Charterpedia—Section 2(a) – Freedom of religion. (1999). Government of Canada.
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Section 2(a) – Freedom of religion

29-37 minutes

Provision

2. Everyone has the following fundamental freedoms:

1. freedom of conscience and religion.

Similar provisions

Similar provisions may be found in the following Canadian laws and international instruments legally binding on Canada: section 1(c) of the *Canadian Bill of Rights*, article 18 of the *International Covenant on Civil and Political Rights*, article 14 of the *Convention on the Rights of the Child*, article 3 of the *American Declaration of the Rights and Duties of Man*. The *Canadian Human Rights Act* prohibits discrimination on the ground of religion as does section 15 of the Charter.

See also the following international, regional and comparative law instruments that are not legally binding on Canada but include similar provisions: article 18 of the *Universal Declaration of Human Rights*, article 12 of the *UN Declaration on the Rights of Indigenous Peoples*, article 12 of the *American Convention on Human Rights*, article 9 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the First Amendment to the *Constitution of the United States of America*.

Purpose

The purpose of section 2(a) is to prevent interference with profoundly held personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being *(R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713 at page 759; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at page 346; *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 at paragraph 41; *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567 at paragraph 32).

Analysis

1. Freedom of religion

General

Freedom of religion has been defined as "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 practise or by teaching and dissemination" (*Big M, supra* at page 336; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at paragraph 72; *Amselem*, *supra* at paragraph 40; *Reference re Same-Sex Marriage,* [2004] 3 S.C.R. 698 at paragraph 57; *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256 at paragraph 32; *Bruker v. Marcovitz*, [2007] 3 S.C.R. 607 at paragraph 71; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, [2017] 2 S.C.R. 386 at paragraph 63). The term "religion" has not been specifically defined, although the Supreme Court has stated that beliefs or practices rooted in secularism are not protected by the guarantee of freedom of religion and, further, that "religion" typically involves: a particular and comprehensive system of faith and worship; a belief in a divine, superhuman or controlling power; and/or a personal conviction or belief that fosters a connection with the divine or with the subject or object of that spiritual faith (*Amselem, supra* at paragraph 39). Note, however, that the Court has also stated that the rights of atheists, agnostics, skeptics and the unconcerned are equally protected by section 2(a) (*Hutterian Brethren*, *supra* at paragraph 90; *Mouvement laïque québecois v. Saguenay (City)*, [2015] 2 S.C.R. 3 at paragraph 70).

The Supreme Court has interpreted section 2(a) broadly with a stated preference for leaving competing state interests, including competing rights, to be reconciled under section 1, or through the proportionality analysis in the case of judicial review of administrative decisions, rather than formulating internal limits to the scope of freedom of religion (*Ross*, *supra* at paragraph 73; see also *Reference re Same-Sex Marriage*, *supra* at paragraph 53; and *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013] 1 S.C.R. 467 at paragraph 154). Section 1 is considered a more flexible tool for balancing competing rights (very often equality rights of other individuals) (*B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at pages 383-384; see also *Multani, supra* at paragraphs 26-30). In spite of the guarantee's broad scope, however, the Court has also set certain limits, stating that "the freedom to hold beliefs is broader than the freedom to act on them" (*Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 at paragraph 36; *B.(R.) supra* at paragraphs 107 and 226; see also *Whatcott*, *supra* at para. 154).

The Supreme Court has stated on many occasions that freedom of religion can be limited where it interferes with the fundamental rights of others (*Ross*, *supra* at paragraph 72; *B. (R.), supra* at page 385; *Big M, supra* at page 337; *Amselem, supra* at paragraph 62). When individual rights come into conflict, the conflict ought to be resolved through the proper delineation of the rights and values involved (*Trinity Western v. British Columbia College of Teachers*, *supra* at paragraphs 29-31; *Reference re Same-Sex Marriage*, *supra* at paragraphs 50 and 52; *B.(R), supra* at paragraph 226).

In *Law Society of British Columbia v. Trinity Western University*, [2018] 2 S.C.R. 293, and its companion case *Trinity Western University v. Law Society of Upper Canada*, [2018] 2

S.C.R. 453, the Supreme Court chose to reconcile the competing religious freedom of evangelical community members of TWU with the equality rights of LGBTQ persons through the proportionality analysis at the second stage of the *Doré/Loyola* framework for the judicial review of administrative decisions that engage Charter rights. The majority found that the impact on the religious freedom of TWU community members was of "minor significance" and that the law societies' decisions represented a proportionate balance with the significant statutory objectives of ensuring LGBTQ equality and public confidence in the legal profession.

