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*Sikh Religious Symbols in Contemporary Canada*

BAKALÁŘSKÁ PRÁCE

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I would like to express my gratitude to Klára Kolinská, Ph.D. for her never-ceasing support, competence and indispensable advice.

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## **Abstract**

The aim of this thesis is to discuss the place of visible Sikh religious symbols in Canadian public life, and their ensuing controversies. These will illustrate the complexity of resolving the issues of cultural and religious conflict in the Canadian multicultural society. The analysis of the lines of argument behind the chosen court decisions will be central for the purposes of this paper. The debate offers valuable insight into the political process of policy-making and accommodating diversity in Canada.

The Sikh articles of faith, commonly referred to as the “5Ks” are an indispensable part of life for the people practicing the Sikh religion. However, by applying these religious beliefs in their everyday life, the Sikh Canadians often find themselves in conflict with some of the Canadian laws and regulations. The most problematic articles are the *kesh* (unshorn hair covered at all times by a specific kind of turban or cloth) and the *kirpan* (a stylized representation of a sword, which must be enclosed in a protective covering and worn next to the body). These will be in the centre of focus of this thesis.

The thesis is divided into four main chapters. The first chapter will give the contextual framework of the thesis. Its basic notions will be introduced. The chapter will briefly overview the concept of multiculturalism, the core religious beliefs of Sikhism, the Sikh articles of faith, the history of this community in Canada and its place in the Canadian multicultural society. The Sikh community will be presented as an active group which has a major input in the public debate about Canadian multiculturalism and which contributes in the shaping the public view on religious freedom of visible minorities in Canada.

The second chapter will evolve around the controversy ensuing from the wearing of the *kesh* by practicing Sikh Canadians. This will be done by means of two major court cases that have shaped the public debate about this problem. The arguments used in these cases will be critically looked at and analyzed. The first case concerns the wearing of *kesh* while driving a motorcycle in Ontario. The second case concerns the

struggle of the turban-wearing Sikhs to enter the Royal Canadian Mounted Police and the public debate concerning their demand to alter the traditional uniforms.

The third chapter concentrates on the *kirpan*. Even though the Sikhs insist that the kirpan is a mere symbolic article, its potential use as a weapon is often pointed out. To illustrate this controversy, a court case which concerns the wearing of the *kirpan* in an educational institution has been chosen.

The closing chapter sums up the controversies. It presents their positive impact on the Canadian society as well as on the changing image of this often negatively viewed minority. It will conclude that the balancing of religious freedom in a multicultural society is a perpetual process with no definite resolution.

## Abstrakt

Tato práce pojednává o vizuálním projevu sikhských náboženských symbolů a kontroverzích, které způsobují v Kanadském veřejném životě. Tyto rozepře vykreslují složitost řešení náboženských a kulturních problémů v kanadské multikulturní společnosti. Pro účely této práce je nejdůležitější analýza argumentů použitých v soudních sporech týkajících se tohoto tématu. Tato debata nabízí zajímavý pohled na proces politického rozhodování a vyrovnávání se s diverzitou v Kanadě.

Sikhské náboženské symboly, obecně označované jako „5ká“, jsou nepostradatelnou částí života každého vyznavače této víry. Nicméně důsledným dodržováním těchto zásad v každodenním životě se kanadští sikhové často dostávají do sporu s kanadskými předpisy. Nejvíce problematickými články jsou *kéš* (nestříhané vlasy skryté neustále pod zvláštním turbanem nebo látkou) a *kirpán* (stylizované zpodobnění meče, který musí být uzavřen v ochranném obalu a nošen u těla). Tyto jsou hlavním bodem zájmu v mé práci.

Práce je rozdělena do čtyř hlavních kapitol. V první kapitole je rámcově popsán kontext a popsány základní pojmy. Tato kapitola stručně sleduje koncept multikulturalismu, základní náboženské představy sikhismu, náboženské symboly, historii této komunity v Kanadě a její místo v multikulturní společnosti. Sikhské společenství bude představeno jako skupina mající nezanedbatelný vliv na veřejnou debatu týkající se kanadského multikulturalismu, a která pomáhá utvářet postoj společnosti směrem ke svobodě veřejného projevu náboženských menšin v Kanadě.

Druhá kapitola pojednává o kontroverzích způsobovaných dodržováním *kéše* praktikujícími kanadskými sikhy. Tato problematika bude sledována ve světle dvou významných soudních rozhodnutí, která silně podnítila veřejnou diskusi. Odůvodnění použité v tomto rozhodnutí bude kriticky prozkoumáno a analyzováno. První případ se týká nošení *kéše* při řízení motocyklu v Ontáriu. Druhý pokrývá snahu sikhů nosících turban o vstup do Royal Canadian Mounted Police a veřejnou debatu týkající se požadavku na změnu tradičních uniforem.

Třetí kapitola se soustředí na *kirpán*. I přes to, že sikhové zdůrazňují, že *kirpán* je pouhým symbolickým předmětem, je často zdůrazňována možnost využít jej jako

zbraň. K ilustrování tohoto kontroverzního tématu bylo vybráno soudní rozhodnutí týkající se nošení *kirpánu* ve vzdělávacích institucích.

Závěrečná kapitola shrnuje a hodnotí tato témata jako přinášející pozitivní změny do kanadské společnosti a také přispívající k pozitivnímu pohledu na donedávna nepříznivě vnímanou menšinu. Závěrem je řečeno, že nalézání správné míry náboženské svobody v multikulturní společnosti je trvalým procesem bez nějakého definitivního řešení.

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## Introduction

The Canadian society is composed of a mosaic of various cultural and religious groups. With multiculturalism as the state policy, Canada guarantees the diverse ethnic facions the right to maintain their differences and cultural expressions. Moreover, its citizens are protected from any form of discrimination, including race, sexual orientation and religion. The diversity of the Canadian population, where at least one fifth of the population is foreign-born, naturally creates a very fertile ground for intercultural debates and controversies. On the practical level, these debates often manifest themselves in incidents where a religious belief is in conflict with a law or a regulation, thus limiting the citizen in his everyday life. Court cases concerning the alleged violation of religious freedoms of some minorities occur almost on a daily basis. Some of the incidents which have triggered these discussions include, for example, an instance, when “11-year-old Asmahan (Azzy) Mansour was called off a soccer field in Montréal by a referee who ruled [that] her hijab violated Rule 4 of the International Football Association Board.”<sup>1</sup> In a different instance, this time in Alberta, “the Court of Appeal has supported the claim by Hutterites that they be exempt from photo identification on their driver’s licenses.”<sup>2</sup>

The relatively large population of Sikh Canadians plays an active role in this public multi-cultural debate. The Sikh religious symbols are quite clearly visually represented. A majority of the practising Sikhs insists on wearing the prescribed articles of faith – *kesh* (uncut hair covered by a cloth, usually a turban), *kirpan* (a ceremonial item resembling a dagger), *kacchera* (cotton underwear), *kanga* (a wooden comb) and *kara* (an iron or steel bracelet). This obligation can come very easily into conflict with the laws in many environments and professions such as schools, police forces, public institutions etc. It is, therefore, no wonder that the Sikh Canadians are very strong advocates of their religious rights and freedoms in many fields of professional, public and private life. Their struggle culminated in the last three decades, when the Sikh religious symbols began to be partially or fully recognized and respected by the society at large.

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<sup>1</sup> Lori G. Beaman and Peter Beyer. Religion and diversity in Canada. (Leiden: Brill, 2008) 3.

<sup>2</sup> Beaman 3

The study and analysis of the Sikh controversy in Canada is, therefore, not only a means to understand this culturally profound and interesting minority, but also a window into the workings of Canadian society, as it forces us to ask the following question: what are the legitimate limits of accommodation in a multicultural society or, more simply, what tolerance is there for intolerance? On an example of individual controversies, this thesis will try to answer these questions and attempt to uncover the inner workings of the Canadian multicultural public debate, as well as of its legislature.

