

# Freedom of Speech for Some *...but not for others*

## Why Christians have less rights than other Canadians

by Johan D. Tangelder

Common freedoms are freedom of speech, worship, association, peaceful assembly and freedom of movement.

Most Canadians believe they live in a country where these freedoms are held in high esteem and are vigorously defended. They point to the country's democratic traditions, its human-rights laws and especially Canada's *Charter of Rights and Freedoms*. They have good reason to take note of the Charter because it proclaims "everyone" has the fundamental freedoms "of conscience and religion...of thought, belief, opinion and expression."

On April 16, 1997, fifteen years after the Charter was signed, Canadians were treated to a barrage of self-congratulatory pronouncements on how the Charter had made Canada a freer and more democratic society. "Thank God for the Charter," declared the Chief Justice of Canada. In the *Globe and Mail*, Jeffrey Simpson pronounced that, "the Charter has sunk deep roots in Canada's psyche." And even today opinion polls show that a majority of Canadian thinks that the Charter is a "good thing."

But as Ian Hunter recently observed, Canadians like free speech in the abstract; it's in the *Charter of Rights*, after all. They just don't like free speech that offends them, or with which they disagree. Indeed, in Canada free speech is shut down when it offends politically correct sensibilities. What Canadians really support is freedom of speech for *some* but not for *others*.

### Faith in the closet

One of the striking features of modern, Western democratic societies is the priority they place upon tolerance. As Alan Levin put it, "Toleration is one of the most attractive and widespread ideals of our day. It is a cornerstone of liberalism, a key protection for both individual citizens and minority groups."

But Canadian liberals of various stripes have changed the meaning of tolerance. Tolerance of another religion is often regarded as a matter of not saying anything about its beliefs or practices. In the name of tolerance Canada's former Prime Minister, Jean Chrétien, insisted that the name of Jesus not be mentioned at the memorial service for the Swiss Air disaster, nor at the memorial service for the victims of Sept. 11.

However, freedom of religion and speech clearly prohibits a government from restraining or prohibiting individuals or groups from practicing their faith and stating their conviction both in private and in public. People or politicians who interfere with the free practice of religion and interfere with legitimate free speech are a menace to our

fundamental rights, and they must be relentlessly opposed.

### **Freedom from religion**

The government may not sponsor a particular religion, and citizens should be free to practice their religion without governmental interference. But in our contemporary society religion is not only marginalized, it is even privatized.

The Charter, which was to protect freedom of religious expression in every sphere of life, has given way to the view that religion is purely a private matter which should not intrude into the public square. The guarantee of religious freedom is used to push religion out of public institutions. We now have freedom *from* religion instead of freedom *of* religion.

Stephen Carter has styled this attitude to religion as a tendency "...to say of religious belief, 'Yes, we cherish you – now go away and leave us alone' and regard a person's religious practices as a hobby." Carter contends that contemporary culture's regard of religion as a private practice probably provides some insights into why the government and the courts find little difficulty in accommodating private religious practices but ignore or prohibit these practices in the public square. Obviously this view on religion leads to hardship and discrimination for people who are unwilling to consider their faith a purely private matter.

Canadians should not have to suppress their beliefs in the public square. Religious faith is not a private affair. Public life and private morals cannot be split. People act upon their beliefs, either for good or evil.

### **The State and Freedom**

Freedom of speech clearly prohibits governments from punishing individuals for their religious beliefs (or non-beliefs) privately and publicly held. They should also protect the right of individuals to criticize government policy and leaders.

But Canada's "nanny" state indulges in ludicrous interventions into the daily lives of its citizens. As the government expands its control over their lives, the freedom to speak and act diminishes. Individual Canadians have been deprived of protection against government discrimination, unless they belong to a "historically disadvantaged group." But if every person and every ethnic and every interest group is out to promote its own self-interest, there is no hope for protection for freedom of expression. Race, gender, and sexual orientation should not be treated as priority rights. When they are seen as dominant rights, any dissent regarding them is treated as intolerance and hate.