The scope of section 2(a) is not, however, without limits. In *Ktunaxa*, *supra*, at paragraphs 71-72, a majority of the Supreme Court held that an Indigenous spiritual freedom claim to the protection of a sacred mountain valley site from a proposed ski resort development did not fall within the scope of section 2(a), which does not protect the object of beliefs or the spiritual focal point of worship and the subjective meaning derived from them.

Freedom of religion comprises both an individual aspect and a collective aspect (*Loyola High School v. Quebec (Attorney General)*, [2015] 1 S.C.R. 613; *Ktunaxa*, *supra* at paragraph 74; *Hutterian Brethren, supra* at paragraph 182, per LeBel J). The Supreme Court has noted that religion is about both religious beliefs and "religious relationships" *(Law Society of British Columbia v. Trinity Western University, supra* at para. 64). Recognizing the linkages between religious belief and its manifestation through "communal institutions and traditions", the Court has found that "measures that undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom" (*Loyola High School*, *supra* at paragraph 67; see also *Law Society of British Columbia v. Trinity Western University*, *supra* at paragraphs 64 and 99). In *Law Society of British Columbia v. Trinity Western University, supra*, a majority of the Court found that the refusal of the regulatory bodies to accredit a new law school governed by a mandatory covenant, which precluded sexual relations outside marriage between a man and a woman, engaged s. 2(a) of the Charter by limiting the ability of members of the TWU community to enhance their spiritual development through studying law in an environment defined by their religious beliefs. In collective-type claims, freedom of religion may encompass or intersect with other rights, such as freedom of expression, freedom of association and equality (at paragraphs 76-78; 122; 316).

The question of whether corporations and other entities can claim the right to freedom of religion remains open (see *Loyola*, *supra*, where the majority found it unnecessary to decide this issue, while the minority found that religious organizations, not corporations writ large, hold section 2(a) rights; see also *Law Society of British Columbia v. Trinity Western University*, *supra* at paragraph 61). While a corporation's ability to claim section 2(a) rights remain unclear, a corporation can challenge the constitutionality of a law under which it is being prosecuted on the basis that the law infringes an individual's freedom of religion (*Big M, supra* at pages 314-315). For more about standing to bring Charter claims, see "Charterpedia, section 52(1)".

Analytical framework

The Supreme Court has adopted the following test for determining whether there has been an infringement of section 2(a) (*Hutterian Brethren, supra* at paragraph 32; *Amselem, supra* at paragraphs 56-57; *Multani, supra* at paragraph 34; *Law Society of British Columbia v. Trinity Western University*, *supra* at paragraph 63):

An infringement of section 2(*a*) of the Charter will be made out where:

1. the claimant sincerely believes in a belief or practice that has a nexus with religion; and
2. the impugned measure interferes with the claimant's ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.

(i) Nature of the belief or practice

Under the first step, as stated above, freedom of religion will only be triggered where the claimant shows that he or she has a sincere practice or belief that has a nexus with religion, ""which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith"" (*Amselem*, *supra* at paragraph 56).

Sincerity of belief is a question of fact. To establish sincerity, an individual must show that he or she sincerely believes that a certain belief or practice is required by his or her religion. The religious belief must be asserted in good faith and must not be fictitious, capricious or an artifice. In assessing the sincerity of the belief, a court will take into account, *inter alia*, the credibility of the testimony of the person asserting the particular belief and the consistency of the belief with his or her other current religious practices (*Multani, supra* at paragraph 35; *Amselem*, *supra* at paragraphs 52-53). It is the sincerity of the belief at the time of the interference, not its strength or absolute consistency over time, that is relevant at this stage of the analysis (*R. v. N.S.,* [2012] 3 S.C.R. 726 at paragraph 13).