The thesis will approach this problem by means of analyzing the examples of specific controversies concerning the Sikh religious symbols. Firstly, a brief introduction into the history of the Sikh minority in Canada, its basic characteristics and the definition of the religious symbols relevant for the argument will be provided. Secondly, an introduction into the context of Canadian multiculturalism will follow. Afterwards, cases concerning the controversies brought about by the exceptions in helmet requirements for Sikh motorcyclists will be discussed. The case of the Sikh struggle to accommodate the turban in the RCMP uniforms will be considered; and lastly, the controversies of the *kirpan* in schools will be framed analyzed.

The methodology of this paper will be based on a wide range of sources. However, as the topic of this thesis is a rather new field of research, the focus will be on legal documents such as *The Canadian Charter of Rights and Freedoms* as well as documents and reports from the court hearings. Supplementary information will be drawn from sources such as documents of the World Sikh Organisation of Canada and articles and other material from the Canadian online media. In order to put the controversies in a historical and specifically Canadian context, some historical and theoretical publications will be used.

## Chapter 1 – Sikhism in the Multicultural Canada

### 1.1. Multiculturalism in Canada – a General Introduction

Multicultural situations are not a phenomenon that first emerged in the modern times. Contacts between diverse cultures have begun as early as the civilization itself. In the Middle Eastern and Mediterranean societies “a multiplicity of cultures coexisted in rural areas as well as in cities since Antiquity.”<sup>1</sup> For example, Alexander the Great created a vast empire, where “Greek speaking urban elites dominated lower groups pertaining to a wide variety of languages, religions and cultural traditions from Egypt to Central Asia or Northern India.”<sup>2</sup>

However, in the 20th and 21st centuries, the process of globalization has dramatically changed the interactions between various cultures in the world:

Because of the increased mobility linked with air travel, people in remote areas are discovering new styles of life through their contacts with tourists. International migrations develop and a growing number of foreign groups settle in the great cities of the developed or developing countries. Because of the new facilities of telecommunication, it is easy for migrants to maintain contacts with their home countries: it gives to their cultures more chance to survive.<sup>3</sup>

Yet another innovation of the modern times is the creation of multiculturalism as an ideology and of the ensuing state policies implementing the multicultural philosophy by means of the state legislature. These new phenomena are particularly remarkable in the contemporary Canada, where the equal status of all ethnic groups and the preservation of one’s cultural heritage are guaranteed by the state itself.

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<sup>1</sup> Paul Claval. “Multiculturalism and the Dynamics of Modern Civilizations.” United Nations University. Web. 26 Apr 2013. p.1

< <http://archive.unu.edu/dialogue/papers/claval-s2.pdf>>

<sup>2</sup> Claval 1

<sup>3</sup> Claval 1

This fact is crucial for the purposes of this thesis, as the protection of the Sikh cultural heritage in Canada and the struggle of the Sikh Canadians for the acknowledgement of their religious symbols would hardly be possible in a country where the multicultural policy is not implemented.

### **1.1.1. What We Talk About When We Talk About Multiculturalism**

As has been previously established, the term multiculturalism hides more than one meaning and its substance changes from country to country. Firstly, it could be understood as a descriptive term, explaining a state of affairs in a given country. Secondly, it is an ideology promoting peaceful intercultural debate and cultural pluralism. And thirdly, it is a social policy implemented and protected by the state.

As for the first meaning, this descriptive term applies to any country, where two or more cultures coexist. There are many regions in the world that could be described by this term. Apart from Canada, we could take countries like India, China, Indonesia or Mexico as an example. The coexistence of these multiple cultures does not necessarily need to be regulated and the cultures do not necessarily need to have an equal status. Their mere presence is enough to make an environment multicultural.

The nature of the cultural diversity as well as its origin differs from country to country. Some of these countries have been multicultural for centuries; some of them have become multicultural only with the growth of globalized immigration during the 20<sup>th</sup> century.

The second meaning of the term multiculturalism is that of an ideology. It is based on the idea of cultural plurality, understood as a beneficial factor for the society. It also promotes, that the best way for managing intercultural relations is an open and respectful dialogue. According to this theory no culture (including that of the majority) should be considered more developed or superior. It assumes that all cultures are equally important products of their specific context and conditions and that diverse cultural expressions should be considered legitimate. Unlike other ideologies managing cultural diversity, multiculturalism respects the right of different cultures to maintain their specific characteristics and differences.

Probably the most important feature of this ideology is the fact that it not only accepts diversity, but it also makes it the fundamental value of the society as a whole and makes it a key element in the construction of the national identity. The identity of the given state is therefore no longer based on an idea of a homogenized nation state, but rather on a set of diverse cultures and individuals who all cooperate within the legal boundaries of the state. However, as this thesis will show, the promotion of cultural diversity does not mean that all cultural practices have to be automatically accepted. It merely enforces their open and unbiased consideration.

The third aspect of multiculturalism is its implementation in the legislature of the given state. Arguably, Canada has developed one of the most multicultural political systems in the world. It was institutionalized in part by the 1988 *Multicultural Act*. This document states, among other things, that the Canadian government should:

(a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;

(b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future;

[...]

(d) recognize the existence of communities whose members share a common origin and their historic contribution to Canadian society, and enhance their development; [...]<sup>4</sup>

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<sup>4</sup> Canadian Multiculturalism Act (R.S.C., 1985, c. 24 (4th Supp.)) Web. < <http://laws-lois.justice.gc.ca/eng/acts/C-18.7/page-1.html#docCont> >

As has been said earlier, Canada not only recognizes the right of all Canadians to preserve their culture and respects their contribution to the Canadian society. The act also makes multiculturalism the very basis of Canadian identity and future.

### **1.1.2. Why Multiculturalism?**

What are the reasons for the implementation of multiculturalism in Canada? Why did Canada not follow the example of some European countries or the United States, who still base their identities on the one dominant majority culture? Is it because Canadians are simply more tolerant and open? Or are there any other, more profound reasons? In order to answer this question we must take a look at the relationship between the Anglophone and the Francophone Canadians and at the ethnical composition of the Canadian society.

Let us begin with relationship between the English and French speaking Canadians. The alternative ideologies to multiculturalism are assimilation (discouragement of minority cultural expressions and imposition of a dominant culture), integration (cooperation of the dominant and minority culture so that a new mixture is created – the so-called melting pot) and segregation (division of the cultural and ethnic groups, imposed by the majority). As it appears, multiculturalism is the only alternative that does not promote one culture as the dominant one. The fact that Canada chose this path is not an accident. In order to promote a dominant culture, one needs to have one that can claim superiority over all the other cultural groups. However, it appears that Canada is divided into two major cultural groups, out of which none can claim primacy. As a result, the national identity of Canada as a whole is weakened, if not absent entirely – one could even go as far as to say, that the Canadians are connected only by their common citizenship. The strategies of assimilation, integration and segregation therefore seem to be almost impossible to be carried out.

Moreover, not only is the Canadian national identity weakened by the duality of its majority culture, it is also marked by the increasing amount of foreign born immigrants and people of non-European background. According to the website of the *Statistics Canada*:

The nearly 6.2 million foreign-born people in Canada reported more than 200 countries of origin on the 2006 Census.

Among the more than 1.1 million recent immigrants who arrived between 2001 and 2006, almost 6 in 10 (58.3%) were born in Asian countries, including the Middle East.

The share of recent immigrants born in Asia (including the Middle East) had increased steadily since the late 1970s. But in 2006, the share (58.3%) was virtually unchanged from 59.4% in 2001.<sup>5</sup>

Furthermore, the religious diversity of Canadians is becoming increasingly diverse as well.

