# RELIGIOUS FREEDOMS UNDER THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS: DO RELIGIOUS FREEDOMS PERMIT RELIGIOUS AUTONOMY?

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**Abstract**: **:** The recognition and preservation of multiculturalism in Section 27 of the Canadian Charter of Rights and Freedom's has resulted in the perception that religious diversity is equated with cultural diversity. An analysis of noted Section 2 (a) cases, suggests that religious freedoms do not result in religious autonomy for religious minorities. The cases reveal that the Supreme Court of Canada's justices have complicated Canada's multiculturalism policy by exhibiting pessimistic views in matters concerning Section 2 (a) rights. The cases further show that the Supreme Court of Canada has perplexed the status of religion in Canadian society by associating the practices of religious minorities with harm and inconvenience. Concerns of Christian supremacy, decline of multiculturalism in Canada, social exclusion of religious minorities, and the viability of the Charter to advocate minority rights are also explored.

***Keywords***: *Canadian Charter of Rights and Freedoms*, Religious freedoms, multiculturalism, Supreme Court of Canada, religious minorities

## INTRODUCTION

The success of western democracies is often attributed to their egalitarian principles that advocate equal rights and opportunities for all individuals. These nations assemble their populace together on common ground through a secularist agenda. This not only ensures a greater level of social equality but also promotes tolerance, freedom to acquire limitless knowledge, and the choice to hold ones own views. However, although a secularist society promises many individuals an elevated experience, it is far from being utopic and the ideal society. The actuality that western democracies adopt a form of secularism that reflects the values underpinning Christianity greatly undermines the profundity of minority religions. Individuals rejecting a lifestyle built on *secular* views habitually face limitations in exercising their own rights to religious freedom. For this reason, the functionality and potency of the religious rights and freedoms promised within western democracies become questionable.

To gain a greater understanding of the viability and depth of religious rights in western democracies, it is worthwhile to probe the Canadian case. Canada is the ideal case study because at the international level, the country is acclaimed as being a nation that has achieved a bona fide balance among state, religion, and multiculturalism. For example, the 2004 UN Development Report, entitled *Today's Diverse World*, not only advocated multiculturalism as a vital component of development but also utilized Canadian examples to make its argument.[i]

It appears that this celebration of Canadian multiculturalism is largely a result of the romanticization associated with the *Canadian Charter of Rights and Freedom*s,[ii] which is often seen to be the cure for all societal ills. A closer examination of the Canadian approach to diversity suggests that there are a number of inherent problems with the country's application of multiculturalism.

Canada may not be the ideal model of a secular society that many envision it to be. There are numerous conflicts between religion and the state. Over the years, many religious minorities have brought forth a number of legal challenges in which they assert they have been subjected to official discrimination or experienced a particular disadvantage due to their beliefs.[iii]

This clash between religion and society is also exemplified in the recent developments on the turban ban imposed by the Quebec Soccer Federation. In situations as such, we see that religious minorities call on the government to respect individual beliefs and command the right to act in ways that are demanded by their beliefs; request that the majority religion not to be imposed on them; and ask that believers not to

be excluded from the public sphere because of their faith.[iv] It is this persistent tension between religion and the state that ensures that religious minorities face these hardships despite the assurance of religious freedom in Canada through s. 2 (a) of the *Charter,* which states, "*everyone has the following fundamental freedoms:* (a) *freedom of conscience and religion."*[v]

These problems emerge because religious freedoms are not equated with religious autonomy. Religious freedoms in Canada are defined in relation to the nation's secularist agenda. At present, the freedom to practice one's right to religious freedom denotes having a limited opportunity to act, speak, or think in a religious manner. It is plausible to say that had religious freedoms transformed into religious autonomy, a majority of state vs. religion conflicts would recede in Canadian society. Religious autonomy would allow individuals the right to religious independence and the ability to live in accordance to their religious beliefs.

This paper seeks to further examine the degree to which the relationship shared by the *Canadian Charter of Rights and Freedoms* and the Supreme Court of Canada has impacted the prerogative of religious freedoms. The central focus of this paper is to examine the following inquiry: Do religious freedoms result in religious autonomy? It will explore the ways in which the state has limited the scope of religious freedoms and the repercussion of judicial activism by examining how the Supreme Court of Canada has ruled in three areas significant to multiculturalism: individual religious practice, familial relations, and collective religious rights.

By conducting a case analysis of prominent Supreme Court of Canada cases, that have redefined s. 2 (a) rights in Canadian society, I advance the argument that religious freedoms are not equated with religious autonomy in Canada, largely because the Canadian judicial system subverts ideological objectives of the *Charter*. The theoretical foundations of the *Charter* are aimed at creating a pluralistic society, in which the right to cultural and religious self-determinism is seen as a critical Canadian value that not only aids in fostering diversity but national development as well.

To support this claim I make three arguments. Firstly, the Supreme Court of Canada justices exhibit the debilitating view that religious tolerance should be subjected to spatial limitations. They restrict the actualization of religious autonomy by limiting the level of religious tolerance acceptable in public spaces. Secondly, there is a discernible consensus among justices that religion conflicts with individual growth and development. In matters pertaining to religion in the private sphere, the rights of religious individuals are weighed unfavorably, because justices equate secular households with functional families. Thirdly, the court exhibits a lack of interest in enforcing religious accommodation within civil society. When ruling in collective religious rights claims, justices do not aim to facilitate the needs of the group but give importance to perpetuating what is deemed acceptable in a secular and liberal society.

This inquiry is of great importance as it underscores the contradictions inherent in a society that advocates equality in a secular state, whose origins are based on Christianity. Additionally, this paper will shed light on several other debates present within Canadian politics: (a) Is the *Charter* a viable mechanism to promote minority rights and multiculturalism? (b) Does the concept of multiculturalism accommodate individuals who practice their religion in an orthodox/conservative manner? (c) Why are religious freedoms not absolute rights? (d) Does judicial activism prompt a decline in multiculturalism? (e) Is the development of religious minorities affected by the Supreme Court of Canada?

This paper will adhere to the following framework. Firstly, in the section *The Origins of Canada as a Multicultural State*, I will contextualize the debate of multiculturalism and religion in Canada by administering a historical analysis. This is a critical step in making the state's ideology towards religious freedoms more tangible, as it will reveal the views and opinions the state exhibits in regards to multicultural accommodation. Secondly, I will conduct a literature review on the inconsistent relationship courts, religious freedoms, and multiculturalism share within Canada. Here, the focus is to gain greater insight on this dilemma by situating it within larger literature.

The third section is devoted to the ensuing dialogue of why religious freedoms have not resulted into religious autonomy in Canadian society. This section is divided into three subsections: *Religion and the Public Space; Religion: an Obstacle to Human Development; and Divided Loyalties: Is the State Really a Crusader of Religious Accommodation?*

The section, *Religion and the Public Space* will explore the limitations individuals face when they wish to exercise their religious beliefs outside their homes. In this section, it will become apparent how religious autonomy is hindered by the Supreme Court of Canada's interpretation of what the public space is and how it should be controlled. In stark contrast, *Religion: an Obstacle to Human Development* examines

the dynamics through which religious rights are constrained within the household. The focus will be on deciphering the ways in which the court promotes a standardization of Canadian households by undermining parental rights to religious freedoms. Lastly, the section *Divided Loyalties: Is the State Really a Crusader of Religious Accommodation?,* is focused on decoding where the Supreme Court of Canada's loyalties lie. It will examine the degree to which the court aims to facilitate the actualization of religious freedoms at the societal level.

The fourth section titled, *Two Sides of the Same Coin*, will explore prominent arguments made in favour of Canada's approach to religious freedoms. Lastly, this paper will posit concluding remarks on how the defects evident in the state and judicial system can be rectified. Additionally, the conclusion will aim to contextualize the future of religious freedoms in western democracies.

**The Origins of Canada as a Multicultural State**

The ideology of multiculturalism is deeply rooted in Canada, to the extent that multiculturalism is recognized as a Canadian policy. Core attributes of Canada's multicultural policy include language and skills training programs for new immigrants, promotion of diversity through public education, and most importantly s. 27 of the *Canadian Charter of Rights and Freedoms* that compels the state to preserve and enhance multiculturalism.

Despite the fact that multiculturalism is entrenched in all areas of Canadian society, it is important to note that the application of this concept is not static nor did its conception occur in a linear pattern. As this historical analysis will reveal, in periods of economic, social, and political turmoil, politicians have remodeled various components of Canada's multicultural policy. This means that multiculturalism is an ideology dispensed at the convenience of the state and is not implemented wholly for the welfare of the people. In civil society, multiculturalism is utilized as a process by which racial and ethnic minorities can use the state to advance their goals and aspirations.[vi] It can be argued that this very element has hindered the attainment of a fully multicultural society, the state has ill conceived the concept of multiculturalism, the actuality is that the state does not have the capacity nor the resources to address and balance every claim for cultural equality. Likewise, to gain a finer understanding of how the dynamics of Canadian multiculturalism work, it is important to trace the origins of how Canada became a multicultural state.

