

Supreme Court of Canada strikes down ban on ceremonial dagger in schools

In a unanimous decision, the Supreme Court of Canada has ruled that a Quebec school board's blanket prohibition against wearing a ceremonial dagger, or kirpan, violates the freedom of religion guaranteed by the *Canadian Charter of Rights and Freedoms*. The decision, *Multani v. Commission scolaire Marguerite-Bourgeoys*, contains three sets of reasons, all of which ultimately arrive at the same conclusion.

The case concerned an orthodox Sikh student, Gurbaj Singh Multani, who believed that his religion required him to wear a kirpan at all times. On November 19, 2001, Gurbaj Singh accidentally dropped the kirpan he was wearing under his clothes in the yard of the school he was attending. One month later, the school board sent a letter in which it authorized Gurbaj Singh to wear his kirpan to school as long as he complied with certain conditions to ensure that it was sealed inside his clothing.

Gurbaj Singh and his parents agreed to this arrangement. However, in a resolution passed on February 12, 2002, the school's governing board refused to ratify the agreement on the basis that wearing a kirpan violated the school's code of conduct, which prohibited the carrying of weapons and dangerous objects.

In response, Gurbaj Singh's father went to Superior Court to seek a declaration that the school board's decision was of no force or effect and that Gurbaj Singh had a right to wear his kirpan to school if it was sealed and sewn up inside his clothing. He was successful: the Court ruled that the board's decision was null and of no force or effect and authorized Gurbaj Singh to wear his kirpan under certain conditions. The Quebec Court of Appeal reversed this decision and Mr. Multani appealed in his own name and in that of his son to the Supreme Court of Canada.

The Court unanimously allowed the appeal, with the majority holding that the rule against wearing the kirpan was not a justifiable limit on Gurbaj Singh's religious freedom under the *Charter*.

A SINCERE BELIEF, A SERIOUS INFRINGEMENT

Before determining whether the prohibition was a justifiable limit, the Court set out why it clearly infringed Gurbaj Singh's religious freedom. Religious freedom is at issue when the religious belief being infringed is sincere:

“The fact that different people practise the same religion in different ways does not affect the validity of the case of a person alleging that his or her freedom of religion has been infringed. What an individual must do is show that he or she sincerely believes that a certain belief or practice is required by his or her religion. The religious belief must be asserted in good faith and must not be fictitious, capricious or an artifice.”

In this case, the Court held, there was no question that Gurbaj Singh sincerely believed that his faith required him to wear a metal kirpan at all times. Moreover, the Court ruled, Gurbaj Singh's refusal to wear a replica made of a material other than metal was not capricious. Gurbaj Singh

genuinely believed that he would not be complying with the requirements of his religion if he were to wear a plastic or wooden kirpan. The fact that other Sikhs accept such compromises is not relevant, the Court ruled.

Finally, the interference with Gurbaj Singh's freedom of religion was neither trivial nor insignificant. Forced to choose between leaving his kirpan at home and leaving the public school system, Gurbaj Singh decided to follow his religious convictions and enter a private school. The prohibition had, therefore, deprived him of his right to attend a public school.

PROHIBITION NOT A JUSTIFIABLE LIMIT

Having established that Gurbaj Singh's religious freedom had been infringed, the Court considered whether the limit was justifiable under the *Charter*. In order for a limit to be justifiable, two requirements must be met: the objective being pursued must be sufficiently important to warrant limiting a constitutional right, and the means chosen by the state authority must be proportional to the objective in question.

The Court spent little time on the first part of the test: the objective of ensuring a reasonable level of safety in schools was, without question, pressing and substantial. Therefore, the Court had to determine whether the ban on the kirpan was a means that was proportional to the attainment of that objective.

The proportionality branch of the test has three components: Is there a rational connection between the challenged rule and the objective? Does the rule minimally impair the right being infringed? And do the benefits of the objective being attained outweigh the deleterious effects of the rule? The Court held that, although there was a rational connection between the prohibition and the objective of school safety, the prohibition failed the other two components of the test.

Turning to the issue of minimal impairment, the Court considered the school board's arguments as to why it could not permit Gurbaj Singh to wear his kirpan, even with the restrictions he had agreed to. According to the board, allowing the kirpan in school entailed the risks that it could be used for violent purposes by the person wearing it or by another student, that it could lead to a proliferation of weapons at the school, and that its presence could have a negative impact on the school environment. According to the board, the kirpan was a symbol of violence and, if the board were to allow a student to possess a kirpan in school, other students would see it as applying a double standard.

The Court rejected these arguments, noting that the evidence showed that Gurbaj Singh had no behavioural problems and had never resorted to violence at school. The risk that this particular student would use his kirpan for violent purposes was, therefore, highly unlikely.

The risk of another student taking Gurbaj Singh's kirpan was also quite low, especially if it were worn under conditions such as those imposed by the Superior Court. Moreover, there were many other objects in schools that could be used to commit violent acts and that were much more easily accessible to students, such as scissors, pencils and baseball bats.

While the board conceded that there was no evidence of actual harm from the presence of kirpans in schools in other Canadian jurisdictions, it argued that it was not necessary to wait for the harm to occur before taking action. In this connection, it cited the decisions of other courts in which prohibitions against kirpans in court and on airplanes had been upheld. The Court rejected this argument, holding that each environment is a special case justifying differing levels of safety depending on the circumstances.

With respect to the airplane case, the Court noted that the Canadian Human Rights Tribunal had found that aircraft were a unique environment, in which groups of strangers were brought together in confined spaces for periods of time without access to emergency medical or police

assistance. Unlike students in schools, airplane passengers are a transitory population, and there is no meaningful opportunity to assess the circumstances of individuals who request accommodation of religious beliefs. Similarly, courts are temporary environments. By contrast, schools are living communities in which students spend years of their lives.

The board also argued that kirpans were weapons whose presence poisoned the school environment and sent the message that force is the way to resolve conflicts. This was forcefully rejected by the Court, which held that such arguments are disrespectful of the Sikh religion and contrary to the value of multiculturalism. The Court also stated that it could not accept the view that permitting Gurbaj Singh to wear his kirpan would lead to a sense among students that a double standard was being applied:

“Religious tolerance is a very important value of Canadian society. If some students consider it unfair that Gurbaj Singh may wear his kirpan to school while they are not allowed to have knives in their possession, it is incumbent on the schools to discharge their obligation to instill in their students this value that is ... at the very foundation of our democracy.”

This last point related to the third component of the proportionality test – whether the benefits achieved by infringing the constitutional right outweigh the harms caused by its restriction. In the Court’s view, an absolute prohibition would stifle the values of multiculturalism and diversity:

“A total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others. On the other hand, accommodating Gurbaj Singh and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities. The deleterious effects of a total prohibition thus outweigh its salutary effects.”

Accordingly, the Court allowed the appeal. Because Gurbaj Singh no longer attended the school in question, the Court held that the appropriate remedy was to nullify the board’s decision prohibiting him from wearing his kirpan.

In Our View

Since a 1990 decision of a board of inquiry under the Ontario *Human Rights Code*, which was upheld in 1991 by the Divisional Court, the wearing of kirpans has been permitted in Ontario schools under conditions similar to those proposed for Gurbaj Singh. The Peel school board, which was the subject of that complaint, now requires that a formal request be made to the school principal, that the requestor be baptized Sikh, that the kirpan be no more than 17.8 cm in length, and that it remain sheathed and secured under the student’s clothing. Evidence was introduced in this case that showed that, since that time, there have been no kirpan-related incidents in Ontario schools. Similar evidence emerged regarding kirpans worn by students in a number of British Columbia school boards.

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