For example, feminist Jean Augustine, Canada's Minister of Multiculturalism, said, "The government will not tolerate statements that create dissonance in our society and disrespect for others." In other words, she doesn't tolerate any dissent from official policy. She wants uniformity of opinion. This is frightening! It is an argument for the pre-eminence of the state in the lives of its citizens.

It reminds me of a statement made by the Fascist Giovanni Gentile in 1928. In an early defense of Fascism (in the prestigious American journal *Foreign Affairs*), he argued that Fascism solved the conflict between freedom and authority: "For freedom can exist only within the State, and the State means authority." this authority is absolute; it "does

not bargain, it does not surrender any portion of its field to other moral or religious principles which may interfere with the individual conscience." But history shows that no government can impose a single view of the good and retain legitimacy.

## **The Courts and Freedom**

Prior to the Charter, the courts regarded religious freedom as a principle enjoying constitutional status. All religions stood on an equal footing, with all free to affirm and propagate religious belief either individually or through institutions. But when the Charter was adopted, unelected judges slowly began to undermine freedom of religious expression. They were often at the cutting edge of controversial issues. They ruled on issues which should have been decided by parliament. In reality Canada has become a jurocracy, ruled by judges with the assistance of well-paid lawyers.

Rather than being offended by their loss of power, many re-election-minded politicians have welcomed the development as a convenient way to avoid controversial issues. The rulings of the courts strongly suggest that some judges think that religious beliefs are no longer entitled to a place in public debate because they contravene "Charter values." They blithely ignore that all values are ultimately expressive of some underlying faith-claim whether Christian, secular, or whatever.

The Preamble of the Charter states: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law." Although the Preamble suggests that all other rights and freedoms set out in the Charter are founded on these two principles – God's supremacy and the rule of law – courts and academics have treated the Preamble, especially in its reference to the "supremacy of God," as an embarrassment to be ignored.

Courts have even been dismissive of the Preamble. Supreme Court Justice, and feminist, Bertha Wilson suggested that a principle of "supremacy of God" stands in opposition to a democratic society. She apparently thinks that God and a democracy stand opposed to each other.

Judges have not shown any self-restraint in their interpretation of the Charter. In the area of freedom of expression, they have set limits. For example, in 1989 the Supreme Court ruled that not all groups but only "historically disadvantaged" groups are protected by the state. And in a 1995 ruling, it blithely added "sexual orientation" to the list of prohibited kinds of discrimination.

Judges even determine the nature of Canadian values. For example, Justice Rowles of the British Columbia Court of Appeal said that if a court determines that certain views or beliefs are un-Canadian because they do not conform with "Charter values", then a court may sanction efforts to *compel* those who express such beliefs to reform their way of thinking. She stated that, "the public interest in the public school system may also require something more than mere tolerance. ...Public school teachers and those who administer and regulate the public school system may have a positive duty to ensure nondiscrimination in our public schools."

This kind of thinking leaves little room for conscientious objections.

And some Christians have already experienced the consequences of enforced conformity to a lifestyle they believe is immoral.

## **The Homosexual Controversy**

Recent court decisions show that Christians have every reason to be concerned about the challenges to their freedom of speech. Sincerely held religious convictions are now considered offensive, and thus intolerant. The implication of this new understanding is that any time one disagrees with someone else's sincerely held conviction it is necessarily intolerant.

The equality rights protected by the Charter are taken to mean, not simply that homosexual orientation shouldn't be a ground for discrimination (e.g. in employment), but that homosexual conduct must be publicly recognized as equally worthy of respect as other sexual preferences. If you don't agree with "Charter values" (whatever they are) for religious reasons, judges think you are not entitled to hold or defend your "anti-Charter" values in public.

Ruth Ross, executive director of the Christian Legal Fellowship in London, Ont., cites two cases: Mark Harding, who was convicted in Ontario for hate crimes for literature he printed on Islam, and Hugh Owens, who was fined by the Saskatchewan Human Rights Commission for an advertisement featuring several biblical references on homosexuality. In Owens' case, the judge said that the "biblical passages, which suggest that if a man lies with a man they must be put to death, expose homosexuals to hatred." This statement suggests that those Biblical passages themselves are problematic in public discourse.