The Court does not want to engage in theological debates when examining the practice or belief in question. The practice or belief in question need not be required by official religious dogma nor need it be in conformity with the position of religious officials. Freedom of religion extends beyond obligatory doctrine to voluntary expressions of faith and is not restricted to major and recognizable religions (*Amselem*, *supra* at paragraphs 46-50, 53, and 56). A protected religious practice need not be part of an established belief system or even a belief shared by others. An individual need only demonstrate a sincere belief that the practice is of religious significance to him or her (*Little v. R.*, 2009 NBCA 53, leave to appeal dismissed, [2009] S.C.C.A. No. 417 at paragraph 7). It is not appropriate to adduce expert evidence showing sincerity or lack thereof (*Amselem*, *supra* at paragraph 54).

Assuming the sincerity of an asserted religious belief, it is not then open to the court to question its validity. It is sufficient to trigger constitutional scrutiny if the effect of the impugned act or provision interferes with an individual's religious activities or convictions (*Ross*, *supra* at paragraph 71; *R. v. Jones*, [1986] 2 S.C.R. 284 at page 295).

In *Ktunaxa*, *supra* at paragraphs 71-72, a majority of the Supreme Court declined to extend the scope of section 2(a) to include the protection of the object of beliefs or the spiritual focus of worship, and the subjective meaning derived from them, on the basis that it would put the contents and merits of deeply held personal beliefs under judicial scrutiny, contrary to *Amselem*, *supra*.

(ii) Nature of the interference

All coercive burdens on the exercise of religious beliefs are potentially within the ambit of section 2(a), whether a coercive burden is direct or indirect, intentional or unintentional, foreseeable or unforeseeable and may also include psychological pressure (*Edwards Books*, *supra* at paragraph 96). Directly compelling religious belief or practice clearly infringes section 2(a) as compelling religious practice deprives the individual of the fundamental right to choose his or her mode of religious experience, or lack thereof (*Hutterian Brethren*, *supra* at paragraph 92). Religious freedom is also inevitably abridged by legislation which has the effect of impeding conduct integral to the practice of a person's religion (*Edwards Books, supra* at paragraph 99).

However, the Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. Claimants must provide objective proof of interference, not just cite subjective belief of interference (*S.L., supra* at paragraphs 2 and 24). Not every effect of legislation on religious beliefs or practices is offensive to the guarantee of freedom of religion. Section 2(a) does not require the legislature to refrain from imposing any burdens on the practice of religion. Legislative or administrative action which has a trivial or insubstantial effect on religion is not a breach of freedom of religion, yet there is no requirement to demonstrate actual harm, only that the freedom is infringed (*Ross*, *supra* at page 870; *Edwards Books*, *supra* at page 759; *Little*, *supra* at paragraph 17). Trivial or insubstantial interference has been described as interference that does not threaten actual religious beliefs or conduct (*Hutterian Brethren*, *supra* at paragraph 32). The oath to the Queen, as a requirement of becoming a Canadian citizen, has been found to be secular and thus not to constitute a more than trivial or insubstantial interference with the sincerely held religious beliefs of non-Anglicans (*McAteer v. Canada (Attorney General)*, 2014 ONCA 578, leave to appeal dismissed, [2014] S.C.C.A. No. 444).

It is unclear whether the effect of any breach of the state's duty of religious neutrality could be considered trivial or insubstantial so as not to unjustifiably limit freedom of religion (see *Saguenay*, *supra*).

The state is normally under no duty under section 2(a) to take affirmative action to eliminate the natural costs of religious practices or to otherwise provide positive assistance such as public funding. The Charter guarantees freedom of religion but does not indemnify practitioners against all costs incident to the practice of religion (*Edwards Books, supra* at paragraphs 97 and 114; *Hutterian Brethren*, *supra* at paragraph 95). Accommodation or differential treatment may be necessary, nonetheless, to avoid indirect coercion arising from state action (*Edwards Books, supra*). Note also that several Supreme Court justices have suggested that, in exceptional circumstances, positive government action may be required to make the right to freedom of religion meaningful, according to the test set out in *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 (see the dissenting judgment in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, at paragraphs 73-79).

Selected issues in respect of freedom of religion

(i) Freedom from conformity to religious dogma

Freedom from conformity to religious dogma (freedom to express and manifest religious non-belief and the freedom to refuse to participate in religious practice) is not necessarily impaired by legislation with a secular inspiration which requires conduct consistent with the tenets of a religion. Such legislation might, however, limit the freedom of conscience and religion of persons whose conduct is governed by an intention to express or manifest their non-conformity with religious doctrine (*Edwards Books*, *supra* at paragraph 101).

