



Religion and the State

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RELIGION AND THE STATE

1. INTRODUCTION

Freedom of religion is one of the “necessary attributes and modes of self-expression of human beings and the primary conditions of their community life within a legal order” *per* Mr. Justice Rand.¹

Friedrich Nietzsche once famously proclaimed “God is Dead -- and we have killed him” in *The Gay Science* first published in 1882. Such proclamation was typical of the post-Enlightenment Progressive movement in the late nineteenth century where writers predicted a new era of a modern and secular state. In hindsight, such predictions remain an antiquity of the past. Religion plays an active role in shaping both the public and private lives of many Canadians today, and is a protected right under *section 2(a)* of the *Charter*.² *Section 2(a)* simply states: “Everyone has the following fundamental freedoms: (a) freedom of conscience and religion”. Like all rights and freedoms guaranteed by the *Charter*, freedom of religion is “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” as stated in *section 1* of the *Charter*.

This paper is divided into two parts. The first part will consider the development of the jurisprudence surrounding Freedom of Religion by examining the early *section 2(a)* cases. The second part of the paper will focus on a number of recent cases from the Supreme Court of Canada that have explored the issues of religion and the state. The paper is intended to provide a framework for considering the broader questions of how, and to what extent, can our courts and societal institutions accommodate religious rights and

¹ *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 at 329.

² *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

Note that the Preamble of the *Charter* reads, “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law...”. The earlier versions of the *Charter* did not contain this reference to “supremacy of God” in the Preamble. Courts have been critical of the reference. For example, in *R. v. Morgentaler*, [1988] 1 S.C.R. 30, Wilson J. said at 178 that while she was “not unmindful of the fact that the *Charter* opens with an affirmation that ‘Canada is founded upon principles that recognize the supremacy of God’”, she was “also mindful that the values entrenched in the *Charter* are those which characterize a free and democratic society”.

values particularly when those rights conflict, or at least appear to conflict, with other *Charter* protected rights?

2. THE DEFINITION AND SCOPE OF “FREEDOM OF RELIGION”

The Supreme Court of Canada has, since the inception of the *Charter*, articulated an expansive definition of “freedom of religion” which revolves around the notion of personal choice. *R. v. Big M Drug Mart Ltd.*³ was the first decision of the Court to consider the definition of “freedom of religion” under *section 2(a)*. In that case, several retailers challenged the constitutionality of the national Sunday-closing law, the *Lord’s Day Act*,⁴ as an impermissible attempt to compel adherence to the Christian Sabbath. The Supreme Court of Canada *per* Dickson C.J. agreed and summarized the meaning of “freedom of religion” in the following oft-quoted words:

[94] A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the employment of fundamental freedoms and I say this without any reliance upon *section 15* of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.

[95] Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of

³ [1985] 1 S.C.R. 295.

⁴ R.S.C. 1970, c. L-13.

conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

Three aspects of Dickson C.J.'s definition deserve comment. First, the exercise of religious practices is not confined to the private sphere of a person's life. Protection is given to public declaration and manifestations of religious beliefs, including worship, practice, teaching and dissemination. Secondly, freedom of religion is not absolute but subject to legal limits as are necessary to protect the public order and the rights of others. In other words, protection of freedom of religion may involve a balancing with other competing claims of members of society. *Big M Drug Mart* predates the Court's decision in *R. v. Oakes*⁵ and subsequent *section 2(a)* case law has incorporated the *Oakes* test in determining whether the infringement of the right, if found, was justified in the circumstances. Finally, a curious but necessary feature of Dickson C.J.'s definition is the absence of any reference to the divine. Rather than outlining a theological pretext for protecting public declaration and manifestations of religious practices, an area that is profoundly personal and existential, Dickson C.J. chooses only to allude to the historical importance of the right when he states that: "Religious belief and practice are historically prototypical and, in many ways, paradigmatic of conscientiously-held beliefs and manifestations and are therefore protected by the *Charter*".⁶

