

Request for proposals for papers on creed-based human rights and freedom of religion

The **Ontario Human Rights Commission** (OHRC) will host a legal workshop on rights relating to religious belief and practice at the end of March 2012 in partnership with York University's Centre for Law and Public Policy.

The primary purpose of the legal workshop is to generate expert legal and academic research and dialogue to help inform the OHRC's update of its (1996) [Policy on creed and the accommodation of religious observances](#).

Short papers (5000 words maximum) will be presented and discussed with an audience of human rights lawyers and practitioners, academics, and community members. While the papers will provide a focus for the workshop, the primary goal is to generate productive dialogue and encounters between diverse perspectives. Papers may also be published on the OHRC website and in journal format, potentially in longer form.

The OHRC is currently accepting 1-3 page proposals for papers for this workshop. Proposals should address at least one of the six themes and related questions listed below. Papers may be both descriptive of the current law, and may also include a critique of the current law suggestive of future recommended changes to the law's approach to creed and religion. Moreover, while the focus of the workshop is on the Ontario human rights context, as shaped by the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*, comparative provincial and international reflections and analyses on the themes listed below are also welcome. Potential paper themes and questions include the following:

1. Human Rights and the protection of religious belief and practice in a secular society

- What definitions and interpretations of secularism arise in the law on rights extending to religion and creed?

2. Definition of creed and religion

- How is creed and/or religion defined in Canadian law? How is creed and/or religion defined in similar international jurisdictions?
- Applying principles of statutory interpretation and based on Canadian case law, is creed synonymous with religion? Should it be? What distinctions, if any, may be drawn?
- What protection is given, if any, to political and personal beliefs and opinions of a secular nature in the law relating to religious rights (including legislation and its interpretation in other jurisdictions)?
- Section 2(a) of the *Charter* encompasses not only freedom of religion but also freedom of conscience, as does international human rights law. How has conscience been defined in the law? Should interpretations of conscience be incorporated into, or influence interpretations of, the definition of creed under the *Code*?

How have 'non-traditional' religions been approached in the law, e.g. Wicca, Satanism, spiritually infused cultural practices, self-professed belief systems?

How have Aboriginal spiritual practices been defined and approached in provincial, national, and international law dealing with creed and religion?

3. Relationship between Ontario *Human Rights Code* and *Charter of Rights and Freedoms*

- What is the relationship between s. 2(a) of the *Charter* (freedom of conscience and religion) and religion/creed as an equality right under s. 15 of the *Charter* or under human rights codes?
- Are decision-makers conflating these rights? Is this appropriate? If so, why? If not, how should they be given independent legal meaning and how should each type of claim be analyzed?



- What is the relationship between the “reasonable accommodation” approach taken in human rights law and the *Charter’s* section 1 (“minimal impairment”) test for assessing appropriate accommodation? How do these approaches differ, overlap and/or potentially conflict with one another?

4. Human rights protections and limits relating to religious belief and practice

- What beliefs and practices connect, or fail to connect, to creed or religion in the case law on creed and religion, e.g. spiritually infused cultural practices, Aboriginal spirituality and tradition, community activities, practices that contravene the law etc.?
- How has the law defined a “trivial” and “insubstantial” interference with a creed right? How has this been applied in specific cases? From whose perspective is this understood? Is this requirement unique to creed rights and, if so, what is the justification for this? What are the risks of this approach (e.g. could/should this be used to determine accommodation rights under human rights codes)?
- How has the right to be free from religious imposition been dealt with in the law? What scope, if any, is given for religious practice in employment, services, and public space more generally and when has this been found to impair other rights?
- What trends and issues are there, if any, in how the law has been interpreted in the area of statutory defences and exemptions from the general prohibition of discrimination on the ground of creed? (For example, s. 18 of the *Code* which allows certain religious organizations to restrict membership on the basis of religion; s. 24 which, in the employment context, allows certain religious organizations to give preference based on religion as long as the qualification is a reasonable and *bona fide* one because of the nature of the employment).

5. Duty to accommodate religious belief and practice

- What religious beliefs and practices trigger, or fail to trigger, the duty to accommodate (particularly interested in challenging examples from employment and education services, comparatively, across Canada)?
- How have different Canadian jurisdictions dealt with the most common creed accommodation issues, such as accommodating prayer times, Sabbaths and religious holy days, religious attire and the wearing of religious objects, concerns relating to photos, biometrics, and healthcare practice including blood transfusions, abortion etc.
- How have courts and tribunals defined ‘undue hardship’ in the context of religious or creed accommodation? Is the obligation to accommodate up to the point of undue hardship defined differently in the context of creed/religion compared to other grounds like disability?

6. Intersection of creed and other grounds

- How has the law been applied and interpreted in cases involving the intersection of creed and other *Code* grounds, such as race or gender?

RFP Submission Process

Please include the following details within your proposal:

- Name, title and contact information (including phone number and email)
- Brief bio explaining your interest and background in dealing with legal issues relating to creed human rights
- Outline of proposed topic
- RFP theme(s) and question(s) to be engaged in your paper
- Relevance to Ontario *Human Rights Code*, *Charter of Rights and Freedoms*, and/or human rights case law
- Research methods informing the production of your paper, including potential sources of information
- Timeline for completion



Papers will be selected on the basis of:

- engagement of Workshop themes and questions listed above
- relevance to human rights issues relating to creed/religion within the context of the Ontario *Human Rights Code* and/or *Charter of Rights and Freedoms*
- quality of analysis
- clarity and coherence of form and structure
- background and experience in dealing with creed human rights issues in the context of the law

Papers making the final selection for presentation at the Legal Workshop will be presented in panel format, receiving comments from selected respondents, and questions from audience members. Please note that not all proposals accepted will necessarily be presented at the Legal Workshop.

The deadline for submission of proposals is January 1, 2012.

Selected proposals will be confirmed by January 23, 2012. The deadline for submission of full papers will be March 1, 2012.

Please email proposals to:

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