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## **MOTORCYCLE HELMETS AND RELIGION: A CASE COMMENT ON THE BADESHA DECISION**

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### **A. INTRODUCTION**

On March 6, 2008, the Ontario Court of Justice released its decision in *R. v. Badesha* (“*Badesha*”),<sup>1</sup> a noteworthy case for churches and faith-based organizations because of its discussion of religious freedom. In the context of recent decisions by appellate courts which upheld freedom of religion and accommodation,<sup>2</sup> *Badesha* is significant as it indicates that religious freedom remains subject to limitations, particularly when matters of health and safety are involved.

As in many legal disputes, *Badesha* required the court to balance competing interests of the state and the individual. In this case, the court decided that the government’s interest in protecting individuals by requiring motorcycle helmets on Ontario’s roads was a reasonably necessary limitation to an individual’s freedom to not wear a helmet due to religious convictions.

This *Church Law Bulletin* reviews the court’s decision in *Badesha* and discusses why it may be of interest to churches and other religious organizations.

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<sup>1</sup> 2008 ONCJ 94 [*Badesha*].

<sup>2</sup> See, for example, Terrance S. Carter & Anne-Marie Langan, “Supreme Court Gives Strong Endorsement to Freedom of Religion” in *Church Law Bulletin No. 17* (16 March 2006), online: <http://www.carters.ca/pub/bulletin/church/2006/chchlb17.pdf> and Terrance S. Carter & Nancy E. Claridge, “Alberta Court of Appeal Upholds Province’s Obligation to Accommodate Religious Beliefs” in *Church Law Bulletin No. 19* (15 June 2007), online: <http://www.carters.ca/pub/bulletin/church/2007/chchlb19.pdf>.

## B. BACKGROUND TO THE DECISION

In Ontario, section 104(1) of the *Highway Traffic Act*<sup>3</sup> requires individuals to wear an approved helmet while operating a motorcycle. Mr. Baljinder Badesha is a member of the Sikh faith and believes that because of his faith, he must wear a turban when in public and that he cannot wear anything over the turban.

When Mr. Badesha was charged with contravening the motorcycle helmet law, he challenged the validity of the law on the basis that it violated his freedom of religion and right to equality, and therefore did not comply with the *Canadian Charter of Rights and Freedoms* (the “Charter”)<sup>4</sup> and the *Ontario Human Rights Code* (the “Code”).<sup>5</sup> Generally stated, Mr. Badesha’s position was that the law forced him to choose between either abandoning his religious beliefs or abandoning motorcycling and therefore unjustifiably infringed his religious freedom. In defence of the legislation, the province of Ontario took the position that the purpose of the law is to prevent serious injury and death. Given the significance of this purpose, the requirement for all motorcycle operators to wear a helmet did not amount to an interference of religious freedom. Alternatively, the province submitted that any breach of rights could be legally justified.

## C. THE STATUTORY FRAMEWORK

### 1. Canadian Charter of Rights and Freedoms

Sections 2 and 15 of the Charter establish, respectively, the rights to religious freedom and equality under the law. The two sections state:

2. Everyone has the following fundamental freedoms:  
(a) freedom of conscience and religion...

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Where it is proven that there is a *prima facie* breach (i.e. a breach on its face) of a Charter right, the onus is on the government to justify it according to section 1 of the Charter, which states:

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<sup>3</sup> R.S.O. 1990, c. H.8.

<sup>4</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

<sup>5</sup> R.S.O. 1990, c. H.19.

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

The basic framework for evaluating whether the government has met the onus under section 1 of the Charter is set out in the well-established Oakes test,<sup>6</sup> which requires that:

- the infringing measure has an objective of sufficient importance to warrant overriding a Charter right; and
- the means chosen are proportional to the objective, which requires the court to ensure that (a) the means chosen are rationally connected to the objective, (b) the means impair the right as little as possible, and (c) there is proportionality between the effects of the infringing measure and the objective.

