
Presentation for the Standing Committee on Canadian Heritage – Motion 103

November 1, 2017

**Foundations for Freedom of Religion in Canada
and
Recommendations for reducing or eliminating systemic
religious discrimination**

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Summary

A Mi'kmaq friend has shared an Indigenous peoples' perspective on how to engage significant issues before us. Look back to learn how the issue, or related issues, have been considered in the past. Assess the status of the situation today. And then look forward seven generations to consider the future impact of decisions made, and actions taken, today. That perspective informs this presentation.

Canada is a nation whose history is steeped in religious tension, religious accommodation and the development of robust political, legal and constitutional principles in regard to freedom of religion, including prohibitions against discrimination based on religion.

The *British North America Act, 1867* (now known as the *Constitution Act, 1867*) did not assign responsibility for religion to either the federal or provincial governments. The *BNA Act* did make provision to protect religious education on a province-by-province basis, amended to make similar provision as new provinces joined Confederation, and assigned most existing public service expressions of religion, such as education, charities, hospitals and the solemnization of marriages, to the provinces.

The federal government assumed a role in regard to religion through protections provided under its criminal law power, and support for financial contributions of public benefit under its taxation power.

The *BNA Act* assigned civil rights to the provinces. Both provincial and federal governments have human rights legislation within their respective jurisdictions, all of which prohibit religious discrimination.

The *Constitution Act, 1982* included the *Canadian Charter of Rights and Freedoms*, which lists rights in the relationship between government and citizens. The first *fundamental freedom* stated is "freedom of conscience and religion." The Supreme Court of Canada has issued more than a dozen decisions which define the right. In doing so, the Court has developed the concept of state neutrality in regard to religion. There is no constitutional concept of separation of church and state in Canada. The state may not prefer one religion (or "no religion") over another, and the state may work with the church for the public good.

There is no majority religious community in Canada. Religious individuals and communities have broad *Charter* rights to both belief and practice, as well as equal protection with other identified communities under the *Charter's* equality rights provision and both provincial and federal human rights legislation. Reducing and eliminating religious discrimination will require multi-generational, long-term whole-of-government efforts.

Recommendations made that fit within the jurisdiction of Parliament include: Parliamentarians are encouraged to continue to inform themselves and to interact with people and organizations from different faith expressions, including on matters of public policy; in regard to Bill C-51, remove s. 14 (re removal of s. 176 of *Criminal Code*, threat or interference with religious rites and ceremonies) and retain s. 30 (re removal of s. 296 of *Criminal Code*, blasphemous libel); seek opportunities to educate Canadians about constitutional and legislated positions on religious freedom and non-discrimination; invite participation of apt religious representatives for appropriate government activities; continue to work cooperatively with religious organizations; continue to collect and share data on religion in Canada; hold a first ministers' conference re cooperative promotion of religious freedom for all Canadians; establish uniform guidelines for accommodation of religious expression in the public service; continue robust chaplaincy programs in the penal and military systems; continue military briefings on religion relevant to foreign engagement; re-establish an office dedicated to international religious freedom and relevant political theology in contemporary global relations; re-establish Global Affairs consultations on human rights.

Motion 103 as passed in the House of Commons on Thursday, March 23, 2017 by a vote of 201 to 91:

“That, in the opinion of the House, the government should: (a) recognize the need to quell the increasing public climate of hate and fear; (b) condemn Islamophobia and all forms of systemic racism and religious discrimination and take note of House of Commons’ petition e-411 and the issues raised by it; and (c) request that the Standing Committee on Canadian Heritage undertake a study on how the government could (i) develop a whole-of-government approach to reducing or eliminating systemic racism and religious discrimination including Islamophobia, in Canada, while ensuring a community-centered focus with a holistic response through evidence-based policy-making, (ii) collect data to contextualize hate crime reports and to conduct needs assessments for impacted communities, and that the Committee should present its findings and recommendations to the House no later than 240 calendar days from the adoption of this motion, provided that in its report, the Committee should make recommendations that the government may use to better reflect the enshrined rights and freedoms in the Constitution Acts, including the Canadian Charter of Rights and Freedoms.”

