

To Pray or Not to Pray, is that the Question?: How the Increasing Desire for State Neutrality Affects Prayer Before Council Meetings in Canada

Lauren Forbes

Master's Student

University of Ottawa

lforboog@uottawa.ca

ABSTRACT

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Historically, in western liberal democratic states, Christian prayers have often been recited at the opening of various public institutions' meetings. However, the recitation of such prayers is now being questioned on the grounds of being too particular in promoting specific religious denominations; of promoting a particular religion over another; and even of promoting religion in states where no longer everyone subscribes to one. Many such disputes spring from the growing desire for equality and neutrality in increasingly diverse and secular societies. This paper focuses on the recent legal disputes in Canada, concerning the recitation of prayers before the commencement of primarily council meetings. It examines Canadian tenets of neutrality and consequently secularism, questioning what each looks like (or could look like) and whether they require public spaces to be religion-free in order to hold true, or whether they can be inclusive to both religious and worldviews of non-belief in these public spaces (i.e. council meetings in this context). In this paper the relevant legal cases are analyzed and current solutions to the disputes are discussed. Concerns are raised and finally, solutions that may be more neutral and that equally do justice to both freedom of religion and freedom of conscience are considered.

Introduction

As Canada's population becomes increasingly diverse, its pursuit and/or maintenance of neutrality regarding freedom of conscience and religion also becomes more complicated. This is particularly evident in recent legal cases dealing with disputes over whether prayers should be recited before public city council meetings. In these cases non-believers¹ and/or secularists demand that their views be treated equally with religious views, thereby throwing into question the neutrality of secularism (Moon, 2008). Historically, western democratic states have often opened various public meetings with a prayer. Such prayers, however, are now being questioned on three grounds: 1. as being too particular by promoting a specific denomination of a religion; 2. as promoting a particular religion over another and; 3. as promoting religion in states where everyone no longer subscribes to one. In order to investigate how neutrality and secularism play into this debate in the Canadian context this paper is divided into four parts. The first section examines whether neutrality demands a religion-free context in Canada and argues that it does not. In agreement with Ian Benson's 1999-2000 article and Richard Moon's 2008 piece, this paper also questions a neutrality and by extension secularism in which there is no room for religion in the public sphere and argues that such interpretations of neutrality and secularism are in themselves a position that can be seen as catering to non-believers and discriminating against the religious (their argument is explained in part two of this paper). It argues that in the Canadian context neutrality and secularism are not threatened by the presence of religion in the public sphere (in this case in local council meeting contexts) and that religious worldviews (and those of non-belief) should perhaps even be encouraged into the public sphere. The second section asks whether neutrality, in terms of the protection of freedom of conscience and religion under the *Canadian Charter of Rights and Freedoms*, can extend itself to non-belief and determines that it can in the context of the cases disputing the prayers before council meetings. The third section examines these themes in relation to two of the most recent legal cases dealing with the recitation of prayers before town council meetings. It outlines some concerns that should be raised and the efforts that have been made to resolve the disputes, but illustrates that the issue remains largely unresolved in any uniform manner. The final section explores some of the more innovative potential resolutions to these disputes that could be adopted that are consistent with Canada's understandings of neutrality and secularism.

Following from scholarship by Ian Benson (1999-2000) and Richard Moon (2008), this paper, by focusing on Canadian legal cases and government documents, ultimately questions what neutrality and consequently secularism in Canada look like (or could look like) and how such principles could play out on the ground in the context of resolving disputes over the recitation of prayers before council meetings. It does this through a close reading and analysis of all of the Canadian cases dealing with the recitation of

prayer before council meetings. This paper's method draws on scholarship by Mary Jane Mossman (1987), Carol Smart (1989), Rebecca Johnson (2002) and Lori Beaman (2008) who employ a sociological approach to the analysis of law. Through the use of their scholarship this paper focuses particularly on how religion and non-belief are discussed, conceptualized and dealt with in the Canadian legal framework in cases (both from courts and tribunals) dealing with the recitation of prayers before council meetings, paying particular attention to the most recent cases, which represent the most current legal positions on the matter². While many of the examined cases originate in Quebec they nevertheless make up part of Canadian jurisprudence, which is relevant to the rest of Canada. The cases furthermore deal with issues that are likely to arise (and have already arisen in many instances) in other provinces whose religious diversity will only continue to grow and who will likely encounter similar questions regarding neutrality and secularism³. Given that these cases are some of the forerunners on matters of neutrality and secularism in Canada they are relevant in terms of setting legal precedence on how the state deals with similar and related issues on these matters in the future.