Another Christian, who discovered that freedom of speech is for some and not for others, is Christopher Kempling. In April 2003, this Quesnel, B.C. school counselor learned that the B.C. College of Teachers had ruled he should be suspended, without pay, for one month. The College had earlier found Kempling – who was an exemplary teacher according to principals and students, past and present – guilty of conduct unbecoming a member of the teaching profession. This decision effectively ended his teaching career.

His offence? Kempling wrote letters to the editor of his local newspaper in which he expressed his opposition to the advancement of homosexual rights and opined that homosexual activity was immoral and harmful.

Mr. Kempling appealed his case but lost. Justice Holmes ruled that the statements in the letters to the editor were discriminatory against gays and lesbians. Despite the fact that these writings were off-duty and there was no evidence Kempling was discriminatory in school, the Court sided with the College of Teachers. In other words, Kempling's right to critique the gay movement is not protected. He makes the point, "It means that teachers who happen to be Christians or who belong to other religions proscribing homosexuality may not comment publicly on this issue." One would think there would be a hue and cry about the curtailing of Kempling's freedom of speech. Hardly a word. Even the B.C. Civil Liberties Association intervened against Kempling.

## **A Christian Response**

In a column in the *National Post* (June 6, 2002), Charles Krauthammer claimed that, "civil society grants the Church autonomy in ritual, belief, and practice." Krauthammer is wrong. The state does not have the power to grant the freedoms of conscience, speech, and religious practice. The state is not the judge of truth. In *The*

*Ethics of Freedom* Jacques Ellul points out that Christian freedom must never take the form of a privilege which is conferred by the state. Ellul is right. Certain rights and freedoms must be recognized as prior to the state. The state *recognizes* these rights, but it does not *create* them. If the state grants rights, it can also withdraw them. Freedom of speech, religion and the inviolability of the person, are original freedoms. The state has no right of ownership.

The Bible clearly teaches that a person's first responsibility is to God, yet in a totalitarian society one's freedom is often restricted to such an extent that he cannot follow his conscience in fulfilling that responsibility. The courts and the Canadian government have no right to force one view of homosexuality on Canadians. Our freedom to oppose the gay agenda should be protected through airing our views on radio or television, or through the print media. Ian T. Benson, Executive Director, Centre for Cultural Renewal, points out that it is a mark of a truly free society that it respects the limited nature of its powers and seeks to accommodate differing beliefs to the greatest extent possible, keeping other state mechanisms to an absolute minimum. And he comments about the Canadian situation, "Unfortunately, many of the cases before the courts fail to keep this important insight in mind with very dangerous consequences if the insight is not recovered."

Who are the free in our society? The church father Augustine set the discussion of freedom in its biblical context: Only that man is free who is free to do the will of God; man as sinner, who revolts against the will of God, is in bondage. In other words, the freedom of man is tied up wholly with the Gospel and the new birth. Jesus said, "If the Son shall make you free, you shall be free indeed" (John 8:36). The Christian is truly liberated. He is free in Christ. This freedom has been given to him and no one can take it away from him. But this freedom means accepting responsibility to seek, speak and write the truth. A Christian has to accept the consequences of his profession of faith. He has the right to address even specific wrongs. For example, John the Baptist did not address Herod with the general principle that "adultery is wrong." He said, "It is not lawful for *you* to have *her*."

## **Conclusion**

Freedom of expression is precious and deserves to be diligently protected. People of all persuasions should have an "equal voice" in debates on family issues and whatever. Honoring citizens as equals means not only respecting views we agree with, but more demanding ones which clash with our convictions. The failure to take diversity seriously results in tyranny by the politically correct. We need uninhibited, robust, and wide-open debate on public issues. We must champion freedom of speech. The time to speak out against the restriction on our fundamental freedom is right now! If we don't speak out now, who will speak for us in the future? The oft-quoted warning of Niemoller is more relevant now than ever, "First they came for the Jews but I was not a Jew so I did not speak out. Then they came for me and by then there was no one left to speak for me."