The number of Muslims [...] increased from 253,300 in 1991 to 579,600 in 2001. [...] The number of people who identified themselves as Hindu increased 89% to 297,200. Those who identified themselves as Sikh rose 89% to 278,400, while the number of Buddhists increased 84% to about 300,300.<sup>6</sup>

This information does not include immigrants from China and Taiwan, who often do not affiliate to any traditional religion. In the context of this thesis, it is also noteworthy to consider the ratio between the Sikhs and Hindus in Canada, which does not reflect at all the number of these religious groups in their country of origin – India.

If the effects of the weakened national identity of Canada and the increasing ethnic and cultural diversity of the Canadian society are combined, we can conclude that the tendency towards multiculturalism is almost inevitable, as the need for multicultural dialogue becomes increasingly necessary.

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<sup>5</sup> "Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Immigrants came from many countries." *Statistics Canada*. N.p.. Web. 26 Apr 2013. <<http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/p4-eng.cfm>>.

<sup>6</sup> "Growth in Islam, Hinduism, Sikhism and Buddhism." *Statistics Canada*. N.p.. Web. 26 Apr 2013. <<http://www12.statcan.ca/english/census01/Products/Analytic/companion/rel/canada.cfm>>



### **1.1.3. Effects of Multiculturalism**

For the purposes of this thesis, it is very important to take a look at some of the effects of multiculturalism on Canadians. Apart from the openness and respect for cultural diversity, some opposing tendencies, such as traditionalism, excessive adherence to the few remaining Canadian traditional symbols and increased nationalism on the part of the French speaking Canadians are noticeable. All of these rebound phenomena take great effect on the cases of the Sikh Canadians that will be treated in this thesis.

The traditionalism and adherence to the symbols of Canadian traditional culture is very important for the Sikhs struggling to wear turbans in the Royal Canadian Mounted Police. The uniform of these old police forces is one of the most traditional symbols of Canadian identity. As the shape of these uniforms began to be altered due to the demands of the visible minorities (in this case the Sikhs), a swift and strong opposition to these changes had aroused. It will be dealt with in more details later on, however it is important to notice the perception of multiculturalism as a potential threat to the majority culture.

The feeling of being threatened by the implementation of multiculturalism is observable on the behaviour of the Francophone Canadians as well, especially those living in Quebec. Some of these people feel insulted by the notion, that their culture should be equal to all the other minority cultures, as they feel suppressed themselves. For the Quebec nationalists, it appears to be more important to support their own culture rather than to make what they perceive as concessions for the minorities. This approach, connected with the enforcement of the French-enforcing laws, also plays their role in the multicultural debate and has its effect on the Sikh Canadians as well.

## **1.2. The History of Sikh Immigration to Canada**

The following section provides an overview of the history of the Sikh immigration to Canada and discusses Sikhism in Canada today, with the aim to demonstrate that although the Sikh community is widely regarded as a new minority, it

has been a part of Canada for more than one hundred years. Throughout the 20<sup>th</sup> and 21<sup>st</sup> centuries, the Sikh Canadians took an important part in the making of Canadian multicultural society and contributed actively to its development.

Even though the Sikhs in Canada are still a predominantly foreign-born population, the history of their immigration dates back to the beginning of the 20<sup>th</sup> century. The impetus for their immigration came from a group of Punjabi soldiers who visited British Columbia on their way home from the jubilee celebrations of Queen Victoria. Some of these Sikhs decided to resign from the British Armies in India, and then migrated to Canada. Their families and relatives soon followed. Other Sikh immigrants started to come shortly afterwards from India and other British colonies, such as Hong Kong, Malaysia and Singapore. The standard means of transport for these early pioneers was via merchant ships from Calcutta to Hong Kong, and then via passenger ships from there to Vancouver.<sup>7</sup> The vast majority of Sikhs settled in British Columbia – the most accommodating province with the most favourable working opportunities.

At the time, the immigrants from Asia (i.e. Japan, China, India) formed only a minor part of the total body of newcomers and the reception they received was far from that of a warm welcome. The Asians had to face various forms of discrimination and “a number of legislative measures to restrict and control Asian immigration”<sup>8</sup> were executed. However, as a part of the British Empire, the Canadian state had to consider “international diplomatic demands, the political and economical demand of the empire, the interests of steamships companies, and a need for cheap Asian labour.”<sup>9</sup> In other words, the Sikhs and other Asian immigrants were simply too profitable to be flatly denied access, as their work was so cheap.

Nevertheless, the strict anti-Asian migratory policies were gradually implemented despite these advantages. For example in 1909, only six Indians were

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<sup>3</sup>G.S. Basran and B.S. Bolaria, *The Sikhs in Canada: Migration, Race, Class, and Gender* (New Delhi: Oxford University Press, 2003) 96.

<sup>8</sup> Basran 96

<sup>9</sup> Basran 97

allowed to enter Canada.<sup>10</sup> The whole process culminated in the *Komagata Maru* incident, which is today considered one of the most important dates in the history of the Sikh immigration to Canada. In 1914, a Japanese ship, *Komagata Maru*, was denied landing in Vancouver. The ship carried 376 passengers from India. Of the people on board, “340 were Sikhs, 24 were Muslims and 12 were Hindus.”<sup>11</sup> Today, two plaques in Vancouver are dedicated to this incident and “its significance for the Sikh minority and the Canadian state.”<sup>12</sup> It stands as a symbol of racial discrimination in the past as well as a celebration of the modern Canadian society, where these practises are no longer acceptable.

In the first decades of the 20<sup>th</sup> century the immigration policy continued to be characterized by a “long established system giving preferential treatment to migrants from Europe and the United States.”<sup>13</sup> The number of Sikhs entering Canada was very low: in 1931, there were only 1,400 East Indians in Canada,<sup>14</sup> out of which Sikhs formed only a fraction. In 1952, the quotas for immigration from India were set to only 150 people; in 1965, the number of people arriving from India was 2,000.

The situation started to change dramatically only after 1967. In this year, which was very significant for Sikhs and other Asian immigrants, a substantial change in the immigration laws took place. The old policy was replaced by a new “points-based scheme through which independent migrant from any world region could earn merit based on educational attainment, workplace skills and language ability.”<sup>15</sup> These new laws “initiated a rapid shift from a predominantly Western to a more global immigrant stream,”<sup>16</sup> and Canada became “the world’s second largest recipient of people from Third World countries, including India.”<sup>17</sup>

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<sup>10</sup> Khushwant Singh, *A History of the Sikhs: Volume II: 1839-2004*, 2<sup>nd</sup> ed. (New Delhi: Oxford University Press, 1999) 168.

<sup>11</sup> Basran 100

<sup>12</sup> Basran 101

<sup>9</sup> Heather Smith. "Concentrated Immigrant Settlement and Concentrated Neighbourhood Disadvantage in Three Canadian Cities." *International Journal of Canadian Studies*. 31 (2005): 85

<sup>14</sup> Basran 101

<sup>15</sup> Smith 85

<sup>16</sup> Smith 85

<sup>17</sup> Basran 105

It was only then that the Sikh immigration began in larger numbers. The influx of Sikh immigrants increased even more after the infamous storming of the Golden Temple in Amritsar by the Indian forces in 1984. In retaliation for this breaching of the Sikh sacred ground, the prime minister Indira Gandhi was assassinated by her two Sikh bodyguards, which immediately caused yet another wave of vengeance – this time taking the form of massive pogroms on the Indian Sikh population. During the following years, the Sikh diaspora significantly grew in numbers and the Sikh immigration to Canada recommenced with new strength. Sadly, there were some militant extremists amongst those who searched for a new home in Canada. This small, but aggressive, splinter schemed the infamous bombing of *Air India* flight from Montreal to Delhi, killing 329 people, out of which 268 were Canadian citizens. This event is the deadliest act of terrorism in the history of Canada, and left a mark on the public image of the Sikhs in Canada for a long time to come.