A year after *Big M Drug Mart*, the Supreme Court of Canada in *R. v. Edwards Books and Art Ltd.*⁷ considered the constitutionality of Ontario's Sunday-closing law, *Retail Business Holidays Act*,⁸ which contained an exemption for Sabbath observers. The majority of the Court *per* Dickson C.J. found that the legislation infringed the freedom of religion of some retail workers who observed Saturday as a holy day by imposing a financial burden on them. However, the Court justified the infringement under *section 1* as a reasonable legislative attempt to protect retail workers by ensuring a common day of rest. The Ontario legislation in

⁵ [1986] 1 S.C.R. 103.

⁶ *Big M Drug Mart*, at para. 123.

⁷ [1986] 2 S.C.R. 713.

⁸ R.S.O. 1980, c. 453.

Edwards was distinguishable from the federal *Lord's Day Act* in *Big M Drug Mart* because the purpose of finding a common day of rest for retail workers was a secular one. In concluding that the legislation in question was justified by *section 1*, Dickson C.J. explained the impermissible burdens on religious practices under the *Charter* as follows:

[97] This does not mean, however, that every burden on religious practices is offensive to the constitutional guarantee of freedom of religion. It means only that indirect or unintentional burdens will not be held to be outside the scope of *Charter* protection on that account alone. *Section 2(a)* does not require the legislatures to eliminate every minuscule state-imposed cost associated with the practice of religion. Otherwise the *Charter* would offer protection from innocuous secular legislation such as a taxation act that imposed a modest sales tax extending to all products, including those used in the course of religious worship. In my opinion, it is unnecessary to turn to s. 1 in order to justify legislation of that sort. The purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs in turn govern one's conduct and practices. The Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. For a state-imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice. In short, legislative or administrative action which increases the cost of practising or otherwise manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial: see, on this point, *R. v. Jones*, [1986] 2 S.C.R. 284, per Wilson J. at p. 314.

By the end of the 1980's, the Supreme Court of Canada through settling the issue of Sunday-closing laws had given *section 2(a)* of the *Charter* its initial definition, and ascribed to it some general principles.⁹ On March 2, 2006, the Court released its latest decision on the issue in *Multani v. Commission scolaire Marguerite-*

⁹ For examples of other Sunday Observance case law, see *London Drugs Ltd. v. Red Deer (City)* (1988), 52 D.L.R. (4th) 203 (Alb. C.A.), leave to appeal to S.C.C. refused; *R. v. Canada Safeway Ltd.* (1989), 37 B.C.L.R. (2d) 199 (C.A.); *R. v. Westfair Foods Ltd.* (1989), 65 D.L.R. (4th) 56 (Sask. C.A.); *R. v. Paul Magder Furs Ltd.* (1989), 49 C.C.C. (3d) 267 (Ont. C.A.); and *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1991), 78 D.L.R. (4th) 333 (Ont. C.A.).

*Bourgeois*¹⁰. The Court reviewed the previous decisions on the issue, including *Big M Drug Mart* and *Edwards*, and activated a two-step test for *section 2(a)* claims:

I. Was there an infringement of *section 2(a)*? In answering this question, the courts must be mindful of the key principles regarding “freedom of religion”.

- (1) The essence of the concept of freedom of religion is:
 - (a) the right to entertain such religious beliefs as a person chooses;
 - (b) the right to declare religious beliefs openly and without fear of hindrance or reprisal; and
 - (c) the right to manifest religious beliefs by worship and practice or by teaching and dissemination.¹¹
- (2) No one is to be forced to act in a way contrary to his or her beliefs or conscience, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.¹²
- (3) It is not for the state to dictate what the religious obligations of the individual are, it is for the individual to determine.¹³
- (4) Freedom of religion consists of:
 - (a) the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith; and

¹⁰ [2006] S.C.J. No. 6, 2006 SCC 6.

