2012

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Introduction

In a secular, multicultural, liberal democratic society founded on the rule of law,[1] is it appropriate for legislators (or political candidates) to refer to religious beliefs or texts when discussing a government initiative or urging action on a particular issue? Such references might be used for various purposes: to explain the speakers' own beliefs; to emphasize that an issue has been around for a long time and therefore should be taken seriously; to elucidate historical influences on a particular law; or to give weight to a particular argument by buttressing it with religious authority. In Canada today, do ethics, law, or political theory offer persuasive reasons to limit any such references to religion in parliamentary debate or political campaigning?

In previous articles, we considered the role of religious-based reasoning in two other spheres: public discussion[2] and judicial decision making.[3] In the first, we argued that there is no valid reason to dissuade citizens from referring to their religious beliefs when discussing matters of public interest. In the second article, we suggested that using religious-based reasoning as a starting point for judicial analysis is acceptable where the law is underdetermined,[4] and where care is taken not to violate constitutional protection for freedom of religion, which requires that the state be neutral as between different faiths and between believers and nonbelievers.

We turn now to legislators. We do so not because we predict any great surge in religious references and religious-based arguments in Parliament, provincial or territorial legislatures, municipal councils, or election campaigning, but because the issue gives a third angle from which to consider the relationship between religion and the public sphere in Canada. Canadian scholar Benjamin Berger suggests that "[t]here is perhaps no more important access point into the key issues of m odern political thought and legal theory than the questions raised by the interaction of law and religion in contemporary constitutional democracies."[5]

In our first article in this series we focused on philosophical arguments about what is or is not appropriate behaviour for citizens debating in the public square. In our article on the use of religious-based reasoning by judges, we looked primarily at legal arguments regarding freedom of religion, the role of judges, and the rule of law. Our primary focus in this third article is on political theory and, in particular, on different understandings of a constellation of related concepts: state neutrality, separation of church and state, and, particularly, secularism.

We start our discussion with a brief overview of the ways in which Canadian politicians have relied on religious-based reasoning. We then examine whether ethical considerations, freedom of religion, or arguments arising from political theory should preclude Canadian

legislators or political candidates from making reference to religious beliefs or texts. We conclude that, so long as freedom of religion is not infringed, a secular, multicultural, liberal democratic state founded on the rule of law should provide room for legislators or political candidates to explain their position on public issues in terms of their religious beliefs, or with reference to religious texts or authority, if they choose to do so.

Of course, this does not mean that such explanations or references will always be good political strategy. Very general statements, such as vague allusions to love, sin, or God's will may not be seen as having enough substance to move the discussion along, while specific faith-based claims may be seen as unprovable and thus unpersuasive. In fact, explaining one's political views in religious terms may simply call forth incredulity, irritation, or even hostility in others, or may make it more difficult to form alliances with those of another (or no) religious perspective.

Further, we are not suggesting that recourse to religious arguments or texts by legislators will necessarily lead to a better society: religious reasons (like nonreligious ones) can be used to support mean-spirited and retrogressive government policies, as well as enlightened and compassionate ones.[6] In our view, however, any policy should be judged on its own merits, in other words, on how it will affect individuals, communities, and different sectors of society, rather than by whether some of those advocating for or against it refer to religion.

Finally, just as we do not claim that religious references will necessarily advance a particular political cause, or lead to policies that are good for society, nor do we think that references to religion in political speech will always be good for religion. Relying on religious reasons to buttress draconian or ungenerous policies may confirm for some that all religions (or the particular religion being relied upon in that case) are hypocritical in their talk of compassion and justice. Hearing politicians on both sides of a debate claim that their position is biblically based may lead some to conclude that religious reasoning is silly or chaotic, or may call to mind Shakespeare's comment that even the Devil can cite scripture to his purpose.[7] American scholar Stephen Carter—who has roundly criticized efforts to excise "God-talk" from the public square—warns that constantly invoking religion in political debate may cause "God's name [to] become a tool, a trope, a ticket to get us where we want to go."[8]

So we are not asking whether religious-based arguments or references will necessarily further a particular policy objective or politician's career, lead to better governance, or enhance society's view of religion; we are simply asking whether there is room for such arguments and references in a secular, multicultural, liberal democratic society such as Canada. Or, to put it another way: are the core principles of democracy, as understood in Canada, violated by legislators making religious-based arguments and references?

Political References to Religion

Religious references by politicians in the United States are not unusual.[9] To give two recent examples, President Barack Obama has buttressed his call for higher taxes for the rich by reference to Luke 12:48,[10] while Republican Rick Santorum has alleged that Obama's policies are not biblically based.[11] In Canada, however, it is fairly rare for politicians to support their positions on social or economic policy by reference to their religious beliefs or by calling on religious authority. This may, of course, simply reflect different political realities in the two countries. Thus, according to political scientist Katherine Fierlbeck,

> Only 30 per cent of Canadians consider themselves to be devout, so policy-makers heed their political constituencies rather than religious authorities when legislating new laws and programs. This secularism makes Canada distinct from the United States; over two-thirds of Americans consider themselves to be regular church-goers, and American politicians are very mindful of religious lobby groups.[12]

That said, other researchers report significant levels of "religiosity" in Canada,[13] and certainly religious-based organizations and coalitions

have lobbied government on a variety of issues over the years. Whatever the degree of religious adherence or affiliation in Canada, however, it does appear that overt references to religion by individual politicians or overt reliance on religion by political parties is fairly rare in Canada. The Social Credit Party and the Canadian Co-operative Federation (CCF) are often seen as "good examples of 20th century religious-political movements."[14] Today, however, the Social Credit Party has little or no impact on politics. As for the CCF, even the early connections to religion may be somewhat more nuanced than sometimes assumed: J. S. Woodsworth ultimately came to believe that the formal religious institutions to which he belonged were at odds with his political goals,[15] and Tommy Douglas remarked that the Bible was like a fiddle that could play whatever tune the fiddler wanted.[16] Certainly, today the New Democratic Party (NDP), the successor to the CCF, has "shed most of its Christian identity."[17] In fact, one commentator suggests that "[i]t is more likely that political influence has had a larger impact on the doctrine of the United Church than religious doctrine has shaped the New Democratic Party."[18]

