Canadian Law and Policy Regarding Religious Freedom

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Questions today

- What are the legal/policy approaches to religious diversity in Canada?
- Debates, issues, challenges
- Is Canadian experience relevant to other countries?
### Religious Affiliations in Canada, 2011

<table>
<thead>
<tr>
<th>RELIGION</th>
<th>OVERALL POPULATION (%)</th>
<th>RECENT IMMIGRANTS (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christian</td>
<td>67.3</td>
<td>47.5</td>
</tr>
<tr>
<td>Muslim</td>
<td>3.2</td>
<td>17.4</td>
</tr>
<tr>
<td>Hindu</td>
<td>1.5</td>
<td>6.6</td>
</tr>
<tr>
<td>Sikh</td>
<td>1.4</td>
<td>4.8</td>
</tr>
<tr>
<td>Buddhist</td>
<td>1.1</td>
<td>2.8</td>
</tr>
<tr>
<td>Jewish</td>
<td>1.0</td>
<td>0.9</td>
</tr>
<tr>
<td>Other</td>
<td>0.6</td>
<td>0.5</td>
</tr>
<tr>
<td>No Religion</td>
<td><strong>23.9</strong></td>
<td><strong>19.5</strong></td>
</tr>
</tbody>
</table>

Source: National Household Survey, 2011
Evolution, 1971-2011

Canada’s Religious Composition, 1971-2011

% of Canadians who identify as...

<table>
<thead>
<tr>
<th></th>
<th>1971</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protestant</td>
<td>41%</td>
<td>27%</td>
</tr>
<tr>
<td>Catholic</td>
<td>47%</td>
<td>39%</td>
</tr>
<tr>
<td>Other Religion*</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Religiously Unaffiliated</td>
<td>11%</td>
<td>24%</td>
</tr>
</tbody>
</table>

Sources: 1971-2001 Canada census; 2011 National Household Survey
*Data for the "Other Religion" category in 1971 are not shown because the figure is not comparable with the figures for 1981-2011. Percentages may not add to 100 due to rounding.

PEW RESEARCH CENTER
1. Managing religious diversity in Canada: legal and policy framework
Protection for fundamental rights

- Constitutional:
  - **Canadian Charter of Rights and Freedoms (1982)**
    - Applies to Parliament and government, federal & provincial
    - Includes freedom of religion & right to equality
Protection for fundamental rights

• Legislative:

  • In every province & federal level: Human Rights Acts
    ❖ Non-discrimination
    ❖ Also apply to private relations
State neutrality

- No state religion in Canada (Supreme Court of Canada, 1955)

- Freedom of religion requires the State to be religiously neutral (SCC, 1985)
Implications of neutrality

- State may not:
  - Dictate citizens **how to behave**, based on religious norms (e.g., Sunday observance)
  - Enforce religious standards
  - Interpret religious standards
  - Indoctrinate
Neutrality does not mean ignoring religions

- Public schools may teach facts about religions, as long as do not indoctrinate (SCC, 2012)

- Private contracts referring to religious standards may be enforced by civil courts (SCC, 2007 – Jewish divorce)

- Religiously-based tax exemptions

- Private religious schools get public funding

- Consumer laws protect kosher advertising

- Etc.
Freedom of religion

- Canadian Charter of Rights and Freedoms, s. 3

- Protects both belief and external manifestation of belief (SCC, 1985 – religious observance)

- Individual sincerity prevails – no need to conform to official religious doctrine:
  - SCC, 2004 – Court accepts individual belief (against rabbi’s opinion)
Reasonable accommodation of religion

- Canadian antidiscrimination law requires “reasonable accommodation” of differences (SCC, 1985):
  - Equality sometimes requires differential treatment (Aristotle)
  - On case-by-case, individual basis
  - Accommodation becomes unreasonable when “undue hardship”
Accommodating religion in public services

Examples

- Dress codes/uniforms
- Prayer rooms
- Prisons: kosher/halal meals
- Gendered time slots (e.g., swimming pools)
- Examination days in universities take religious observance into account
- etc.

