

The Canadian Secular Alliance



The CSA is a non-profit, public policy think-tank advancing church-state separation and the neutrality of government in matters of religion.

The CSA believes that the government of Canada should not favour one religion over others, or religious belief over non-belief. Our goal is not to promote atheism - rather, our commitment is to liberal-democratic principles of equality, fairness, and justice for all under the law, regardless of religious belief or lack thereof.

Religious accommodation (religious exemptions from the law)

religious accommodation:

- consists of granting exemptions from generally applicable laws and policies to individuals whose desire not to comply is based on religious beliefs (but not other types of beliefs).
- is deeply entrenched in our laws and public discourse (>25 years of judicial precedents)

The CSA's position:

- 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;
 - (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).

Two competing concepts of religious neutrality

- Although it is widely accepted that the government should remain “neutral” with respect to religious belief, there are two profoundly different formulations of religious neutrality:

neutrality of treatment

- fairness is achieved by a system of uniform laws that apply to everyone
- religious beliefs do not merit special treatment, either positive or negative, relative to other important personal commitments
- it is not the role of the state to insulate individuals from the costs and inconveniences that result from their beliefs (nor is it even feasible)

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The CSA's view

neutrality of impact

- fairness is achieved by the government not creating any incentives or disincentives for people to change their religious beliefs or behaviors
- to accomplish the above, it may be necessary to single out religion for preferential treatment and to have different laws for different people in the same society

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The view of the Canadian government and judiciary

Re-examining the (flawed) logic of religious exemptions

- **We need to critically examine two questions from first principles:**

(1) Is it feasible to grant exemptions from the law to individuals who have an intense desire not to comply?

(2) If there is room for exemptions, is it fair to give the benefit of that room to the members of a particular religious group as opposed to other people in society?

Arguments against religious exemptions

- **Inherent in the idea of “the rule of law” is a uniform standard that applies to everyone.** “Can a man excuse his [disobedience to law] because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.” [*Reynolds v. United States*, 1898]
- **Granting religious believers immunity from laws with which they disagree is ultimately unsustainable.** Religious beliefs are so diverse that virtually every law in our society will be subject to challenge. “Any society adopting such a system would be courting anarchy, but that danger increases in direct proportion to the society’s diversity of religious beliefs, and its determination to coerce or suppress none of them.” [*Employment Division, Department of Human Resources of Oregon v. Smith*, 1990]
- **In almost all cases, either the rationale for a law is strong enough to rule out exemptions, or the rationale for exemptions is strong enough to suggest that there should be no law in the first place.** If a libertarian argument is persuasive, this implies that the paternalistic law should be repealed — not that it should be retained with an exemption for religious believers.

Arguments against religious exemptions (cont'd)

- **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 “special” in a way that justifies their exclusive right to exemptions.
- **Granting exemptions from the law only to religious objectors violates 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”. The intentional inequality created by religious exemptions is far more harmful than the unintentional de facto “inequality” supposedly caused by a system of uniform laws.

Arguments in favour of religious exemptions

- It is self-evident that religious beliefs merit preferential treatment.

The Supreme Court on religious freedom

*Syndicat Northcrest v.
Amselem, 2004*



Personal, idiosyncratic
religious beliefs are
protected by the Charter.

*"[f]reedom of religion under the Quebec (and the Canadian) Charter consists of 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, **irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.***

*This understanding is consistent with a **personal or subjective understanding of freedom of religion.** As such, **a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion.** It is the religious or spiritual essence of an action, not any mandatory or perceived-as-mandatory nature of its observance, that attracts protection."*

Religious accommodation in action

- religious workers exempt from working on the Sabbath and other religious holidays
- religious nurse exempt from handling blood I.V. bags
- religious government worker exempt from processing paperwork associated with abortion
- religious motorcyclist exempt from wearing a helmet
- religious store clerk exempt from stocking shelves with Christmas merchandise
- religious condominium residents exempt from prohibition on building structures on their balconies
- religious student exempt from prohibition on weapons in school
- religious employees exempt from requirement to use a security scanner

Ongoing questions:

- should religious government employees be exempt from processing same-sex marriages?
- should religious doctors be exempt from providing patients with information about contraception and abortion?
- should veiled women be exempt from the usual requirement that the jury see their face in court?

A shift in the Supreme Court's thinking?

Alberta v. Hutterian Brethren of Wilson Colony, 2009



The Hutterites will *not* be exempt from having their photos taken to obtain a driver's license.

“The Charter guarantees freedom of religion but does not indemnify practitioners against all costs incident to the practice of religion. Many religious practices entail costs which society reasonably expects the adherents to bear. The inability to access conditional benefits or privileges conferred by law may be among such costs.”

“By their very nature, laws of general application are not tailored to the unique needs of individual claimants. The legislature has no capacity or legal obligation to engage in such an individualized determination, and in many cases would have no advance notice of a law's potential to infringe Charter rights. It cannot be expected to tailor a law to every possible future contingency, or every sincerely held religious belief.”

For more information

- consult the CSA's Policy on Religious Accommodation and Exemption:

1-page summary:

<http://www.secularalliance.ca/wp-content/uploads/2009/09/csa-briefing-note-religious-accommodation.pdf>

Full-length position paper:

<http://www.secularalliance.ca/wp-content/uploads/2009/10/csa-policy-on-religious-accommodation.pdf>

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