**Primitive Years of Cultural Pluralism**

A common misconception within Canadian society is that Canada's commitment to multiculturalism arose during the repatriation of the *Constitution* in 1982. Canada's bond with diversity precedes this period in history, in fact social inclusion has been an integral component of the state's policy since the colonial period.

The Royal Proclamation of 1763[vii] took the initiative to develop a bicultural environment in which the British colonizers could live harmoniously with their aboriginal subjects. The Royal Proclamation gave the aboriginal community special status by recognizing the fact that they had certain rights to the land they occupied.[viii] For the aboriginal community this translated into a right to self-governance and land claims.

However, a closer analysis of the agreement shows that the colonizers did not intend for the aboriginal community to experience a level of social empowerment. The main purpose was to give an illusion of freedom, to facilitate a bridge of trust between the two conflicting groups, and to supplement the colonizers economic interests.[ix] The idea of divide and rule was cleverly used, by allocating aboriginals their own land, the British were able to freely rule and develop their colonial settlements without aboriginal interference.[x]

This idea of biculturalism was further replicated within the *British North America Act.*[xi] With increased independence from Britain and the provinces being at loggerheads, the state struggled to find equilibrium to epitomize the interests of British and French communities. The aim of the founding fathers was to ensure national unity while erecting a new national identity. To facilitate this goal, the founding fathers established the French and British as charter groups.[xii]

The designation of being a charter group ensured that most activities in Canada would be centered on the French and English culture. The downgrading of education to provinces through Section 93 allowed the minority Roman Catholic community of Quebec, the ability to have their children educated under their own faith.[xiii] Likewise, Section 133 prompted the development of a bilingual society in which French and English was to be used in all documents affiliated with the Canadian Parliament and the Quebec Legislator.[xiv]

The *BNA Act* percolated the state's agenda of assimilation without undermining the hegemonic position of

the English community. This view is evident in the post-confederation years, where the interpretation of the *BNA Act's* principles, only allowed the French minority to gain a right to self-determinism on a geographical basis.

The Manitoba school crisis, which lasted from 1870 to 1890, arose from the increased presence of English speaking settlers in the province. With an increasing English population and declining French population, the issue at hand was whether the province should continue to fund French schools. The *Manitoba Public School Act*, 1890[xv] rendered the decision that public schools would not get public funding; rather, an individualized tax support program would fuel the public education system.[xvi] This meant that French schools would slowly face extinction within Manitoba. Subsequently, this act also aided in the development of an English only law in the province, which was in full force for 75 years.[xvii]

The foundations of the *BNA Act* also aided in the development of a bilingual province, New Brunswick. It can be deduced that despite the presence of a bilingual province, the French community living in Quebec enjoys a greater degree of societal inclusion than those residing in New Brunswick. Many Francophone's residing in New Brunswick remark, "*we have equality in law, but we don't have equality in fact*."[xviii] This claim is supported by the fact, that the Acadian peninsula is still underdevelopment; it has no freight rail system and still lacks the development of proper infrastructure, such as roads leading to central cities.[xix] Moreover, only 0.1 per cent of the provincial public service sector is unilingual French.[xx]

Due to restrictions of this paper, I cannot fully delve into a more detailed analysis. However, it can be speculated that there is a high level of probability that French Canadians will experience a greater level of social inclusion and economic development in Quebec than New Brunswick, largely because in New Brunswick the French are treated as a minority and in Quebec the French minority is treated like the majority.[xxi] Although, the New Brunswick French community is equally French as most Quebecers; however, the sustainability of their cultural practices is questionable.

From the onset of the colonial period to the Confederation years, Canada's dedication to minority and cultural politics is evident but the motive behind the acceptance of these groups has been equally debatable. It would not be an understatement to say that Canada did not choose diversity but diversity chose Canada because it was the only logical ideology that would promote an alliance between incompatible groups.

**Development of Multiculturalism as State Policy**

For a more in-depth interpretation of Canada's approach to multiculturalism it is important to explore the 1960's. This period marks the formative stage of Canadian multiculturalism, wherein societal and political pressures forced the state to adopt new conflict resolution measures. Likewise, Canada's shift from a bicultural to a multicultural nation is a direct result of two unmanageable events, the influx of Post World War II immigration and the FLQ Crisis.

In the early 20th century, the status of immigrants in the Canadian state had been relatively inferior in comparison to the aboriginal community and charter groups. The actuality is that prior to the *Canadian Citizenship Act*, 1947,[xxii] the acceptance of racial and ethnic differences was seen as a hindrance to national development.[xxiii] A change in Canadian attitudes towards immigrants arose after WWII, wherein the state sought to rebuild Canada through the enactment of talent and not race based immigration policies.[xxiv]

It can be speculated that the conception of Canadian multiculturalism was to a certain extent accidental, for the fact that multiculturalism is a byproduct of the Quiet Revolution. The 1960's introduced the idea of cultural self-expression to Canadian society.[xxv] In order to subdue and garner an in-depth understanding of the French community, the state prompted the establishment of the Royal Commission on Bilingualism and Biculturalism.[xxvi]

In the context of Canadian multiculturalism, the B & B Commission played a critical role in aiding Canada's transition from biculturalism to multiculturalism. The main purpose of the commission was to evaluate the status of biculturalism and bilingualism in Canada and recommend ways in which a fair balance with both cultures could be achieved.[xxvii] However, what prompted the idea of multiculturalism was the fact that a strong third voice entered this debate of self-expression. A vast majority of immigrants and more predominately the Ukrainian community, intervened in the B & B Commission hearings and demanded that the government also protect their cultural and linguistic rights, along with ensuring them equal participation, recognition, and equality in civil society.[xxviii]

It can be argued that the Ukrainian and other European communities took a leadership role in the B &B commission, largely because they felt that their voices were being silenced by the needs of visible minori-

ties. The fact that their ancestors had lived in Canada before WWII, gave the state the illusion that these communities had assimilated into white settler colonies and did not require additional recognition like most third world immigrants.

At the conclusion of the inquiry, the commission developed an additional report called, *The Cultural Contribution of the Other Ethnic Groups* in 1969. To the state, it had been made clear that they could not continue to cater to the traditional societal cleavages, immigrants had to be accommodated just like the aboriginal population and charter groups.

The socio-political environment of the 1960's was immensely tense, with ethnic organizations and lobby groups demanding minority rights; declining public confidence in the state and the looming crisis in race and ethnic relations, politicians were left with no option but to impose a new hegemonic order and forgo its central ideology of anglo-comformity.[xxix] As a result, in order to achieve a bona fide balance among all Canadian populations, Pierre Elliot Trudeau revealed the ultimate solution on October 1971.

The solution was a policy of multiculturalism within a bilingual framework; this meant that under federal multiculturalism there would be no official cultures, despite the status of English and French as official languages of the state, no ethnic group was superior than another, and the government would take action if any cultural groups experienced barriers to participation in Canadian society.[xxx]

It can be argued that although multiculturalism is a realistic solution for those seeking cultural self-expression for it gives all cultures an equitable status, the reality is that the state places the onus of cultural development on minorities. It makes them responsible for the actualization of this allowance for the fact that, it does not build or fully fund the infrastructure needed for cultural expression; it solely allows the practice. For the most part, multiculturalism has been used a tool to subdue cultural conflict and promote unity within diversity in Canada.

**Multiculturalism Policy: Outdated or Underdeveloped for the New Generation?**

In the ensuing years, this policy of multiculturalism became entrenched within Canadian society to the degree that it was solidified within the Constitution Act of 1982. The *Canadian Charter of Rights and Freedoms* exemplified Canada's commitment and dedication to the policy of multiculturalism, equality, and minority rights. Canada's approach to cultural tolerance has been enshrined through *s. 27*, which notes, "*This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.*"[xxxi]

A closer examination of this section shows that it lacks practicality within society and can be interpreted as Canada's romanticization with the subject of multiculturalism. Firstly, *s. 27* despite being situated in a group of rights, has not been given the status of a right. This means that there is no accountability on part of the state to ensure *s. 27* is held central to all state proceedings. This fact is evidenced in the events that occurred in Hérouxville, Quebec in 2007, where the municipal government had enacted an *Immigrant Code of Conduct*. Despite having an almost non-existent immigrant population, the town inscribed how immigrants should behave and act in within its territory.[xxxii] Although, the legislation has been vilified in Canada and internationally, the mere existence of such legislation points towards a decline and deviation from upholding Canadian multiculturalism as the central state policy.

Moreover, since *Charter* rights are often interpreted and implemented in civil society by the judicial system, the application of *s. 27* has become subjective, because there are no checks and balances to verify that rights have been interpreted in a multicultural context by the justices.