While contemporary Canadian politicians do not frequently make arguments based on religious belief, or turn to religious authority to give weight to their position, it is possible to find a few such examples. For instance, in a sermon, Elizabeth May, who is both the leader of the federal Green Party and an Anglican priest in training, connected her environmentalist concerns to her religious beliefs.[19] A number of parliamentarians have expressed their religiously based opposition to embryonic stem cell research, referring, variously, to the belief that ensoulment occurs at the moment of conception,[20] to Jesus' teachings on the need to protect children,[21] and to "the very principles of natural law [which] existed before government and . . . [which] are based on the law of nature and nature's God."[22] Other examples include references to injunctions against usury in the Bible and the Quran in a discussion on credit card interest;[23] an allusion to Deuteronomy 24:10 in a list of arguments for greater privacy in one's home;[24] reference to the biblical concept of Jubilee to advocate forgiving debts owed by poorer nations;[25] reliance on the Bible and the Quran in support of amending the *Criminal Code* to create a specific offence for suicide bombings;[26] and a request to reinstate the Lord's Prayer in the House of Commons.[27]

The paucity of overt references to religion by Canadian legislators does not, of course, mean that no Canadian politicians are religious; on occasion, members of the clergy have been elected to government and some other legislators have held strong religious beliefs as well. For instance, Prime Minister Pierre Trudeau was a committed Roman Catholic and one analysis of his "universalist liberalism" devotes significant discussion to "the spiritual sources of Trudeau's political philosophy."[28] However, Trudeau rarely made the connection between his political views and his religion explicit, at least in public. Like Trudeau, most Canadian politicians of faith have kept that faith a private matter. This suggests that there is a strong social norm against express reliance by legislators on religious-based reasoning. According to Claude Ryan, "There has been a tendency since World War II to relegate religion to the private sphere; to suggest that it should have as little as possible to do with economic, social and political life."[29]

In the remainder of this paper, we evaluate the arguments that are frequently invoked in support of upholding or even strengthening this norm—arguments based on ethical considerations, the *Charter*, and political theory. We conclude that concerns about civility and inclusiveness, the Constitution, or the secular nature of Canada do not justify attempting to place an embargo on legislators referencing religion.

Ethical Considerations: Civility and Inclusiveness

Can an ethical argument against the use of religious references by legislators be constructed, based on civility and inclusiveness? Arguably, one of the core elements of "liberal-democratic morality" is "freedom[] of political communication."[30] If so, careful thought should be given to whether particular ways of communicating about important political and social issues im-

pede others (particularly those who have been historically marginalized) from entering into the discussion. Would religious references by politicians so ostracize those who do not share their religious views that reliance on such references could be seen as unethical or offending liberal-democratic morality?

In a state where a vast majority of citizens are at least nominally of one religion, one might assume that most religious references will relate to that religion. Thus, in Canada, where three-quarters of Canadians self-identify as Christian,[31] it is possible that most religious reasoning would be based on the Bible and particularly, perhaps, the New Testament, or on Christian perspectives on the Bible. Could it be argued that anyone not familiar with both Old and New Testaments and with Christian tradition would have to become familiar in order to enter the debate? If so, could this be seen as inappropriate and unwelcoming in a multicultural, secular society?

We offer three responses: first, it is important to answer questions such as this in context, rather than as hypotheticals; second, an understanding of civility as avoiding all possibility of disagreement would weaken public and political debate; and finally, inclusiveness actually demands that politicians feel free to refer to their comprehensive values, whether religious or not.

Looking first at context, then: the concern that religious-based reasoning could work to exclude those of another, or no, religion would be more pressing if all citizens of the dominant religion were both so devout and so theologically knowledgeable that religious-based reasoning was in wide usage, or if law and religion were so closely intertwined that it would be hard to understand the law without understanding the dominant faith. We could imagine a society where the inability to quote passages from a particular religious text might leave one completely outside mainstream political debate or unable to understand the law. That is not the situation in Canada, however. If an argument from religion strikes listeners in Canada today as incomprehensible, it is the speaker, not the listener, who is likely to be sidelined.[32] Further, if the concern is that mainstream Christians would benefit most from a political atmosphere that is open to religious references, this is not necessarily the case. While more Canadians consider themselves as affiliated with a Christian denomination than any other religion, it does not necessarily follow that political references to religion would be overwhelmingly mainstream Christian. It seems possible that there are other communities in Canada—for instance, although not limited to, those who have recently immigrated—where religion may play a more significant role in one's sense of identity. Individuals from these communities might feel a greater need to express their concerns and priorities in religious terms. If so, a norm that frowns on the use of religious-based reasoning by legislators is far from inclusive; it may, albeit unintentionally, discourage some Canadians, including some newer Canadians, from entering politics.

Secondly, while *civility*—treating others' views with respect—is of utmost importance, it should not be watered down to mean avoidance of disagreement or diverse views. Divisiveness alone is not a valid criterion for excluding ideas from political speech. Presumably, we want to foster a vigorous debate on matters of public significance. As John Young argues,

> To suggest that religion ought not to be part of public discussion and debate or influence public policy is to diminish democracy—not because the Bible or the Koran are superior political texts, but because democracy is, at its core, a debate.[33]

The mere fact that an idea may be unconventional, startling, unpopular, or countercultural is no reason to muzzle the expression of such an idea. Religious-based reasoning by legislators, even if it falls oddly on some ears, may add richness and new and helpful perspectives; and frankly, even if it does not, it is still a valid form of expression. Further, debate that is not only vigorous but reveals why a person feels the way they do is more transparent and may allow for a more focussed examination and perhaps, ultimately, rebuttal of certain ideas.[34]

This leads to our third point: politicians of faith should not be precluded from arguing

from their deepest convictions when there is no such restriction on others who wish to speak from deeply held positions. Thus, if a Canadian politician shared the view of American philosopher Nicholas Wolterstorff that he personally can find no way of justifying why individuals and society should be concerned about alleviating poverty without turning to the Bible,[35] surely it should be open to that politician to explain the religious foundation for his or her commitment to social justice, just as it would be open to some other politician to express similar views based on deeply held humanist principles.