¹¹ *Big M Drug Mart*, *supra*.

¹² *Ibid*.

¹³ *Ibid*.

(b) this is irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.¹⁴

(5) In order to establish that a claimant's freedom of religion has been infringed, it must be shown that the claimant sincerely believes in a practice or belief that has a nexus with religion, and that the impugned conduct of a third party interferes with the claimant's ability to act in accordance with that practice or belief.¹⁵

(6) This interference must be more than trivial or insubstantial.¹⁶

II. If so, can the infringement be saved under section 1? In order to justify an infringement of a constitutionally protected right, the government or body acting under government authority needs to prove a number of elements.¹⁷

(1) The *Charter* infringement must be reasonable.

(2) The infringement is prescribed in law.

(3) The infringement is demonstrably justified in a free and democratic society which requires that:

¹⁴ *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551. Assessment of sincerity is a question of fact that can be based on several criteria under ordinary rules of evidence, including but not limited to credibility of witnesses.

Amselem involved a proceeding brought under Quebec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12. The issue before the Supreme Court of Canada was (a) whether the building bylaw in question, which prohibited the plaintiffs (all orthodox Jews) from building succahs on their balconies for the annual nine-day Jewish religious festival, infringed the plaintiffs' freedom of religion protected under the Quebec Charter; and (b) if so, whether the infringement was justified. Though the majority of the Court stated at para. 36 that "the interplay of the rights in the Quebec Charter is governed by its unique content and structure", the general comments of the Court with respect to the content and scope of freedom of religion is instructive and has wider application outside of Quebec to the rest of the common law jurisdiction.

¹⁵ *Ibid.*

¹⁶ *Ibid.* See also *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 226; and *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31, at para. 29.

¹⁷ *R. v. Oakes*, [1986] 1 S.C.R. 103 (the "Oakes test").

- (a) there was a pressing and substantial objective; and
- (b) the means are proportionate to the objective;
 - (i) the means are rationally connected to the objective;
 - (ii) there is a minimal impairment of rights; and
 - (iii) there is proportionality between the salutary and deleterious effects of the requirement.

3. SUMMARY OF RECENT CASE LAW

(a) *Reference re Same-Sex Marriage*¹⁸

On December 9, 2004, the Supreme Court of Canada issued its advisory opinion in the Same-Sex Marriage Reference. The Court was asked to give its opinion on four questions relating to draft legislation that, in its entirety, provides:¹⁹

1. Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.
2. Nothing in this Act affects the freedom of officials of religious groups to refuse to perform marriage that are not in accordance with their religious beliefs.

For the purposes of this paper, only the third question addressed by the Court will be considered, namely whether the freedom of religion guaranteed by *section 2(a)* of the *Charter* protects religious officials from being compelled to perform a marriage between two persons of the same-sex that is contrary to their

¹⁸ [2004] 3 S.C.R. 698, 2004 SCC 79. Although *Reference re Same-Sex Marriage* was a major landmark in terms of legal approval of same-sex marriage, in terms of substantive rights for same-sex couples, the case did not add much for a number of reasons. By the time the reasons were released, the federal government had already decided not to appeal the *Halpern v. Canada (Attorney General)* (2003), 65 O.R. (3d) 161 (C.A.), a case decided on the very same issue and so there was no point examining it again. The Court also wished to respect other lower-court decisions [*EAGLE Canada Inc. v. Canada (Attorney General)* (2003), 255 D.L.R. (4th) 472, 2003 BCCA 251; and *Hendricks v. Quebec (Procureur general)*, [2002] R.J.Q. 2506] upholding same-sex marriages by letting them stand.

¹⁹ On July 16, 2003, the Governor in Council issued Order in Council P.C. 2003-1055 asking the Supreme Court of Canada to hear a reference on the federal government's *Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes*.

religious beliefs. The Court gave a brief answer concluding that *section 2(a)* of the *Charter* was indeed broad enough to protect the religious officials from being so compelled, or even protect those who disagree from renting religious spaces for the purposes of same-sex marriage.