House of Commons petition e-411 (Islam), 42nd Parliament, initiated by Samer Majzoub from Pierrefonds, Quebec, on June 8, 2016, sponsored by MP Frank Baylis (Liberal, Pierrefonds–Dollard)

Whereas:

- Islam is a religion of over 1.5 billion people worldwide. Since its founding more than 1400 years ago, Muslims have contributed, and continue to contribute, to the positive development of human civilization. This encompasses all areas of human endeavors including the arts, culture, science, medicine, literature, and much more;
- Recently an infinitesimally small number of extremist individuals have conducted terrorist activities while claiming to speak for the religion of Islam. Their actions have been used as a pretext for a notable rise of anti-Muslim sentiments in Canada; and
- These violent individuals do not reflect in any way the values or the teachings of the religion of Islam. In fact, they misrepresent the religion. We categorically reject all their activities. They in no way represent the religion, the beliefs and the desire of Muslims to co-exist in peace with all peoples of the world.

We, the undersigned, Citizens and residents of Canada, call upon the House of Commons to join us in recognizing that extremist individuals do not represent the religion of Islam, and in condemning all forms of Islamophobia.

Court of Appeal for British Columbia, *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423, paragraph 193

A society that does not admit of and accommodate differences cannot be a free and democratic society — one in which its citizens are free to think, to disagree, to debate and to challenge the accepted view without fear of reprisal. This case demonstrates that a well-intentioned majority acting in the name of tolerance and liberalism, can, if unchecked, impose its views on the minority in a manner that is in itself intolerant and illiberal.

Introduction

1. A week earlier, I had not anticipated attending the Shabbat service at Congregation Machzikei Hadas on November 20, 2016, or the multi-faith rally that followed. Machzikei Hadas was one of five religious buildings vandalized with anti-religious and racist graffiti by a seventeen year-old Ottawa youth. Three buildings belong to Jewish worshippers, one a Muslim mosque and the other a Christian church.
2. This kind of behaviour is not isolated as regards anti-religious incidents that have taken place in Canada over the last year. Like the Ottawa spree, such incidents have not been confined to being directed against any one religious community. Nor can such incidents be considered to be of greater or lesser significance based simply on which religious community was targeted.
3. It is unfortunate that *Motion 103* highlighted one religious community, a decision that resulted in divisive debate within Parliament and across Canada. To the credit of sponsor MP Iqra Khalid (Liberal, Mississauga–Erin Mills), the motion sparked national debate about religious freedom. *M-103* provides a mandate for this committee that goes beyond the concerns of or for any one religious community, without lessening the concerns of or for discrimination directed against any one religious community.
4. For purposes of this dialogue, I set aside comment on the use of the etymologically uncertain and self-applicationally expansive, and thus not properly definable, term *Islamophobia*; except to suggest that the concern of this committee ought to be in regard to mistreatment of people who are Muslim, as well as people from other religious communities, rather than consideration of the religion of Islam. (Similarly in regard to *House of Commons petition e-411*, which is referenced in *M-103*.)
5. The reference to “racism” in *M-103* may be overly broad given that Islam is a religion not a race, and Muslims – like those in other religious communities – are people from a variety of races.
6. Although fully supportive of efforts to reduce and eliminate systemic racism, my comments will be confined to matters pertaining to reducing and eliminating systemic discrimination based on religion.
7. Canada is a nation whose history is steeped in religious tension, religious accommodation and the development of robust political, legal and constitutional principles in regard to freedom of religion, including prohibitions on discrimination based on religion.

Political Development of Religious Freedom in Canada

8. European settlers who began serious efforts to make Canada their home in the 16th century carried with them a religious motivation, the desire to convert Canada’s Indigenous peoples to Christianity. That desire, intended to bring light to the New World, would presuppose a dark period in the history of both church and state. Shortly after Confederation, the federal government and several churches would cooperate in the effort to compel conversion to a European cultural understanding of the Christian faith through compulsory education of Indigenous children by means of residential schools.
9. The French colony of Canada (Quebec) became a British colony by conquest in 1759. The formal transfer of control took place through the 1763 *Treaty of Paris*, which included provision for the continuation of worship in the Roman Catholic faith.¹ This was affirmed in the *Quebec Act* of 1774 and

¹ *Treaty of Paris* (1763), Article IV, includes the following:

... His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. ...

the Province of Canada's (Ontario and Quebec) *Freedom of Worship Act* in 1851. The voices of Canada's Indigenous peoples were not heard on this point; their religious practices were curtailed.

