

Support Judge Marengo!

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We have all heard reports of the case of Rania El-Alloul, a veiled Muslim woman who appeared as plaintiff before judge Eliana Marengo of the Quebec Court in an attempt to regain possession of her car seized by the police. The judge dismissed the case because El-Alloul refused to comply with the Court's dress code. Marengo invoked a rule prohibiting hats and sunglasses and considered that the hijab worn by the plaintiff fell into the same category of unsuitable clothing, but El-Alloul refused to remove it.

We must support judge Marengo because her decision is eminently reasonable, refusing to accommodate an arbitrary behaviour based on religious motives. The judge thus refused to discriminate on the basis of the religion of the person appearing before her court. A petition^[1] to support the judge is available on line.

This case goes beyond the purview of state secularism and the separation between state and religion. Although the judge is an agent of the state, the plaintiff on the other hand is merely a citizen. She has the right to dress as she wishes in her private life as well as in public outside civil institutions. However in this situation she is appearing before the court which is a civil institution and she thus has the obligation to abide by the rules of that institution as interpreted by the judge in charge. This situation is similar to the prohibition on dispensing public services to a beneficiary whose face is covered, as specified in the secular charter proposed by the previous Quebec government defeated in April 2014, although in this case the "beneficiary" is wearing only a hijab and not a full veil.

With this decision, the judge reminds us that a religious symbol is just clothing – and clothing can be removed or changed. This very simple lesson is one which multiculturalists would nevertheless like us to forget, obsessed as they are with the promotion of religious privilege (which they falsely call a "right"). An Islamic veil – or any other religious symbol, sign or article of clothing – deserves no more consideration than a lapel button for a political party, or a pastafarian's colander worn as a hat, or a tinfoil cap worn in order to keep extraterrestrials from reading one's mind.

Yet the reaction of both the plaintiff and her supporters is completely in line with the anti-secular outcry against the now-dead Charter. Ms. El-Alloul plays the offended victim, declaring herself shocked by this alleged denial of justice. Interviewed on CBC Radio Noon, Anne-France Goldwater (lawyer of Dalila Awada in a SLAPP suit brought against Louise Mailloux and others) did not miss an opportunity to accuse both the Charter and the judge of "xenophobia."

Shortly after the dismissal of the court case, several Torontonians started up an internet fundraising campaign to buy a new car for Ms. El-Alloul. It would appear that some people have more money than brains. The reality of the situation is that the plaintiff found herself car-less for two reasons: (1) because she allowed her son, whose license had been suspended, to drive her car and (2) because she refused to comply with a simple dress code during court proceedings. Thus, it was by her own actions that she was deprived of her car. All she had to do was remove her hijab during the brief court appearance and put it back on afterwards.

Unfortunately, although the judge's decision is an obvious illustration of common sense, I fear that it will eventually be reversed because common sense and legality do not always go hand in hand. A simple internal court rule such as the one which the judge applied here cannot take precedence over a

constitutional right. Canadian federal legislation, as well as case law based on it, may very well undermine her decision.

Indeed, in December of 2012, the Supreme Court of Canada ruled that a woman may, under certain circumstances, appear before the courts wearing a niqab. This decision was based on paragraph 2(a) of the *Canadian Charter of Rights and Freedoms*^[2] which stipulates that “freedom of conscience and religion” are fundamental freedoms. The application of this stipulation apparently requires that the court determine the sincerity or strength of the religious belief of the person wearing the niqab. More recently, the Federal Court ruled that a woman cannot be compelled to uncover her face during the citizenship swearing-in ceremony, because *Citizenship Regulations*^[3] state that the citizenship judge must administer the oath by “allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof.”

I am no lawyer, but it would appear to me that the *Canadian Charter* has a serious defect: it puts freedom of conscience and freedom of religion on equal footing while failing to mention freedom from religion. I think paragraph 2(a) would be greatly improved if it read, “freedom of conscience, which includes both freedom of religion and freedom from religion,” because the last two freedoms should be respected equally. Similarly, paragraph 2(b) which begins, “freedom of thought, belief, opinion and expression” should be modified by replacing “belief” by “belief and nonbelief.” These modifications to both paragraphs would allow the protection of the freedoms of atheists and other nonbelievers to the same extent that they now protect believers’ freedoms. Without these modifications, the *Canadian Charter* assigns unjustified precedence to religion and religious belief, thus leading to religious accommodations, i.e. religious privileges, of which the above-described legal decisions are examples.

Furthermore, it is not enough to eliminate the offending stipulation from the *Citizenship Regulations* and to improve the *Canadian Charter*. We must also repeal, or at least substantially modify, the *Canadian Multiculturalism Act*.^[4] This act has the same defect as the *Canadian Charter*, i.e. it evokes freedom of religion and belief with no mention of nonbelief. More generally, the *Multiculturalism Act* encourages the fragmentation of society into ethno-religious communities with no attempt to define shared values. Finally, it is of course obvious that the mention of “the supremacy of God” in the preamble to the *Charter* must be removed.

Although Canada has a reputation for being a model of democracy and tolerance, it sometimes takes on the appearance of a theocracy which, at the expense of the fundamental rights of its citizens in general, gives undeserved precedence to religions and religious beliefs. To correct this situation, we have an enormous amount of work to do.

Links

1. Support Judge Eliana Marengo, http://www.petitions24.net/appuie_a_la_juge_eliana_marengo
2. *Canadian Charter of Rights and Freedoms*, <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>
3. *Citizenship Regulations*, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-93-246/>
4. *Canadian Multiculturalism Act*, <http://laws-lois.justice.gc.ca/eng/acts/c-18.7/>