The Court commented that the performance of religious rites was a fundamental aspect of a person's religion and acknowledged the concern that it seemed "clear that state compulsion on religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion under *section 2(a)*"²⁰ and that such violation could not be justified under *section 1*. However, absent exceptional circumstances and in an evidentiary vacuum, the Court refused to speculate what those infringements would be and held that "the guarantee of religious freedom in *section 2(a)* of the *Charter* is broad enough to protect religious officials from being compelled by the state to perform civil or religious same-sex marriages that are contrary to their religious beliefs".²¹

A note of interest was the Court's reiteration that it was up to the provinces to legislate protection for religious groups. To date, no individual has brought a claim in the courts challenging the constitutionality of a government decision on the ground that it compelled him or her to perform same-sex or other forms of marriage contrary to his or her religious beliefs.

(b) ***Multani v. Commission scolaire Marguerite-Bourgeois***²²

The plaintiff was a baptized Sikh whose beliefs required him to wear a kirpan (a metal dagger with a four-inch blade carried by orthodox Sikhs as religious symbol) at all times. In 2001, the school board sent to the plaintiff's parents a letter authorizing the plaintiff, then a 12-year old boy, to wear his kirpan to the school provided that it was sealed inside his clothing. The plaintiff and his parents agreed to this arrangement as a reasonable compromise. However, the governing school board refused to ratify this arrangement on the ground that wearing a kirpan violated article 5 of the school's Code of Conduct which prohibited the carrying of weapons. The school board's Council of Commissioners (the "Council") upheld the decision of the school board. The Quebec Superior reversed the decision of the Council, and the Court of Appeal later restored it.

²⁰ *Reference re Same-Sex Marriage*, para. 58.

²¹ *Ibid*, at para. 60.

²² See note 11.

The majority of the Supreme Court of Canada *per* Charron J. ruled first, that a total ban on wearing a kirpan to school violated an individual's freedom of religion protected by *section 2(a)* of the *Charter* and, second that this ban on religious expression was not reasonable or justifiable under *section 1*. One practical issue was the characterization of the kirpan – whether the kirpan is rightly viewed primarily as a weapon or as a religious symbol. The Court however disagreed with the approach of the lower courts that the plaintiff needed to address the “kirpan as weapon” issue during the infringement step of the *section 2(a)* analysis. Charron J. noted at para. 37 that:

[37] Much of the [Council's] argument is based on its submission that [TRANSLATION] "the kirpan is essentially a dagger, a weapon designed to kill, intimidate or threaten others". With respect, while the kirpan undeniably has characteristics of a bladed weapon capable of wounding or killing a person, this submission disregards the fact that, for orthodox Sikhs, the kirpan is above all a religious symbol. Chaplain Manjit Singh mentions in his affidavit that the word "kirpan" comes from "kirpa", meaning "mercy" and "kindness", and "aan", meaning "honour". There is no denying that this religious object could be used wrongly to wound or even kill someone, but the question at this stage of the analysis cannot be answered definitively by considering only the physical characteristics of the kirpan. Since the question of the physical makeup of the kirpan and the risks the kirpan could pose to the school board's students involves the reconciliation of conflicting values, I will return to it when I address justification under s. 1 of the Canadian Charter. In order to demonstrate an infringement of his freedom of religion, Gurbaj Singh does not have to establish that the kirpan is not a weapon. He need only show that his personal and subjective belief in the religious significance of the kirpan is sincere.