10. Confederation negotiations were sensitive to religious differences in the four founding provinces of Nova Scotia, New Brunswick, Quebec and Ontario. The *British North America Act, 1867* (now known as the *Constitution Act, 1867*) did not assign responsibility for religion to either the federal or provincial governments. The *BNA Act* did make provision to protect religious education on a province-by-province basis,² amended to make similar provision as new provinces joined Confederation, and assigned most existing public service expressions of religion, such as education, charities, hospitals and the solemnization of marriages, to the provinces.³

11. The federal government assumed a role in regard to religion through protections provided under its criminal law power (described in more detail below) and under its taxation power, through personal income tax deductions, beginning in 1930 (and changed to tax credits in 1988).^{4 5}

12. Beginning with Saskatchewan's *Bill of Rights* in 1947, the provinces started exercising their constitutional jurisdiction over civil rights⁶ by enacting human rights legislation that included recognition of religious rights to belief, association, assembly, teaching, practice and worship.

13. In 1948, at the Paris session of the General Assembly of the United Nations, Canada voted in favour of adopting the *Universal Declaration of Human Rights*, a statement of general principles which speaks to religious freedom in its Article 18.⁷ Following a process for pre-approval by provincial governments, in 1976 Canada endorsed the UN's *International Covenant on Civil and Political Rights*, a binding multilateral treaty which addresses religious freedom in greater detail in its Article 18.⁸

14. The work completed by the Canadian government before supporting the 1948 UN *Declaration*⁹ and the wording of the *Declaration* itself informed development of the 1960 *Canadian Bill of Rights*, which is

² *Constitution Act, 1867*, section 93.

³ *Constitution Act, 1867*, section 92.

⁴ *Constitution Act, 1867*, section 91.

⁵ *An Act to amend the Income War Tax Act*, S.C. 1930, c. 24, s. 3.

⁶ *Constitution Act, 1867*, section 92.

⁷ *Universal Declaration of Human Rights*, Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

⁸ *International 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.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

⁹ W.A. Schabas, *Canada and the Adoption of the Universal Declaration of Human Rights*, (1998) 43 McGill L.J. 403

applicable only within federal constitutional jurisdiction. Features from the *Declaration* and from the *Canadian Bill of Rights* informed drafting of the *Canadian Charter of Rights and Freedoms* (the *Charter*), enshrined in our constitution as Part I of the *Constitution Act, 1982*.¹⁰

15. Civil rights remain the purview of the provinces under the *Constitution Act, 1867*, except in federal jurisdiction, however the *Charter* applies between all levels of government – federal, provincial, territorial, municipal, school boards and other agencies of government – and Canadians.¹¹

16. The first fundamental freedom noted in the *Charter* is “freedom of conscience and religion.”

Legal Development of Religious Freedom in Canada Prior to the *Charter*

17. Freedom of Religion did not arrive on Canadian shores on April 17, 1982 with the *Charter*. Pre-*Charter* military battles over religious freedom may have ended with diplomatic resolution, but ongoing life in Canada’s free and democratic society resulted in courtroom battles that contributed domestic legal understanding for freedom of religion, subsequently specifically stated as a fundamental freedom in section 2¹² of the *Charter* and as a protected right in the equality rights provision in section 15.¹³

18. Several important pre-*Charter* cases involved the Jehovah’s Witnesses (Watchtower Society), a minority religious community whose members are assertive in sharing their beliefs publicly. Decisions of the Supreme Court of Canada in these cases set a twentieth century foundation for Canadian legal understanding of an expansive freedom of expression,¹⁴ limitation of the state’s capacity to interfere with the public practise of religion, noting freedom of religion as one of the primary conditions of community life within a legal order,¹⁵ limitation of the discretionary authority of public officials,¹⁶ and protection of religiously informed conscience under the law based on an expanded understanding of

