



# Courting the Definition: Religion



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## Purpose

This research project considers the issue of defining religion in Canadian society, specifically its legal spheres. In the past ten years, the definition of religion has been formed with uncertainty and indecisiveness as a result of the ambiguity of the term itself. In Canada's multicultural society, defining religion can revolve on culture and heritage. It is this research project's purpose to attempt to uncover how courts, legal bodies and representatives along with citizens (plaintiffs) are defining their religious identities.

## Methodology

Individual court cases at the provincial and federal levels were investigated. This involved examining each court case from the past ten years inclusively (2005-2015) which had a concern with religion, its definition, and translation into legal discourse. Specific words searched for within the individual cases amounted to: Religion, Religious, Heritage, Culture/Cultural, and Creed. When a definition of religion was provided or something along the same lines with equal significance, it was documented and filed for further research.

## The Religion and Diversity Project

The seven year project seeks to address the following question: **“What are the contours of religious diversity in Canada and how can we best respond to the opportunities and challenges presented by religious diversity in ways that promote a just and peaceful society?”** Specifically for this sub-research project, it falls under the enquiry of “How is religious expression defined and delimited in law and public policy?”



“Religious beliefs, by their very nature, are fluid and rarely static” and thus the definition of religion needs to adapt and conform to this fluidity.

- Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC 47 – paragraph 53

## Religion as Culture

In Canadian court cases, religion is reference as culture the majority of the time. It appears that courts perceive religion as taking up a major space in citizens' daily lives, resulting in religion being a major pillar in their culture and consequently dictating a main part of their lives. This is especially true in cases involving persons arriving from Eastern countries (though not exclusive to them alone). Thus, the distinction between religion and culture becomes blurred and the terms have become interchangeable in many legal cases.

## Religion as Heritage

Religion is often associated with one's heritage in legal discourse mainly when dealing with immigrants to Canada. Roughly 80% of the time a Muslim or Sikh is an applicant in a court case, their race and place of origin are mentioned together and are represented as interchangeable affiliations. (i.e. “his race, colour, ancestry, religion and place of origin” when referring to an Arab Muslim). This is also a demonstration of a lack of protection as a result of the association, taking away from the exclusive right of Freedom of Religion.

## Conclusion

Ultimately, disagreements and doubt present themselves in religion's definition by way of scope and determining what actually constitutes religion and if it stems from one's culture and/or heritage. Currently, there has been a reluctance to give a forthright, deterministic definition of religion in individual court cases researched thus far. Religion is a main pillar in Canada's multicultural society and numerous legal issues and cases are made upon this element of Canadian life. Presently, the definition of religion used in court cases largely stems from *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47. The problem with the use of this definition is that it is presented in a subjective and personal form instead of the objective notion of religion provided. Thus far we can gather the conclusion that a high majority of court cases that deal with religion are apprehensive in providing a definition and when required, make explicit reference to the definition of sincere belief in *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47.

## Acknowledgements

I would like to thank Dr. Lori Beaman for providing me with this opportunity, by taking on the position as my Supervisor, along with the University of Ottawa. I also would like to thank Dr. Heather Shipley for being my mentor and guiding hand throughout this process.