

Stemming the Tide of Hate

By **Edward C. Corrigan** - November 3, 2017



A Chinese Proverb says, "May you live in Interesting Times." Today in the "Age of Donald Trump" and a rise of right-wing political parties across the Globe we are seeing a resurgence of right-wing views, anti-immigrant sentiments and veiled discrimination against "The Other" and the trampling on the rights of various minorities. These minorities include the Rohingya Muslims in Myanmar, Palestinians in the Holy Land, refugees in Europe, Muslims in many countries, Arabs, even Christians in the Middle East, conflict between Sunni and Shia Muslims, attacks against Blacks and vilification of Mexicans and other Hispanics in the United States, and discrimination and even persecution of other minorities.

Frequently these attacks are presented against a perceived threat of crime or "Terrorism" or as a defence against a "Tide of Islam" that threatens Western values and sparks fear in many predominantly White societies. This fear has given rise to "White Nationalism" and Conservative movements that claim to be based on Christianity but do not live up to Christian principles. In fact, the majority of acts of terrorism committed in the United States have been by White Nationalists while the media whips up fear about Islamic Terrorism which exists more in myth than reality.

There are many frightening parallels to the 1930s where we saw the persecution of Jews in Europe and the rise of Fascist regimes today. The Nazis once order that all Jews had to wear a

yellow star. Even Canada is not immune to these developments.

In the province of Quebec Bill 62 was passed on October 18, 2017. The law has spawned another highly charged, difficult discussion about religious differences, inclusion and equality. Freedom of religion is guaranteed by section 2 of the Charter. I would also argue that the law is in violation of freedom of expression which is also a Section 2 Charter-protected right. Such law can be saved by Section 1 of the Charter, the "notwithstanding clause" if the government can prove a "pressing and substantial objective" is being served by the law. It is useful to review part of the Canadian Charter of Rights and Freedoms.

Rights and freedoms in Canada

1. The ***Canadian Charter of Rights and Freedoms*** guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Laws in Canada that are in violation of any Charter-protected right can be saved "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

If there is no overriding strong safety or security purpose served by the Bill my expectation is that Court challenges to the Quebec law will succeed in having it declared illegal and in violation of both the Quebec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms.

The Bill 62 was the Quebec Liberal government's follow-up to the aborted Charter of Quebec Values, proposed by the Parti Québécois in 2013. That law would have banned overt religious symbols of all kinds in the Quebec public service and some government-funded agencies. The

proposed 2013 law sparked a strong reaction from many religious communities who wear religious items and many threatened to leave the province. That exodus of observant Jews, Sikhs, and Muslims etc. would have wreaked havoc on Quebec's health system and other social services. Many critics attacked the proposed law as thinly veiled discrimination.

The new Quebec law is at once more narrow and more broad. Instead of purporting to target all religious symbols, it attacks only "face covering." However, the law it applies to many more sites of public interaction, including universities, community centres, libraries and even public transit. The Law applies not only to those who work for the state but to those who receive its services.

The new law gives rise to obvious legal problems. Its focus on a particular behaviour — face covering — suggests a desire to single out the one religious group that actually engages in that practice: Muslim women. There are some Orthodox Jews who also follow a similar practice of covering the face and even wearing clothing identical to Burkas. If this behaviour is targeted because of its religious or cultural aspects that would be an instance of state objective that is both illegal and unconstitutional.

Faced with questions about this intention, provincial officials *have stretched the definition of "face covering"* to absurd lengths, suggesting that even sunglasses and balaclavas would be prohibited. What about Halloween masks, gas masks, masks to prevent the spread of communicable diseases, surgical masks and ski masks?

Since 2004, the Supreme Court of Canada has rejected the idea that courts ought to delve into what are, essentially, issues of religious dogma. The Court *has held*, instead, that the Charter protects any sincere practice that someone thinks furthers their connection to the "divine." This highly individualistic approach is one about which reasonable people can disagree. But the Court is unlikely to depart from it as it protects sincerely held religious beliefs and religious freedom.

The sheer breadth of services covered by the Quebec Bill 62 should be enough to tip the balance away from a "trivial" interference to one that is pervasive, continuing and even profound. Banning face coverings on public transit does not serve any demonstratable public need. The law is targeting only a minuscule part of the Quebec population but it does, fan the flames of Islamophobia. There ways to accommodate concerns of safety and respect religious and cultural practices.

Today the election of US President Donald Trump has given many groups formerly on the fringes of society a veneer of legitimacy. White Nationalists, Conservative Christians, even groups like the Ku Klux Klan have been emboldened to assert themselves politically and press their agenda in the United States. Much of this activity is a backlash to the election of Barack Obama, a Black President, and has spurred on the aggressive “White Nationalist” political agenda that many had thought not possible.

These developments have also had unfortunately an impact in Canada. This is not just about the election of Stephen Harper and his fellow travellers but has impacted virtually all aspects of political and social life in Canada and beyond.

Individuals who are concerned about the rising tide of hate and discrimination against minorities must be vigilant and fight hard to maintain a Canada that respects minority rights, political freedoms and fights discrimination against Native Canadians, people of colour, Islamophobia and intolerance towards gays and other discriminated groups. There is much work to do. However, it is fair to say that we live in interesting and even dangerous times.

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