Part I – Encompassing Religion in Neutrality

In a recent research paper by Roland Pierik and Wibren Van der Burg entitled “What is Neutrality” (2011) the authors examine different interpretations of neutrality that can be pursued by liberal governments. Their paper focuses mainly on two types of neutrality, exclusive and inclusive. The former demands an approach towards society that ignores all distinctions between citizens and attempts to create a public sphere free of differences, including religion. The latter, rather than trying to hide diversity, works to include it on a number of levels (2011, p. 3-6). The authors summarize the inclusive neutrality position by stating that, “[i]nclusive neutrality tries to take account of culture and religion in the public sphere in an evenhanded way and seeks to include all relevant views, including controversial worldviews, in the decision-making process” (2011, p. 6). Pierik and Van der Burg give the example of France's neutrality as being more exclusive and Canada's as more inclusive. The authors present arguments for and against each type of neutrality and ultimately conclude that the best interpretation of neutrality depends much on circumstance and countries should not be wholly wedded to one approach (2011, p. 3-21). They advocate however, that, “[a] pragmatic plural approach provides more fruitful solutions than a narrow-minded, either-or choice” (2011, p. 21).

Being a state that practices inclusive neutrality more often than not is a designation that others have given Canada but also a designation that the country believes of itself. According to research conducted through the Library of Parliament, “[t]he Canadian approach to religion has been to promote multiculturalism by celebrating the expression of various religions while recognizing the supremacy of none – the government

plays a role of neutral accommodation” (Library of Parliament 2004, p. 5). The Library of Parliament also states that this “neutral accommodation” sometimes even takes place in the public sphere (2004, p. 7), unlike in countries such as France. The Bouchard-Taylor Report, which dealt with reasonable accommodation in Quebec, viewed Quebec's neutrality in a similar fashion. It espoused what they call “open secularism” in regard to religion, which allows individuals – including state officials – to make their religion visible in the public sphere (Bouchard-Taylor Report 2008, p. 148, 152). Furthermore, in Quebec it is now also mandatory for elementary to high school students to take a religion and ethics course which exposes them to a variety of religions. On February 17, 2012 the Supreme Court of Canada extended this decision to include even Catholic school students in Quebec (See *S.L. v. Commission scolaire des Chênes*, (2012)). A form of “inclusive neutrality” is also declared in legal jurisprudence such as *R. v. Big M Drug Mart Ltd.*, (1985) where it is stated that, “[a] truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct” (1985, para. 94). The Supreme Court has also made decisions that uphold these principles in cases such as *Syndicat Northcrest v. Amselem* (2004), which allowed the Jewish population in Montreal to build *succahs* on their apartment balconies and in *Grant v. Canada* (1995), which allowed turbans to be worn by Sikh members of the Royal Canadian Mounted Police. The premise in these cases is that all Canadians have equal religious citizenship which, according to Bruce Ryder (2008, p. 87), entails that “society must accommodate individuals' freedom to hold and express religious beliefs and engage in religious practices unless doing so would interfere with the rights of others or with compelling social interests” (see also 91-92). These views reveal where Canada is, thinks it is and would like to go regarding inclusive neutrality. It also supports the idea that religion can not only be present in public spaces in the Canadian context but is sometimes even encouraged or at least aided in having such a presence.

