

## Religious Freedoms in Today's Workplace: challenges and opportunities

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## Culture

- Secularization
- Pluralism of religions
- Multiculturalism
- Political correctness where choice is the highest value
- Individualism

## UN Covenant on Civil and Political Rights

### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

## What is religious freedom?

- Section 2(a) of the *Charter of Rights and Freedoms*
  2. Everyone has the following fundamental freedoms
    - (a) Freedom of conscience and religion;
    - (b) Freedom of expression;
- Applies to government

## Non-discrimination

- Section 15 of the Charter:
  - (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.

## What is religious freedom?

- Canadian Human Rights Act
  7. It is a discriminatory practice, directly or indirectly,
    - (a) to refuse to employ or continue to employ any individual, or
    - (b) in the course of employment, to differentiate adversely in relation to an employee,
  - ...
  - on certain grounds including religion.

## The basis for religious freedom

### ■ *Big M Drug Mart* case (1985)

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 belief by worship and practice or by teaching and dissemination.

## The basis for religious freedom in the workplace

### ■ *O'Malley v. Simpsons-Sears* (1985)

O'Malley converted to Seventh Day Adventist and asked for Saturday Sabbath. Employer offered part time work. Supreme Court of Canada ruled that employer must accommodate employee unless there is "undue hardship."

## Unions must defend religious freedom

### ■ *Central Okanagan School District No. 23 v. Renaud* (1992)

School janitor was Seventh Day Adventist and required to be off at sunset on Friday. Union refused to take grievance. Supreme Court ruled that union must defend religious practices of union member.s

## Syndicat Northcrest v. Amselem (2004)

- A condo corporation refused to allow Jewish owners to have a souccah hut on the balcony although Christmas lights were tolerated. Is there a duty to accommodate religious practices?
- Supreme Court ruled in favour of Jewish owners.

## Multani v. Commission scolaire (2006)

- Sikh boy expelled from school because he wore kirpan – small ceremonial dagger – as religious requirement
- Supreme Court of Canada says that he should be allowed to wear kirpan even though it violates "no weapons" policy

## Conscientious objection

Numerous issues have been resolved in believer's favour

- Newfoundland hospital suspended a Pentecostal clerk because she refused to sell tickets to a social event at which liquor would be served.

## Conscientious objection

- Stouffville General Hospital required all obstetrics nurses who had religious objections to assist with abortions.
- Case settled with the hospital agreeing to change its policies to accommodate those nurses who conscientiously object

## Conscientious objection

- Shoppers Drug Mart was required to accommodate a Jehovah's Witness who refused to arrange a display of poinsettias during the Christmas season.

## Conscientious objection

- A youth services program was found to be discriminatory for firing an employee for taking off one day a month for the "new moon". It was discrimination on the basis of religion.

## Conscientious objection

- But so far, marriage commissioners have not been accommodated on the basis that they are acting on behalf of the government (officials). While this is a provincial issue, it may mean that government employees may have a more limited right to be accommodated when they are representing the government.

## Wilson Colony v. Alberta (2009)

- But recent case where Hutterites in Alberta were asking for an exemption from mandatory photo driver's licence
- Hutterites are a sect that believes getting a photo taken violates the 2<sup>nd</sup> commandment (no graven image)

## Conscientious objection and taxes

- So far, people have not been accommodated in diverting their taxes if they disagree with how governments have been spending.
- Prior (1989) was a Quaker who diverted taxes because she object to military spending
- Man diverting taxes on abortion issue

## Chamberlain v. Surrey School Board (2002)

- Supreme Court of Canada ruled that school boards can consider concerns of religious parents but cannot use those concerns to exclude other protected groups from inclusion in public schools. The issue was storybooks featuring same-sex parents for classroom use in kindergarten and grade 1.

## Kempling v. B.C. College of Teachers (current)

- The B.C. Court of Appeal ruled that the College of Teachers was right to discipline a teacher for out of school conduct that was demeaning to gays and lesbians (letters to the editor in paper). Denied right to appeal from Supreme Court.
- Allows professional body to censor teachers.

## Restrictions on religious expression

- Bishop Henry – Calgary, pastoral letter
- Pastor Boissain – Red Deer, AB, wrote letter to the editor on homosexuality
- Ezra Levant faced human rights complaint when he published “Danish cartoons” in Western Standard magazine
- Mark Steyn and Maclean’s faced human rights complaint for “America alone”

## Freedom to preach in public

- Pastor in Pictou (2004) wanted to have an outreach play at the local bandshell but was denied permission because his play was “controversial”. He proceeded and faced loitering charges. He was acquitted. He won a human rights complaint that the municipal policy is discriminatory against religion.

## Unions (dues)

- Comstock case (2007)  
Federal Court rules that union has the right to collect dues from its members even if the member objects to the political views of the union. Comstock was a member of the PSAC and objected to their support of same-sex marriage.