¹⁰ D. Hutchinson, *Under Siege: Religious Freedom and the Church in Canada at 150 (1867–2017)* (Winnipeg, MB: Word Alive Press, 2017), 49-58

¹¹ *Canadian Charter of Rights and Freedoms*, section 32 (1)

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

¹² *Constitution Act, 1982*, Part I, *Canadian Charter of Rights and Freedoms*

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

¹³ *Constitution Act, 1982*, Part I, *Canadian Charter of Rights and Freedoms*

15. (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.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

¹⁴ *Boucher v. The King*, [1951] SCR 265

¹⁵ *Saumur v. City of Quebec*, [1953] 2 SCR 299, freedom of religion reference at p. 329

¹⁶ *Roncarelli v. Duplessis*, [1959] SCR 121

religion, what constitutes a religious denomination, and a religious operating structure that differed from the traditional church/clergy/parishioner structure of Canada's Catholic and Protestant churches.¹⁷

19. A 1984 decision of the Supreme Court of Canada was issued after the *Charter* became law but dealt with a situation that arose in the courts before the *Charter*. In its decision, the Court concluded that, in accordance with provincial human rights legislation, a religious community/institution could define itself and enforce that self-definition in its requirements for membership/employment. In this instance, requiring a teacher at a Roman Catholic school to adhere to the teaching and practices of the Roman Catholic Church.¹⁸ While *Charter* values have been found to apply to provincial human rights legislation, provincial human rights legislation is applicable between private parties and the *Charter* is not.

20. In 1985, the Court stipulated a non-religious employer's responsibility, under provincial human rights legislation prohibiting discrimination in employment, to take reasonable steps, short of undue hardship, to accommodate an employee's religious practices, including those resulting from a change in religion. In this instance the employee had converted to become a Seventh Day Adventist.¹⁹

21. In addition to decisions of the courts, Parliament has taken steps to protect religious freedom – belief and practice – through its constitutional criminal power, prohibiting interference with clergy in the performance of a religious service,²⁰ blasphemous libel²¹ and hate crimes motivated against an individual or community because of the individual or group's religious beliefs.²²

¹⁷ *Greenless v. Attorney General for Canada*, [1946] SCR 462

¹⁸ *Caldwell et. al. v. Stuart et. al.*, [1984] 2 SCR 603 (re: membership, see also *Hofer v. Hofer* [1970] SCR 958)

¹⁹ *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536

²⁰ Sections 171, 172 and 173 of the 1892 *Criminal Code of Canada* are now consolidated in section 176

176 (1) Every one who

(a) by threats or force, unlawfully obstructs or prevents or endeavours to obstruct or prevent a clergyman or minister from celebrating divine service or performing any other function in connection with his calling, or

(b) knowing that a clergyman or minister is about to perform, is on his way to perform or is returning from the performance of any of the duties or functions mentioned in paragraph (a)

(i) assaults or offers any violence to him, or

(ii) arrests him on a civil process, or under the pretence of executing a civil process,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) Every one who wilfully disturbs or interrupts an assemblage of persons met for religious worship or for a moral, social or benevolent purpose is guilty of an offence punishable on summary conviction.

(3) Every one who, at or near a meeting referred to in subsection (2), wilfully does anything that disturbs the order or solemnity of the meeting is guilty of an offence punishable on summary conviction.

²¹ Section 170 of the 1892 *Criminal Code of Canada*, which is now section 296

296 (1) Every one who publishes a blasphemous libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) It is a question of fact whether or not any matter that is published is a blasphemous libel.

(3) No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion on a religious subject.

²² The *Criminal Code of Canada* deals specifically with hate crimes and hate-motivated crimes directed toward religious individuals, groups and buildings in sections 318 to 320.1, hate propaganda; 430 (4.1), mischief relating to religious property; and, 718.2 (a) (i), sentencing principles.

22. Federal²³, provincial and territorial governments have all enacted quasi-constitutional legislation prohibiting discrimination against persons or groups on the basis of religious beliefs and practices as part of human rights legislation applicable within their respective jurisdictions.