Of course, the corollary of legislators using religious-based arguments is that the argument and the underlying faith claim are then as legitimately open to critique, rebuttal, and satire as arguments offered from other perspectives. In other words, arguments based on religion—like any other expression of belief, conscience, or opinion—can hope to be treated with respect, but cannot expect to be treated as sacred in public debate. Such debate may at times be divisive (although other times may perhaps allow for greater understanding or even reconciliation); however, wherever people hold strong conflicting views on important issues, there is the potential for discord. This would be the case whether or not explicitly religious-based arguments are made. Thus, to use an American example, in the last presidential election, Democrats and Republicans were significantly at odds over whether the rich should be taxed more rigorously, and at least some politicians expressed this disagreement with rancour and personal attack, whether or not religion was referenced.

Arguably, then, excising religious references from politics is unlikely to create an atmosphere of harmony and accord. Further, only very watered-down notions of civility and inclusiveness, which might well result in watered-down public debate, could justify limiting politicians' ability to explain their positions in religious terms, should they wish to do so.

Freedom of Religion

Would the constitutional protection for freedom of religion, which also protects freedom from religion,[36] be violated by a legislator's reliance on religious-based reasoning? Section 2(a) of the *Canadian Charter of Rights and Freedoms* guarantees everyone the right to freedom of conscience and religion. As with all the rights and freedoms in the *Charter*, s. 2(a) places limits on the power of the state: the state is expected to be neutral as between religions and as between religious belief and unbelief.[37] Further, s. 1 provides that such freedom is subject only to such limitations as can be demonstrably justified in a free and democratic society.[38]

> Freedom of religion encompasses several core concepts:
>
> Freedom of religion consists first of all in the right to make up one's own mind when answering religious questions. These include, but are not limited to, such questions as whether God exists, how God should be conceived, and what responsibilities, if any, human beings have in response to God's actions with regard to them. Freedom of religion also consists in the right to act in ways that seem appropriate, given one's answers to religious questions—provided that one does not cause harm to other people or interfere with their rights.[39]

A law might prove to be unconstitutional for its violation of these rights in two ways. First, legislation that has a religious purpose is unconstitutional—it infringes freedom of religion and cannot be saved by s. 1 of the *Charter*. Secondly, even where legislation is passed for a secular purpose, its impact may violate freedom of religion and this, too, is unconstitutional, unless the disproportionate impact can be justified under s. 1. We argue that reference to religious reasoning by politicians does not, by itself, offend the Constitution in either respect.

Whether a law has an objectively religious purpose is discerned primarily from the language of the act, including the act's purpose section (if it has one), as well as from statements made by the government on a bill's introduction, and from the purpose ascribed by earlier courts to similar legislation. Thus, in *R. v. Big M Drug Mart*,[40] the Supreme Court of Canada concluded that the *Lord's Day Act*[41] (which required Sunday closing of businesses) had a reli-

gious purpose. The Court reached this conclusion by considering precursors to the legislation that contained overtly religious statements, and earlier decisions of the Privy Council and Supreme Court of Canada to the effect that the chief purpose of the legislation was to enforce observance of a Christian Sabbath and "provide for the peace and order of the public on the Lord's Day."[42] According to Dickson J.:

> In proclaiming the standards of the Christian faith, the Act creates a climate hostile to, and gives the appearance of discrimination against, nonChristian Canadians. It takes religious values rooted in Christian morality and, using the force of the state, translates them into a positive law binding on believers and nonbelievers alike. The theological content of the legislation remains as a subtle and constant reminder to religious minorities within the country of their differences with, and alienation from, the dominant religious culture.[43]

Once the Court in *Big M* concluded that the paramount purpose of the *Lord's Day Act* was religious, that settled the constitutional question. The purpose of the Act violated freedom of religion and so the legislation could not be saved by s. 1.

The mere fact that legislators might offer faith-based justifications in support of a bill, or that legislation might cohere with the teachings of some religions does not, however, approach the threshold of an unconstitutionally impermissible religious purpose. *Big M* sets a high bar for finding that a law has a religious purpose such that it automatically offends the Constitution. This is appropriate, given that no recourse to s. 1 is available once the *Big M* test has been met. The "religious purpose" test will strike down laws that are so clearly infused with religious purpose that there is no need to consider their impact, and no justification is possible.

Violations of freedom of religion on this first basis will be relatively rare in Canada and should not be found lightly. It would be a misunderstanding of the purpose of freedom of religion for a court to strike down a law as unconstitutional simply because the law coincides with the religious convictions of some politicians. This is particularly true since the religious purpose test is not the only protection offered by s. 2(a); courts have a second and more substantial basis on which to determine the constitutionality of a law, namely its impact.

According to the Supreme Court of Canada in *R. v. Edwards Books and Art Ltd.*,[44] a law whose purpose is secular may still be found to violate freedom of religion if its impact is not neutral as between religions or as between religion and nonreligion. If there is a prima facie violation of s. 2, then a s. 1 analysis is required. On the surface, *Edwards Books* looked similar to *Big M* as it, too, dealt with Sunday closing legislation; here, however, it was the Court's s. 1 analysis that proved decisive. In *Edwards Books*, the Court concluded that the *Retail Business Holidays Act*,[45] unlike the *Lord's Day Act*, was enacted for the secular purpose of providing a common day of rest for workers, rather than as a "surreptitious attempt to encourage religious worship." [46]

The disproportionate impact on those whose religion observed a day of rest other than Sunday was an effect of the legislation, but not its purpose. Therefore, a s. 1 analysis could be conducted. In that case, the legislation was upheld.

An example may help to illustrate that use of religious-based reasoning by legislators is not enough, by itself, to infringe freedom of religion. Suppose a bill was introduced in Parliament to reintroduce the death penalty for first-degree murder. On the first basis for unconstitutionality—a religious purpose – the bill would indeed be unconstitutional if it were introduced by the Minister of Justice as codifying the sixth commandment or if this formed the purpose section of the bill. Assume instead, however, that the bill is introduced as part of the government's "get tough on crime" stance, and justified by the Minister of Justice as providing greater general and specific deterrence and protecting the public. It would be quite possible for individual politicians to construct biblical arguments for the bill, for instance arguing that the deliberate breaking of the commandment "Thou shalt not kill" [47] requires the most extreme penalty. These arguments would not, however, affect the purpose of the bill. Based on the approach tak-

en in *Big M* and *Edwards Books*, it is extremely unlikely that a statement of religious conviction by one or more politicians in parliamentary debate would be sufficient to show that the law had a religious purpose or was a "surreptitious attempt to encourage religious worship." Nor would it have the effect of imposing Abrahamic law on nonbelievers or create a climate hostile to nonbelievers. The secular nature of the bill would not be undermined simply because some individual MPs based their support of it on their religious beliefs. If the bill became law, it could not be challenged as having a religious—and therefore unconstitutional—purpose.

