

The Canadian Secular Alliance invites our government to uphold one law for all Canadians, by abandoning the policy of “religious accommodation”



What is the Canadian Secular Alliance (CSA)?

- The Canadian Secular Alliance is a non-profit, public policy research and advocacy organization advancing church-state separation and the neutrality of government in matters of religion. We seek to represent all Canadians, religious and non-religious alike, who believe that the Canadian government should adopt public policies consistent with a secular state.
- The CSA believes in church-state separation — the idea that the government of Canada should not favour one religion over others, or religious belief over non-belief. Our commitment is to liberal-democratic principles of equality, fairness and justice for all under the law, regardless of religious belief or lack thereof.

What is the logic underlying the doctrine of “religious accommodation”?

- “Religious accommodation” entails granting exemptions from generally applicable laws and policies to individuals whose objections are rooted in religion, but not other sources. When a law that is neutral on its face — i.e., applied equally to all people — has a disproportionate impact on people in a religious group, many argue that “equality” and “fairness” require that exemptions be offered.

What is the CSA’s position on religious exemptions from the law?

- Although the policy of religious accommodation is deeply entrenched in our laws and public discourse, the CSA believes that a major re-think is required. The Canadian government and judiciary should adopt one of two coherent positions on this issue:
 - (1) Preferably, exemptions from the law should not be granted, irrespective of whether they are based on religion or not;
 - (2) Barring that, exemptions should be granted to accommodate all deeply held human commitments (including religion, culture, secular conscience, and deeply held political / philosophical / ethical / moral / metaphysical beliefs).
- Either way, the status quo — of legally privileging religious beliefs over all other kinds of beliefs — is untenable. This is not to trivialize religious beliefs, but rather to recognize that government has a duty to treat the deeply held commitments of religious and non-religious Canadians with equal respect.

Isn’t religious accommodation required by Canada’s commitment to religious freedom and multiculturalism?

- The fact that we value religious freedom and multiculturalism does not obligate us to grant religious believers a presumptive constitutional right to disregard otherwise valid laws of general application.
- The policy of granting religious exemptions from the law is ultimately unsustainable precisely because of Canada’s religious and cultural diversity. Every law would be opened to challenge because it conflicts with some person’s religious practice.

Does differential impact of a law on a religious group automatically imply that it is unfair?

- No. In reality, every general law will have a different impact on different people (speed limits differentially impact those who like to drive fast, laws against drunk driving differentially impact alcoholics, anti-tobacco laws differentially impact smokers, laws banning hand-guns differentially impact gun enthusiasts, and so on). This is a trivial and completely general observation. A set of uniform laws is fair because it provides for equal opportunities — for identical choice sets, from which people are free to choose depending on their preferences. It is unclear how a system of uniform laws can be unequal or unfair — in contrast, having different laws for different people in the same society is plainly unequal and unfair. Trying to ensure “equal impact” as opposed to “equal treatment” is conceptually flawed and practically unworkable — the state cannot insulate citizens from every cost or inconvenience resulting from their beliefs, religious or otherwise.

What’s wrong with the “rule-and-exemption” approach?

- To make sense, the “rule-and-exemption” approach requires very precise conditions: it must be important to have a general law, but not so important as to rule out exemptions. In most cases, either the rationale for a law is sound enough to preclude exemptions, or the rationale for exemptions is sound enough to suggest that the law is overly paternalistic and should not exist. If a law is excessively paternalistic, this implies that it should be repealed — not that it should be retained with an exemption for religious believers. If the libertarian argument is valid, it implies that the same freedom from government regulation should be available to all, making religion an irrelevant factor.

Are religious objectors to a law the only people who merit consideration for exemption?

- No. Even if the precise conditions for the rule-and-exemption approach exist, justice requires that the available room for exemptions be distributed among the total population of objectors in a fair manner. Although religion is certainly one possible basis for exemption, there are others, including culture, deeply held non-religious convictions, and strong preferences. Religious beliefs cannot be shown to be “special” in a way that justifies their exclusive right to exemptions. No attempt to logically differentiate between religious and non-religious beliefs has ever successfully justified granting exemptions to religious objectors exclusively.

Does the policy of religious accommodation treat religious and non-religious Canadians equally under the law?

- No. In fact, it is unclear how granting exemptions exclusively to religious claimants can be reconciled with the equality rights guaranteed in section 15(1) of the Canadian Charter of Rights and Freedoms, which states: “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 ... based on ... religion”. In this instance, religious and non-religious Canadians clearly receive unequal treatment, and the endorsement of inequality by the state sends a clear message of “second-class status” to the non-religious. Consequently, the intentional inequality created by religious exemptions is much more harmful than the unintentional de facto “inequality” (allegedly caused by a system of uniform laws) that the exemptions supposedly rectify.

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