Brief Note on Secularism

One cannot discuss neutrality without also discussing secularism because the equal promotion of religious beliefs in the public sphere can be seen as a challenge to state secularism. While Canada does not have an officially secular state, it does hold equality and freedom of religion as important tenets (Library of Parliament 2004). These tenets may lead one to view Canada as secular insofar as a particular religion cannot be espoused by the state nor take precedence over another (see Maclure and Taylor 2011, p. 22-23). The type of secularism that Canada could be said to be observing is what Ahmet Kuru describes as “passive secularism” where the “state play[s] a ‘passive’ role in avoiding the establishment of any religions, [and] allows for the public visibility of religion” and can be seen as “a pragmatic political principle that tries to maintain state neutrality toward various religions” (Kuru 2007, p. 571). He distinguishes such secularism from “assertive secularism” where “the state excludes religion from the public sphere and plays an

‘assertive’ role as the agent of a social engineering project that confines religion to the private domain” such as the case of France or Turkey (Kuru 2007, p. 571, 572). While it is clear that Canada can be seen as promoting a form of “passive secularism”, where it falls on further distinction seems yet unclear. Kuru makes sub distinction to “passive secularists” of being “accommodationists” or “separationists” where the former “regard close state-religion interactions as compatible with secularism, since that does not mean an establishment of a particular religion” and the latter who would rather see a strict separation between the two (Kuru 2007, p. 580). The Bouchard-Taylor Report would describe Canadian secularism (or at least Quebec’s) as “open secularism” which “defends a model centered on the protection of freedom of conscience and religion and a more flexible conception of State neutrality” (Bouchard-Taylor Report 2008, p. 137). The report distinguishes this from “rigid” secularism, which “allows for greater restriction of the free exercise of religion in the name of a certain interpretation of State neutrality and the separation of political and religious powers” (Bouchard-Taylor Report 2008, p. 137). The passive accommodationist secularist / open secularism position, so long as all religions and positions of non-belief are (or can be) represented equally, indicates that indeed there need not be a religion-free space for secularism to exist. Indications that in Canada secularism can be seen as allowing for religion to be present in the public sphere as long as no religious or position of non-belief takes precedence over any other are potentially indicated in some legal cases such as *Chamberlain v. Surrey School District No. 36* (2002), where it is stated by Chief Justice McLachlin in relation to secularism in schools, that “[t]he requirement of secularism means that the school board must consider the interests of all its constituents and not permit itself to act as the proxy of a particular religious view held by some members of the community” (para. 27). While this case does not make explicit reference to the views of the non-believers of the community it does state that, “the school board must consider the interests of **all** its constituents” (2002, para. 27, emphasis added), which could be understood to include them. Similar, yet more explicit statements are also made in *Quebec v. Laval* (2006), which will be discussed in more detail below.

Part II – Non-Belief and Neutrality

In Canada, can neutrality in terms of the protection of freedom of conscience and religion extend itself to non-belief? According to Ryder in a 2005 article, the answer to whether non-belief is protected under s. 2(a) of the *Canadian Charter of Rights and Freedoms*⁴ is no; the state need not be neutral towards those who do not believe. “Canadian jurisprudence” he says, “does not impose on the state a duty of neutrality about religion. Rather, the Canadian position appears to be that the state can aid religion so long as it does so in a manner that respects the principle of neutrality or even-handedness *between* religions” (Ryder 2005, p. 174-5, emphasis added). Such an understanding of neutrality as being *between* religions was evident in the first court case that dealt with the recitation of prayers before town council meetings. In