Although section 2(a) of the Charter is not infringed merely because education may be consistent with the religious beliefs held by a majority of Canadians, teaching students Christian doctrine as if it were the exclusive means through which to develop moral thinking and behaviour amounts to religious coercion in the classroom (*Canadian Civil Liberties Assn. v. Ontario* (1990), 71 O.R. (2d) 341 (C.A.) at paragraph 57; *Zylberberg et al. v. Sudbury Board of Education* (1988), 52 D.L.R. (4th) 577 (Ont. C.A.)). Also the same time, requiring a religious school to teach its own religion from a neutral perspective has been found to seriously impair the religious freedom of the school's community members (*Loyola*, *supra*).

Government may not coerce individuals into affirming a specific religious belief nor to manifest a specific religious practice for a sectarian purpose. Government may not compel individuals to perform or abstain from performing otherwise harmless acts because of the religious significance of those acts to others (*Big M*, *supra* at pages 347, 350). But the right not to believe is not infringed by a criminal offence that is rooted in a moral principle developed within a religious tradition (*Edwards Books*, *supra* at pages 760-761). A person's belief in the religious aspect of a societal institution does not free that person from an obligation to comply with the civil aspect (*Jones*, *supra* at page 313).

A requirement to apply to a school board for a religious exemption from mandatory school attendance in order to attend a private religious school or to receive instruction at home does not offend section 2(a); it accommodates it (*Jones*, *supra* at page 312). Similar reasoning applies to a law allowing businesses to close on days other than Sunday for religious reasons (*Edwards Books*, *supra* at pages 779-780).

Permitting exemptions to a religious requirement can still, however, result in an infringement of section 2(a) by in effect compelling a religious statement by those seeking an exemption or due to peer pressure which might militate against seeking an exemption (*Saguenay*, *supra* at paragraphs 120-125).

(ii) Secularism and state neutrality

The meaning of secularism has also been addressed by the Supreme Court. According to the Court, the concept of secularism rules out any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community. A requirement of secularism implies equal recognition and respect to all members of a community. Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group *(Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710 at paragraph 19).

Secularism is closely linked to the notion of "state neutrality" in respect of religion, which the Supreme Court has articulated as follows:

> "... following a realistic and non-absolutist approach, state neutrality is assured when the state neither favours nor hinders any particular religious belief, that is, when it shows respect for all postures towards religion, including that of having no religious beliefs whatsoever, while taking into account the competing constitutional rights of the individuals affected." (*S.L. v. Commission scolaire des Chênes*, [2012] 1 S.C.R. 235 at paragraph 32; see also *Loyola*, *supra* at paragraphs 43-45).

A breach of a duty of state neutrality must be established by proving that the state is professing, adopting or favouring one belief to the exclusion of all others and that the exclusion has resulted in interference with the complainant's freedom of conscience or religion (*Saguenay*, *supra* at paragraph 83). While the state cannot favour one religious view at the expense of others, the duty of neutrality does not require it entirely to abstain from celebrating and preserving its religious heritage (*Saguenay*, *supra* at paragraphs 87 and 116).

Such neutrality is consistent with promoting diversity in a multicultural society as enshrined in section 27 of the Charter and with a democratic imperative that requires the state to encourage everyone to participate freely in public life regardless of their beliefs (*Saguenay*, *supra* at paragraph 74). The reference to the supremacy of God in the

preamble of the Charter cannot be relied on to reduce the scope of freedom religion and authorize the state to consciously profess a theistic faith (*Saguenay*, *supra* at paragraphs 147-48).

Secularism in the Canadian context has not been held to mean that religion has no place in the public sphere. For example, in *R. v. N.S.*, the majority of the Supreme Court concluded that a secular response that requires individuals to "park their religion at the courtroom door" (*e.g.* always remove the full niqab face veil before testifying in criminal proceedings) is inconsistent with Canadian jurisprudence and "our tradition of requiring state institutions and actors to accommodate sincerely held religious beliefs insofar as possible" and risks limiting freedom of religion where no limit can be justified (*R. v. N.S.*, *supra* at paragraphs 2, 31, 50-56; see also *Chamberlain*, *supra* at paragraph 19).

