

Zunera Ishaq Niqab Citizenship Oath Case

Canada (Citizenship and Immigration) v. Ishaq FCC (2015)



ANALYSIS

Charter of Rights and the niqab collide in views on 'Canadian values'

It seems Canadians love the Charter and dislike the niqab -- which makes acting on those feelings problematic

By James Fitz-Morris, [CBC News](#) Posted: Oct 04, 2015

More fuel for those who stereotype Canadians as a dry, boring people.

Statistics Canada said last week that more than 90 per cent of us, when asked, identified the Charter of Rights and Freedoms as an "important symbol of Canadian identity."

Hockey is down in fifth place on [Statistics Canada's list of national symbols](#) — although still chosen by 77 per cent of respondents.

The high value Canadians continue to place on the Charter is interesting, especially when you consider how Charter rights have become a surprising, and apparently game-changing, issue in this election campaign.

According to the government's [own polling](#), 83 per cent of Canadians support forcing a Muslim woman to remove her niqab to take part in the oath of citizenship.

People are, of course, entitled to hold opinions and to express them.

Section 2(b) of the Charter makes sure of that.

The protections of the Charter don't extend to petty acts of [vandalism](#), nor to the promotion of hate against groups of people based on their racial or religious background.

Nor does it cover [attacking](#) a pregnant woman on the street for, apparently, wearing a hijab.

Far from being an isolated incident, Statistics Canada [reported](#) earlier this year that "Muslim populations had the highest percentage of hate crime victims who were female (47 per cent)."

The Conservative government announced the niqab ban in 2011 and brought in a regulation to enforce it.

Twice now, [the courts](#) have pointed out the regulation doesn't conform with the existing law and struck it down.



It's a point the Conservatives seem to have already conceded as they introduced new legislation on the very last day of the House of Commons to fill the hole.

Nonetheless, they are pursuing their challenge to the Supreme Court.

No court has yet ruled, or even heard, arguments on the constitutionality of the ban.

What the Charter says

There is good reason to believe it infringes on a number of aspects of Section 2 of the Charter — including the right to religion, expression and association — as well as Section 15, which guarantees no one is to be singled out based on religion or gender.

Both of those sections, by the way, guarantee fundamental rights to "everyone," meaning all people residing in Canada whether or not you have become a full citizen yet.

Section 1, of course, allows for "reasonable limits" that can be "demonstrably justified."

If the government's new legislation is passed, there can be little doubt it will be challenged.

Courts will be asked if it is "reasonable" to deny a woman citizenship because — after having removed her veil to prove her identity — she would like to replace it for a public ceremony.

Citizenship and Immigration Canada acknowledges that, in the nearly four years the ban has been in place, two women have chosen not to go through with the ceremony and receive citizenship as a result.

So, to show the ban is "demonstrably justified," the courts will likely have to look at the consequences of decades of letting about one veiled woman take the citizenship oath every other year.

On Thursday, Conservative candidate Pierre Poilievre was the latest from his party in this election campaign to add his voice to support the niqab ban.

"We are not going to succumb to political correctness in order to accommodate a practice that is not in line with Canadian values," he told reporters.

It seems like an odd way of looking at "political correctness" though.

The minuscule number of women affected by this are asking to do what they do in their daily lives and, until four years ago, were allowed to do at citizenship ceremonies.

So, is it those who would defend their right to do so at a citizenship ceremony who are suffering from political correctness, or those whose sense of Canadian values are offended by what's happening at a ceremony the vast majority of Canadians have never attended?

That may ultimately be up to the Supreme Court to decide.

<http://www.cbc.ca/news/politics/canada-election-2015-charter-and-niqab-analysis-1.3254167> SOURCE