

Muslim Women May Have to Remove Veils in Ontario Courtrooms

The Ontario Superior Court recently ruled that a judge may require a Muslim witness to remove her veil without unduly interfering with her section 2(a) [Charter](#) right to freedom of religion. The case of [R. v. N.S.\[1\]](#) turns on the principle that when two or more *Charter* rights come into conflict, the court must find a compromise and not uphold one right at the expense of another.

The case in question places the section 11(d) *Charter* right to a fair trial for the accused against the witness's section 2(a) freedom of religion. The Supreme Court of Canada dealt with an analogous case of two competing rights in the 1994 decision on [Dagenais v. Canadian Broadcasting Corp.\[2\]](#) In that case it was freedom of expression that had to be balanced with the right to a fair trial. The majority decision in *Dagenais* stressed that balance, rather than hierarchy, must be the goal towards which courts strive when rights come into conflict.[\[3\]](#)

In the task of balancing the rights at stake in *R. v. N.S.*, both the trial judge and the Superior Court justice found that it was appropriate to consider just how much weight to give the wearing of a veil as an element of one's religious convictions. The Supreme Court took up a similar task in 2004 in [Syndicat Northcrest v. Amselem.\[4\]](#) The Court distinguished the essential elements of religious expression protected by the *Charter* from those with a more tenuous connection to religion. In *Anselem*, the Court determined that:

religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.[\[5\]](#)

Thus a claim of religious expression need not be supported by reference to the institutional authority of church, temple or mosque. Rather, it is the sincerity of the belief in question that courts should look at in determining whether the expression of that belief is protected by section 2(a) of the *Charter*.

In *R. v. N.S.*, the applicant's religious convictions concerning the wearing of a veil were brought into question by the fact that she had previously posed for a driver's license photo without a veil.[\[6\]](#) This evidence was enough to persuade the court

that the wearing of a veil was more a matter of comfort to the applicant than an expression of religious conviction. Thus the Ontario Superior Court refused the applicant's request to testify with her face veiled.

[1] 2009 ONSC 21203 (CanLII). (*R. v. N.S.*)

[2] [1994] 3 S.C.R. 835, 1994 CanLII 39 (S.C.C.). (*Dagenais*)

[3] *Ibid.* at 841.

[4] 2004 SCC 47. (*Anselem*)

[5] *Ibid.* at para. 39.

[6] *Supra* note 1 at para. 33.