Constitutional Religious Freedom under the *Canadian Charter of Rights and Freedoms*

23. As noted above, the first *fundamental freedom* stated in the *Charter* is “freedom of conscience and religion.” This first freedom is intimately connected with the freedoms that follow it in section 2: (b) freedom of thought, belief and expression, including freedom of the [religious] press and other media of communications; (c) freedom of peaceful assembly; and, (d) freedom of association.

24. In addition to section 2, other *Charter* provisions are relevant to freedom of religion. As mentioned above, “religion” is one of the stated grounds on which discrimination is prohibited and amelioration efforts by government (constitutionally defined to include federal and provincial, and thus the territorial, municipal and school board governance established by them as well as government agencies; collectively “the state”) are permitted under the equality rights provision in section 15. Section 27 states “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” A multicultural heritage, and continuing immigration to Canada, has necessarily resulted in a *multi-religious* heritage as well. And, the beliefs of religious and non-religious Canadians also weave their way into application in regard to most *Charter* rights and freedoms.

25. In its first decision on the section 2(a) *Charter* right, the Supreme Court of Canada asserted a broad understanding and constitutional definition of “freedom of religion.” The Court’s words align with the UN *Declaration of Human Rights* and the UN *International Covenant on Civil and Political Rights*. The Court’s definition of “freedom” in Canada, and freedom of religion in particular, remains the cornerstone of all subsequent decisions made by the Court on this topic:

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 enjoyment of fundamental freedoms and I say this without any reliance upon s. 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.

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 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.²⁴

²³ The federal government enacted two, the *Canadian Bill of Rights* and the *Canadian Human Rights Act*.

²⁴ *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, paragraphs 94 and 95.

26. The Court has decided freedom of religion cases more than a dozen times since. It has repeatedly affirmed this first decision, and extended the understanding of the right to include individual, group and institutional manifestations, because religion is practiced both individually and in community, including differences in beliefs and practices.²⁵ The Court has recognized the right of religious organizations to establish their own membership requirements based on their beliefs and practices.²⁶

27. In addition to defining the right to freedom of religion, the Court has ruled that the state is to be “neutral” in regard to religion.²⁷ The Court has been clear that Canada does not have an accepted doctrine of the separation of church and state, a constitutional concept in the United States. The state is not permitted to act as arbiter of religious beliefs or to favour one religion over another. Nor is the state permitted to require “no religion” in its relationship with Canadians. The state’s intervention in religion is confined to minimal intrusion for legitimate general requirements where religious beliefs and practices cannot be accommodated, and to the protection of citizens from harm or injury.

28. State neutrality allows government to work with and provide financial support to religious institutions for purposes of public benefit, as well as to accredit religious educational institutions that meet established academic standards to grant government recognized diplomas and degrees. Thus, governments in Canada are free to work with religious organizations like World Vision, meeting stated government goals in the developing world, The Salvation Army, working with persons with addictions or in emergency disaster relief, Christian Horizons, for the care of people with disabilities, etc., as well as to recognize educational institutions such as Tyndale University, Trinity Western University or degree granting seminaries. The federal government neutrally facilitates the registration of more than 35,000 charities under the Canada Revenue Agency’s “advancement of religion” provisions as well as other religious charities that operate under the other established classifications of charity: “relief of poverty,” “advancement of education” and “other purposes beneficial to the community.”

29. In the context of state neutrality, freedom of religion is about inclusion; providing opportunity for all Canadians to participate in Canadian life from the perspective or worldview that informs the way they choose to live, without fear of mistreatment or punishment for doing so. A 2002 decision of the Court affirmed this freedom to include expressing religiously informed opinions in debates about and development of public policy. The Court noted that Canada’s secular society must equally recognize religious and non-religious citizens and their opinions, stating, “everyone has ‘belief’ or ‘faith’ in something, be it atheistic, agnostic or religious.”²⁸ In a 2004 decision, the Court affirmed that the state

²⁵ *R v. Edwards Books* [1986] 2 SCR 713; *R. v. Gruenke* [1991] 3 SCR 263; *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31; *Syndicat Northcrest v. Amselem*, 2004 SCC 47; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48; *Reference re Same-Sex Marriage*, 2004 SCC 79; *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37; *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7; *Loyola High School v. Quebec*, 2015 SCC 12

²⁶ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1972] 3 SCR 165; *Trinity Western University v. British Columbia College of Teachers*; *Alberta v. Hutterian Brethren of Wilson Colony*; *Loyola High School v. Quebec*

²⁷ The concept of the state not favouring one religion over another is expressed by the Supreme Court of Canada in virtually all freedom of religion cases. For more detailed and direct comment on “state neutrality” see particularly *S.L. v. Commission scolaire des Chênes* and *Loyola High School v. Quebec*.