State compliance with its duty of neutrality does not entail a reconciliation of rights. The state does not have a freedom to believe or to manifest belief. However, the Court has stated that the same restrictions do not apply to the exercise by state officials of their own freedom of conscience and religion when they are not acting in an official capacity (*Saguenay*, *supra* at paragraph 119).

(iii) Religious communications

Since there is no *prima facie* privilege for religious communications at common law, a case-by-case application of the Wigmore criteria will allow courts to determine whether an individual's freedom of religion will be imperilled by the admission of evidence, and section 2(a) and section 27 of the Charter require a non-denominational approach in this regard (*R. v. Gruenke*, [1991] 3 S.C.R. 263 at pages 289-291).

(iv) Best interests of the child

Parents have the right to rear their children according to their religious beliefs, including choosing religious education and choosing medical and other treatments (*B.(R.)*, *supra* at paragraph 105; *P.(D.) v. S.(C.)*, [1993] 4 S.C.R. 141; *Jones, supra* at page 296). However, such activities can and must be restricted when they are against the child's best interests (*B.(R)., supra* at page 383). Furthemore, the exercise of discretionary powers in a custody application that are based solely on the best interests of the child can prevent the imposition of religious views of the non-custodial parent on the child (*Young v. Young*, [1993] 4 S.C.R. 3 at pages 94 and 122; *P.(D.) v. S.(C.)*, *supra* at page 182).

When the "best interests of the child" standard, as provided in child protection legislation, is applied in a way that takes into increasingly serious account the young person's views in accordance with his or her maturity in a given medical treatment case (and allows the young person to lead evidence showing mature medical decisional capacity), the legislative scheme is neither arbitrary, discriminatory, nor violative of religious freedom

(*A.C. v. Manitoba (Director of Child and Family Services)*, [2009] 2 S.C.R. 181 at paragraphs 98 and 115).

With respect to education, while parents have the right to pass on their religious beliefs to their children, ““…the early exposure of children to realities that differ from those in their immediate family environment is a fact of life in society. The suggestion that exposing children to a variety of religious facts in itself infringes their religious freedom or that of their parents amounts to a rejection of the multicultural reality of Canadian society and ignores [in this case] the Quebec government's obligations with regard to public education.”” (*S.L.*, *supra* at paragraph 40; see also *Loyola*, *supra* at paragraph 71).

(v) Income taxes

The non-filing of annual returns, like the non-payment of taxes, does not qualify as a religious practice nor has it become the tenet of any religious faith. Furthermore, the filing of annual income tax returns, like the payment of taxes, cannot reasonably be regarded as an expression of support for a particular government expenditure or policy so as to offend a claimant's Charter right to freedom of religion and conscience (*Little*, *supra* at paragraphs 10 and 17).

2. Freedom of conscience

While the Supreme Court has not given much consideration to freedom of conscience, it has noted that this aspect of section 2(a) includes the right not to have a religious basis for one's conduct (*Edward Books, supra* at paragraph 99). In the concurring judgment of Wilson J. in *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at page 37, freedom of conscience was distinguished from freedom of religion as follows:

> ““Freedom of conscience and religion" should be broadly construed to extend to conscientiously-held beliefs, whether grounded in religion or in a secular morality and the terms "conscience" and "religion" should not be treated as tautologous if capable of independent, although related, meaning…”

The Federal Court of Appeal has held that freedom of conscience is aimed more broadly at protecting views based on strongly held moral ideas of right and wrong, not necessarily founded on any organized religious principles, and distinguishable from political or other beliefs which are protected by section 2(b) freedom of expression (*Roach v. Canada (Min. of State for Multiculturalism & Citizenship)*, [1994] 2 F.C. 406 (C.A.)). See also *Amselem, supra*, and *Little*, *supra* at paragraphs 12-14 for a general treatment of freedom of conscience. See also the discussion of fundamental personal decisions under the section 7 right to liberty. Freedom of conscience has also been described as the "protection against invasion" of a sphere of individual intellect and spirit such as protection against officially disciplined uniformity or orthodoxy, but it does not protect the broader notion of "activity" motivated by one's conscience (*Ontario (Attorney General) v. Dieleman* (1994), 117 D.L.R. (4th) 449 (Ont. Gen. Div.) at paragraph 235).