The Sikh population in Canada continues to grow rather rapidly and is expected to do so in the future. To compare the numbers, in 1981, the Sikhs alone formed a population of 27,120<sup>18</sup>; by the year 1991, the number exceeded 100,000.<sup>19</sup> In 2001, there were 278,410 Sikhs in Canada.<sup>20</sup>

### **1.3. The Sikh Canadians Today – Basic Characteristics of a Minority and Its Public Image**

As was said in the previous section, the population of Sikh Canadians comprises more than 278 000 people. Their number today is estimated to be even higher, and further growth is expected. In 1991, “nearly two thirds of the Sikh population were foreign-born.”<sup>21</sup> Even though this information might be different today,

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<sup>18</sup> Basran 160

<sup>19</sup> Basran 161

<sup>20</sup> "Selected Religions, for Canada, Provinces and Territories - 20% Sample Data." *Statistics Canada*. N.p.. Web. 2 May 2013.

<<http://www12.statcan.ca/english/census01/products/highlight/Religion/Page.cfm?Lang=E&Geo=PR&View=1a&Code=01&Table=1&StartRec=1&Sort=2&B1=Canada&B2=1>>.

<sup>21</sup> Basran 163

it remains true that most of the Sikhs are still recent immigrants. This remains true for most of the other visible minorities. The two provinces with the largest Sikh populations are British Columbia and Ontario – traditional targets of Sikh, as well as other Asian immigrants. In 2001, there were 135 100 Sikh in British Columbia<sup>22</sup> and 104 785 in Ontario.<sup>23</sup>

It is very hard to define just how the majority population in Canada views the Sikh community. However, the media coverage is a tell-tale sign. The public image seemed to be that of a rather aggressive and radical community in the 1990s. The Sikhs “have been in the headlines off and on ever since the downing of the Air India flight over the North Atlantic in 1985.”<sup>24</sup>

However, Sikhs are depicted in media not only as the provokers of violence, but also as its victims. The most well-known and tragic among the incidents that took place in North America was the tragic shooting in a Sikh temple in Wisconsin last year, where 6 people were shot down by a non-Sikh gunman. The shooting attracted the attention of the American public. Both the president Barack Obama and the republican presidential candidate Mitt Romney expressed their condolences. The latter was quoted in *The New York Times*: “Our hearts are with the victims, their families and the entire Oak Creek Sikh community”<sup>25</sup> The Sikh community in North America has been, because of their turbans and distinctive looks, often mistaken for Taliban members and has been victim of attacks on numerous occasions.

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<sup>22</sup> "Population by religion, by province and territory (2001 Census) (Alberta, British Columbia, Yukon)." *Statistics Canada*. N.p., 05 Jan 2005. Web. 23 Mar 2013. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo30c-eng.htm>>.

<sup>23</sup> "Population by religion, by province and territory (2001 Census) (Quebec, Ontario, Manitoba, Saskatchewan)." *Statistics Canada*. N.p. 25 Jan 2005. Web. 2 May 2013. <<http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo30b-eng.htm>>

<sup>24</sup> Basran 173

<sup>25</sup> Steven Yaccino, Michael Schwirtz, and Mark Santora. "Gunman Kills 6 at a Sikh Temple Near Milwaukee." *New York Times*. N.p., 05 Aug 2012. Web. 23 Mar 2013. <<http://www.nytimes.com/2012/08/06/us/shooting-reported-at-temple-in-wisconsin.html?pagewanted=all>>.

## 1.4. The Sikh Beliefs and Religious Symbols

Sikhism is a monotheistic religion founded in the Punjab region of South Asia in 1469 by Guru Nanak. The evolution of this religion continued for about two more centuries, with a succession of ten living Gurus. It worships a “universal, genderless and formless God, who is accessible equally to all, irrespective of their race or religion.”<sup>26</sup>

Guru Nanak founded the religion combining and developing (but at the same time overthrowing) the teaching of both Islam and Hinduism. His philosophy of equality appealed especially to the “politically downtrodden Hindus of the lower castes, and the poor of Muslim peasantry.”<sup>27</sup> However, what started as a rather small group of peaceful disciples under the first Guru, became a large society of warriors during the times of the tenth and last leader – Guru Gobind Singh.

It was Gobind Singh who founded the *Khalsa* (the community of all initiated Sikhs), in a rather spectacular way. Khushwant Singh retells the story as follows:

After the morning service the Guru appeared before the congregation, drew his sword out of its scabbard, and demanded five men for sacrifice. After some trepidation one rose to offer himself. He was taken into a tent. A little later the Guru reappeared in front of the throng with his sword dripping with blood and asked for another victim. In this manner five men were taken for a ‘sacrifice’ into the tent. Then the Guru came out with five ‘victims’ (he had slaughtered goats instead) and announced that the *panj piyare* (five beloved ones) were to be the nucleus of a new community [...] *Khalsa*, or the pure.<sup>28</sup>

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<sup>26</sup> "What is Sikhism?." *World Sikh Organization of Canada*. N.p., Web. 12 Mar 2013. <<http://www.worldsikh.ca/book/sikhism/what-sikhism>>.

<sup>27</sup> Khushwant, Singh. *A History of the Sikhs: Volume I: 1469-1839*. 2nd ed. (New Delhi: Oxford University Press, 1999.) 35.

<sup>28</sup> Singh, Vol.I, 79-80.

Afterwards, Gobind Singh baptized the five men and their Hindu names were changed to one family name *Singh* (lion). The *Khalsa* women received the name *Kaur* (princess).

On the same day, the five articles of faith were prescribed for both men and women of the *Khalsa*:

They were to wear their hair unshorn (*kes[h]*); they were to carry a comb (*kangha*) in the hair to keep it tidy; they were always to wear a knee-length pair of breeches (*kach*), worn by soldiers at the times; they were to carry a steel bracelet (*kara*) on their right wrist; and they were to be ever armed with a sabre (*kirpan*).<sup>29</sup>

Since all these articles start with a letter “k”, they are commonly known as the 5 *kakas*, or the 5Ks. The amount of importance attributed to these articles varies in different factions of the Sikh population. This thesis is concerned only with the views of those orthodox Sikhs, who sincerely believe that any deviation from these five prescriptions would mean abandoning their faith.

In the context of the Sikhism in Canada and the controversies analyzed in this thesis, two of the 5Ks are relevant - *kesh* and *kirpan*. Each of these two articles causes a controversy for a different reason and each will be analyzed in a separate chapter.

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<sup>29</sup> Singh, Vol.I, 81

## Chapter 2 – *Kesh*

This chapter will talk about the controversies concerning *kesh*. The word denotes the long unshorn hair that needs to be combed regularly and that has to be covered by a turban (*dastar*). An initiated Sikh is not allowed “to cover his turban or remove it outside of his home.”<sup>1</sup> As we will see later on, for a portion of the Sikhs, the turban is a mere matter of custom and can be replaced at all times by a handkerchief or a similar covering. However, it remains true that a large part of the community sees it as an inseparable part of the *kesh*.

In everyday life, the turban is not a problem. However, it becomes an obstruction in those situations when the law requires an additional head covering – either for safety or dress code reasons. Under such circumstances, the initiated *Khalsa* members find themselves in a conflicting position and they have to choose between the laws of the state and the necessities of the Sikh faith.

This thesis will focus on two cases which brought this conflict into the foreground. Firstly, it will be the problem of the Sikh motorcyclists, who refuse to wear a safety helmet for the reasons stated above. Secondly, it is the controversy caused by the accommodation of the Sikh turban in the Royal Canadian Mounted Police uniforms.