Freitag v. Town of Penetanguishene (1999) the Ontario Court of Appeal decided that a non-Christian man's freedom of religion was contravened by the recitation of the Lord's Prayer, which was determined to be a Christian prayer. The court suggested that "non-denominational prayer and a moment of silence, similar to the current practice of the House of Commons" could serve as a suitable alternative (para. 52). In this case the courts did not deal with what a prayer (of any kind) would mean for non-believers. A lack of precedence regarding neutrality's scope does not, however, inhibit neutrality from being able to adequately deal with non-belief in the future. In fact, according to Richard Moon as little as three years ago, there was still indecisiveness on behalf of the courts as to whether they would protect non-belief in addition to belief (Moon 2008, 2003). This could be, at least partly, because of the court case *Allen v. Renfrew (Corporation of the County)* (2004) where Robert Allen, the applicant, who did not believe in God, challenged the recitation of a prayer (which includes the mentioning of God) before the commencement of his town council's meetings. While the prayer was changed to be non-denominational and perhaps even acceptable to many non-Christian groups, Allen continued his case but was eventually found not to have his right to freedom of conscience and religion infringed upon in a substantial way and thus lost his case under s. 1 of the *Canadian Charter of Rights and Freedoms*⁵ (para. 27). This case seemed to say that the courts would not deal with non-belief and belief in completely neutral or equal ways. The court in the two most recent cases, however, seems willing to go further, showing that non-belief is equally able to receive protection as religion is. In *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Laval (Ville)* (2006), a woman who is a "non-believer" challenged her city council on its recitation of a prayer (with Christian origins) at the beginning of its city council meetings. Legal adjudicators sided with the women (and banned the prayer) declaring that her freedom of conscience and religion had been sufficiently infringed upon, citing the *Freitag* (1999) decision on a number of occasions and ignoring *Allen v. Renfrew* (2004). In the second of these cases, *Simoneau c. Tremblay* (2011), the court decided that Mr. Tremblay, the mayor of the town of Saguenay (Québec), must cease the recitation of the prayer which opens Saguenay council meetings and that Christian religious symbols must be removed from public meeting rooms in order to appease the appellant Mr. Simoneau, who claims that as a man of non-belief his rights to freedom of conscience and religion were infringed upon. Coming from the Quebec Human Rights Tribunal⁶ these latest decisions, which address the infringement of non-believer's freedom of conscience and religion more directly, actually complicate the state's position regarding neutrality in another manner. The predicament that has now arisen concerning neutrality is summed up eloquently in a number of questions posed by Richard Moon in a 2008 piece where he asks⁷,

if a Christian prayer excludes non-Christians, does not an ecumenical prayer, which appeals explicitly to a divine creator, in the same way exclude non-religious individuals – agnostics or

atheists – or the followers of polytheistic or non-theistic belief system? Is the state not favouring the practices of those who believe in a divine creator over those who do not? But if a court were to decide that the ecumenical prayer was objectionable because it excluded non-believers, would it then be favouring the practices or beliefs of agnostics and atheists over those of religious believers? (230)

The issue with neutrality here is similarly apparent in secularism where Moon also states that it is no longer the case that secularism is necessarily considered to be neutral as it once had been when most of Canadian society subscribed to a particular religious tradition (2008, 230). He comments:

If secularism or agnosticism constitutes a position, worldview, or cultural identity equivalent to religious adherence, then its proponents may feel excluded or marginalized when the state supports even the most ecumenical religious practices. But by the same token, the complete removal of religion from the public sphere may be experienced by religious adherents as the exclusion of their worldview and the affirmation of a non-religious or secular perspective, the culture or identity of one segment of the community. Secularism, in this context, looks less and less like a neutral or common ground that stands outside religious controversy and more like a particular worldview that dominates the public sphere because of the political power of its adherents. (Moon 231)⁸

It appears that the state could be compromising its neutrality and secularity by siding with either the religious or the non-believers in legal disputes regarding the recitation of prayers before council meetings; not to mention the challenge it poses to equality.

Part III – Study of the Cases

The two most recent cases from the Quebec Human Rights Tribunal will now be scrutinized more closely as they represent the most current legal position in Canada on the subject and bring to the forefront the latest struggles in these types of disputes. In *Québec v. Laval* (2006, para. 154) the Tribunal, in determining that freedom of conscience and freedom of religion are equal, appears to be using an inclusive understanding of neutrality which results in taking into account the view of a minority group and allowing such a view to impact the public sphere (by banning the prayer). The Tribunal also comments on neutrality. It states on two occasions that, “the state and the administration have an obligation of neutrality, that is, *an obligation not to give preference to or promote one religion over another, or to promote religious convictions over atheistic or agnostic convictions*” (2006, para. 150, emphasis added,, similar statement

made at para. 184). What seem to be inclusive statements to ensure equality however oddly leave out whether equality would be compromised if non-belief were promoted over belief. In fact, the outcome of the case results in exactly this situation where non-belief seems to be promoted over belief. Such an outcome is especially puzzling given the Tribunal's citation of scholar José Woehrling where the Tribunal commented that,