- Employers, public institutions need better, clearer guidelines for granting/refusing accommodation
- Accommodation does not conflict with separation of Church/State, gender equality, “rights of majority”
- Accommodation crisis only a “crisis in perception”
Multiculturalism

- **Canadian Multiculturalism Act:**
  - “The diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society.”

- **Canadian Charter of Rights and Freedoms, s. 27:**
  - “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.”
Multiculturalist jurisprudence

• The kirpan case (SCC, 2006):
  
  • Sikh kirpan in school – Safety concerns
  
  • No evidence of risk
  
  • Individual accommodation was possible, therefore prohibition was disproportionate: “An absolute prohibition would stifle the promotion of values such as multiculturalism.”
  
  • Court allows kirpan, as long as worn securely
Interculturalism (Québec)

- Emphasizes **social integration** (like Multiculturalism)
- Not legally formalized
- Recognizes both **Majority and Minorities**
- Aims at shared identity transcending initial identities
- Compatible with accommodation policy & “open secularism”
In summary

- Liberal paradigm of religion: dominant in Canada

- Canadian concept of equality: substantive (not formal)

- Multiculturalism and Interculturalism serve as justifications for policy of accommodation – although not the legal grounds for it
2. Debates, issues, challenges
What place for religion in State?

- Principle of State neutrality: not challenged
- Meaning of neutrality: still debated
  - “Open” or “strict” neutrality?
  - Has religion become part of “heritage”?
Religion: still religious?

- Reciting prayers in municipal town meetings: neutral or not?
  - Québec Human Rights Tribunal, 2011: prayer violated freedom of religion & non-discrimination
  - Québec Court of Appeals decision, 2013: prayer no breach of neutrality - State has responsibility “to preserve history”
  - Case presently under appeal (SCC)
Open or strict neutrality?

• Should “State agents” be allowed to wear religious clothing/accessories?

  • Currently allowed
  • Québec proposals, 2014 (“Charter of Québec Values”): State agents shall not wear “objects such as headgear, clothing, jewelry or other adornments which, by their conspicuous nature, overtly indicate a religious affiliation.”

  • Would be forbidden:

Source: Government of Québec website
Québec proposals (continued)

- Replicate current limits to individual accommodation, adding two further limits:

  - Must respect equality of men/women (hierarchy of rights?)

  - Must not affect State neutrality, *laïcité*, separation between Church/State - neutrality turned upside down?
Québec proposals (continued)

- “Charter of Values” a probable issue in next Québec elections

- Possible outcomes:

  - If adopted, Charter will be challenged in Canadian courts, based on constitutional guarantees of freedom of religion & non-discrimination

  - Prohibition of religious signs for all State agents is likely to be be ruled disproportionate to the aim of ensuring State neutrality

  - Constitutional crisis will ensue?
Open or strict neutrality? (continued)

- Should State simply ignore religions?

- Recurring debates about:
  - Tax exemptions
  - Public maintenance of religious buildings
  - Public support for faith-based schools
  - Legal recognition of ritual slaughter
Law & Policy

- Open secularism
- Religions recognized
- Accommodation

Challenges

- Strict secularism
- Religions ignored
- Accommodation curtailed

Current state of debates
3. Is Canadian legal and policy framework relevant to other countries?
Canadian framework is different

- Legal approaches to discrimination (e.g., reasonable accommodation, affirmative action) are country-specific; often reflect legal cultures

- State policies towards diversity (e.g., multiculturalism, interculturalism) are also country-specific; may reflect nature of historical relationship to immigration, established religions, colonial past, etc.
Canadian framework is relevant

- Human rights: a shared heritage
- Legal concepts: flexible, globalized
- Canadian experience: reasonably successful
- Debating State policy about religious diversity: time, knowledge, respect essential
Gracias
Merci
Thank you

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