²⁸ *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86

cannot impose its position on a matter of public policy on a religious individual or group but must rather accommodate their freedom to hold a different position and practice.²⁹

30. The Court has affirmed, in a case dealing with quotations from the Bible, that sacred texts or select parts of sacred texts cannot be considered in and of themselves to be hate speech. However, the way in which those texts are used may be considered hate speech if expressed with intent to marginalize or vilify an identifiable person or group of people.³⁰

Conclusion

31. This brief historic tour and commentary on the current status of the law is offered for consideration by the committee in a context shared with me by a Mi'kmaq friend, an Indigenous peoples' perspective on how to engage the significant issues being contemplated. Look back to learn how the issue, or related issues, have been considered in the past, assess the status of the situation today, and then look forward seven generations to consider the future impact of decisions made, and actions taken, today. In the Canadian context, looking forward seven generations would take us from #Canada150 to #Canada300. If that seems a visionary stretch, the committee is encouraged to at least look to #Canada200, which will take place within the lifetimes of many in the room, rather than be overly concerned with action and outcomes within the context of scheduled federal elections in 2019 or 2023.

32. Much of what has been presented here may be fresh information for some members of the committee, and for other Parliamentarians, just as it would likely be revelatory to the vast majority of Canadians. Indeed, until Parliament decided this committee would research, report and take action on the matter of systemic religious discrimination, which is not new but is concerning, it is likely only a comparatively small number of Canadians found it interesting or important to study the history and constitutional understanding of religious freedom in Canada, including discrimination based on religion.

33. Without the context of history and a current constitutional/legal understanding, recommendations to or by this committee may be helpful, may even have beneficial impact, but may also lack the authoritative capacity to properly inform Parliament initiated and/or Parliament supported action intended to bring about reduction or elimination of religious discrimination in Canada over the course of multi-generational progression and reinforcement.

34. With the context of history and a current constitutional/legal understanding, the following glance at some relevant statistics provides additional perspective to facilitate recommendations for evidence-based policy-making.

35. The most current data released to the public, both the 2001 Census results³¹ and the 2011 National Householder Survey,³² confirm that while the general religious category "Christian" is representative of between two-thirds and three-quarters of the Canadian population, like other religions Christianity is not a homogeneous group. The largest identifiable Christian community comprises simply the largest minority religious community in the country. Self-identified Catholics include under two-fifths of

²⁹ *Reference re Same-Sex Marriage*

³⁰ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11

³¹ Statistics Canada, "Religion, Tables on Religion" accessed September 28, 2017

<http://www12.statcan.gc.ca/english/census01/Products/Analytic/companion/rel/canada.cfm>

³² Statistics Canada, "2011 National Household Survey: Data Tables," accessed September 28, 2017

<http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=0&PID=105399&PRID=0&PTYPE=105277&S=0&SHOWALL=0&SUB=0&Temporal=2013&THEME=95&VID=0&VNAMEE=&VNAMEF=>

Canadians. This number is largely comprised of Roman Catholics, but includes six other expressions within the Catholic Church.

36. The most current data released to the public on hate crimes, the extreme end of the discrimination spectrum, is for the year 2015. Of 1,362 reported incidents 469 (or 35%) were motivated by anti-religious bias. 37% of anti-religion incidents (178) were directed against the Jewish community, which comprises 1.1% of the Canadian population. 34% (159) were directed against the Muslim community, which comprises 3.2% of the Canadian population. 55 incidents were directed against Catholics and the remainder against other religious communities.³³

Recommendations

37. The following recommendations are made in the spirit of the *Constitution Act, 1867*'s provision in section 91 that the federal government “make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces,” the *Constitution Act, 1982*'s description of Canada as a “free and democratic society” in Part I, section 1, and a whole-of-government approach.