Professor José Woehrling pointed out ... that the same neutrality is incumbent on the state between individuals with religious convictions and those who do not have any, since section 2(a) of the Canadian Charter equally protects freedom of religion and freedom of conscience. As long as the state [TRANSLATION] “... does not give preference to or disfavour religious convictions over atheist or agnostic convictions”, then neutrality will subsist. (2006, para. 186, emphasis added)

The Tribunal's earlier statements seems to be contradicted by the use of the Woehrling citation wherein he states that neither religion nor non-belief should take precedence in order to maintain neutrality. Later in the case, however, the Tribunal does state that the

City Council is the elected proxy of the municipal community, which is usually composed of various religious communities and non-believers. To respect its obligation of neutrality, City Council must take into consideration everyone's interests, even a minority viewpoint in its midst. (2006, para. 198)

While again alluding to the need to treat the perspectives of the religious and non-believers more equally, the Tribunal falls short of providing equal recognition to both in its decision. The decision, which takes an exclusive understanding of neutrality by siding with the non-believers in banning the recitation of the prayer, does not reflect the more inclusive statements made by the Tribunal. In all of the cases, up to and including *Quebec v. Laval* (2006), the language used in them and their outcomes indicate that the legal system was expanding its interpretation of neutrality to be more inclusive in relation to these types of disputes. However the Tribunal's decision also resulted in placing neutrality in the precarious position where in order for it to be maintained the legal adjudicators were not really able to get rid of the prayer but neither were they able to keep it.

The most recent case, *Simoneau c. Tremblay* (2011), on the other hand, varies from *Quebec v. Laval* (2006) in that it indicates that legal adjudicators may now be moving to a more exclusive understanding of neutrality in relation to these disputes. *Simoneau c. Tremblay* (2011) contains fewer statements that refer to or demonstrate an inclusive understanding of neutrality than *Québec v. Laval* (2006) and the statements it

does use are not as supportive of it as they are often more general or vague. Examples of this are where the Tribunal states that “the duty of religious neutrality ... guarantees the equality of all” and where it describes Mr. Simoneau's “right to the full and equal exercise of his convictions as a non-believer” (paras. 269 and 270). In *Simoneau c. Tremblay* (2011), as in *Québec v. Laval* (2006), the Tribunal also at times leaves out non-believers, for example when stating that “Ville de Saguenay and the mayor favour one religion to the detriment of another” and “[t]he State’s decision to protect and prefer a particular religion or particular beliefs creates, for all others cohabiting in a society, a destructive inequality of freedom of conscience and religion” (paras. 250 (see also 269, 301) and 306, emphasis added). Here, the Tribunal is not directly referring to non-believers and while conceptually they can be included, its terminology can also be understood as only encompassing different religious traditions. With fewer definitive comments regarding inclusive neutrality and only direct reference to equality between religions it appears that the Tribunal is approaching a less inclusive understanding of neutrality in this case when compared to *Quebec v. Laval* (2006).

A final point regarding these two tribunal cases is related to their use of language regarding the position of the minority group when the majority recites their prayer. It was determined in *Big M* that “whatever else freedom of conscience and religion may mean, it must at the very least mean this: government may not coerce individuals to affirm a specific religious belief or to manifest a specific religious practice for a sectarian purpose” (1985, para. 123). Since its establishment, this principle has been interpreted in a broad manner and the language used in the discussion in these cases is therefore noteworthy. Language in *Freitag*, has the court stating that in this instance, “[s]omeone who chooses to object to government action which is inclusive of the majority”, namely choosing not to participate in the recitation of the prayer before council meetings, “forces the religious minority to conform or to accept exclusion” (1999, para. 36, emphasis added). While the position of the minority religious group in this case describes them as being excluded, language surrounding the minority's position in subsequent cases has been significantly stronger. For instance, that one “is entitled not to be forced to act contrary to her beliefs and conscience” as stated in *Quebec v. Laval* (2006, para. 150, emphasis added) and that “the use of public power to display, in fact convey, a particular faith imposes religious values, beliefs and practices on people who do not share them” as used in *Simoneau c. Tremblay* (2011, para. 250, emphasis added) and again in the latter case where it is stated that “his right to the full and equal exercise of his convictions as a non-believer, including the right not to be compelled to take part in a religious practice in which he does not believe and to which he does not subscribe” (2011, para. 270, emphasis added). Describing the minority groups in these cases as being excluded is one thing, however using language such as 'forced', 'imposed', and 'compelled' to make a case for a religious practice being coercive to minority groups seems to be taking a much stronger

position. Moon helps to clarify the situation by unveiling some of the meaning behind the terminology that expands the “coercion” that the court is looking for to “indirect coercion” (2008, p. 221). Moon states that,