This deposition is exemplified in the *Andrews v. Law Society of British Columbia,*[xxxiii] case wherein s. 15 equality rights could have been enhanced by s. 27.[xxxiv] The court could have interpreted Andrews's reluctance to gain Canadian citizenship as his efforts to preserve his multicultural heritage through foreign citizenship.

Similarly, in more recent cases s. 2 (a) rights, which concern religious freedom, have been defined without the mention of s. 27. The *Multani v. Commission scolaire Marguerite-Bourgeoys,*[xxxv] case, hailed as a landmark victory for Canadian multiculturalism was decided without a direct reference to s. 27.[xxxvi] For Canadian multiculturalism this could mean two things, either s. 27 is being tuned out by the court or that the Supreme Court of Canada justices have conjectured their own image of multiculturalism that is not being addressed by referring s. 27.

The plummeting presence of s. 27 points towards the possibility that multiculturalism is in a decline in Canada and this decline can be accredited to the increasing authority the state has bestowed on Supreme Court of Canada justices. The inquiry that follows in this paper will aim to further situate the current status of multiculturalism within Canada by looking at the

degree to which religious tolerance is the aim of the judiciary in s. 2 (a) cases.

**Final Thoughts**

This historical analysis of multiculturalism in Canada has revealed that attitudes towards the idea of diversity and minority rights have evolved over time in direct correlation to the state social, political, and economic needs. This is evidenced by the fact the concept of multiculturalism was largely introduced with a dual purpose, firstly to appease the populace's need for self-expression and secondly, as a method of fostering the nations socio-economic development.

In the context of Canada, history has shown that multiculturalism has been a reaction and solution to the problems encountered by the majority. The actuality that the Department of Multiculturalism and Citizenship was dismantled within two years of operation pays heed to the verity that multiculturalism is used as tool to facilitate the state's political agenda. This is perhaps why the key components of multiculturalism: equal treatment, protection from racial discrimination, equality of opportunity, and the right to remain culturally different[xxxvii]; have failed to materialize amidst minority communities. Insofar, that minorities to this day, struggle to achieve a status on par with the larger Canadian population.

**Existing Debates in Literature**

Many theories have been advanced to explain the dynamic relationship courts, multiculturalism, and religion share within Canada. However, in order to decipher the main inquiry of this paper of whether the Supreme Court of Canada allows religious freedoms to result into religious autonomy, this review will focus on three major themes that emerge from the literature reviewed. The themes are: C*ulture and the Courts, Limitations of State Induced Religious Freedoms, and Bringing Religious Diversity into Multiculturalism*. Although, the literature postulates these themes in various situations, the purpose of this literature review is to apply their foundations to the discourse of judiciary induced limitations on religious freedoms, to facilitate the development of the central thesis.

**Culture, Religion, and the Courts**

The embodiment of multiculturalism within the Canadian judicial system is a fairly underdeveloped phenomenon. Neil Valance in his essay, *The Misuse of "Culture" by the Supreme Court of Canada*, analyzes various court decisions and argues that the discussion of law's relationship with culture is exceedingly minimal. Although, he predominantly uses the aboriginal community to make his claim, his views are still applicable to this debate. He conveys the belief that culture is viewed objectively within the Supreme Court of Canada.[xxxviii] His analysis has shown, that culture is seen as a fact rather than a concept;[xxxix] this means that people need to constantly prove their cultural beliefs because culture has not been established as a defined principle in Canadian society.

Even though, his work is significant to the discussion of the role of culture within Canadian courts, it is flawed in some domains. His premise that freedom of a religion is a concept and well defined within Canadian courts is highly problematic, due to the fact that just like cultural minorities, religious minorities also have to prove their devotion to their religious beliefs in order to make any claims under Section 2 (a). This right like other rights should be guaranteed, meaning an individual should be allowed to act in a religious manner without having to justify that they truly hold those beliefs.

Benjamin L. Berger in *Law's Religion: Rendering Culture* further supports this outlook on culture and courts. He is highly critical of how the law interprets religion and culture through two disparate lenses.[xl] Despite the fact that his work does not explore what the conception of religion as culture may look like, it does shed light on how the courts have complicated the actualization of multicultural ideals.

Although, religion and culture are seen to be interchangeable concepts, courts do not interpret them in that sense, rather religion experiences a sense of *othering*. He notes that the law renders religion to be an individual, private, and autonomous practice.[xli] As a consequence, religion is not offered the same level of protection as culture. It can be argued that religious freedoms are not defined in relation to the ideology of multiculturalism; hence religious minorities are more prone to social exclusion than cultural minorities.

On the contrary, Robert J. Currie in the essay, *Whose Reality? Culture and Context before Canadian Courts* cherry picks his way through the discourse of cultural sensitivity and Canadian courts. He posits the thesis that the interpretation of law changes to reflect new realities, largely because the *Canadian Charter of Rights and Freedom's* principle of equality prompts the development of cultural discourse in courts.[xlii] The issue with this analysis is that this claim is made without referencing *Charter* cases where cultural freedoms were questioned in Canada. It is hard to wholly credit his claim that courts through amendments to judicial notice, hearsay, and

creditability assessments are able to harbor cultural sensitivity and multiculturalism in their decisions.
These essays further denote another pitfall in the court's interpretation of multiculturalism; the unfamiliarity of justices with minority religions and the fragmented consensus on what constitutes cultural diversity. In order to further contextualize the relationship between religion and multiculturalism within Canada, it is important to explore the state's role as an enabler of religious freedoms.

**Limitations of State Induced Religious Freedom**

The manifestation of religious freedoms in the state's agenda has inhibited the actualization of religious autonomy due to the fact that minority religions are incompatible with the state's objectives. Many theorists assert that a state's dedication to religious freedom cannot co-exist with its commitment to secularism. In *The Irreducibly Religious Content of Freedom of Religion*, Jeremy Webber contends that freedom of religion cannot be secularization largely because s. 2 (a) rights do not reflect a neutral state but solidify the fact that the state has moral commitment to accommodate religion.[xliii] Webber asserts that this limitation of state induced religious freedom leads to the removal of religion from public discourse despite the presence of religious freedoms.[xliv]

Bruce Ryder in his essay *The Canadian Conception of Equal Religious Citizenship* further elaborates on this dilemma. Whilst, deducing the key attributes of religious freedom in Canada, Ryder maintains, that religious rights are not absolute because they need to be balanced by competing claims and interests of other rights and individuals.[xlv] Alluding to the fragility of religious freedoms he brands the right as the new gay, meaning these rights are best kept in private and not celebrated in public.[xlvi] He claims that restrictions on religious freedoms emerge mostly from the state associating religion as a threat to national security.[xlvii]

The strength of his argument is that he is able to clearly articulate the status of religion within the Canadian state. However, he fails to take into account the premise that only conservative religious minorities face limitations when participating in Canadian society, whereas those who practice their religion through liberal values do not experience the same level of social exclusion. It can be argued based on the content of these essays that the state's conception of religious rights is problematic as its aims to give religion a liberal meaning. The preference for defining religion in liberal terms arises from the fact that liberal practices are inline with the state's secular agenda largely because liberal religious practices do not require additional state accommodation and are invisible in civil society. Moreover, it is plausible to assert that religious freedoms have failed to facilitate religious autonomy for this very reason.

This assertion is given some weight in Rex Ahdar and Ian Leigh's book *Religious Freedom in the Liberal State.* Their work outlines the ways in which liberalism has affected religious freedoms in western states. They note that difficulties with the concept of religion arise in western states when religion requires what the law prohibits and vice versa.[xlviii] The soundness of their work lies in the fact that they have blatantly illustrated the predicaments religious minorities face; in particular by using the example of polygamy they have exhibited that religions upholding this practice are placed in a precarious position for they must choose between obeying god or the state.[xlix] Their analysis denotes another inherent flaw within Canadian society, the inability to carry religious diversity into the framework of multiculturalism. It is crucial to further probe this matter, as it will help to further situate the status of religion and multiculturalism in Canada.

