Freedom of Religion

The freedom of religion is one of the fundamental freedoms protected by section 2 of the *Canadian Charter of Rights and Freedoms*.[1]

What is the legal impact of having this freedom? In other words, what does it allow me to do and what government action does it protect me from?

According to the Supreme Court, the *Charter*-protected freedom means that no one in Canada can be forced by the government to act in a way that is contrary to his or her religious views.[2] For example, the Supreme Court has determined that religious officials cannot be forced to perform same-sex marriages if doing so violates their religious beliefs.[3] In practice, having the freedom of religion means a person is allowed to entertain whatever religious beliefs he or she chooses.[4] Freedom of religion also allows a person to declare his or her religious beliefs "without fear of hindrance or reprisal," and to worship, practice, and disseminate those beliefs.[5]

The freedom of religion protects only "beliefs, convictions, and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held."[6] What does the term "religion" mean in this legal context? "Religion," according to the Supreme Court, "is about freely and deeply held personal convictions … connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment."[7] It often "involves a particular and comprehensive system of faith and worship" and "the belief in a divine, superhuman or controlling power."[8]

What religious conduct is legally protected from government interference? A 'trivial or insubstantial' effect on a person's ability to practice his or her religion will not constitute a breech of this freedom.[9] The freedom extends to protect against only non-trivial interference. Additionally, only practices that do not injure others are protected.[10]

Beyond these thresholds, religious beliefs that are 'sincerely held' are protected from government infringement.[11] Sincerity can be assessed many ways, for example, by examining the claimant's demeanour, his or her prior religious experience, and the relationship between prior religious experience and the belief currently held.[12] There is no objective inquiry into whether a belief conforms with established religious practice.[13] The freedom of religion is not contingent on whether a religion is being practiced 'correctly'.[14]

Are their any limitations on the freedom of religion? While freedom of religion is a fundamental freedom, it is not absolute: this freedom is subject to "reasonable limits" by the government as outlined in section 1of the *Charter*.[15] For example, the Alberta Government was allowed to impose a universal photo requirement for drivers' licences even though this violated the religious freedom of Albertan Hutterites, whose religious beliefs prohibit them from having their photograph taken.[16]

[1] *Canadian Charter of Rights and Freedoms*, s 2, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[2] *R v Big M Drug Mart*, [1985] 1 SCR 295 at 337, 18 DLR (4th) 321 .

[3] *Reference Re Same-Sex Marriage*, 2004 SCC 79 at para 60, [2004] 3 SCR 698.

[4] *Big M Drug Mart*, *supra* note 2 at 336.

[5] *Ibid*.

[6] *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 39, 2004 2 SCR 551 .

[7] *Ibid*.

[8] *Ibid*.

[9] *Ibid* at para 58. See *R v Jones*, [1986] 2 SCR 284 at 313–14, 31 DLR (4th) 569.

[10] *Ibid*.

[11] *Ibid* at 42; See also Jose Woehrling, "L'obligation d'Accommodement Raisonnabe et L'adaptation de la Societe a la Diversite Religieuse" (1998) 43:2 McGill LJ 325.

[12] See *Re Civil Service Association of Ontario and Anderson et al*, 60 DLR (3d) 397 at 399, 9 OR (2d) 341 (HC).

[13] *Amselem*, *supra* note 6 at para 43.

[14] *Ibid* at para 50: "In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining … the content of a subjective understanding of religious requirement, "obligation," precept, "commandment," custom or ritual".

[15] *Canadian Charter of Rights and Freedoms*, *supra* note 1, s 1.

[16] *Hutterian Brethren of Wilson Colony v Alberta*, 2009 SCC 37 at para 104, 310 DLR (4th) 193.