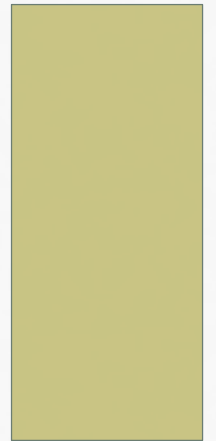


HOW HAS THE LAW RESPONDED?

HORIZONS OF THE EVALUATION AND REFLEXIVITY
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PLAN

- 1. Some difficulties and challenges related to the evaluation of a situation in a diverse context.
- 2. Some possible postures modeling the process of decision-making
- Conclusion

A. SOME DIFFICULTIES AND CHALLENGES RELATED TO THE EVALUATION OF A SITUATION (8)

- 1. Very difficult questions to resolve; process of deconfessionnalization is recent and little advanced
- 2. Public and very sensitive controversies being covered in the media
- 3. Irreconcilable opinions and visions
- 4. More than one interpretation of an issue
- 5. Distinction between neutrality, impartiality and objectivity
- 6. To evaluate the sincerity of a belief, between subjectivity and objectivity

CITATION D'UN ARTICLE SUR AMSELEM

- « That the legal world ought to set limits in its consideration of the doctrines of a religious group goes without saying. That it should abandon them entirely, however, does not seem altogether pragmatic. For the front-line decision makers, doctrine ought to constitute an element that can contribute to the evaluation of a reasonable accommodation demand, without reducing the inquiry to the most official dogma of the religious group in question; that is, one must remain aware of the possible range of interpretations.»

CITATION, SUITE

- The Amselem case is therefore rather astonishing because of the qualitative leap wrought by the majority ruling that adopted a hypersubjective definition of religion to justify the decision while at the same time considering objective doctrine to underpin the evaluation of sincerity. This ruling opens the possibility of evaluating a belief subjectively, independently of objective facts, without even subjecting itself to this perilous exercise. Put another way, the judges did not envisage the problem with the sukkah, nor, alternately, that of the wearing of the kirpan, without evoking precepts and dogmas. » (Lefebvre 2012)

SUITE DU POINT A. QUELQUES DIFFICULTÉS ET DÉFIS LIÉS À L'ÉVALUATION D'UNE SITUATION (8)

- 7. Evaluating the extent of discrimination can be difficult (understood as something damaging to an individual because of his or her beliefs or non belief).
- 8. When religion arises in court, it stirs up very personal things that a judge tries to dissimulate behind his or her impartiality, but that he feels in many ways. Few occasions to reflect on this dimension of life. In contrast, people who use the courts have strong and articulate beliefs.

B. SIX POSSIBLE POSTURES

- 1. Traditional : attachment to religious and cultural traditions
- 2. Traditional (culturally): attachment to cultural expressions of religions
- 3. Republican posture confines religion into the private sphere.

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- 4. Moderate republican posture maintains state compromises with historical religions.
- 5. Liberal posture (or liberal-pluralist): support state neutrality and recognition of the importance of spirituality and religions for many individuals.
- 6. Pluralist posture : endorses 'reasonable' collective and individual religious or non religious expressions.

C. CONCLUSION

- There is a fatigue related to this debate, which nevertheless makes progress.
- In Canada, we find all these postures in diverse judicial decisions. A liberalism limiting certain minority expressions seems to dominate, along a mixture with republicanism. The attachment to traditions is still present, but undermined by the importance of the individual rights of the individual.