**Bringing Religious Diversity into Multiculturalism**

Diversity in Canada is encapsulated under the umbrella of multiculturalism. A recent evaluation of multicultural societies by theorists has shown that multiculturalism does not entail a commitment to religious diversity. This view is exemplified by Christopher McCrudden's essay, *Multiculturalism, Freedom of Religion, Equality and the British Constitution*. He contends that the world is in a post-multicultural phase. In the current conception of multiculturalism, culture and religion are seen as two different things for the reason that nations are more reluctant to shelter religious practices than cultural practice for they harm the rights of women and homosexual individuals.[l]
Prominent theorist on multiculturalism, Will Kymlicka has recently become conscious of this discrepancy. For his earlier work, Dwight Newman has criticized him in *Liberal Pluralism and Will Kymlicka's Uneasy Relation with Religious Pluralism*, for painting a fragmented picture of Canadian multiculturalism by using a one size fits all approach to cultural and religious needs.[li]

Kymlicka in his recent document prepared for the Canadian government entitled, *The Current State of Multiculturalism in Canada and Research Themes on Canadian Multiculturalism 2008-2010*, is more attentive to this issue as he argues that religion has deviat-

ed from Canada's multicultural policy. He prompts the view that in the realm of religion Canada lacks multicultural preparedness.[lii] He is of the view that the Supreme Court of Canada should not be dealing with every religious claim; rather religion should be normalized wherein people can practice their beliefs without the help of courts and media.[liii]

The backbone of his document is that he outlines the eminent flaws within Canada's multiculturalism policy and sets out an action plan. However, he commits the fallacy of idealizing multiculturalism as the ultimate goal of the state, whereas a vast majority of literature that was explored and unexplored in this review point towards a decline in multiculturalism.

Nonetheless, this literature review has exposed the inherent gaps between the conceptualization of multiculturalism and religion in courts, state, and theory. It has also been exhibited that theorists and academics shy away from tackling this subject matter under one topic. The ensuing dialogue presented in this paper will aim to fill this substantial gap in current literature by encompassing these three themes under the framework of one paper.

**Religion and the Public Space**

The Canadian conception of citizenship is distinctly different from the standardized denotation of the theory. In Canada, the presence of s. 2(a) has made citizenship synonymous with equal religious citizenship. This means that religious freedoms and religious equality rights are unified to foster the engagement of religious individuals in Canadian society, without forcing them to disavow their religious beliefs.[liv] However, the attainment of this type of citizenship is highly improbable due to the fact that the Supreme Court of Canada justices have treated s. 2(a) claims subjectively.

This section will explore how the justices have hindered the actualization of equal religious citizenship by continually shifting their views on how much religious tolerance is acceptable in the public sphere. It will be argued that these alternating beliefs have confined religious rights, as the actualization of these rights is dependent on the space and environment in which these rights are exercised.

To facilitate this argumentation, this section will probe the verdicts given in *Multani v. Commission scolaire Marguerite-Bourgeoys*, and *Saskatchewan (Human Rights Commission) v. Whatcott*. This section will examine various themes pertaining to religious tolerance and the public space. By using the *Multani* case, the role of religion in the public and private sphere and notion of long term vs. short-term religious accommodation present within the Supreme Court of Canada will be conjectured. Whereas, the *Whatcott* case will be used to exhibit how the justices utilize the reasonable person and the allotment of public space as democratic space to limit religious autonomy.

**Religion in the Public and Private Sphere**

The *Multani* case denotes a landmark ruling within Canadian history. The Supreme Court of Canada granted the Sikh community the right to wear the kirpan (ceremonial dagger) in schools.[lv] Although, the kirpan was granted special position in Canadian society through s. 2 (a), the issue at hand is that dynamics through which justices assessed this case are highly controversial.

Core components of the decision show that the justices interpreted the right to religious freedom under the framework of spatial limitations. The dichotomy of public and private space was utilized to confer the Sikh community rights to religious freedom. This framework is greatly debilitating for religious minorities because it prevents religious freedoms to transcend into religious autonomy.

The court presented the willingness of other Sikhs to compromise their religious beliefs by wearing a kirpan in form of a metal pendant or a plastic kirpan in a favourable light.[lvi] It was hoped that the Multani family like other Sikhs would accept this agreement and sustain the public space as a liberal space, where symbols of religious identities are sidelined to promote a culture of humanity.

This refusal also denotes another issue with religious freedoms in Canada, that individuals with orthodox religious beliefs like Multani face greater hardships in the realization of their religious freedoms than those who practice their religion in a liberal fashion. For the Sikhs that had accepted the state's alternatives to their religious belief did not face social exclusion like Multani.

This case unravels an additional facet of religious freedoms in Canada, which is the reluctance of the courts to give religious minorities the chance to achieve religious autonomy. Excerpts from the case indicate the justices are leaning towards reshaping religion as private practice; this is exemplified in remarks such as, "*individuals must show that he or she sincerely believes that a certain belief or practice is required by his or her religion,*[lvii]" and "*…chosen approach should not impose a more onerous burden on the government.*[lviii]"

This can be interpreted as the Supreme Court of Canada's attempt to displace religion from the public to private sphere, as it connotes the sensitivity and personal nature of religion. On a larger scale, calling on individuals to defend their personal beliefs in public acts as a deterrent from claiming s. 2 (a) rights.

Correspondingly, this limitation imposed on the realization of s. 2 (a) rights also denotes the fact that religious minorities are not given religious autonomy, for they first have to prove their dedication to their faith before making any claims to their right. Individuals should be able to practice their faith without being liable to the state. The onus should be on individuals if they want to utilize the religious freedoms bestowed upon their religious community and not dependent on the uncertainty of whether the state will grant those freedoms.

Nonetheless, this distinction between the role of religion in the public realm and the willingness of justices to push religion into the private realm exhibits that religious autonomy of minority groups is not the aim of justices. Instead, the conceptualization of public space and the role of religion convey the predisposition of the court to limit the scope of religious rights.

**Long Term vs. Short Term Accommodation**

The *Multani* case further contextualizes the debate of whether religious accommodation should be provided, by evaluating the long-term and short-term viability of allowing the kirpan in schools. Justices reference two prominent cases regarding the kirpan before adjudicating on a verdict.

In the *Nijjar v. Canada 3000 Airlines* case it was articulated that the kirpan was prohibited in airplanes. Nijjar had been denied the right to wear his kirpan on a Canada 3000 Airlines flight on the basis that he had failed to establish that the prohibition against wearing a kirpan on board the flight went against his religious beliefs.[lix] The significance of this case lies in the reasoning the justices posited for their decision, it was noted that, "*consideration must be given to the environment in which the rule must be applied… aircrafts present a unique environment. Groups of strangers are brought together and are required to stay together in confined spaces for prolonged periods of time. Emergency medical and police assistance are not readily available.*"[lx]

It is evidenced that justices treat religious freedoms in a constrained way. They do not allow religious minorities to freely exercise their religious beliefs rather limit the actualization of their rights by imposing environmental limitations. The problem with this type of reasoning is that they limit religious freedoms based on assumptions. A reasonable limit for reasons of security is justified on part of the court only to a certain extent. In this example, the court should have had proof that the kirpan would undeniably be used as a weapon and harm the well being of all passengers.

This view is again replicated in *Hothi v. R.* The judge in this case decided that the kirpan would not be allowed in courts due to the fact that it undermined the judge's position and harmed the ability of the court to facilitate a non-violent setting for justice.[lxi]

In these cases, short-term accommodation of religious rights is denied for security reasons. This occurs largely because meeting these needs of religious minorities does not correlate to the long-term agenda of the state. Although, the right to security is equally as important as the right to religious expression, the problem with the current method of balancing these rights is that the beliefs of the majority start to sideline the faith of the minority. The court needs to establish a more fitting approach to religion and security, which is based on facts such as an individual's history of violence and not speculation, as this method treads on a fine line between prejudice and racial profiling of the Sikh community. These views are detrimental to the social development of religious minorities as they are denied a sense of belonging within society.

In contrast, it is logical to presume that the court ruled in favour of Multani solely because of the environment in which Multani would practice his right. The school environment is viewed by justices to be, "*one that permits relationships to develop among students and staff.*"[lxii] Granting Multani his right to religious freedom was seen to harbor the Canada's long-term goals of societal harmony and diversity. It is reasonable to assume that had Multani demanded the right to wear his kirpan in another public domain, this case would have rendered a negative result.

It can be argued that courts not only limit religious freedoms in the public but also further reduce the potency of rights by allocating a certain environment for their realization. Moreover, this case conveys the fact that the state has ownership of public space and all rights are subjected to the state's approval because anything undermining the hegemonic position of the state is rejected. Although, the *Multani* case is historic for minority religions it also portrays another side of the story. It shows that religious rights do not translate into religious autonomy within Canada, for courts attempt to push religion into the private realm by limiting the number of public spaces in which

religion can be practiced and weigh the right in correlation to its short term and long term benefits. On a similar note, this paper will now explore additional facets of how religious autonomy is limited through the notion of space using the *R v. Whatcott case*.

**A Reasonable Person in the Public Sphere**

The *Whatcott* case is of value to this inquiry as it is the latest case to emerge in the domain of s. 2 (a) rights. The *Whatcott* case concerns William Whatcott's claim that his s. 2(a) rights were infringed when the Saskatchewan Human Rights Commission prohibited the distribution of his homophobic, faith based publications in public. The justices held that a violation of his rights did not occur rather his views and actions are deemed inappropriate under Section 1 of the *Charter*.