The wrong that is the focus of freedom from religion is sometimes described by the courts as religious imposition rather than simply religious compulsion, a change in language that signals an enlargement of the scope of the wrong. The term 'imposition' is sufficiently broad or open that it may include any form of state support for religion. It may be that religion is imposed on someone even when she is not actually required to engage in a religious practice (e.g., the recite the Lord's Prayer). Whenever the state adopts or affirms particular religious symbols and practices, it may be seen as imposing religion on non-adherents, interfering with their right to live in a secular environment or to have their religion treated with equal respect. (2008, p. 221)

Such descriptions of minority groups' positions may be useful in establishing a case surrounding freedom of conscience and religion, however, some of the language is concerning. First, these minority groups (such as those, not of the Christian faith, present when the Lord's prayer is recited) while excluded, are not actually compelled or forced to participate in traditions that are not their own. It is concerning when a majority is constantly excluding the minority but it is worth noting that no one is technically forced to take up a tradition or practice against their will by being exposed to it. Additionally, in these cases, along with the language of majority religion being pushed on minority groups there are statements such as, one should not “*be subjected to a religious practice in which she does not believe*” as stated in *Quebec v. Laval* (2006, para. 150, emphasis added) and even going as far as questioning whether one should even be exposed to other traditions without their consent (*Simoneau c. Tremblay* (2011), para. 225). It is unsettling that the Tribunal seems to be implying on a number of occasions that a person should not have to tolerate seeing, hearing or even being present during a religious ceremony that is not their own. Not only is such language more in line with an exclusive interpretation of neutrality but more worrisome is where such a position could lead if carried out steadfastly in society. Exposure to other traditions is at least one way to increase understanding and foster acceptance between groups and also serves to promote or celebrate multiculturalism⁹. These are some of the very motivations behind Quebec's ethics and religious culture course¹⁰. Why should the learning that can come from the exposure to other traditions and cultures stop when one's schooling ends? Suggesting one should hide from traditions other than their own as if one fears they are doing something wrong by being respectfully present or may perhaps be accidentally converted in such instances is ludicrous and does not promote inclusivity or understanding in diverse societies such as Canada.

At this point legal bodies in Canada have not yet clarified how to reconcile neutrality and secularism with the issues surrounding the recitation of prayer before council meetings. What is certain however, is the inconsistency in their language surrounding the equal treatment of religion and non-belief in addition to some concerning comments in these cases regarding particularly how religious beliefs are viewed in the public sphere.

Part IV – Innovative Solutions

The cases that courts or tribunals have heard regarding prayer before public meetings result in the legal body typically siding with one of the groups which results in either a ban of the prayer or leaving it in place (at times in an altered form). There are however other options available to legal adjudicators which side with neither group and encompass a more inclusive interpretation of neutrality that is more in line with Canadian understandings of the term, as seen in court and tribunal cases (mentioned above), and espoused by the Canadian state through government research (see Library of Parliament research above) and in the Bouchard-Taylor Report¹¹. The hurdle appears to be a lack of imagination in creating resolutions that are more neutral and equal. There are two solutions that appear to be the most promising in terms of solving the disputes as well as being in accordance with Canada's legal values of neutrality, equality and secularism. A first solution entails promoting all religions to be included before the city council meetings. Having a prayer from each tradition occur before the commencement of each town council meeting could no doubt be a lengthy task that may still exclude non-believers who may desire no prayer and no atheist alternative to a prayer. Including all religious traditions before council meetings could therefore be pursued on a type of rotating and perhaps proportional basis (with an established minimum) and anonymous trigger to indicate different traditions to officials. Such a solution could result in each tradition, including non-believer's positions, taking turns on different days to open meetings. This way each view is represented and included in the process and the court or Tribunal need not decide between taking a stance of exclusive neutrality or unequal treatment towards non-believers in order to come to a functional decision. This position would also deal with other issues that arise in these cases such as attempting to equally do justice to the mayor of Saguenay's religious beliefs as well as those of no-belief in the *Simoneau c. Tremblay* (2011) case; negating the “indirect coercion” present towards minority religious groups or non-believers when only one group prayer is repeatedly recited (discussed in Moon 2008, p. 221); the issue of exposing one's beliefs in public (discussed in *Simoneau c. Tremblay* (2011), para. 54); and could even benefit communities by promoting equality, inclusion and acceptance through exposing those present at the meetings to a variety of beliefs (a method used by the religion and ethics course in Quebec¹²). Rotating prayers similar to this model have been considered or implemented by many town councils around the world (see for example Darwin city council in Australia (News.com.au, 2008), or the city council of Owen