Therefore, to continue with our example, reinstatement of the death penalty could be challenged on freedom of religion grounds only by showing that it had the effect of infringing freedom of religion. For this second potential basis of unconstitutionality, the presence or absence of religious reasoning by legislators would be completely irrelevant. A challenge based on disparate impact would involve showing that reinstating the death penalty, although not directed at religious belief or practice, in fact prevented religious individuals from practicing their religion or imposed particular religious beliefs and practices on individuals. Such an argument might be made out if a prison official or other state employee objected on religious grounds to being compelled to assist with an execution. The success of such a challenge would have nothing to do, however, with whether religious or only secular justifications had been offered by individual MPs during passage of the bill.

Thus, while constitutional parameters guard against legislation or government policy that has a religious purpose or that inadvertently infringes religious freedom (unless the infringement can be justified under s. 1 of the *Charter*), use of religious-based reasoning by legislators is not inherently unconstitutional.

Secularism and Related Concepts

Assuming that the constitutional limits established by s. 2(a) of the *Charter* are adhered to, arguments against religious references by politicians flow less from the law and more from several related strands of political theory—most particularly from concepts of state neutrality, separation of church and state, and, above all, secularism. Each of these is a contested term, and we argue that only the most extreme interpretation of each—interpretations not in keeping with Canadian tradition—requires that religion be kept entirely out of public and political life.

Neutrality

As noted above, the freedom of religion guarantee in s. 2(a) of the *Charter* has been interpreted as requiring that the state remain neutral as between religions and between religion and nonreligion. Not surprisingly, however, there are different notions as to how this neutrality is to be achieved—beyond the obvious constitutional parameters discussed above that preclude the state from legislating for a religious purpose and require the state to provide justifications for legislation that has a disproportionate effect vis-à-vis religion. In the Supreme Court of Canada's most recent decision involving freedom of religion, *S.L. v. Commission scholaire des Chênes*, Justice Deschamps, writing for the majority, states that "[r]eligious neutrality is now seen by many Western states as a legitimate means of creating a free space in which citizens of various beliefs can exercise their individual rights."[48] It is unclear, however, (and unnecessary to clarify for the purposes of that decision) whether the public space becomes "free" in this way by discouraging or encouraging a full discussion of the various beliefs held by citizens. In their report on interculturalism in Quebec, *Building the Future: A Time for Reconciliation*,[49] Gérard Bouchard and Charles Taylor refer to the "ambiguity of state neutrality."[50] They state that "it is widely acknowledged that the secular State must be neutral in respect of all religions. To this we must add that the State must not take sides as regards religion and nonreligion."[51] However, Bouchard and Taylor note that this neutrality may be expressed in different "institutional structures."[52] They describe two possible structures: a complete separation of church and state and "the neutrality of the State with respect to religions and deep-seated

secular convictions."[53] They conclude that "[s]ince freedom of conscience and religion is one of the purposes of secularism . . . the neutrality of the State . . . should be designed to foster, not hinder, its expression."[54] We would agree with their conclusion that neutrality is best achieved where free expression of matters of importance to individuals and communities, including matters relating to religious belief and conscience, is allowed to flourish.

Separation of Church and State

A core legacy of the Enlightenment is the idea that the church and state are not—and should not be—one. While this principle would be seen by most as a fundamental characteristic of modern Western democratic states, there are, however, a variety of ways in which this principle can be understood.

The formal separation of church and state is a key constitutional principle in the United States and has had a significant influence on how American courts have interpreted the clauses relating to religion in the US Constitution. In Canada, however, the status of separation of church and state arguments is less clear. Certainly, the Enlightenment legacy is evident in that there is no tradition in Canada of a theocratic state intended to be ruled by god, where religious authorities are formally recognized as having the power to dictate law and policies. Further, Canada has no formal policy of requiring an individual to belong to a particular faith in order to run for government or hold public office. Finally, unlike England, Canada has no tradition of an established church. In fact, given s. 2(a) of the *Charter*, attempts to inaugurate a theocracy, to require public officials to belong to a particular (or any) religion, or to create an established church would clearly be unconstitutional. Beyond our political traditions and the requirements of s. 2(a) of the *Charter*, however, there is no exact sense of what further, if anything, separation of church and state demands.

The phrase is rarely used in Canadian jurisprudence, and one historian has characterized the relationship between church and state in Canada as "ill-defined—and difficult to define."[55] The most recent reference by the Supreme Court of Canada[56] simply makes a general link between this separation and secularization in the West—which tells us little about how either separation or secularization is to be conceived of in Canada. In a speech comparing the protection of constitutional rights in the United States and Canada, Chief Justice McLachlin has said:

> The United States constitution enunciates a doctrine of separation of church and state which precludes the state from supporting any religion. The Canadian guarantee protects the right of the individual to practice the religion of his or her choice, but also permits the state to support religious groups—indeed it requires the state to support minority Roman Catholic and Protestant school systems in some provinces as a consequence of the concern of the fathers of Confederation that minority religious rights be protected. [57]

According to the Chief Justice, then, protection of freedom of religion is the Canadian parallel to American concepts of separation of church and state.

European scholar Veit Bader suggests that understanding separation of church and state to mean a complete privatization of religious belief and practice is a "counterfactual and maximalist interpretation"[58] of the phrase. He argues instead that only a "minimal threshold of institutional, organizational and role differentiation between religious and other organizations (specifically the state) is functionally required for modern societies."[59] This threshold can best be described as protection of reciprocal "autonomies,"[60] where religious organizations cannot control the state and the state cannot control the inner workings of religious organizations. Canadian scholar Iain T. Benson offers a similar picture:

> Though the secular overlaps with the religious, the secular state does not have jurisdiction over the religions, just as the religions, though they are active in the public sphere, do not have jurisdiction over the state.[61]

We would agree with Bader that "liberal-democratic constitutions do not or should not require a strict wall of separation between

'secular' state politics and religions"[62] and therefore references to the separation of church and state are not sufficient to preclude religious-based reasoning by legislators. This conclusion is buttressed by the fact that religious references by politicians abound in the United States, which does view the separation of church and state as an integral constitutional principle.