Although, Whatcott's actions are not commendable, the process through which the justices adjudicated on this case is to a certain extent problematic, for they set unrealistic precedents for future s. 2(a) claims. This case was argued largely on the grounds that a reasonable person in the public space would feel Whatcott's actions are exposing hatred towards homosexuals.[lxiii]

The reasonable person in this case is ill defined for it wrongly imposes a one size fits all strategy. This reasonable person is conjectured on the premise that all citizens support homosexual rights. Yet, the reality is that only 43.3% of Saskatchewan's population is in favour of giving same-sex marriages a status on par with traditional marriages.[lxiv] It cannot be wholly deduced that the presence of homophobia is completely absent in public spaces.

Moreover, it is highly probable that individuals from conservative religions such as Islam and orthodox individuals from other religions were also exposed to the material. In this conception of a reasonable person in the public space, no weight is given to the beliefs of minority religions. On the contrary, the court recognizes the public space as a liberal space. This displays the courts' aptness to undermine religious rights of religious minorities to facilitate its own agenda.

Nonetheless, it is tenable to say that this conception of the reasonable person has shown that justices view minority religions as lacking reason. This is why their beliefs are not taken to account within this framework. On a larger scale, this debilitates the ability of minority religions to autonomously practice the tenets of their fate. Moreover, the social rejection of their religious values prevents them from conjecturing a sense of belonging within Canadian society. Justices essentially take away the ability of any minority religion to be suitable for Canadian society. Similarly, this case characterizes other inherent flaws of utilizing the public space to proclaim religious beliefs.

**Public Space as Democratic Space**

The Supreme Court of Canada has further convoluted the relationship between religion and public space by redefining the public space as a democratic space. Justice McLachlin notes, "*… it does not target the ideas, but their mode of expression in public and the effect that this mode of expression may have."*[lxv]

This exemplifies that the environment in which hate speech is practiced is crucial in determining whether s. 2 (a) will be given weight. When this view is pitted against the fact that Whatcott's actions failed the s. 1 reasonable limits test, it is plausible to conclude that under these tenets public space was interpreted as being a democratic space during the trial.

The setback of construing the public space as a democratic space is evident in Justice McLachlin's reference to Section 14 (1) (b) of the *Saskatchewan Human Rights Code.*[lxvi]Justice McLachlin interprets the Section 14 (1) (b) right, as only prohibiting public communications of hate speech.[lxvii] It is further advanced that that the provision does not restrict hateful expression in private communications among individuals[lxviii]. This reading of Section 14 right alludes to the fact that hate speech is allowed in the private realm as it will not negate the views and opinions of the majority.

The democratic space is a conflictual place for religious minorities, for the fact that social conformity and majority rule is preferred. Rebranding the public space as democratic space, allows the court the ability to further the state's ideological objectives of promoting a same-sex agenda. In this arrangement religious freedoms do not translate into religious autonomy for the reason that the court displays the predisposition to enforce the long-term goals of the state. This leaves the interpretation of religious rights and minority religions to be fragmented within the Supreme Court of Canada.

Nonetheless, it is quite evident that religious freedoms are highly constrained in the Supreme Court of Canada. Territorial idealizations of what the public space is and what it should entail prevents religious freedoms from resulting in religious autonomy. In essence, public space is used to contain religious rights, in the hopes of furthering the state's hegemonic position and long-term goals. This analysis has also shown another major problem inherent within the court; that the public space is not always deemed

as being secular. Justices pick and choose what rights they wish to accommodate. For religious minorities this unwarranted power invested in justices harms not only religious autonomy but religious freedoms as well. To further grasp the degree to which religious freedoms are constrained the court, it is reasonable to examine the scope of s. 2 (a) rights in the private sphere; the courts' preferred arena for religious freedoms.

**Religion: an Obstacle to Human Development**

The limitations imposed on religious rights in the public domain give rise to the view that perhaps religious communities could live under the tenets of their faith in their homes. However, the problem that hinders the realization of this rationale is the absence of a general consensus, on the role religion plays in the development of individual capacities. While, some legal scholars like Shauna Van Praagh argue that membership in religious communities help foster identity development.[lxix] A vast majority of theorists voice opposing views; individuals like Rex Ahdar and Ian Leigh depict religion as being an impediment to medical treatment, workplace equality, and acquiring knowledge.[lxx]

The inclination of associating religious rights as non-progressive rights and an investigation of family law cases point towards the fact that these attitudes have influenced the Supreme Court of Canada to view religion in the private realm with contempt. To further understand this relationship, this section will examine how the Supreme Court of Canada has characterized and limited the role of religion in family law.

It will be argued that Supreme Court of Canada harbours a negative understanding of the role religion plays in the development of individuals. This paper further posits the premise, that these pessimistic views render the result of not only impairing the realization of s. 2 (a) rights but also undermine religious self-determinism in the household.

This section will be organized in the following manner. It will draw on two Supreme Court of Canada cases, central to the theme of religion and family law: *Young v. Young*, and *P. (D.) v. S. (C.)*. The focus will then shift to deciphering the degree to which religious freedoms become alienated in custody cases. The *Young* case will be used to examine the role of religion in identity development and whether the limitations imposed on religion actually work in the best interest of the children. On a similar note, the *P. (D.) v. S. (C.)* case will be used to situate the function of religious education and religious practices in larger Canadian society.

To comprehend the opinions of the justices and the subsequent effects of their outlook, I will briefly discuss each case. *Young v. Young* is centered on a family dispute, in which the judge gave the wife custody of the children and some access rights to the husband. However, the issue at point was the court order, which barred the husband from sharing and practicing his Jehovah Witness beliefs with his children.[lxxi] Similarly, *P. (D.) v. S. (C.)* also dealt with an almost identical issue, wherein the father's tendency to involve his daughter in his Jehovah Witness faith was viewed negatively by his ex-wife.[lxxii] It is important to note that both these cases despite being alike were rendered different verdicts.

This very point gives weight to the central thesis that the Supreme Court of Canada's justices' exhibit crippling views that result in the containment of religious rights. In *P. (D.) v. S. (C)*, Justice L'Heureux-Dube was seen to sustain the restrictions on the father's religious freedoms whereas, in *Young*, Justice McLachlin was reluctant to wholly denounce the father's religious rights.[lxxiii]

However, in the context of this paper, the thought process used and expressed in treatment of religion is more important than the final judgment. For the views expressed in the case help elucidate the framework through which religious freedoms are being assessed, whereas the judgment could be influenced by external factors not accounted for in the trial.

**The Role of Religion in Identity Development**

The relationship religion and family law share is at a crossroads. For a large part of the early 19th century, custody cases depicted a parent's religious beliefs in a positive manner, for religion was deemed as being an asset to the child's future wellbeing.[lxxiv] However, in the current framework, there appears to be systemic shift, as now judges use secular and atheist values to assess the best interest of the child.[lxxv] This view is articulated in the *Young* case, wherein religion is equated with harm.

A reoccurring theme within the case is that the court is the mediator in family law disputes, whereby the role of the court is to protect the integrity of the child, meaning the protection of their bodies, minds, and spirits from harm or damage that can occur from religion.[lxxvi] In this context, religion is viewed as an impediment to the psychological and physical development of children.

For Justice L'Heureux-Dube, limiting s. 2(a) is justified only to the extent that the exercise of that freedom causes or threatens the occurrence of real or physical harm to children.[lxxvii] Moreover, Justice

McLachlin despite ruling in favour of the father's religious identity concludes that even though his religious expression and practices may have placed stress on his children, this implication is minor compared to the harm of not having an actual relationship with their father.[lxxviii] Here it is evident that despite being on different spectrums religion is still viewed as *harm*.

This conceptualization entails a plethora of problems. Firstly, it defines religion from a hegemonic position, wherein a parent with conservative religious beliefs is seen as regressive in a secular society. Secondly, it shows the Supreme Court of Canada's preference to rule in favour of the parent who exerts more liberal religious beliefs and membership in their religious community. Thirdly, it exhibits the tendency of the court to undermine religious freedoms and contain peoples right to religious self-determinism within their homes. This concept will be later revisited and expanded upon in this section because to fully contextualize this concern it is important to examine the concept of best interest.

**Limiting Religious Freedoms for Whose Best Interest?**

The concept of best interest is central in all family law disputes for the court deems to create a favourable and progressive environment for children in custody battles. However, there are many loopholes persistent within this theory.

The *Young* case has shown that the concept of best interest reduces parental religious freedoms and commits the dubious act of giving precedence to children's freedom of religion. Although, the child has an equal right to exert that right, the problem is the context under which the right is granted.

In this case, the best interest concept gives the children the right to not follow their father's beliefs. Foremost, the fact that his children are not even in their teens makes one wonder how are these children going to deploy their rights when they are denied the option to situate their religious views in relation to their father's religion. It is problematic that the court grants this right to children at an early age especially when they are denied voting rights which are equally important to their psychological and social well being.