The oath to the Queen of Canada (as part of becoming a Canadian citizen) has been found not to limit the freedom of conscience of persons who say they are morally and ethically opposed to what the Queen stands for; it is not an oath to the Queen as an individual but to our form of government of which the Queen is a symbol (*McAteer*, *supra* at paragraphs 117-120).

3. Section 93 denominational school rights and privileges

The denominational, dissentient and separate school rights or privileges protected under section 93 of the *Constitution Act, 1867* are the product of an historical compromise crucial to Confederation and form a comprehensive code immune from Charter review that cannot be enlarged through the operation of section 2(a) (*Adler v. Ontario*, [1996] 3 S.C.R. 609 at paragraph 35; *Reference Re Bill 30, An Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148; *Ontario Home Builders' Association v. York Region Board of Education*, [1996] 2 S.C.R. 929 at paragraph 77). See also the discussion in "Charterpedia, section 29".

A secular public school system does not limit section 2(a), but any government funding of religious schools beyond that required by section 93 would have to be extended equally among religions (*Adler*, *supra* at paragraph 49).

Section 1 considerations particular to this section

Freedom of religion is not unlimited, ""…and is restricted by the right of others to hold and to manifest beliefs and opinions of their own, and to be free from injury from the exercise of the freedom of religion of others. Freedom of religion is subject to such limitations as are necessary to protect public safety, order, health or morals and the fundamental rights and freedoms of others"" (*Ross*, *supra* at paragraph 72; *B.(R.),supra)* at page 385; *Big M, supra* at page 337; *Amselem, supra* at paragraph 62).

A section 1 justification is unavailable where the purpose of the legislation is to infringe freedom of religion (*Big M*, *supra* at page 353; *Hutterian Brethren, supra* at paragraph 92).

While religious freedom has both individual and collective aspects, community impact does not transform an individual claim into the assertion of a group right. The broader impact of an infringement on a religious community is relevant at the proportionality stage of a section 1 analysis (*Hutterian Brethren, supra* at paragraph 31).

The reasonable accommodation analysis undertaken when applying human rights legislation and the proportionality analysis under section 1 of the Charter are conceptually distinct (*Hutterian Brethren*, *supra* at paragraphs 66-71; see also the minority reasons in *Multani*, *supra* at paragraphs 129-135). Where the validity of a law of general application is at stake, the proper approach is a section 1 Charter analysis based on the *Oakes* test. Where a government action or administrative practice is challenged, the case law on the duty to accommodate may be helpful "to explain the burden resulting from the minimal

impairment test **with respect to a particular individual**" [emphasis in original] (*Hutterian Brethren*, *supra* at paragraph 67).

Section 2(a) cases will often fall to be decided at the final balancing stage of the proportionality analysis since freedom of religion cases often present an "all or nothing" dilemma. Compromising religious beliefs is something adherents may justifiably be unwilling to do, and governments may find it difficult to tailor laws to the myriad ways in which they may trench on different people's religious beliefs and practices (*Hutterian Brethren, supra* at paragraph 61).

When judging the seriousness of the limit in a particular case, while the perspective of the religious or conscientious claimant is important, this perspective must be considered in the context of a multicultural, multi-religious society where the duty of state authorities to legislate for the general good inevitably produces conflicts with individual beliefs (*Hutterian Brethren, supra* at paragraph 90).

Where the incidental effects of a law passed for the general good on a particular religious practice are so great that they effectively deprive the adherent of a meaningful choice, the impact of the limit on the right will be very serious. In contrast, where a limit exacts a cost but leaves the adherent with a meaningful choice about the religious practice, the impact on the right will be less serious (*Hutterian Brethren, supra* at paragraphs 94-5).

Section 2(a) cases often involve the review of discretionary administrative decisions rather than direct challenges to laws (see for example, *Trinity Western University v. Law Society of British Columbia*, *supra*; *Ktunaxa*, *supra*; *Loyola*, *supra*). Such cases will be examined in accordance with the framework set out in *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 392, and *Loyola*, *supra*, rather than pursuant to the *Oakes* test. A reviewing court will consider whether the administrative decision engages Charter protections and, if so, whether it reflects a proportionate balancing of the Charter protections at play with the relevant statutory mandate (for more information on this framework, see "Charterpedia, Section 1").