Secular

Often closely allied with concepts of state neutrality and separation of church and state, the characterization of modern democratic states as secular is frequently the chief argument offered for keeping religion out of public and political discourse. The first recorded use of the term "*secular*," in the thirteenth century, meant "living in the world, not belonging to a religious order"; thus, a priest who lived outside a monastery, attending to the needs of the world, was a secular priest.[63] The word also had connotations "of an age,"[64] thus allowing secularity to be contrasted to the eternal nature of God. A current-day definition of *secular* incorporates a number of these elements, including "not ecclesiastical or clerical," "not bound by monastic vows," and "worldly or temporal"; further, the definition specifies "not overtly or specifically religious."[65]

There are a number of references in the jurisprudence to Canada as a secular state. Thus, in *Rodriguez v. British Columbia (Attorney General)*, Lamer C.J.C., in dissent (although probably not on this point) stated that "the *Charter* has established the essentially secular nature of Canadian society."[66] The reference to the supremacy of God in the preamble to the *Charter* has not been recognized by courts as creating rights or providing an interpretative lens for understanding the rest of the *Charter*.[67] In its most recent decision on freedom of religion, the Supreme Court of Canada noted that "[t]he gradual separation of church and state in Canada has been part of a broad movement to secularize public institutions in the Western world."[68] However, even if it is generally accepted that Canada is a secular state, there is no one accepted definition of "secular" in Canada. Without further elaboration, this label gives little guidance as to exactly what role religion may play in public life.

For some, the term "secular" is a synonym for complete separation of church and state; on this understanding, it means "the removal of religion from public life,"[69] with the concomitant privatization of religion as merely something one may or may not decide to engage in at home or in the church, synagogue, mosque, or temple. This approach may be based simply on the desire to avoid the kinds of conflict that can arise out of differing religious views,[70] but more frequently it seems to reflect a view of religion as an unfortunate holdover from the past. Thus, John Von Heyking describes the "secularization thesis" as based on the premise "that societies evolve (or progress) from being religion-centred to being centred on secular, especially scientific knowledge, and human forms of governance."[71] Another definition of the secularization thesis refers to "historical processes of rationalization that would ultimately spell the end of religion as a publically significant cultural phenomenon."[72]

Even as simply a descriptive, rather than normative, theory, the secularization thesis seems doubtful. It may be somewhat credible in Western Europe—although even there, not fully—and it certainly does not seem to reflect experiences in North America or elsewhere. As Veit Bader, writing from a European perspective, states:

> The thesis that religious beliefs and practices would inevitably decline, based on evidence in Western Europe, clearly does not hold for the US and the 'rest of the world'. The thesis that all religious concerns and worries will only be limited to and pertain to the private realm is contradicted by their recent widespread presence in the public realm. Currently, conservative and fundamentalist religions as well as progressive religions are re-politicising 'private' relations and re-normativising the economic and political spheres.[73]

In Canada, according to the 2001 census (the most recent date for which census information on religious affiliation is available), one-sixth of Canadians reported having no religious affiliation.[74] While one could debate exactly what degree of belief or practice is implied by affiliation, when five-sixths of Canadians see religion as playing some role in their lives, it is hard to

argue that the secularization thesis offers an accurate account of Canadian society.

Arguably, then, we should be seeking an understanding of secularism that more fully reflects the Canadian experience, and the Canadian commitment to multiculturalism. Secularism need not be understood solely in opposition to religion. Another possible definition—which parallels the understanding that separation of church and state simply requires the protection of reciprocal autonomies—is that a "[secular] state must not be run or directed by a particular religion or 'faith-group' but must develop a notion of moral citizenship consistent with the widest involvement of different faith groups (religious and non-religious)."[75] This is in keeping with a Canadian case that distinguished between a secular state and an "atheistic" one, describing a secular state as one that simply "leaves religion alone,"[76] rather than, presumably, one that attempts to oust it from the public sphere.

In his recent work, *A Secular Age*,[77] Canadian philosopher Charles Taylor offers three understandings of the term "secular." The first two possibilities are "secularized public spaces" and "the decline of belief or practice," both of which Taylor rejects as unhelpful. Instead, he suggests that secularism represents

> a change . . . which takes us from a society in which it is virtually impossible not to believe in God, to one in which faith, for even the staunchest believer, is one human possibility among others. . . . Belief in God is no longer automatic. There are alternatives.[78]

From this perspective, secularization is neither about the need to banish religion from public life, nor about the growing irrelevance of religion. Instead, it describes a state of mind alive to the different possibilities that exist, once one discards old and hegemonic assumptions.

American scholar Jeffrey Stout would agree. He argues that the secularization of modern democracies does not "rule[] out an expression of religious premises or the entitlement of individuals to accept religious assumptions."[79] Instead, for Stout, the core aspect of this secularization is that speakers from within the dominant religious traditions—or indeed any religious tradition—cannot and should not assume that others will share their perspective:

> [S]ecularization concerns what can be taken for granted when exchanging reasons in public settings. . . . What makes a form of discourse secularized is not the tendency of the people participating in it to relinquish their religious beliefs or to refrain from employing them as reasons. The mark of secularization . . . is rather the fact that participants in a given discursive practice are not in a position to take for granted that their interlocutors are making the same religious assumptions that they are. This is the sense in which public discourse in modern democracies tends to be secularized.[80]

This seems to us a far more nuanced and inclusive understanding of the secular, to be preferred over definitions that view religion as the enemy of a secular state. The recognition that one cannot simply take for granted the perspective of others also seems to go some way towards answering the concerns regarding incivility and exclusion raised earlier.

Further, not only is this enhanced understanding of secular more inclusive but it is also more accurate. As Iain T. Benson has argued, it is simply inaccurate to view faith and secularism as separate and opposed concepts. As we noted in our earlier paper on religious discourse in the public square, all comprehensive world views are based on core concepts that require a leap of faith. As Benson explains, "faith—understood as metaphysical assertions that we do not empirically prove" is "an inevitable aspect of human action and therefore of culture."[81] Therefore, it is impossible to expect legislators to refrain from making faith-based statements. All politicians will make such statements from time to time, although some will do so from a religious perspective and others will call on other foundational values. The politician who speaks about the importance of fostering dignity and equality for all is making a faith-based statement. The politician who posits that some species of a regulated free market provides the greatest scope for human flourishing is making a faith-based statement. This is so, even where there is no reference to, or reliance on, religion.