If one were to assess who the concept of best interest really accommodates it would undoubtedly be the state. For the reason, that by undermining the religious autonomy of parents to teach their kids their religious values, they are able to enhance societal cohesion. For example, under this framework Jehovah Witness parents are denied the right to interfere with the values of Canadian society, meaning that they would not be able prevent blood transfusions for they are in the best interest of the children.[lxxix] Hence, by restricting the religious freedoms and autonomy of parents in the private sphere the court is able to harbor the state's agenda of promoting a Canadian identity in line with liberal values. This displays the systemic shift to assimilation politics within Canada, wherein individuals are forced to give up their religious identities and assimilate with the larger Canadian population.

The partiality towards the religious rights indicates the court's desire to implement a secularist agenda within households, for the court in both *Young* and *P. (D.) v. S. (C.)* hold the secular and liberal household as being an archetype for functional families. This is highly problematic for the social development of religious minorities as they are forced to suppress their religious identities and conform to the norm. This view strongly advocated in *P. (D.) v. S. (C.)*, hence in order to further grasp the limitations imposed on religion in the private sphere it is reasonable to examine the underlying framework of this case.

**Reading in Between the Lines: Is Religious Education, Indoctrination?**

Education and indoctrination are two concepts that are poles apart. Education entails the ability of an individual to critically examine the material they learn, whereas indoctrination is seen as propagandizing of an individual in which an individual becomes inculcated in certain beliefs. The reason for this explanation is that the Supreme Court of Canada elucidates religious education as indoctrination. In *P. (D.)*, the justices are substantiating the fact that the religious education the father is providing his daughter is indeed religious indoctrination.

The court concluded that the father may teach the child the Jehovah Witness religion but does not have the right to indoctrinate her with the precepts and religious practices of Jehovah Witnesses by taking her to religious demonstrations, ceremonies, conferences or preachings.[lxxx] This condition complicates the scope of the father's religious freedoms, how can he be expected to teach his religion without contextualizing his beliefs and by not giving his daughter exposure to the religious community. This further exemplifies how religious education is treated with inferiority in comparison to school education, for in the school environment a child is encouraged to apply and not contain their learning to the outside world.

It can be argued that religious education is met with disdain in the court, largely because their conception of religion is fueled by their negative connotation of religion with human development. This view is exemplified in the fact that the court deduced every detail of the father's religious activities and portrayed him in a manner that justified the limitation of his religious freedoms. It was noted, that the father preaches and does door to door solicitation for 20-25 hours a week, only works for his basic necessities as a cleaner, and in his free time reads the bible and study's his religion.[lxxxi]

The purpose of conducting this analysis was to depict a cause and effect relationship between religion and development. This case shows that the father is not being able to exercise his potential because he is too invested in his religious beliefs. This leads to the further assumption on part of the justices, that if the daughter becomes an active part of this environment her socio-economic potential will also be hindered.
It can additionally be speculated that the court keeps this notion of development central to its religious agenda, for the fact that revoking religious freedoms under this scheme appears to be justified. The reality, however is that not only do religious minorities lose the ability to share their religious values with their future generations but religious autonomy is also lost for the fact that religious practices are contained by court induced beliefs of how one should teach and practice their religion.

On a similar note, from this debate it is possible to deduce that this defense of human development can be used to manipulate the role of religion in the household. Likewise, it is also reasonable to examine this facet of the debate to fully contextualize the relationship the Supreme Court of Canada shares with religion.

**Objective of Religion in the Household**

At the familial level, the objective of the household is to accommodate Maslow's hierarchy of needs. However, in the court's interpretation of religion, the purpose of the household transcends this traditional outlook. In *P. (D.)* the home has been conceptualized as a unit that satisfies the objectives of the state. For example, when Justice L'Heureux-Dube places the limits on the father's religious freedoms, she gives the following rationale: "*A young girl must be able to benefit fully from her childhood without being constantly bothered by conflicts, namely whether god is in heaven or her heart, whether or not she should put a clown costume at Halloween, and so on.*"[lxxxii]

Taking religion out of the home is deemed as the logical response, for the justice fears that the ability of the child to see her self as a part of Canadian society and feel a sense of belonging within society will be denied under the tenets of her faith. This can be also interpreted as an attempt of the justice to establish the home as a place that facilitates assimilation into Canadian society.

By comparing the way of life in this family's home with the lifestyles of other Canadian households, L'Heureux-Dube shows a preference for secular and not religious households. She commits the fallacy of believing that a religious and a Canadian identity cannot be successfully balanced. In essence, the court views children as a byproduct of Canadian secularism, whereby the only way they can attain a sense of belonging and prosperity is by relinquishing the impact religion plays in their lives.

It can be argued, that the views the Supreme Court of Canada employs within these two cases deeply undermine the role of religious freedoms in Canada. By viewing religion as an impediment to the children's development, the ability of parents to exert their religious autonomy has severely been debilitated for the fact that they cannot teach or experience their religion with their children. Moreover, this section has revealed that multiculturalism is also in a decline as religious values, which often entail a cultural dimension, are prevented from being shared and celebrated.
Nonetheless, this section has exemplified the negative connotations associated with religion and its actualization in the private sphere. Having said that, this inquiry cannot be satisfied unless another dimension of religious freedoms is explored. The following section, will examine whether collective religious rights claims hold more weight than individual religious rights claims, for one of the main purposes of multiculturalism is to provide group based accommodation.

**Divided Loyalties: Is the State Really a Crusader of Religious Accommodation?**

It is often assumed that the rights of a group hold more weight than the right of one individual. However, in the context of Canadian society, the claim that collective rights can ensure groups a greater level of recognition and protection is quite problematic. The reality is that in the framework of liberalism, individual rights are prioritized over group rights; this means that collective accommodation is not a guarantee.
In this section, it will be argued that the Supreme Court of Canada justices impede the actualization of religious freedoms at the societal level for the fact

that they do not strive to accommodate the needs of religious groups. This premise further lays the groundwork for an additional argument, that group rights become undermined in the court's liberal agenda.

To examine the scope of collective religious rights in Canadian society, this section will evaluate two cases: *Congrégation des témoins de Jéhovah de St□Jérôme□Lafontaine v. Lafontaine (Village)* and *Trinity Western University v. College of Teachers*. By drawing on the views the justices have exerted in regards to religious accommodation, this section will analyze why collective religious rights are looked at with disdain.

The *Congrégation des témoins de Jéhovah de St□Jérôme□Lafontaine v. Lafontaine (Village)* case will be used to exemplify how religious accommodation of minority religions is weighed partially against the rights of other members of the community. Whereas, the *Trinity Western University v. College of Teachers* case will be employed to show how the concept of socially benefiting from religion can be pitted against individual and group rights.

Before further embarking on this analysis, it is reasonable to contextualize this debate by briefly visiting core components of each case. The *Congrégation des témoins de Jéhovah de St□Jérôme□Lafontaine* case revolves around a dispute between a Jehovah Witness community and a village in Lafontaine, Quebec. The dispute was centered on the fact that the community wished to build a place of worship but was denied that right three times under rezoning by-laws. The final verdict rendered by the court was that the municipality should reconsider the community's application, because they failed to provide a reasonable rationale for rejecting the application the third time.

On the contrary, the *Trinity Western University*[lxxxiii] case circles around the outcry that occurred, when the British Columbia College of Teachers[lxxxiv] refused TWU proper accreditation of their teaching program. TWU's clause on prohibiting homosexual behavior in the university was seen to violate BCCT's policy against discrimination. Although, the justices ruled in favour of TWU, the arguments made against the university established that rendering positive decisions in future collective religious rights is highly unlikely.

**Religious Accommodation and Public Interest**

The hypothesis that religious freedoms are only granted if they do not override other rights has already been established, however the *Congrégation des témoins de Jéhovah de St□Jérôme□Lafontaine* case introduces a new way of limiting religious rights. The justices have deduced that the right to religious expression is weighed against the concept of public interest.

The religious community in question was denied the ability to build a place of worship because the land they wished to acquire was in a residential area. It was feared that since religious institutions do not pay taxes, tax payers in that area would have to suffer the burden of accommodating the religious community by experiencing an increase in taxes.[lxxxv]

Under this concept of public interest religious autonomy is hindered in a twofold manner. Firstly, municipalities through the enforcement of zoning by-laws are able to contain the level of religious expression. Secondly, justices ultimately pit the religious debate against money, in which the economic side effects, ultimately gain more sympathy.