Continue the Conversation

38. 1- Continue to inform yourselves. Members of this committee and all Parliamentarians are encouraged to make an ongoing practice of engaging openly with people of various religious beliefs, sharing your own beliefs and making the effort to understand the beliefs of others, accepting there will be points of common interest and points of difference. This may take place through a variety of means, such as actively engaging conversation with Parliamentarians and with constituents who have a shared or different worldview from your own, participating in shared single-faith activities, like the National Prayer Breakfast, as well as multi-faith opportunities, like the All Party Interfaith Fellowship Group, which had a wonderful multi-faith discovery fair for Parliamentarians a few years ago.

39. 2- Parliamentarians are encouraged to engage opportunities to connect with faith-based organizations in the community on an equal basis as with non-faith-based organizations, and to engage with faith-based organizations that participate in the democratic processes of policy development.

Continue to Protect

40. 3- Parliamentarians are encouraged to remove section 14 from Bill C-51, *An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, the proposal to remove section 176 from the *Criminal Code*. Section 176 protects the ability of clergy to officiate religious services with a gathering of individuals, and to celebrate religious rites without threat, interference or disruption. The Supreme Court of Canada has recognized a broad concept of “clergy” to include those functioning in a role similar to traditional clergy and not limited to the traditional understanding of clergy or minister. Section 176 also protects the right of congregants to engage in unhindered communal religious worship. The pre-*Charter* position on clergy (noted above at paragraph 17) was affirmed in a 1991 decision of the Court dealing with privileged religious communication³⁴ and the 2004 decision in *Reference re Same Sex Marriage*³⁵ in which the Court referred to the state not

³³ Statistics Canada, The Daily, 2017-06-13, “Police-reported hate crimes, by detailed motivation, Canada, 2014 and 2015” <http://www.statcan.gc.ca/daily-quotidien/170613/t001b-eng.htm> and Statistics Canada, Correction Notice, 2017-06-14, “Police-reported hate crime in Canada, 2015” <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.htm> accessed September 28, 2017.

³⁴ *R. v. Gruenke*

³⁵ *Reference re Same Sex Marriage*

imposing a position on a “religious officiant” that would violate an officiant’s religious belief, practice or conscience. While, thankfully, use of section 176 has been infrequent, charges were laid under s. 176 as recently as June of this year. If the *Criminal Code* did not already contain such a provision, adding this type of protection would be precisely the kind of recommendation anticipated from this committee in the effort to reduce or eliminate religious discrimination using a community-centred focus.

41. 4- Parliamentarians are encouraged to retain section 30 of Bill C-51, the proposal to remove section 296 from the *Criminal Code*. Legislation criminalizing blasphemy in other jurisdictions has led to intimidation and persecution of religious and non-religious individuals and groups that is counter to the principles of a free and democratic society. In Canada, all beliefs and practices, religious and those that might be considered non-religious,³⁶ must be open to critical evaluation and peaceful dialogue, debate and dissension. In a nation with constitutional recognition of “freedom of thought, belief, opinion and expression” as its second listed fundamental freedom, such peaceful public conversations must be considered hallmarks of our democracy.

42. 5- Parliamentarians are encouraged to retain the following sections of the *Criminal Code*: sections 318 to 320.1, hate propaganda; 430 (4.1), mischief relating to religious property; and, 718.2 (a) (i), sentencing principles.

Progress from Protection to Promotion

43. 6- Parliamentarians are encouraged to further explore and seek opportunities to educate Canadians about the constitutional and legislated positions on religious freedom. It is important to move from protection of rights alone to promotion of understanding rights, with a goal of bringing about generational change (e.g. Environment and Climate Change Canada has started a #ClimateCampus campaign “focused on talking climate action with college and university students across Canada”).

44. 7- Parliamentarians and the Government of Canada are encouraged to ensure apt religious representatives are present at and/or participants in appropriate government activities, including public events, celebrations and situations such as donation matching for emergency disaster relief.

45. 8- The Government of Canada is encouraged to continue working cooperatively and publicly with religious organizations whose work provides desired public benefit – frequently regarded as multiplying government financial contributions through combination of private support, volunteer engagement and organizational partnering.