The question, therefore, seems to be: out of all the different kinds of faith-based statements that might be made by legislators, is there a valid reason for excluding those that flow from a religious world view? Does recognition of Canada as a secular state automatically require such a norm? While recognizing that legislation or government policies cannot have as their purpose favouring one religion over another or favouring religion over nonreligion, it is hard to see why legislators discussing public policy should be allowed to make some kinds of faith-based statements but not others.

In *Chamberlain v. Surrey School District No. 36*,[82] the Supreme Court of Canada was required to interpret a provision in the British Columbia *School Act*[83] to the effect that "[a]ll schools and Provincial schools must be conducted on strictly secular and non-sectarian principles."[84] Chief Justice McLachlin stated:

> The Act's insistence on strict secularism does not mean that religious concerns have no place in the deliberations and decisions of the Board. Board members are entitled, and indeed required, to bring the views of the parents and communities they represent to the deliberation process. Because religion plays an important role in the life of many communities, these views will often be motivated by religious concerns. Religion is an integral aspect of people's lives, and cannot be left at the boardroom door. What secularism does rule out, however, is 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 that, although the Board is indeed free to address the religious concerns of parents, it must be sure to do so in a manner that gives equal recognition and respect to other members of the community.[85]

This approach suggests that, in Canada, secularism aligns with the constitutional protection for freedom of religion. Or, to put it another way, when legislators act in accordance with s. 2(a) of the *Charter*, they are exhibiting respect for secularism, whether their arguments for or against particular public policy initiatives are explained in religious or nonreligious terms.

Conclusion

Having looked at arguments based on ethical concerns for civility and inclusiveness, at constitutional arguments based on freedom of religion, and at different understandings of secularism and related concepts, we conclude that there is no good reason to frown on religious-based references by legislators in a secular, multicultural, liberal democratic society founded on the rule of law. In saying this, we are not suggesting that arguments based on religious beliefs or texts will always be good political strategy, will lead to better laws, or will enhance the public perception of religion. However, to label such arguments as un-Canadian or undemocratic may limit public debate, both in terms of the ideas that are advanced and who engages in the debate. Further, it would unfairly privilege faith-based claims founded on nonreligious world views over faith-based claims founded on religious perspectives.

Notes

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1 In relation to the terms used in this phrase:

- We devote a later portion of this paper to discussing the meaning of *secular*.
- *Multiculturalism*—an appreciation of diversity—is recognized in s. 27 of the *Charter*: "This *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
- As to *liberal democracy*, we find William Galston's description helpful: "The noun denotes a particular way of exercising public power; the adjective, a set of limitations on the exercise of that power." William Galston, "Religion and the Limits of Democracy" in Douglas Farrow, ed, *Recognizing Religion In A Secular Society: Essays In Pluralism, Religion, And Public*

Policy (Montreal: McGill-Queen's Press, 2004) at 41.

- *Rule of law*: the preamble of the *Charter* states that "Canada is founded upon principles that recognize the supremacy of God and the rule of law." As we said in our piece on judging, "The rule of law is shorthand for a number of concepts limiting the arbitrary power of the state." Diana Ginn & David Blaikie, "Judges and Religious-Based Reasoning" (2011) 19:2 Const Forum Const 7 at 53 [Ginn & Blaikie, *"Religious-Based Reasoning"*]. Here, as there, we find the following description of the rule of law helpful: "The rule of law presupposes that laws will usually be obeyed, that breaches of the law will usually meet with enforcement, that government will be limited in its powers, and that courts and the legal profession will be independent of government and of powerful private interests." Peter W Hogg & Cara F Zwibel, "The Rule of Law in the Supreme Court of Canada" (2005) 55 UTLJ 715 at 716.

2 David Blaikie & Diana Ginn "Religious Discourse in the Public Square" (2006) 15:1 Const Forum Const 37 [Blaikie & Ginn, *"Religious Discourse"*].

3 Ginn & Blaikie, *"Religious-Based Reasoning" supra* note 1.

4 In a previous article, we defined the law as being *underdetermined* when neither the constitution, legislation, nor common law principles give guidance as to which of several possible alternatives or interpretations a judge should choose. Blaikie & Ginn, "*Religious Discourse*", *supra* note 2.

5 Benjamin Berger, "Key Theoretical Issues in the Interaction of Law and Religion: A Guide for the Perplexed" (2011) 19:2 Const Forum Const at 41.

6 For arguments regarding the humanizing impact of religion on law, see the writing of Harold Berman, in particular: Harold J Berman, *Faith and Order: the Reconciliation of Law and Religion* (Atlanta: Scholars Press, 1993); Harold J Berman, *Law and Revolution: the Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983). For arguments that religion can also stand in the way of Canadian values such as equality rights, see Bruce MacDougall, "The Separation of Church and Date: Destabilizing Traditional Religion-based Legal Norms on Sexuality", (2003) 36 UBC L Rev 1; Robert Wintemute, "Religion vs Sexual Orientation—A Clash of Human Rights?", (2002) 1 JL & Equality 125.

7 William Shakespeare, *Merchant of Venice* in John Drakakis, ed, The Arden Shakespeare, 3rd series (London: A & C Black Publishers Ltd, 2010) act I, scene 3, lines 93–98. This is likely based on biblical references to the devil arguing from scripture, such as Matthew 4:5–6 and Luke 4:9–11.

8 Stephen Carter, *God's Name in Vain* (New York: Basic Books, 2000) at 39.

9 Interestingly, Stephen Carter suggests that *real* references to religion in the US are often unwelcome: "Aside from the ritual appeals to God that are expected by our politicians, for Americans to take their religions seriously, to treat them as ordained, rather than chosen, is to risk assignment to the lunatic fringe." Stephen Carter, *The Culture of Disbelief How American Law and Politics Trivialize Religious Devotion* (New York: Random House, 1993) at 4. However, even if there is debate about whether political references to religion in the United States reflect a real and thought-out respect for faith, it does seem that such references are both more frequent and more accepted in the United States than in Canada.

10 "Every one to whom much is given, of him will much be required; and of him to whom men commit much they will demand the more." *The Holy Bible, New International Version* (Grand Rapids, MI: Zondervan Publishing House, 1984) at 909 [*Holy Bible NIV*].