### 2.1. The Badesha Case

In 2006 “a judge in Ontario has dismissed the case of a devout Sikh man who argued his religious rights were violated when he received a ticket for riding his motorcycle without a helmet.”<sup>2</sup> The ticket was given on the basis of the Highway Traffic Act defining the following regulations:

1. A helmet worn by a person,

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<sup>1</sup> Pam Douglas. "Sikh, Backers to Appeal Motorcycle Helmet Ruling." *Toronto Star*. N.p., 15 Mar 2008. Web. 24 Mar 2013. <[http://www.thestar.com/news/gta/2008/03/15/sikh\\_backers\\_to\\_appeal\\_motorcycle\\_helmet\\_ruling.html](http://www.thestar.com/news/gta/2008/03/15/sikh_backers_to_appeal_motorcycle_helmet_ruling.html)>

<sup>2</sup> Jordana Huber. "Sikh Helmet Law Challenge Dismissed." *National Post* [Toronto]. N.p., 06 Mar 2008. Web. 25 Mar 2013. <<http://www.nationalpost.com/news/story.html?id=357547>>.



- (a) riding on or operating a motorcycle; or
- (b) operating a motor assisted bicycle,  
on a highway shall,
- (c) have a hard, smooth outer shell lined with  
protective padding material or fitted with other energy  
absorbing material and shall be strongly attached to a strap  
designed to be fastened under the chin of the wearer; and
- (d) be undamaged from use or misuse.<sup>3</sup>

Mr. Badesha was of the opinion that he should be exempt from this law “because it violates his constitutional rights to practice his religion requiring him to wear a turban at all times while outside his home.”<sup>4</sup> Similar challenges have seen exemptions for Sikh motorcyclists in British Columbia and Manitoba and in some other countries around the world including the United Kingdom, Hong Kong and India.<sup>5</sup> However, the Ontario case is significant, because it is an example of the fact “that religious freedom remains subject to limitations, particularly when matters of health and safety are involved.”<sup>6</sup>

Mr. Baljinder Singh Badesha challenged the helmet law on the basis that it violated his freedom of religion and his right to equality. To explain his claim, it is necessary to introduce some of the basic laws that were the subject of debate in this case. The legal documents relevant are the *Canadian Charter of Rights and Freedoms* and the *Ontario Human Rights Code*. According to the paragraph 2 of the *Charter*:

2. Everyone has the following fundamental freedoms:

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<sup>3</sup> Highway Traffic Act, R.S.O. 1990, CHAPTER H.8. Web. 02 May 2013. <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h08_e.htm)>

<sup>4</sup> Huber, N.p.

<sup>5</sup> "Sikh loses helmet fight." *Toronto Star*, N.p., 06 Mar 2008. Web. 25 Mar. 2013. <[http://www.thestar.com/news/ontario/2008/03/06/sikh\\_loses\\_helmet\\_fight.html](http://www.thestar.com/news/ontario/2008/03/06/sikh_loses_helmet_fight.html)>.

<sup>6</sup> Terrance S Carter. "Motorcycle Helmets and Religion: A Case Comment on the Badesha Decision." *Church Law Bulletin*. 24 (2009).N.p., Web. 25 Mar 2013. <<http://www.carters.ca/pub/bulletin/church/2009/chchl24.htm>>.

(a) freedom of conscience and religion; [...]<sup>7</sup>

Regarding the right of equality, *the Charter* continues:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>8</sup>

The *Ontario Human Rights Code* affirms the *Charter* in the following sections:

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.<sup>9</sup>

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.<sup>10</sup>

If we take into account only these paragraphs, Badesha's case appears to be clear – the helmet infringes his freedom of religion and the right to equality and is therefore unacceptable. However, the question is much more complex than that.

At the very beginning, the *Charter* limits itself by stating the following: “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.”<sup>11</sup> The judge, therefore, had to

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<sup>7</sup> Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. Web. 02 May 2013. < <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>>

<sup>8</sup> Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

<sup>9</sup> Human Rights Code, R.S.O. 1990, CHAPTER H.19. Web. 02 May 2013. < [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm)>

<sup>10</sup> Human Rights Code, R.S.O. 1990, CHAPTER H.19.

<sup>11</sup> Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

decide whether Mr. Badesha's demand was "justifiable" and whether the infringements had an objective of sufficient importance to warrant overriding a Charter right.

It was thus necessary to determine whether the safety helmet and its implications had a sufficiently reasonable purpose and whether the exemption for the Sikhs would have had more benefits than drawbacks. The efficiency of the safety helmet appears as crucial for this case.

### **2.1.1. Turban on the Motorcycle - an Increased Health Risk?**

The purpose of the helmet is clear – to protect the wearer from a head injury in case of an accident. If one falls off a motorcycle, the risk of suffering a major injury or death is very high. But is it high enough to infringe the religious freedom of Sikh motorcyclists?

According to the website of the Ministry of Transportation of Ontario, the number of people who died in a motorcycle accident in 2005 was 74. Out of these, 68 were the drivers, the remaining 6 were passengers. More than 1,500 more were injured; 232 people in a major way (that is they had to be hospitalized or admitted to hospital for observation). In 2006, the year when the Badesha case was being decided, 53 people died and more than 1,500 were injured.<sup>12</sup> These numbers have remained more or less stable until the present time. The number of deaths dropped below 40 only in 2009. Nevertheless, the number of injuries connected with motorcycle accidents reached almost 1,700 on that same year.<sup>13</sup> It is also noteworthy that in 2006, 15 of the deaths were people not wearing a safety helmet. Based on these numbers, a study had been carried out for the purposes of this case. It claims that: "assuming half of all Sikh motorcyclists wear turbans, the increase in serious injuries would be between 0.43 and 2.83 Sikh riders a year."<sup>14</sup> This information could be misleading and is rather doubtful,

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<sup>12</sup> " Ontario Road Safety Annual Report (ORSAR) 2006." *Ministry of Transportation of Ontario*. N.p., 20 Jun 2010. Web. 27 Mar 2013.

<[http://www.mto.gov.on.ca/english/safety/orsar/orsar06/chp6\\_1\\_06.shtml](http://www.mto.gov.on.ca/english/safety/orsar/orsar06/chp6_1_06.shtml)

<sup>13</sup> " Ontario Road Safety Annual Report (ORSAR) 2010." *Ministry of Transportation of Ontario*. N.p., 06 Mar 2013. Web. 27 Mar 2013. <<http://www.mto.gov.on.ca/english/safety/orsar/orsar10/special-vehicles.shtml#motorcycles>>

<sup>14</sup> Kirk Makin. "Ontario court rejects religious exemption to motorcycle helmet law." *Globe and Mail* [Toronto]. N.p., 30 Mar 2009. Web. 27 Mar. 2013.

as the total number of the Sikh motorcyclists is not known. It interestingly shows the tendency of both of the parties to bend the statistical information in their favour.

A different example of the manipulation of facts to an almost ridiculous degree is the following case: in an attempt to prove that not only is the driving without a helmet less safe, but that the turban is a dangerous article in itself, a rather bizarre experiment was put forward by the Crown: “an expert it had hired proved that turbans unravel rapidly in 100 km/h winds. The Crown's test had been carried out by a professional engineer who purchased a mannequin head, mounted it on a stick and then placed the assemblage in a wind tunnel.”<sup>15</sup> However, the sceptical judge authorized the opposing party to conduct their own test. After they:

confronted the Crown with the dramatically different test result, prosecutors conceded that their engineer had grossly miscalculated the force of the wind he had generated to batter the imitation head [...]. In fact, the device had been subjected to a 300 km/h wind.<sup>16</sup>

Due to the “gross miscalculation”, the dangers of the turban thus remained unproved. However, the positive effects of the helmet appeared to be incontestable.

### **2.1.2. Impact on the Family Members and the State**

So far, only the risks posed to the drivers themselves have been discussed. However, a very significant line of argument that had been presented eventually played a major role in the final decision of the court. This argument claims that the helmet does not only protect the wearer, but also his family members and the state itself.

Even though one can claim that the state has no right to impose safety measures on its citizens against their will, the effects of a death or a permanent injury have a much larger impact, especially on the people who materially depend. Let us suppose that the helmetless driver who dies in a traffic accident has a family. The emotional and

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<<http://m.theglobeandmail.com/news/national/ontario-court-rejects-religious-exemption-to-motorcycle-helmet-law/article671381/?service=mobile>>

<sup>15</sup> Makin, N.p.