46. 9- The Government of Canada is encouraged to maintain and continue to develop appropriate historic memorials and markers that recognize the contribution of religious individuals and communities to the development of the nation.

47. 10- The Government of Canada is encouraged to continue to collect data in regard to religious observance by Canadians through the census and the work of Statistics Canada, and to continue to consult with individuals from a cross-section of religious communities in regard to relevance and benefit of questions, data collection and reports.

48. 11- The Government of Canada is encouraged to hold a First Ministers’ Conference with all or a significant portion of the agenda committed to the cooperative promotion of the religious freedom of all Canadians.

³⁶ See the comments of the Supreme Court of Canada above in paragraph 29.

Progress in Accommodation

49. 12- The public service is populated with people from a wide variety of religious communities. The Government of Canada is encouraged to establish guidelines that facilitate faith-based activities with consistent application within all government departments, such as opportunities to inform co-workers about the significance of religious celebration days, accommodating the use of available departmental meeting space for purposes of prayer or study of sacred texts during lunch hours or prior to or after work during building operating hours, whether those practices are required as a result of religious beliefs or desired because employees find they have shared religious beliefs.

50. 13- Canadian religious and religiously-based charities continue to provide a public benefit within Canada and globally. The Government of Canada ought to encourage Canadians to continue support of such organizations, including by means of the personal tax credits under the *Income Tax Act* of Canada.

51. 14- Inmates in Canadian prisons have benefited from a well-funded and religiously diverse chaplaincy of both volunteer and government-funded chaplains and should continue to do so.

52. 15- The members of Canada's military are representative of the religious diversity of the Canadian population and continue to be deserving of the benefits provided through a well-funded and well-trained military chaplaincy.

Progress in International Engagement with domestic impact

53. 16- The Government of Canada is encouraged to continue and further develop military briefing on religion. The field experience of Canada's military has shown it is essential for members of the military who serve abroad to have an understanding of the religious dynamics relevant to the particular theatre of engagement.

54. 17- The Government of Canada is encouraged to re-establish the Office of Religious Freedom or a similar dedicated office. The initiative to establish an office specializing in matters of international religious freedom and political theology for Canadian foreign relations started in the 1990s, with the support of a diversity of religious communities in Canada who appreciate the importance of religion in contemporary global politics and also know religious freedom is a frequently ignored human right. Several nations, the European Union, and the United Nations have recognized the importance of establishing their own offices that facilitate internal understanding of political theology in global relations and report on the mistreatment of individuals and communities because of their religious beliefs that takes place in too many nations.

55. 18- The Government of Canada is encouraged to re-establish Global Affairs consultations. About a decade ago Global Affairs Canada (then DFAIT) discontinued consultations to which representatives from religious and other communities of concern were invited to comment on developing global situations. The connections Canadians have within countries of interest was demonstrably able to supplement or affirm information available through the foreign service. Many situations benefited from interventions by those from Canadian religious communities with contacts in associated religious communities in countries of interest.

56. In addition to international impact, global initiatives in regard to religious freedom and discrimination based on religion are important to Canadians, in particular ex-patriots of foreign nations.

Conclusion

57. Canadians are affected by religious freedom challenges and systemic religious discrimination that happen in Canada and globally, requiring a whole-of-government approach and holistic response.

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Following fifteen years in leadership with The Salvation Army, including eight as founding legal advisor for its Canadian legal department, Don consulted with World Vision Canada and others. He joined The Evangelical Fellowship of Canada’s leadership team, serving for seven and a half years in the roles of Vice-President, General Legal Counsel, and Director of the EFC’s Centre for Faith and Public Life. He then filled the position of interim National Director/ CEO with the Canadian Bible Society while CBS was searching for a new CEO.

A member of the Law Society of Upper Canada since 1990, Don has appeared before the Supreme Court of Canada on several occasions as well as a number of parliamentary committees. In addition to being featured in print, as well as on television, radio, and online media, this avid motorcyclist has served on the boards of local and national charities.

Don is a recipient of the Queen Elizabeth II Diamond Jubilee medal for contributions in promoting religious freedom and public policy development. Married to Gloria for three and a half decades, Don is a father and grandfather.

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