Sound, Ontario, Canada (Langlois, 2011)). Rotating models however, have not been without controversy and in places where they have been instituted observers have sometimes walked out of the council meetings during the recitation of various prayers (see the case of Portsmouth city council in the United Kingdom (White, 2011)). In other instances people have strongly voiced their dislike of the practice (see the case of the Santee city council in the United States (Pearlman, 2010)).

The second potential solution to the prayer before council meeting issue is to change the prayer to a moment of silence or reflection or contemplation. This has been done as of 1976 in the National Assembly of Quebec and has more recently been instituted in Perth County in Ontario, Canada (Bouchard-Taylor Report 2008, p. 152; Free Press, 2012). While this potential resolution may be less controversial and perhaps seen as more partial to secularism, given that Canadian secularism and neutrality allow for religion to be present in the public sphere, as long as no religious position or position of non-belief takes precedence over any other (or is adopted by the state), a moment of silence is not the only option nor, I think, the best solution. While a moment of silence may indeed be an acceptable resolution, given the increasing diversity of Canadian society (and its ability to allow religion into the public sphere without challenging neutrality and secularism) serious consideration should be given to the rotating model as it may be more beneficial to society as a whole in terms of promoting equality, understanding and respect of different religious traditions in Canada. Nevertheless, both potential solutions are more demonstrative of an inclusive interpretation of neutrality than previous solutions adopted by Canadian courts and tribunals as they incorporate religious diversity into the beginning of town council meetings (the public sphere).

Conclusion

Neutrality may be impossible to achieve but legal adjudicators are addressing the issue of reconciling Canada's inclusive neutrality with the ongoing disputes involving reciting prayers before council meetings. In Canada it is apparent that, as stated by Moon, “[s]tate support for the practices and values of a particular religion (or religion in general) is now viewed as a form of religious discrimination or an illegitimate imposition of religion” (Moon 2008, p. 232). It is now also clear in scholarship that the promotion of non-belief, by the Canadian state or its legal bodies, can be seen as preferential treatment towards non-believers (see Benson 1999-2000 and Moon 2008). The question now remains whether the legal bodies will be innovative and daring enough to deal with the prayer before council meetings problem (and those like it) in a way that can reconcile the intricacies of these situations, namely with Canada's more inclusive interpretation of neutrality and its particular form of secularism (discussed above). Such a harmonization, some proposals for which were outlined above, would allow for all religions and worldviews of non-believers to be dealt with more equally in Canada¹³.

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End Notes

¹ In this article will use the terms “non-belief” and “non-believer” to refer to positions and people who are considered to be atheist, agnostic or who do not subscribe to any religion or religious worldview. While this category is large and could use further refinement, I have chosen these terms rather than “non-religious” or “non-adherent” as the former term could be confused with terms used in scholarship regarding people who identify as spiritual but not religious and the latter term does not account for people who may have religious beliefs but do not adhere to a particular religion.

² Given the small number of court cases on this issue, this paper will examine human rights tribunal cases as well, treating them nearly equally to court cases, as tribunals, like courts, also generate binding legal decisions (which can be appealed through the courts system). The tribunal cases are also simply, the most recent cases on the subject.