However, what is more detrimental to religious freedoms is the fact that in this concept of public interest, justices do not aim to facilitate a ground for compromise. They feel that any decision taken in the public interest is final and should not be questioned. This view is exemplified by Justice Le'Bel's remark, "*having already discussed the broad scope of the municipal power to pursue its urban planning program with fairness, in good faith and with a view to the public interest, I take no position on this matter.*"[lxxxvi]

The fact that the justices place the onus on municipalities to accommodate religious communities is highly problematic for the fact that municipalities are prone to promoting the interests of the majority of the population than its minority. Even though, municipalities are liable to the populace, the electoral system distorts this relationship for it is more profitable to accommodate the needs of the majority of voters than a small segment of the municipality. Subsequently, a lack of checks and balances at the judicial and municipal level, results in minority religions of the area to face a certain degree of neglect as evidenced in this case.

**Idea of a Neutral State**

The reluctance of the court in promoting the development of religious communities at the societal level is further evidenced in the argument of the neutral state. A common consensus among the justices is that the state is neutral entity and it is no longer the state's duty to give active support to any one particular religion.[lxxxvii] It is also noted that the social and legal frameworks of the state are bound because the state itself cannot act in matters relating religion.[lxxxviii] It

can be argued that under this framework, by treating all religions alike the court is able to relieve itself from the burden of accommodating religious communities in society.

This notion of a neutral state is highly problematic for the fact that it does not only undermine the scope religious freedoms, it further displays ignorance to the state's policies of immigration and multiculturalism. When the court asserts that s. 2(a) does not require legislatures to eliminate every little state imposed cost associated with the practice of religion,[lxxxix] it shows that the court is working counter to the state's key policies. The reality is that new immigrants and religious minorities have not already established their places of worship in Canada like the Christian community, which was present before the state's shift to state neutrality. Hence, how can minority religions survive in this neutral framework that undermines s. 27, and hides behind secular values?

Nonetheless, this case has exhibited that the Supreme Court of Canada's primary goal is to accommodate liberalism and in this agenda of liberalism, there are no incentives in habouring religious development at the societal level. This is very detrimental to the social development of religious minorities as to be socially excluded means to have lower social value in relation to the larger Canadian population. This further eludes to the fact that having Canadian citizenship is meaningless in this framework, as in courts religious minorities can have the same rights but not the same treatment as the rest of the population.

For the reasons noted above, the ability of religious communities to act autonomously within their municipality has severely been limited by existing loopholes within the judicial system that allows courts to move away from sheltering religious communities.

**Social Benefit of Sheltering Religious Beliefs**

Although, the *Trinity Western University* case, ruled in favour of collective religious rights, the arguments delivered in the case help elucidate the grounds on which future claims to religious rights can be invalidated. The reason the court adjudicated in favour of TWU was largely because they BCCT did not have a direct evidence of homophobic behavior and that BCCT went beyond its jurisdiction to act as mediator of human rights.

In this case, there was skepticism that the students at TWU upon graduation would express the same homophobic views in society. All justices concurred that for the benefit of society these homophobia views should not spill over into the public realm.[xc] The idea here is that the accommodation of religious institutions should benefit society. It can be speculated that if religious institutions exert a degree of extremism that transcends into the public domain that their rights would be revoked.

In essence, the ideology the court employs in the actualization of collective religious rights is that individuals can hold on to beliefs but not act on them. Views as such, hinder the role of religion in society, especially for minority religions who often exert opposing beliefs to the court's preferred system of secularism. Essentially, the court begins to interpret religion as a simple means towards an end.

**Individual vs. Group Rights: Emergence of a New Minority**

The underlying framework of the case has further alluded to the fact that in the equation of individual vs. group rights, individual rights hold more power, for individuals are deemed weaker than groups. This view is supported by Justice Iacobucci and Justice Bastarache, wherein they pay heed to the fact that, "*homosexual individuals are minorities in their own families, for they do not enter the school environment with the same level of family support and understanding like other members of minority groups."*[xci] In this arrangement, it is plausible to conclude that the homosexual community under the tenets of liberalism has emerged as the new minority group that needs to be protected.

The new theory among justices is that religious minorities being larger in number have already established their safety needs and do not need further state accommodation. Likewise, it is probable to conclude that the focus has shifted to accommodating s. 15 rights rather than s. 2 (a). Moreover, the *TWU* case denotes two factors that may affect future collective religious rights claims. First, that the religious autonomy of religious institutions can be hindered on the basis that they do not promote the well-being of society and secondly, that civil rights are transcending into human rights, which means that the scope of religion is being limited in Canadian society.

Nonetheless, this section has exhibited that the reason religious freedoms and autonomy are limited in Canadian society is because the court does not employ any enforcement mechanisms. There appears to be a systemic preference to stay clear of religious accommodation to allow the growth of the larger Canadian society. Moreover, this section has explored the future of collective religious claims. It can be presumed that liberalism, when the evidence is present, will start to undermine the role of religion in society and religious rights of individuals. Likewise, the underly-

ing framework of both cases has pointed towards a decline in religious freedoms and tolerance in Canada.

**Two Sides of a Coin**

Although, the focus of this paper has been on deducing the ways, in which the Supreme Court of Canada has limited the role of religion and religious autonomy in Canadian society, there are instances in which this approach to religion has helped religious communities. A common goal of western democracies has been to enforce reasonable limits on some rights, to achieve the greater good for all individuals regardless of their religious identity. The Canadian approach to religious freedoms, although restrictive has aided in the development of a socially inclusive and progressive society at times.

To fully understand how the Canadian approach to religious freedoms has helped foster an equal playing field for all individuals, this section will evaluate three areas central to Canadian society: education, healthcare, and the state.

**Education**

Limitations on religious freedoms have allowed the public education system to promote a greater level of equality among students. By defining public education in secularist terms the religious rights of parents are impaired, however, this limitation is justified for the fact that children get to broaden the scope of their knowledge.

Every religion dictates and encompasses its own theories on how evolution occurred. If the religious autonomy of parents was not bound by the Canadian approach to religion, religious teachings would hinder the ability of children to fully understand the world. For example, it would prevent them from applying scientific theories.[xcii] It can be argued that since these limitations persist, children can focus on other parts of their learning. Had each individual be given the right to act autonomously within their religious beliefs, the public education system would be at a crossroad, for every child would be advocating that their theory is authentic. It can further be argued that the Canadian approach to religion aids in promoting respect for all religious values.

The benefits of restricting religious freedoms and autonomy are additionally exemplified in *Adler v. Ontario*. This case articulated that not funding religious schools was not a violation of s. 2 (a) rights.[xciii] The benefit of this ruling is that it helped prevent the development of ethnic ghetto's, which are often seen as byproduct of multiculturalism. Moreover, this decision aids in promoting a greater level of diversity at the societal level as individuals are compelled to come together and develop tolerance for other religions in a public school environment.

On a similar note, the *Chamberlain v. Surrey District School Board No. 36* case discredited the religious values of many individuals in the school board, to permit the usage of books that promoted same-sex relationships.[xciv] This judgment has shown that restricting religious rights can work in favour of larger society since it helps create a progressive and aware society. The reality of today's Canada is that same-sex relationships exist and this actuality cannot be masked under the right to religious freedoms.

Nonetheless, in the realm of education restricting religious freedoms has aided in the development of a more socially aware society. Regulating religion in education has assisted in the development of children's capacities; encourages religious tolerance in schools; and makes education responsive to the current changes in society.

**Healthcare**

The potency of religion to control the actions of the populace is substantial for the fact that religion enforces a way of life. Had the court not developed a certain approach to religious freedoms, an individuals right to life, liberty, and security would be compromised. This view is exemplified in *B.(R.) v. Children's Aid Society*.

In this case, two Jehovah Witness parents of a baby named Sheena did not want her to have a blood transfusion for it was against their religious beliefs.[xcv] However, due to the extremity of the case, the court ruled for a blood transfusion by undermining the child's s. 2(a) rights declaring that a child so young would not able to exert her religious rights. It can be argued that, this overriding of religious rights is justified for the reason that there needs to be distinction between what is more important life vs. religion in matters pertaining to minors. Moreover, the court becomes a safeguard for religious communities, it helps individuals conjecture a realistic balance with their religious beliefs and recognizes that minor children have not built their own religious identities. In essence, the court gives a voice to the voiceless, interference in the jurisdiction of religion becomes a necessity for it helps maintain a progressive relationship with religion.

In like manner, the undermining of religious autonomy has allowed individuals to gain greater autonomy to their bodies. The court views religion as a static doctrine that needs to be limited, in order to reflect of the current realities of its citizens. It can be argued

that had religious autonomy been allowed wholeheartedly, the sexual health of individuals would be compromised. This belief emerges out of the fact that many religions denounce abortion, sexual education, and contraceptives.[xcvi]

The actuality is that the Canadian approach to religion has advocated a greater degree of individual self-determinism, which is often stagnated by religion.