[Emphasis added]

Note the contrast and shift in the analysis between the majority in *Multani* with *R. v. Hothi*²³ and *Nijjar v. Canada 3000 Airlines Ltd.*²⁴ on the “kirpan as weapon” issue. *Hothi* was a case where the trial judge ruled that the accused, also a baptized Sikh, could not have his kirpan in his possession in the courtroom during his trial on the ground that the kirpan was an instrument capable of use as a weapon. In *Nijjar*, the

²³ [1985] 3 W.W.R. 256 (Man. Q.B.).

²⁴ [1999] C.H.R.D. No. 3 (QL).

Canadian Human Rights Tribunal concluded that the complainant who was prohibited from wearing his kirpan on the airplane had not been discriminated against on the basis of his religion. In both *Hotbi*²⁵ and *Nijjar*, the physical characteristics of the kirpan and its potential to be used as a weapon played a dominant role in the analysis and the ultimate finding that a ban on kirpan in the settings were justified. In its *section 1* analysis, the majority of the Court in *Multani* distinguished *Hotbi* and *Nijjar* on the ground that safety in schools, while just as important as it is in airplanes and courtrooms were nevertheless incomparable. Charron J. noted at paras. 65 and 66:

[65] ... The school environment is a unique one that permits relationships to develop among students and staff. These relationships make it possible to better control the different types of situations that arise in schools...

[66] Although there is no need in the instant case for this Court to compare the desirable level of safety in a given environment with the desirable level in a school environment, these decisions show that each environment is a special case with its own unique characteristics that justify a different level of safety, depending on the circumstances.

While the majority of the Court agreed with the Council's submission that it was unnecessary to wait for harm to be done before acting, the evidence in the record relating to safety "must be unequivocally established for the infringement of a constitutional right to be justified".²⁶ Absent such evidence, the majority did not support the Council's arguments in support of an absolute prohibition on kirpans.

²⁵ Dewar C.J.Q.B. of the Manitoba Court of Queen's Bench in *Hotbi* stated at 295: "It serves a transcending public interest that justice be administered in an environment free from any influence which may tend to thwart the process. Possession in the courtroom of weapons, or articles capable of use as such, by parties or others is one such influence". In my view, a compelling argument could also be made of the "transcending public interest" that education (as opposed to justice) be "administered in an environment free from any influence which may tend to thwart the process". Certainly, the Council urged the Court to adopt this line of reasoning in *Multani* without success. See also *Pandori v. Peel Board of Education* (1990), 12 C.H.R.R. D/364, aff'd (1991), 3 O.R. (3d) 531 (sub nom. *Peel Board of Education v. Ontario Human Rights Commission*) on this issue. In *Pandori*, the Ontario Board of Inquiry gave its reasons on why the courts and schools were not comparable institutions at para. 197, none of which I found compelling.

²⁶ *Multani* at para. 67.

The *Multani* decision suggests that a complete ban on religious symbols, practices or beliefs in a given environment, whether it be in schools, courtrooms, airplanes or otherwise, may not be saved under *section* 1. Provided that an individual can prove that his or her belief in a particular religious belief and practices is sincere on a subjective standard, government authorities may well be required to provide a unique set of procedures for that individual depending on the circumstances.

(c) ***Trinity Western University v. British Columbia College of Teachers***²⁷

Trinity Western is not strictly a *section* 2(a) freedom of religion case, but an administrative law decision that involved a judicial review of a decision of the British Columbia College of Teachers (“BCCT”). Trinity Western University (“TWU”) had applied to the BCCT to have its teacher education program approved, but the application was denied because of TWU policies that were said to be discriminatory against homosexuals. The majority *per* Iacobucci and Bastarache JJ. framed the issue as follows: “how to reconcile the religious freedoms of individuals wishing to attend TWU with the equality concerns of the students in B.C.’s public school system, concerns that may be shared with their parents and society generally”.²⁸

The Court decided to reconcile the scope of the freedom of religion and equality rights through the “proper delineation of the rights and values involved”.²⁹ What does this phrase mean and how is it applied? In *Trinity Western*, the Court stated that it would generally draw the line between “belief” and “conduct”. At paras. 35 and 26, the Court stated:

[35] ... Clearly, the restriction on freedom of religion must be justified by evidence that the exercise of this freedom of religion will, in the circumstances of this case, have a detrimental impact on the school system.