³ I will now only speculate on a number of reasons why such cases may be arising primarily in Quebec rather than other provinces including: 1. Quebec’s more deliberate separation of church and state (than other provinces) which occurred during its quiet revolution 2. The minority position of many groups within Quebec (who are not French speakers or from Catholic backgrounds) and Quebec’s minority position (French and historically Catholic) within Canada (which is English and historically more Protestant), which may have contributed to the provinces’ tendencies towards high political engagement and 3. Quebec’s clearer sense of nationalism as compared to Canadian nationalism may have an effect as well as it may lead minority groups in the province to feel they need to be more deliberate in their attempts for inclusion in the state as opposed to other provinces which may take on a more Canada-as-a-multicultural-nation (or multi-worldview) identity. Some of this speculation was reinforced and/or raised to my attention in a discussion period of the panel entitled “Youth, Religion, and Identity” at the annual meeting for the Canadian Society for the Study of Religion (CSSR) in Waterloo, Ontario, Canada on May 29th, 2012.

⁴ This section states that all Canadians have the right to “freedom of conscience and religion”.

⁵ S. 1. of the *Canadian Charter of Rights and Freedoms* states that, “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

⁶ These cases despite being from Quebec are just as relevant to the rest of Canada as much of the discussion hinges on s. 2(a) of the *Canadian Charter of Rights and Freedoms* jurisprudence or Quebec’s equivalent s. 3 of the *Charter of Human Rights and Freedoms*. See *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Laval (Ville)* (2006) CanLII 33156 (QC TDP); para 154.

⁷ For an earlier piece which raised these same issues regarding neutrality and secularism in Canada see Ian Benson’s 1999-2000 article “Notes Towards a (Re)Definition of the ‘Secular’”, *University of British Columbia Law Review*. 33, pp. 519-549.

⁸ Moon references the following two authors in this section: Stanley Fish, “Mission Impossible: Settling the Just Bounds between Church and State” *Columbia Law Review* 97 (1997): 2255; and David Brown, “Freedom from or Freedom For?: Religion as a Case Study in Defining the Content of Charter Rights” *University of British Columbia Law Review* 33 (2000): 605.

⁹ It has been noted in research by the Library of Parliament (2004, p. 5) that “[t]he Canadian approach to religion has been to promote multiculturalism by celebrating the expression of various religions while recognizing the supremacy of none”. Allowing for religion to be present in the public sphere where others can be exposed to it seems a good way to celebrate Canadian diversity.

¹⁰ In Quebec it is mandatory that students in elementary and high school participate in the Ethics and Religious Culture Program whose goal is to promote understanding and respect of different religious traditions in Quebec through exposure to them (both academically and personally). See CANADA. MINISTÈRE DE L’ÉDUCATION, DU LOISIR ET DU SPORT DU QUÉBEC (2005) p. 7-9.

¹¹ Despite the Report’s direct comments against allowing prayers to be recited before council meetings. See CANADA. GOUVERNEMENT DU QUÉBEC. (2008) p. 152.

¹² See CANADA. MINISTÈRE DE L’ÉDUCATION, DU LOISIR ET DU SPORT DU QUÉBEC (2005) p. 7-9.

¹³ While achieving perfect equality in this context is almost impossible (as including every group in council meeting proceedings could be exceedingly difficult), such a solution would be more in line with what Canada espouses regarding neutrality and secularism and would be an improvement from the current state of affairs. Perhaps such an opportunity will arise for the courts to be more creative in resolving these types of disputes when the mayor of Saguenay appears before the Quebec Court of Appeal to challenge the decision of the Quebec Human Rights Tribunal or even at the Supreme Court of Canada, if such an instance arises (see Patrice Bergeron, “Prière à Saguenay: Jean Tremblay a recueilli 181 000 \$,” <http://www.cyberpresse.ca/actualites/quebec-canada/justice-et-faits-divers/201107/12/01-4417242-priere-a-saguenay-jean-tremblay-a-recueilli-181-000-.php>). The mayor's fundraising success points to him having notable support to keep the prayer – as of July 2011 he had raised \$181 000 to use towards his legal cause.