## 2. Ontario Human Rights Code

Sections 1 and 9 of the Code provide that every person has a right to equal treatment with respect to services, without discrimination because of creed, and prohibits any infringement of this right:

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

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9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

Section 11 essentially prohibits rules that have the effect of discrimination, even if it is not explicitly discriminatory. It also requires that there must be accommodation to the point of “undue hardship”:

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; ...

(2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be

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<sup>6</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103.

accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

## D. THE DECISION

Conceptually, there were three distinct legal issues in this case. As indicated in the statutory framework above, Mr. Badesha submitted that the motorcycle helmet law (1) breached his Charter right to freedom of religion, (2) breached his Charter right to equality, and (3) discriminated against his human right under the Code to equal treatment. However, in essence Justice Blacklock's determination of all three issues hinged on the court's role "to consider and balance various competing interests."<sup>7</sup>

### 1. Right to Freedom of Religion

The court found that the law indeed interfered with Mr. Badesha's freedom of religion. In this regard, the court affirmed the principle that it is not the court's role to assess the substance of an individual's religious beliefs, but merely the sincerity of those beliefs.<sup>8</sup> Moreover, the court stated that the threshold for finding state interference with religious freedom was interference with the individual's "ability to act in accordance with his or her religious beliefs *in a manner that is more than trivial or insubstantial* (emphasis added)."<sup>9</sup> In order to determine whether this threshold is met, the court would need to look at the context of each case, and Justice Blacklock outlined a non-exhaustive set of factors that may be taken into account:<sup>10</sup>

- whether or not the legislation, on its face or in effect, completely prohibited a religious practice or belief;
- whether or not the legislative prohibition only incidentally touches upon matters of faith;
- the nature of the impact that adhering to one's religion or the regulation in question has on the individual; and
- the degree of burden placed on others through the conduct in issue and whether or not those burdens engage constitutionally protected interests.

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<sup>7</sup> *Badesha*, *supra* note 1 at para. 2.

<sup>8</sup> See Terrance S. Carter, "Supreme Court of Canada Adopts Broad View of Religious Reform" in *Church Law Bulletin No. 5* (23 August 2004), online: <http://www.carters.ca/pub/bulletin/church/2004/chchl05.pdf>.

<sup>9</sup> *Badesha*, *supra* note 1 at para. 39.

<sup>10</sup> *Ibid.* at para. 41.

However, the court's analysis under section 1 of the Charter resulted in a finding that the motorcycle helmet law indeed satisfied the requirements of the Oakes test, and therefore the interference was justifiable. The legislation was rationally connected to the purpose of highway safety and associated matters. Justice Blacklock noted that the various types of statistical evidence that were before him, which are explained in detail in the decision, were a good indicator that helmets have a significant effect on reducing the risk of head injury and death. The court was satisfied that the law's impairment on religious freedom was minimal, and that there was no reasonable way to accommodate Mr. Badesha's religious practice without abandoning the safety standard necessary to protect him and the public at large. In summary, the motorcycle helmet law was reasonably necessary to ensure the health, emotional and economic interests of all members of the public, including the individual whose religious freedom was being interfered with.

## 2. Right to Equality and Freedom from Discrimination

The court's analyses of the equality and discrimination matters under section 15 of the Charter and section 1 of the Code were largely extensions of the discussion on freedom of religion, and Justice Blacklock commented that "if a legislative scheme is found by the court to be a reasonable limit on freedom of religion... it is... very difficult to see how that same limitation could ever truly be discriminatory within the meaning of section 15."<sup>11</sup> The court stated that, in any event, the justification under section 1 of the Charter was applicable to the rights of both religious freedom and equality. Nonetheless, the court applied the legal principles set out in *Law v. Canada (Minister of Employment and Immigration)*,<sup>12</sup> a landmark decision of the Supreme Court of Canada that established a legal test for discriminatory legislation and underscored the notion of human dignity. In *Badesha*, the court was satisfied that the legislation did, in its effect, create a distinction in its application due to Mr. Badesha's religion, but that this was not discriminatory because Justice Blacklock was "not satisfied that a rational and informed person in a similar position to the Applicant [Mr. Badesha] would feel that this law undercut or deprecat[ed] their human dignity."<sup>13</sup>

With respect to discrimination under the Code, the court decided that the law did constructively discriminate because Mr. Badesha was not able to use the "service" of a public highway due to his

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<sup>11</sup> *Badesha*, *supra* note 1 at para. 76.