11 Samuel P Jacobs, "Santorum says Obama agenda not 'based on Bible,'" *Reuters* (18 February 2012) online: Thomson Reuters <http://www.reuters.com>.

12 Katherine Fierbeck, *Political Thought in Canada: An Intellectual History* (Peterborough: Broadview Press, 2006) at 92.

13 Mebs Kanji & Ron Kuipers, "A Complicated story: Exploring the Contours of Secularization and Persisting Religiosity in Canada" in John Young & Boris DeWiel, eds, *Faith in Democracy? Religion and Politics in Canada* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2009) 13 at 20 [*Kanji & Kuipers*].

14 John Young, "Faith and Politics in Canada" in John Young & Boris DeWiel, eds, *Faith in Democracy? Religion and Politics in Canada* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2009) 1 at 8.

15 Ramsay Cook, *The Regenerators: Social Criticism in Late Victorian English Canada*, (Toronto: University of Toronto Press, 1985) at 215.

16 Doris French Shackleton, *Tommy Douglas* (Toronto: McClelland and Stewart, 1975) at 32.

17 Young, *supra* note 14 at 8.

18 *Ibid*.

19 Jack Aubry, "May says PM's climate stance worse than appeasing Nazis", *The Ottawa Citizen* (1 May 2007) online: Ottawa Citizen < http://www.ottawacitizen.com> (Factiva).

20 *House of Commons Debates*, 37th Parl, 1st Sess, No 189 (22 May 2002) at 1650 (Jason Kenney).

21 *Ibid* at 1725 (Philip Mayfield).

22 *Ibid* at 1655 (Stockwell Day).

23 *House of Commons Debates*, 38th Parl, 1st Sess, No 040 (7 December 2004) at 1945 (Judy Wasylycia-Leis). Judy Wasylycia-Leis, when urging a cap on interest rates chargeable by credit card companies, said: "I never thought I would do this in the context of this debate but maybe it would be useful to quote from the Bible since the Old Testament is pretty clear on usury . . . it is not just some crazy idea of the NDP. It is found in religious texts."

24 House of Commons, Standing Committee on Access to Information, Privacy and Ethics, *Minutes of Proceedings*, 40th Parl, 2nd Sess, Meeting No 32 (22 October 2009) at 0935 (Greg Rickford).

25 *House of Commons Debates*, 36th Parl, 2nd Sess, No 80 (6 April 2000) at 1735 (Bill Blaikie).

26 Reuben Bromstein & Salim Mansur, "The ultimate crime", *National Post* (29 November 2007) online: National Post < http://www.nationalpost.com> (Factiva).

27 *House of Commons Debates*, 35th Parl, 1st Sess, No 172 (22 March 1995) at 10837 (Elsie Wayne).

28 James Bickerton, Stephen Brooks & Alain-G. Gagnon, *Freedom, Equality, Community, The Political Philosophy of Six Influential Canadians* (Montreal: McGill-Queen's University Press, 2006) at 123. It is interesting and instructive to note that the mix of religious belief and political philosophy does not always produce predicable results. It was Trudeau, the committed Catholic but also the committed modernizer and supporter of individual rights, who famously stated (in the context of decriminalizing homosexual acts) that the state has no place in the bedrooms of the nation.

29 Claude Ryan, "In Place of a Foreword" in Douglas Farrow, ed, *Recognizing Religion In a Secular Society: Essays In Pluralism, Religion, and Public Policy* (Montreal: McGill-Queen's Press, 2004) at ix. Ryan goes on to say, "This approach appeared to succeed for a time. But religion, in my opinion, cannot be confined indefinitely to the private sphere."

30 Viet Bader, *Secularism or Democracy? Associational Governance of Religious Diversity* (Amsterdam: Amsterdam University Press, 2007) at 110.

31 Young, *supra* note 14 at 3 (based on the 2001 census).

32 We acknowledge a possible concern relating to this: while it would be unconstitutional to require that individuals have a particular religious affiliation to run for office, could much the same ends be accomplished indirectly, in that certain religious references could be a coded way of letting the voting public know that one belongs to a particularly well-entrenched denomination? It seems unlikely that in Canada today, belonging to a particular religion would make one more attractive to the general populace than, for instance, being nonreligious. It is certainly true that prejudices can linger and that belonging to a minority religion might make a politician less likely to garner votes from some individuals, but a convention of excluding religious argument from politics is unlikely to remedy this situation. In many cases, the politician's name, appearance, or dress (for instance, the wearing of a turban) would be a sufficient clue to the prejudiced voter.

33 Young, *supra* note 14 at 2.

34 It is worth noting that this rebuttal may come from either religious or secular perspectives. Thus, when the legalization of same-sex marriage was debated in Parliament, much—although not all—of the opposition to such marriages was expressed in religious terms. In response to this, the Right Reverend Dr. Peter Short, then moderator of the United Church of Canada, wrote to all Members of Parliament (MPs), setting out the United Church's support for same-sex marriage "in the hope that you will resist the assumption that anyone who speaks from Christian faith, tradition, and values must be against equal marriage." Letter from the Right Reverend Doctor Peter Short to Members of Parliament (17 January 2005) online: The United Church of Canada < http://www.united-church.ca>.

35 Robert Audi & Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham: Rowman &Littlefield Publishers Inc, 1997) at 162–3.

36 See David M Brown, "Freedom From or Freedom For? Religion as a Case Study in Defining the Content of *Charter* Rights" (2000) 33 UBC L Rev 551.

37 *Supra* note 1 *Charter* s 2(a).

38 *Ibid* s 1.

39 Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004) at 63.

40 *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, [1985] SCJ No 17, 3 WWR 481, 18 DLR (4th) 321, 1985 CarswellAlta 316 (WL Can) [*Big M Drug Mart* cited to SCR].