[36] ... The freedom to hold beliefs is broader than the freedom to act on them. Absent concrete evidence that training teachers at TWU fosters discrimination in the public schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU

²⁷ [2001] 1 S.C.R. 772, 2001 SCC 31.

²⁸ *Ibid*, at para. 28.

²⁹ *Ibid*, at para. 29.

should be respected. The BCCT, rightfully, does not require public universities with teach education programs to screen out applicants who hold sexist, racist or homophobic beliefs. For better or for worse, tolerance of divergent beliefs is a hallmark of a democratic society.

In coming to this conclusion, the Court followed the interpretive principle laid by Lamer C.J. in *Dagenais v. Canadian Broadcasting Corp.*³⁰:

[72] ... A hierarchical approach to rights, which places some over others, must be avoided, both when interpreting the Charter and when developing the common law. When the protected rights of two individuals come into conflict, as can occur in the case of publication bans, Charter principles require a balance to be achieved that fully respects the importance of both sets of rights.

Following the above line of reasoning, persons are then free to “believe” in discriminatory religious practices or observances that may conflict with the equality or other rights guaranteed by the *Charter*, but are not necessarily free to “act” on them. While delineating religious practices into “belief” and “conduct” may result in a practical and common sense solution in a straightforward case, the Supreme Court of Canada has yet to provide a clear guidance for a situation where the lines cannot be so neatly drawn. For example, it would be interesting to see how the courts will deal with a situation posed by *Reference re Same-Sex Marriage*. In *Multani*, the Court did not have to reconcile two constitutional rights, as only freedom of religion was in issue, but did offer the following dicta on this issue:

[30] This Court has frequently stated, and rightly so, that freedom of religion is not absolute and that it can conflict with other constitutional rights. However, since the test governing limits on rights was developed in *Oakes*, the Court has never called into question the principle that rights are reconciled through the constitutional justification required by s. 1 of the *Canadian Charter*... In *Dagenais* [citations omitted], the Court, in formulating the common law test applicable to publication bans, was concerned with the need to “develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution” (at p. 878). For this purpose, since the media’s freedom of expression had to be reconciled with the accused’s right to a fair trial, the Court held that a

³⁰ [1994] 3 S.C.R. 835 at para. 72.

common law standard that “clearly reflects the substance of the *Oakes* test” was the most appropriate one (at p. 878).

Multani and *Dagenais*, thus, stand for the principle that a *section 1* analysis (or a modified *section 1* analysis that reflects the substance of the *Oakes* test) is best suited for reconciling *Charter* rights when a simple delineation of the rights involved will not do.³¹

4. CONCLUSION

The rights guaranteed by the *Charter*, including freedom of religion, are public civil rights. The *Charter* protects the rights of Canadians to entertain their religious beliefs and to openly and publicly declare those beliefs without fear of hindrance or reprisal. Canadians also have the right to manifest their religious beliefs through worship and practice as well as by teaching and dissemination, and to be free from discrimination because of their religious beliefs.

Judicial application and interpretation of religious rights have long been an area of controversy. Courts are asked to perform the difficult task of redressing wrongs allegedly done to an individual’s right to exercise his or her religious beliefs and practices. The task invariably involves the courts determining (i) whether that freedom was infringed by reference to the broad definition and scope of “freedom of religion” under *section 2(a)*; and (ii) if so breached, whether the infringement was justifiable in the circumstances under *section 1*. The task is an unenviable one, and so long as Canadian society retains its unique plural makeup predicated on different and sometimes conflicting religious beliefs, any judicial application and interpretation of *section 2(a)* will by necessity be controversial.

³¹ See as well *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825

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