<sup>16</sup> Makin, N.p.

economic hardship imposed on the family members is a major factor, as the children and spouses can be emotionally scarred for life. If the injured person is indispensable in providing for his or her family, the bereaved become economically disadvantaged. In case of a permanent injury, or of a permanent brain damage, the road accident can enormously affect the lives of the family members, who may be forced to take care of the incapacitated victim for many years.

Furthermore, the economic impact on the state and the public health service cannot be neglected. The study already discussed above also claimed, that in case of passing the exemption, the “medical treatment for traumatic brain injuries would increase from \$151,700,000 to \$151,834,685 - a 0.00005-per-cent overall increase in the province's annual health-care budget.”<sup>17</sup> The Ontario tax payers would thus be forced to pay the treatment of drivers, whose injuries could be prevented by the safety helmet.

### **2.1.3. Safety v. Freedom and Equality – the Court’s Decision**

The safety helmet was therefore proven to be efficient; but was it enough to make the infringement in the religious freedom and the right to equal treatment demonstrably justified in a free and democratic society? The court answered both of Mr. Badesha’s claims.

Firstly, the question of limitations of freedom of religion was discussed. The court took into consideration the following criteria:

- whether or not the legislation, on its face or in effect, completely prohibited a religious practice or belief;
- whether or not the legislative prohibition only incidentally touches upon matters of faith;
- the nature of the impact that adhering to one's religion or the regulation in question has on the individual; and

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<sup>17</sup> Makin, N.p.

-the degree of burden placed on others through the conduct in issue and whether or not those burdens engage constitutionally protected interests.<sup>18</sup>

After considering these four points, the court decided that the infringement was indeed justifiable. The court affirmed that “the law’s impairment on religious freedom was minimal, and that there was no reasonable way to accommodate Mr. Badesha’s religious practice without abandoning the safety standard necessary to protect him and the public at large.”<sup>19</sup> After considering the statistical evidence, the helmet was indeed found an effective measure in decreasing the risk of death and head injury. It was decided that the safety regulation had been implemented for the benefit of the public, including those whose religious claims have been partially limited.

Secondly, the question of right to equal treatment under the section 15 of the Charter was discussed. The arguments used in this case were fairly similar to those used in the previous paragraph. As it is hard to imagine that a law that is justifiable on the grounds of religious freedom would remain disputed on the grounds of equal treatment, Mr. Badesha’s claim was therefore dismissed and he was ordered to pay his 110\$ fine.

#### **2.1.4. Concluding Remarks**

This case illustrates the diversity and different approaches to multi-cultural controversies in Canada. Even though the provinces of British Columbia and Manitoba did grant the Sikhs the permission to drive their motorcycles without a safety helmet in very similar situations, Ontario did not follow their example. The dismissal of Mr. Badesha’s claim clearly indicates that the debate over the Sikh religious symbols and the legitimate limits of the religious freedom of this minority is an on-going process without a definite end and that very similar legal controversies can have very different outcomes.

As for the opinion of the author, I do not support the decision of the court, as the evidence seems to be not entirely based on justifiable facts. The increase of injuries of

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<sup>18</sup> Carter, N.p.

<sup>19</sup> Carter, N.p.

the Sikh motorcyclists by a number between 0.43 and 2.83 Sikh riders a year and the 0.00005-per-cent overall increase in the province's annual health-care budget seem hardly to be a convincing reason, as the numbers are based on mere estimations. Since all the arguments are derived from these facts, the decision of the court is rather questionable. Moreover, the financial matters could be solved by other means than a complete ban – for example by increased insurance fees for those who choose not to wear a helmet while riding a motorcycle.

## **2.2. *Kesh* and the Royal Canadian Mounted Police**

Baltej Singh Dhillon, the first turbaned RCMP officer, was born in Malaysia in 1966 and migrated to Canada in 1982. After studying criminology and doing some voluntary work with the police forces, he decided to apply for a full-time employment in the structures of the police. However, “when it came to joining the RCMP, Baltej Singh was told that the RCMP did not recruit people with turbans.”<sup>20</sup>

Luckily for Mr. Dhillon, in 1989 a bulletin was issued by the Commissioner of the Royal Canadian Mounted Police. This bulletin concerned the right of the Sikh RCMP members to wear a turban and other required religious symbols as a part of the uniform. It said the following:

- a. Members who practice the Sikh religion may wear:
  1. an RCMP-issue turban in place of the standard issue headdress provided it conceals the hair and is neat;
  2. under the uniform, a small Kirpan, the symbolic Sikh sword, or replica thereof, having a maximum overall length of 3 [inches];

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<sup>20</sup> Navneet Sidhu. "Baltej Singh Dhillon- Making History: A Sikh Canadian Hero." *Canadian Sikh Heritage*. N.p.. Web. 8 Apr 2013. <[http://www.canadiansikhheritage.ca/files/Baltej\\_Singh\\_Dhillon.pdf](http://www.canadiansikhheritage.ca/files/Baltej_Singh_Dhillon.pdf)>.

3. a Kara, i.e. a symbolic Sikh iron bracelet, and a Khanga, i.e. a Sikh comb worn in the hair under the turban; and

4. facial hair and other uncut hair [...] <sup>21</sup>

This bulletin was part of a longer process which resulted in 1990 in the decision according to which “the federal government finally removes the ban preventing Sikhs in the RCMP from wearing turbans.”<sup>22</sup> This alteration of the uniform was not the first, and is probably by far not the last which will be implemented. However, this controversy has become one of the most important milestones in the history of Canadian multiculturalism because of three reasons: because of its concern for the religious freedom of both the Sikh and the majority population; because the notion of neutrality of the police forces was put in question; and because of the fact that the RCMP uniform has been often perceived as an important Canadian traditional symbol. The resolution of this problem and the following debates did not take place until 1996, when the case was decided by the Supreme Court.

### **2.2.1. Turbans and the RCMP – a Timeline**

. Firstly, it is necessary to present a timeline which maps this controversy and identifies its main protagonists. The first sign of change came relatively soon –already in 1982, when a report was issued by “the Canadian Human Rights Unit of the RCMP, [which] described the tenets of Sikhism, some of its history and the significance of the wearing of various religious symbols.”<sup>23</sup> It highlighted the importance of the symbols for the *Khalsa* Sikhs and recommended their allowing for RCMP members. However, the changes suggested by this report were not put into practice until 1987, when the RCMP “began to endorse and implement affirmative action policies directed at the

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<sup>21</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158. 08 Jul 1994. Web. 02 May 2013. <<http://reports.fja.gc.ca/eng/1995/1995fca0229.html>>

<sup>22</sup> "1990: Sikh Mounties permitted to wear turbans." CBC Digital Archives. N.p., Web. 8 Apr 2013. <<http://www.cbc.ca/archives/categories/society/crime-justice/mounties-on-duty-a-history-of-the-rcmp/sikh-mounties-permitted-to-wear-turbans.html>>.

<sup>23</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.



recruitment of visible minorities [...].”<sup>24</sup> Two years later, “a bulletin was issued by the Commissioner to effect a change in the Administration Manual by changing the relevant Standing Orders.”<sup>25</sup> This bulletin told the Sikh recruits, that they would be allowed to wear turbans and unshorn beards as a part of their uniform. As stated before, the government approved these changes in 1990.