41 *Lord's Day Act*, RSC 1970, c L-13, s 4.
42 *Big M Drug Mart, supra* note 40 at para 57.
43 *Big M Drug Mart, supra* note 40 at para 97.
44 *R v Edwards Books and Art Ltd* [1986] 2 SCR 713, [1986] SCJ No 70, 58 OR (2d) 442, 35 DLR (4th) 1, 30 CCC (3d) 385, 1986 CarswellOnt 141 (WL Can) [*Edwards Books* cited to SCR].
45 *Retail Business Holidays Act*, RSO 1980, c 453.
46 *Edwards Books*, *supra* note 44 at para 62.
47 Genesis 20:13 in *Holy Bible NIV*, *supra* note 10 at 990. Of course, it is equally likely that some legislators might use biblical arguments against the bill, referencing the biblical emphasis on forgiveness or God's reminder that "It is mine to avenge; I will repay" in Romans 12:19, *Ibid*. In fact, the sixth commandment itself might be used by both sides in the argument. As pointed out by the Supreme Court of Canada in *Syndicat Northcrest v Amselem*, 2004 SCC 47, 2004 2 SCR 551, a court is not required to rule on the proper interpretation of scripture in order to decide the constitutional question of whether freedom of religion has been infringed.
48 *(L)S v Des Chênes (Commission scholaire)*, 2012 SCC 7 at para 10, [2012] SCJ No 7, 341 DLR (4th) 577, 252 CRR (2d) 168, 2012 CarswellQue 741 (WL Can) [*Commission scholaire des Chênes*].
49 For the abridged report, see Gérard Bouchard & Charles Taylor, *Building the Future: A Time for Reconciliation, Report of the Consultation Commission on Accommodation Practices Related to Cultural Differences* (Quebec: Gouvernement du Québec, 2008).
50 *Ibid* at 44.
51 *Ibid*.
52 *Ibid* at 45.
53 *Ibid*.
54 *Ibid* at 46.
55 JS Moir, *Church and State in Canada: 1827-1867: Basic Documents* (Toronto: McClelland and Stewart Ltd, 1967), quoted in John Von Heyking, "The Harmonization of Heaven and Earth?: Religion, Politics, and Law in Canada" (2000) 33 UBC L Rev 663 at 675 [*Von Heyking*].
56 *Commission scholaire des Chênes*, *supra* note 48.
57 Beverley McLachlin, "Protecting Constitutional Rights: A Comparative View of the United States and Canada" (2nd Canadian Distinguished Annual Address delivered at the Center for the Study of Canada, Plattsburg State University, 5 April 2004), [unpublished].
58 Bader, *supra* note 30 at 46.
59 *Ibid*.
60 *Ibid* at 49.
61 Iain T Benson, "Considering Secularism" in Douglas Farrow, ed, *Recognizing Religion In a Secular Society: Essays In Pluralism, Religion, and Public Policy* (Montreal: McGill-Queen's Press, 2004) at 84.
62 Bader, *supra* note 30 at 94.
63 Douglas Harper, *Online Etymology Dictionary*, (2012) *sub verbo* "secular," online: Etymonline <http://www.etymonline.com>
64 *Ibid*.
65 *The Merriam-Webster Online Dictionary*, (2012) *sub verbo* "secular," online: Merriam-Webster Incorporated <http://www.merriam-webster.com/dictionary>.
66 *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at para 59, [1993] SCJ No 94, 82 BCLR (2d) 273, 107 DLR (4th) 342, 85 CCC (3d) 15, 1993 CarswellBC 228 (WL Can).
67 *R v Little*, 2008 NBPC 2, 2007 NBJ No 495, 328 NBR (2d) 1, 841 APR 1, 2007 CarswellNB 637 (WL Can).
68 *Commission scholaire des Chênes*, *supra* note 48 at para 10.
69 *Von Heyking*, *supra* note 55 at 664.
70 In this series of articles, we do not deny the bloodshed that has arisen from religious conflict. Instead, we simply note, first, that secular ideologies have also lent themselves to oppression and bloodshed, and second, as stated by HRH Prince El Hassan Bin Talal (moderator of the World Conference on Religion and Peace), that "to acknowledge the centrality of religion and its public nature is not automatically to become a prisoner of history, which has already seen more than its share of religious conflict." HRH Prince El Hassan Bin Talal, "Religion in the Public Realm", in Douglas Farrow, ed, *Recognizing Religion In a Secular Society: Essays In Pluralism, Religion, and Public Policy* (Montreal: McGill-Queen's Press, 2004) at 10.
71 *Supra* note 55, at 668. See also *Bader*, *supra* note 30 at 39. Bader notes that the term "secularization" actually incorporates three distinct yet related meanings; one focuses on "cognitive and normative cultural frames" (i.e., how do people tend to see and understand the world); one focuses on the supposed weakening of religious belief and practice; and one focuses on politics and the role, structure, and functions of the state. It is the third aspect that most interests us here.
72 *Kanji & Kuipers*, *supra* note 13 at 13.
73 Bader, *supra* note 30 at 18.
74 The population of Canada is listed at 29,639,035; of these, 4,900,090 reported no religious affiliation. Statistics Canada, "Population by religion, by province and territory" *Census 2001*, online:

Statistics Canada <www.statcan.gc.ca>. According to the Statistics Canada website, 2001 is the last year for which this kind of information is available. Questions about religious affiliation are asked only every second census – every 10 years. Therefore, questions about religious affiliation would have been scheduled to be asked in the 2011 census. However, that is the year that the long form census was dropped and replaced with a voluntary National Household Survey. That survey did ask about religion, but according to the site, release of that information is scheduled for June 2013.

75 Iain T Benson, "Notes Towards a (Re) definition of the 'Secular'" (2000) 33 UBC L Rev 519 at para 32.

76 *O'Sullivan v Canada,* [1992] 1 FC 522 at para 18, [1991] FCJ No 803, 84 DLR (4th) 124, 7 CRR (2d) 310, 1991 CarswellNat 495 (WL Can).

77 Charles Taylor, *A Secular Age* (Cambridge: Harvard University Press, 2007) at 20.

78 *Ibid* at 3.

79 *Stout*, *supra* note 37 at 1.

80 *Ibid* at 97.

81 *Supra* note 75 at para 30. Benson goes on to suggest that "[w]hen religious believers learn that 'virtues' exist 'outside' religion and non-religious believers learn that they too operate out of a series of 'faith assumptions', then perhaps we shall be closer to an engagement that is long overdue in our society, where we recognize that all human beings operate on some basis of faith."

82 *Chamberlain v Surrey School District No 36*, 2002 SCC 86, [2002] 4 SCR 710, 221 DLR (4th) 156, 100 CRR (2d) 288, 2002 CarswellBC 3021 (WL Can).

83 *School Act*, RSBC 1996, c 412.

84 *Ibid*, s *76.*

85 *Supra* note 82 at para 19.