

Updated - Unveiling Religious Freedom: The Niqab at the Citizenship Ceremony

This article was written by a law student for the general public.

Introduction

The final step to become a Canadian citizen is the oath of citizenship. Citizenship and Immigration Canada requires citizenship candidates to remove full or partial face coverings while taking the oath.

Zunera Ishaq is devout Muslim who wears a niqab.[\[1\]](#) She was granted citizenship as of January 2, 2014, but has not yet taken the oath. Ms. Ishaq is willing to remove her veil for identification purposes before the ceremony. However, she refuses to remove her veil when she takes the oath.

Ms. Ishaq argues that this policy interferes with her right to freedom of religion, which is protected by section 2(a) of the *Canadian Charter of Rights and Freedoms*. She challenged the policy in the Federal Court, and won. The federal government appealed the decision to the Federal Court of Appeal, and lost for a second time. At the time of writing, the federal government plans to appeal the decision to the Supreme Court of Canada. Therefore, it has requested a stay of the Federal Court of Appeal decision.

Section 2(a): Freedom of Conscience and Religion

The *Charter of Rights and Freedoms* is part of Canada's Constitution, and protects some of our basic human rights and freedoms. Freedom of conscience and religion protects the right to hold, declare, and openly express one's beliefs.[\[2\]](#) It also guarantees that no one can be forced to follow another religion, or act contrary to one's beliefs.[\[3\]](#) Religious beliefs and expressions do not need to be recognized by other members of the faith to receive protection.

Freedom of religion is violated when: (1) a person holds a sincere belief associated with religion and (2) a law interferes with that person's ability to act according to this belief.[\[4\]](#) The interference must be more than trivial, and will depend on the context.[\[5\]](#)

Like all other *Charter* rights, freedom of religion is not absolute. It can be limited for "public safety, order, health, or morals or the fundamental rights and freedoms of others."[\[6\]](#) For example, the government can restrict religious activities that harm others.[\[7\]](#) A court must balance a person's right to religious expression with other *Charter* rights and government objectives.

Previous Case on the Niqab

In 2012, the Supreme Court of Canada decided whether a woman could testify as a witness in a criminal trial while wearing the niqab.^[8] The Court determined that a witness who wishes to wear the niqab for sincere religious reasons would only be required to remove it if:

- (1) It is necessary to prevent a serious risk to the fairness of the trial, which is protected by section 11(d) of the *Charter*
- (2) The beneficial effects of removing the niqab outweigh the negative effects of doing so^[9]

In other words, the Court decided that a woman could wear the niqab as long as doing so would not harm another *Charter* right or be outweighed by other negative effects.

The Niqab at the Citizenship Ceremony

Ms. Ishaq has a sincere belief that her faith requires her to wear the niqab. Forcing her to remove her niqab would interfere with this very important belief. Ms. Ishaq also risks losing her citizenship status if she chooses not to remove her veil. Therefore, the policy likely interferes with Ms. Ishaq's beliefs in a crucial way.

The government will likely have a difficult time justifying its position. Prime Minister Stephen Harper has stated in the House of Commons that the practice of wearing the niqab is "rooted in a culture that is anti-women," which is contrary to Canadian values.^[10] However, there is no doubt that Ms. Ishaq sincerely believes it is her duty to wear the niqab, and that she is not being forced to do so.

Finally, it is not likely that wearing a niqab while taking the oath violates other *Charter* rights. Ms. Ishaq has already agreed to remove her niqab for identification and security purposes at the ceremony. It's hard to see any reason beyond needing identification for reasons of fraud or security that should prevent Ms. Ishaq from wearing the niqab.

The Federal Court of Appeal Decision

Interestingly, the Federal Court of Appeal did not deal with Ms. Ishaq's complaint by referring to the *Charter*. The Federal Court of Appeal made its decision on administrative grounds. The *Citizenship Act* gives the Governor in Council the authority to make regulations regarding the taking of the oath of citizenship.^[11] However, the policy of uncovering one's face while taking the oath was made into a mandatory policy change without being adopted by the Governor in Council.^[12] Therefore, the Court dismissed the government's appeal.

Conclusion

The Federal Court of Appeal made its decision quickly as it wanted to leave open the possibility that Ms. Ishaq could acquire her citizenship in time for her to vote in the

upcoming election.^[13] However, the federal government plans to appeal this decision to the Supreme Court, and has therefore applied for a stay of the Court of Appeal decision. If the stay is granted, Ms. Ishaq will not be allowed to wear her niqab while taking the citizenship oath.

If the Supreme Court grants leave to appeal the Court of Appeal decision, it is likely that the government will lose its argument that the niqab cannot be worn while taking the citizenship vote for a third time.

Religious freedom is at the heart of Canadian values, and the courts have ruled thus far that religious freedom cannot be limited because of the government's views about a particular religious belief or practice. The *Charter* exists to protect Canadian citizens against government action that violates their rights and freedoms. The Ishaq case is a classic case in this regard.

[1] A niqab is a veil worn on the head that only reveals the eyes. A description of the different head gear can be seen here: <<http://www.bbc.co.uk/newsround/24118241>>

[2] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 69, 382 DLR (4th) 385

[3] *Ibid*

[4] *Whatcott v Saskatchewan Human Rights Tribunal*, 2013 SCC 11 at para 155

[5] *Syndicat Northcrest c Amselem*, 2004 SCC 47 at para 59

[6] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, [1985] SCJ 17, at para 95

[7] *Young v Young*, [1993] SCJ 112, 108 DLR (4th) 193, at para 225, McLachlin J

[8] See *R v S(N)*, 2012 SCC 72, [2012] 3 SCR 726

[9] *Ibid* at para 3

[10] Steven Chase, "Niqabs 'rooted in a culture that is anti-women,' Harper says", *Globe and Mail* (10 March 2015) <<http://www.theglobeandmail.com/news/politics/niqabs-rooted-in-a-culture-that-is-anti-women-harper-says/article23395242/>>

[11] *Citizenship Act*, RSA 1985, c C-29, para 27(1)(h)

[12] *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 194 at para 3

[13] *Ibid* at para 5