The opposition to this decision emerged almost immediately:

particularly in western Canada where the RCMP is the police force with which the public comes into daily contact. Moreover, western Canadians have always had great pride in and attachment to the traditions of the RCMP.<sup>26</sup>

Already in 1989, when the decision of the RCMP Commissioner became public, a reaction of Kirsten Mansbridge aroused a big public debate and a lot of responses. This woman, whose husband, son and son-in-law were RCMP members and who herself had belonged “to the ladies auxiliary of the RCMP Veterans in Calgary since 1986 and previously was a member of the ladies auxiliary in Winnipeg,”<sup>27</sup> decided to start a petition with her sisters and to address it to the members of Parliament. Ms. Mansbridge and her sisters’ main concern appeared to be “motivated by their great pride in the traditions of the RCMP and a reluctance to see changes in the uniform occur.”<sup>28</sup>

The petition was originally meant as an initiative with a very modest nature and a local scope. However, the support for the case was rather astounding. The petition was eventually signed by more than 210 000 people. In 1990, the parliament passed the legislation anyway, so Ms. Mansbridge decided to forward the case to the court. She joined forces with John R. Grant, Kenneth E. Riley and Howard S. Davis – all ex-RCMP officers who had previously initiated their own unsuccessful petition. The case came before the Federal Court.

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<sup>24</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>25</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>26</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>27</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>28</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

The plaintiffs sought an order prohibiting the Commissioner of the RCMP from allowing the wearing of religious symbols, such as a turban, as part of the RCMP uniform, and a declaration that the Commissioner's actions in this regard were unconstitutional.<sup>29</sup>

This institution rejected their claims and approved the alteration of the uniforms in 1996.

### **2.2.2. Main Topics of the Debate in Court**

This controversy seems to be a relatively simple debate with two opposing camps – the Canadian traditionalists defending the traditional RCMP uniform on the one hand; the orthodox Sikhs standing up for their religious freedom on the other. However, the case is much more complex than that, since the border line between the secularity of police forces and religion seems to be the real issue.

The following questions will be addressed, and will form the main body of this section: Why did the Royal Canadian Mounted Police decide to accept the turbaned Sikhs? Is there anything in the constitution that prevents this? What is the importance of conventions in this case? Will the turbaned Sikh police officers be biased by their religion?

#### **2.2.2.1. Reasons for the Commissioner's Decision**

Firstly, the reasons of the RCMP to accept the Sikh articles of faith will be analyzed. Apart from the external pressures, such as complaints from the Sikh community, the Royal Canadian Mounted Police had a motivation coming from the larger context of the Canadian society, which requires a larger degree of openness to the more ethnical diverse environment. It appears that the “crucial consideration, when the decision to accommodate the Sikh turban was made, was the desire to encourage the recruitment of visible minorities into the force.”<sup>30</sup> This fact was developed by the defendants during the court. They presented three points that led the Commissioner to make his decision:

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<sup>29</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>30</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

- (1) to further the ability of those affected to exercise their religious freedom;
- (2) to reflect the present day multicultural nature of Canada;
- (3) to promote the more effective operation of the force by allowing recruitment of members of a visible minority.<sup>31</sup>

It appears that the bombing of the Air India flight by Sikh militants also played a role in these changes. During the investigation, the forces realized they needed more staff capable of communicating with the Sikh community. As Manjit Singh, a member of the Canadian Sikh Community claims: “In 1985, after the crash of Air India’s Kanishka, when the RCMP launched its investigations into the crash, it realised that it had no one who spoke Punjabi and could talk to the expatriate Sikh community [...]”<sup>32</sup> Without the turbaned Sikhs, this task would be rather difficult. The practical reasons supporting the Commissioner’s decision thus appear to be clear.

#### **2.2.2.2. Tradition, Convention and the Uniform**

The second part of the debate concerned the traditional role of the uniform in RCMP forces. As the plaintiffs claimed: “Whereas the distinctive uniform is recognized and respected by the public and other police forces in Canada and other countries, we see no merit or value or reason to allow changes in the R.C.M.P. uniform or dress code.”<sup>33</sup>

This opinion seems to be strongly rooted in a large portion of the Canadian society. The reason for it seems to be the Canada’s weakened national identity resulting in a rebounding nationalistic movement, which attaches excessive significance to the few remaining national traditional symbols. However, the judge was quick to point out that convention and tradition, strong as they might be, are not a basis for legal matters. Moreover, the defendants met these arguments with the claim, that the RCMP are not

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<sup>31</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>32</sup> "This man helped to bring Sikh Police officer with turban in RCMP ." *NRI Internet*. N.p., 01 Feb 2003. Web. 8 Apr 2013. <[http://www.nriinternet.com/CANADA/POLICE/Manjit\\_Singh/](http://www.nriinternet.com/CANADA/POLICE/Manjit_Singh/)>.

<sup>33</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

respected merely for the clothes they wear, but for the integrity and reliability of their work.

### **2.2.2.3. Religious Symbols – a Threat to the Secularity of the Police Forces?**

The most discussed topic of this court case was the question whether the Sikh religious symbols would infringe the secular nature of the Canadian police forces, and whether the police necessarily needs to be secular in all of its aspects. To introduce this topic to the court, “Dr. Gualtieri, a professor in philosophy and religion at Carleton University, gave evidence relating to the nature and function of symbols, the nature of religion and the type of conditions which promote religious toleration.”<sup>34</sup> According to Gualtieri, a symbol in general is a rather shorthand way of communicating messages. The turban, as well as the other items of the 5ks, is “a public demonstration of his, or her, allegiance to Sikhism and to that religion's values and goals. It is a sign of devoutness and dedication.”<sup>35</sup>

Gualtieri then continued to state that all religions, even those that do not profess violence, thrive for dominance and, by nature, claim the exclusive knowledge of truth. He concluded that the only way for the state to maintain a harmony between different religious philosophies is to remain as detached from them as possible. The implementation of the Sikh religious symbols is, therefore, not recommended. The secularity of the police forces must be protected.

However, the counterarguments contradicted this theory. For the defendants, “there is nothing inherently contradictory in a liberal democracy giving some support for one or more religious traditions.”<sup>36</sup> The United Kingdom was given as an example – a secular democracy as it is, its head of the state, the Queen, is at the same time the head of the Church of England. The argument then continues by claiming that:

there has not been, in Canada, a long tradition of  
having an expressly articulated constitutional

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<sup>34</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>35</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>36</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

principle which requires the drawing of a line between religious authorities and state authorities, as has been the case, for example, in the United States.

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This argument is very interesting as it undermines the claim that the police forces need to be exclusively secular – an opinion presented as indisputable by the plaintiffs.

#### **2.2.2.4. Religious Freedom**

If the religious symbols are not incorporated in the uniform, the Sikhs claim an infringement of their religious freedom. However, the plaintiffs argued that if the articles of faith were implemented, the religious freedom would be infringed upon as well – but, conversely, that of the people coming into contact with the police officers:

The plaintiffs argue that the constitutional guarantee of freedom of religion is breached when members of the public are forced to interact with or confront police officers who are wearing, as part of the uniform of the state, a religious symbol which demonstrates the officer's allegiance to a religious group different from that to which the particular member of the public belongs.<sup>38</sup>

In the context of this thesis, this is perhaps the most interesting argument presented so far. In all the other cases, when the question of religious freedom is discussed, it is usually from the point of view of the Sikh minority. In the RCMP turban case, the tables seem to have turned – the religious rights and neutrality of the majority society could be breached by policemen clearly affiliated with a traditional religion.

According to this line of argument, the general public is, by merely acknowledging such symbols as the Sikh articles of faith, forced to react – passively or actively – to their presence:

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<sup>37</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>38</sup> Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

The incorporation of religious symbols into the uniform of the RCMP similarly imposes a type of pressure or compulsion, on members of the public who are compelled to deal with that officer, to acknowledge the religious tradition of the officer in question.<sup>39</sup>

This situation can be compared to optional religious education in countries such as Ireland, Poland or Slovakia. Even though the pupils are not forced to attend these classes, the mere presence of this subject arguably infringes the freedom of conscience and religion. If the parents need to choose whether their children should attend, for example, the catholic instruction, they are forced to make a religious statement by either accepting or refusing the religion. The person coming into contact with a Sikh RCMP police officer is not forced to make a choice. However, he or she is forced to immediately acknowledge the difference between a Sikh and a non-Sikh police officer, thus being involved in a religious debate.

