Religious Freedom versus Defendants' Right to Face Their Accusers

The Ontario Superior Court is to decide whether an alleged sexual assault victim is allowed to wear a Muslim veil while testifying in court.[1] Justice Frank Marrocco will address the conflict between the values of religious freedom and a defendant's right to face their accuser. This issue has delayed the trial since October 2008 and the defence counsel has indicated that he may file legal arguments seeking for the charges to be dropped against his client for unreasonable delay.[2]

The Supreme Court of Canada has, on numerous occasions, stressed the importance of freedom of religion.[3] The Court has described freedom of religion as follows:

> *The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.*
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> *. . . Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.[4]*

The Court has also considered cases involving the freedom of religion when that freedom competes with other *Charter* rights. The Court has held that "even if individuals demonstrate that they sincerely believe in the religious essence of an action . . . and even if they successfully demonstrate non-trivial or non-insubstantial interference with that practice, they will still have to consider how the exercise of their right impacts upon the rights of others in the context of the competing rights of private individuals."[5] The Court has also avoided setting an internal limit on freedom of religion and has, instead, preferred to reconcile competing rights by means of a section 1 analysis,[6] which determines whether the limit on religious freedom "can be demonstrably justified in a free and democratic society."[7] The Court has held this approach to be preferable because it gives the broadest possible scope to judicial review under the *Charter*.[8]

[1] Timothy Appleby, “Court to hear arguments over right to wear veil” (2 March 2009) online: Globe and Mail.
[2] Shannon Kari, “Veiled testimony hearings delayed as lawyers prepare arguments” (2 March 2009) online: National Post.
[3] *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at para. 32 (CanLII).
[4] *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 at paras. 94-95 (S.C.C.).
[5] *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 62 (CanLII).
[6] *Supra*, note 3 at para. 26.
[7] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the*Canada Act 1982* (U.K.), 1982, c. 11 (CanLII).
[8] *Ross v. New Brunswick School District No. 15*, 1996 CanLII 237 at para. 74 (S.C.C.).