**The State**

It would not be an understatement to suggest that the state benefits the most from the Canadian approach to religion. This approach utilizes the view that perhaps undermining religious autonomy could result in a greater level of diversity. The underlying purpose of constraining religious rights is to bring people together under the dogma of citizenship. This is because the state has three goals in regards to diminishing religious rights. First, to assimilate religious individuals with larger Canadian society. Second, to establish a Canadian identity to facilitate the loss of a religious identity. Third and most importantly, the Canadian approach to religion allows the state to protect the rights and security of its citizens, as it shelters the populace from fanatical religious practices.

Through the Canadian approach, the purpose of the state is to achieve a greater level of good within society by forcing people to not use their religious identity to congregate but rather their political identities. By giving more weight to other civil rights, the court has shown that they want people to use their political identities to voice their concerns in society.

A closer analysis of this premise shows that using their political identities works in favour of religious minorities for it places the minority into the majority. It creates a Canadian identity and encourages political participation, which is often missing in this culture of multiculturalism.

Moreover, limitations on religion in the state also help promote social cohesion within society. This is exemplified by the Sharia Law debate in Ontario, wherein the Dalton McGuinity's usage of the Canadian approach to religion dismissed any type of faith based arbitration in family law. The benefit of this approach is that it helped religious women achieve a status on par with the larger Canadian population. In its entirety, the decision helped the Muslim community become more active members of Canadian society. Had the doctrine of Sharia law been implemented, a father would have been prohibited from watching his daughter swim.[xcvii] This would have not only harmed women's rights but would have harmed societal and familial relations.

Overall, the Canadian approach to religion has helped the state accommodate religious minorities within larger Canadian society. It can be argued that had religious autonomy been allowed in all cases, Canadian society would have been fragmented to the degree to which multiculturalism would exist but tolerance and societal harmony would be absence.

Nonetheless, by addressing views counter to the central thesis of this paper, it has been exemplified that the Canadian approach to religion, which entails restricting religious freedoms and impeding religious autonomy does work to promote the greater good at times. However, when this argumentation is pitted against other facets of this paper, it denotes three facts about the rights of religious minorities in Canada. Firstly, that multicultural accommodation is in a decline and identity politics in favour of assimilation are emerging. Secondly, religious freedoms are only for religions that are inline with the states long-term goals. Thirdly, that liberalism has created new minorities in Canada for the focus of the court has become to defend liberal beliefs.

**Conclusion**

It has been evidenced in this paper that religious freedoms do not result in religious autonomy in Canada. The reason this disparity emerges is because the Canadian judicial system hinders the actualization of s. 2 (a) rights, due to the fact that the Supreme Court of Canada justices impose their own views while interpreting the scope of religious freedom. The impact of such interpretation is that the role of religion is restricted and disregarded in larger Canadian society. This paper further exhibits that the Supreme Court of Canada is not a viable mechanism to promote ethnic relations.

This paper has examined the limitations imposed on religious rights in three areas: individual religious rights, familial relations, and collective religious rights claims. In similar fashion, this argumentation was divided into three sections. However, before delving to the key findings of this paper, it is important to contextualize the subject matter.

By examining the history of multiculturalism in Canada, the aim of the paper was to situate the Canadian approach to religion. The historical analysis revealed instances in which the state both ordered and restricted cultural accommodation. This helped denote the fact accommodation of minority groups largely occurs because such acculturation supports the state's long-term goals.

Similarly, the literature review displayed that courts, religion, and multiculturalism do not work in conjunction with one another in Canadian society; rather, each concept is seen on its own. It was deduced that since each concept is seen to not mutually enforce one another, religion is not seen as being a part of Canada's multicultural agenda. For this reason, it is speculated that religious freedoms do not to result in religious autonomy.

The section, *Religion and the Public Space* advocated the view that religious freedoms are contained within Canadian society because the Supreme Court of Canada justices have restricted the actualization of religious rights by enforcing spatial limitations. This means the place where the right is exercised is crucial in determining whether the right will be restricted or not. Argumentation in this section was facilitated by an evaluation of the *Multani* and *Whatcott* cases.

Moreover, this section deciphered the role of religion in the public and private sphere, the viability of long term vs. short-term accommodation of religion, and examined how religion is affected by the conceptualization of the reasonable person and defining public space as democratic space. It assesses how the views of the justices' can hinder the social development of religious minorities.

The subsequent section, *Religion: an Obstacle to Human Development*, perpetuated the notion that the Supreme Court of Canada justices see religion as being a hindrance to human development and this outlook prevents religious rights from allowing individuals to act with a degree of religious self-determinism. It was argued that individuals could not act autonomously within their households because the court promotes secular households as being the archetype of functional families.

By drawing on the *Young* and *P. (D.) v. S. (C.)* cases, this section decoded the limitations religious freedoms endure in the private realm. The section, unraveled the role of religion in identity development, who is benefiting from the limitations imposed on religious freedoms, and the status and purpose of religion in the household.

The last section, *Divided Loyalties: Is the State Really a Crusader of Religious Accommodation?*, explored how the Supreme Court of Canada has dealt with claims of societal religious accommodation. It was argued in this section that the court impedes the actualization of religious freedoms at the societal level for the fact that they are not invested in promoting religion in civil society. This section examined two controversial collective rights cases, *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine* and *Trinity Western University*.

The focus of this section was to understand the underlying framework justices presently and in the future would use to limit the scope of religious claims. Moreover, it defined how religious accommodation is balanced against the principles public interest and social benefit, evaluated the scope of the neutral state in the Canadian context, and lastly weighed whether individual or group rights are more potent in the realization of civil rights.

Despite making the central claim that the Canadian approach to religion, for the many reasons explored in the paper, is negative for religious self-determinism, this paper still advocated the benefit of the approach. It was held that the Canadian approach has helped partially develop a socially inclusive society while citing examples from education, healthcare, and the state.

While keeping the main focus of the essay in mind, this paper has addressed other inherent inquiries present in Canadian society. It has been exemplified that multiculturalism is in a decline, for religious minorities are not given the opportunity to situate their beliefs within Canadian society. On a similar note, it has been shown that orthodox and conservative religious individuals face more obstacles in actualizing their religious rights, in comparison to their more liberal counterparts. In direct correlation, it has been established that the *Charter* is not a viable mechanism to promote minority rights or multiculturalism. For the reason, that a lack of checks and balances and enforcement procedures in the Supreme Court of Canada has rendered religious rights the title of not being absolute rights. Lastly, it has been established that judicialization of politics prevents sustainable multicultural practices and hinders the social development of religious minorities.

Before I bring an end to this inquiry, I would like to make a few concluding remarks on the future of religion in Canada and abroad. Based on the argumentation presented in this paper, it is quite evident that the future of religious freedom and religious autonomy in the west is gloomy. It is speculated that the events in the international arena are to blame for the declining status of religion.

While many countries in the Middle East and Asia are still using religion as a tool to devise their nationalist agenda, a majority of western democracies apart from the US have attempted to enforce an agenda of state led nationalism in the post 9/11 era. The prob-

lem with the US and Middle Eastern model of religious nationalism is that it hinders the ability of religious minorities to freely exert their civil rights. In most cases, the dichotomy between majority and minority religions results in human rights violations.

For this reason, western democracies are wishing to build their national identities and not religious identities for the fact that aim of nationalism is to show dominance and not societal fragmentation. Interestingly, Canada has also fallen into the trap of nationalism as indicated by Harper's inclination to buy jets to transform the stature of the Canadian army. Moreover, the state is slowly descending towards decreased tolerance for other religions. For instance, after years of debate and deliberations the Supreme Court of Canada has just announced that the niqab would not be allowed in court proceedings for it harms and compromises the judicial system's ability to conduct lawful and cogent trials.

In this period, religion has become synonymous with violence, terror, and fear; hence, it would not be an understatement to say that in the near future traces of religious accommodation would become minimal.

To conclude, an age-old debate of whether *Charter* rights allow individuals to become autonomous, the answer is no. *Charter* rights in the context of today's society become easily undermined by the *Charter* itself. It would be logical to declare that we are in a post-charter and post-multicultural era.

My advice to the advocates and diehard fans of Canadian multiculturalism is that new alternatives or reconfiguration of the methods through which *Charter* values are enforced is needed. I advance four suggestions that would enable the Supreme Court of Canada to make decisions in the best interest of [xcviii]religious minorities. Firstly, Supreme Court of Canada justices should be elected, as they will render the court to be more democratic and liable to the Canadian population. Secondly, there should be appointments of ethnic judges, as this would enable the court to exhibit a degree of cultural sensitivity. Thirdly, set term limits should be imposed on judges, as this will prevent the court from being fixated into a certain ideology, frequent changes will prompt cases to be heard from different perspectives, which are akin to the current socio-economic conditions of Canada. Lastly, there should be an involvement of think tanks with the courts as this will allow justices to make decisions based on factual information and not hypothetical dispositions. Systemic reformation is the only way the *Charter*, Canadian society, and Canadian multiculturalism can yield the same level of respect it once commanded.

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