<sup>12</sup> [1999] 1 S.C.R. 497.

<sup>13</sup> *Badesha*, *supra* note 1 at para. 86.

creed. The analysis then focused on whether or not the law provided for accommodation to the point of “undue hardship” as required by section 11. The court applied the same reasoning used in its analysis for freedom of religion and found that no accommodation could be provided as it would be undue hardship on the province to limit its interest in public safety.

## E. COMMENTARY

Firstly, it should be noted that because an appeal has been filed, it is unclear as to whether this decision of the Ontario Court of Justice is conclusive.<sup>14</sup> Nevertheless, the reasoning employed by the court, as well as the conclusions reached, are of importance to the overall discussion of religious freedom.

As illustrated in the court’s decision in *Badesha*, despite attempts to enunciate principles or indicia to assist in determining whether or not there has been interference with religious freedom, the emphasis on contextual and factual analyses means that lower courts are charged with the task of examining the specific facts of each case to balance the competing interests of different parties. As such, it is worthwhile to examine the facts that the court relied upon in this decision.

Despite recognizing that “[h]ighway safety and statistical analysis are not always straightforward matters”,<sup>15</sup> Justice Blacklock ultimately did find that the evidence before him “seem[ed] to be incontrovertible that helmets markedly reduce deaths and head injuries experienced by motorcycle riders.”<sup>16</sup> It is based on this statistical evidence that Justice Blacklock deduced that allowing helmetless riding for individuals holding the same belief as that of Mr. Badesha would have directly led to at least 2.2 deaths per year as of 2001. It is not surprising that statistical evidence, when presented in this manner, would be persuasive in an argument supporting the necessity of a motorcycle helmet law.

However, other facts stated in the decision may not be as clear, and may generate questions about how much of a legal decision is affected by the particular facts of a case. The court found that Mr. Badesha’s freedom of religion was impinged upon, to the extent that it did force him “to choose between his religious beliefs and participating in an activity open to other Ontarians.”<sup>17</sup> The court also recognized that this choice would have

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<sup>14</sup> See the press release of the United Sikhs, “Sikh Appeals Verdict in Helmet Dispute” (28 March 2008), online: <http://www.unitedsikhs.org/PressReleases/PRSRLS-28-03-2008-00.htm>.

<sup>15</sup> *Badesha*, *supra* note 1 at para. 60.

<sup>16</sup> *Ibid.* at para. 15.

<sup>17</sup> *Ibid.* at para. 42.

some effect on him in the context of his business as a car and motorcycle seller, but stated that “it is quite unclear from the material before me exactly what degree of economic pressure or burden this places on him in the context of his business.”<sup>18</sup> In light of these statements, it may be worth considering whether or not a different set of facts could have led the Court to decide this case differently. Would it have made a difference if Mr. Badesha was a delivery driver who could only afford to own a motorcycle? Would it have made a difference if Mr. Badesha was a member of a religious organization that relied heavily on the low cost of motorcycles in order to assist in providing its charitable services? The issue that is not addressed by the facts in *Badesha* is whether or not, from a legal perspective, a certain degree of “economic burden” on the discriminated party would require a commensurate degree of accommodation by the state. For religious organizations that operate on limited resources, this issue could prove to be one that the courts may need to address in the future.

## F. CONCLUDING COMMENTS

Ultimately, the *Badesha* decision should serve to remind those with an interest in advancing religious freedom that despite the bolstering of religious freedom in Canada’s laws and jurisprudence, “not every action will become summarily unassailable and receive automatic protection under the banner of freedom of religion. No right, including freedom of religion, is absolute.”<sup>19</sup> In quoting this statement from the Supreme Court of Canada, Justice Blacklock underscores the reality that religious freedom is indeed subject to limits.

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at para. 61., cited in *Badesha*, *supra* note 1 at para. 39.