The judge of this case dismissed this argument as well. The ruling stated the following argument: “In the case of interaction between a member of the public and a police officer wearing a turban, I do not see any compulsion or coercion on the member of the public to participate in, adopt or share the officer's religious beliefs or practices.”<sup>40</sup> It appears that the only interaction between the public and the Sikh religious symbols would be that of observation. The ruling then continues with the ensuing statement: “I cannot conclude that observation alone, even in the context of a situation in which the police officer is exercising his law enforcement powers, constitutes an infringement of the freedom of religion of the observer.”<sup>41</sup>

#### **2.2.2.5. Turban – a Necessity?**

Another peculiarity of this controversy is the fact that the very requirement of the Sikh religion to wear a turban was in question. What is even more interesting is that the person who raised these complaints was an adherent to the Sikh religion who had

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<sup>39</sup>Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>40</sup>Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

<sup>41</sup>Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

already been a part of the forces. However, he did not think that the turban is an inseparable part of the Sikh religion. He stated the following:

There is nothing in the Sikh religion that makes the wearing of the turban mandatory. The religion requires a Sikh to wear five symbols, and I am sure that the Commissioner is familiar with them. The wearing of the turban is merely through custom.<sup>42</sup>

It is a known fact that Sikhism is not a monolithic religion – the Sikhs are divided into groups which differ according to the importance they attribute to the turban and to the other articles of faith. For some, it is acceptable to cover the unshorn hair with a simple handkerchief (*patka*) and the turban is considered a mere optional accessory.

However, even though this argument is not without a point, it loses ground in the context of this work, as only those Sikhs who perceive the turban as inseparable from their Sikh identity are considered. Moreover, as will be seen in the next chapter, the religious freedom in Canada is not examined according to the substance of religious beliefs, but solely on the basis of the sincerity of these beliefs. A mere sincere belief in the necessity of the turban is sufficient to be of importance for the court.

### **2.2.3. Concluding Remarks**

So far, the main subject of this thesis has been the *kesh* and its covering *dastar*, or the turban. As we have shown, the first subject of the controversy caused by this symbol was the clash of religious freedoms of the Sikh community and the road safety regulations. Secondly, it was the clash of religious freedoms and the traditional dress code of the RCMP. In the helmet cases, the question was whether an individual's religious beliefs should be allowed to interfere with his or her own personal safety, with the well-being of the family members, and whether they should be allowed to cause potential undue hardship on the state health care. In the second case, the conflict was, in a broader sense, between the accommodation of minorities and Canadian traditions, which seemed to be threatened by the proposed adjustments to the RCMP uniforms. People voiced their fear that one of the oldest Canadian traditions would be altered by

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<sup>42</sup>Grant v. Canada ( Attorney General ) ( T.D. ), [1995] 1 F.C. 158.

numerous religious minorities, and that each of them would claim their own adjustments to the traditional uniform. Moreover, the fear of the police force becoming biased by religious affiliations was also in question.

As for the RCMP turban case, the opinion of the author concurs with the decision of the court. The representation of visible minorities in the police forces increases their credibility and highlights the multicultural policy of Canada. However, I am less sure in regards to the question of the religious neutrality of the police members. The incorporation of religious symbols into the uniform of the security forces seems to me a rather controversial step. However, as far as I am concerned, there has not been any case of a Sikh police officer to be demonstrably biased by his or her religious affiliation since this case took place.

Finally, however powerful and controversial these conflicts were, they did not encompass the potential threat to other people. This appears to be the main problem of the *kirpan* cases that are going to be discussed in the following chapter.



## **Chapter 3: *Kirpan***

This chapter will deal with the article of faith called the *kirpan*. The controversy that this symbol inspired will be illustrated on a case that concerned the safety of the environment of educational institutions. The question of whether the *kirpan* should or should not be allowed into schools will be illustrated on the Multani case – the case of a 12 year-old boy who had to defend his right to wear a *kirpan* to his school in Quebec.

The central question will be whether this ceremonial dagger should be regarded as a weapon and whether it can be used as such. If it is a potential threat, should the protection of religious freedom outweigh the guarantee of a safe environment for other Canadian citizens?

### **3.1. *Kirpan* in a School Environment: the Multani Case**

#### **3.1.1. Introduction**

This section will deal with the problem of the *kirpan* in the school environment and its impact on the safety environment of the public educational institutions. It will be illustrated on the 2001 case of Gurbaj Singh Multani. Firstly, a short introduction of this case will be presented. Secondly, to put the case in a broader context, some important cases of school violence that urge the school boards to be more careful will be discussed. Fourthly, the important questions raised by the court will be looked at closely. These questions will be: Are the school's concerns about the *kirpan* being used as a weapon or as a symbol of violence necessary? Is the complete ban of *kirpans* necessary or would some sort of compromise be sufficient? Does a school's obligation to protect the religious freedoms of students outweigh their duty to keep the staff and students within the domain of a safe environment?

#### **3.1.2. The Multani Case - basic outline**

The *Multani v. Commission scolaire Marguerite-Bourgeoys* case is an important example of the conflict between the Sikh religious symbols and the regulations in Canadian schools. The subject of this controversy was an orthodox Sikh boy: “In

November 2001, Gurbaj Singh Multani, a 12-year-old Grade 7 student at Ste-Catherine Labouré School in Montreal, is playing with other kids in the schoolyard when his *kirpan* falls out of his cloth holder.”<sup>1</sup> This incident immediately raises “questions among the school community about school safety and whether or not he should be permitted to continue to bring the *kirpan* to school.”<sup>2</sup>

This case is a culmination of a long legal battle carried out by Gurbaj and his father, Balvir Singh Multani, against the Quebec school division and the Attorney General of Quebec. Immediately after the schoolyard incident, the school allowed Gurbaj’s parents to continue to send their son to school, provided that his ceremonial dagger was safely enclosed inside his clothing. The parents agreed to this compromise. However, the school board changed their mind and ruled that “wearing a *kirpan* at school posed a potential safety threat to students and staff, which violated the school’s code of conduct prohibiting the carrying of weapons.”<sup>3</sup> Gurbaj was then banned from carrying the *kirpan* on the school grounds. The Multanis claimed that this limitation “posed irreconcilable friction with the tenets of their faith,”<sup>4</sup> and withdrew their son from the public school system.

In 2002 the Superior Court of Quebec weighed the case and disagreed with the total ban of the *kirpan* by the school board. It ruled that under certain conditions, Multani could carry this article of faith to school. It had to be carried in a wooden case, wrapped in a cloth and sewed under the boy’s clothing. However, the Quebec Court of Appeal overturned this judgment favoring the board. The argument was that the safety of the students outweighed the religious freedom of the Sikh student.

Finally, in 2006 the Multanis successfully appealed their case to the Supreme Court of Canada. The decision came, that Gurbaj should be allowed to wear his *kirpan*

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<sup>1</sup> "Timeline: The Quebec kirpan case." *CBC News*. N.p., 02 Mar 2006. Web. 17 Mar 2013.

<<http://www.thecharterrules.ca/index.php?main=concepts&concept=3&sub=case>>.

<sup>2</sup> "Multani v. Commission scolaire Marguerite-Bourgeoys." *The Charter in the Classroom: Students, Teachers and Rights*. N.p., Web. 17 Mar 2013.

<<http://www.thecharterrules.ca/index.php?main=concepts&concept=3&sub=case>>.

<sup>3</sup> "Multani v. Commission Scolaire: The Kirpan Case: Hanging in the Balance: Religious Symbolism, Security, and Freedom of Religion - A Summary of the Kirpan Case." *Centre for Constitutional Studies/Centre d'Etudes Constitutionnelles*. N.p., Web. 17 Mar 2013.

<<http://www.law.ualberta.ca/centres/ccs/rulings/thekirpancase.php>>.

<sup>4</sup> "Multani v. Commission Scolaire: The Kirpan Case: Hanging in the Balance."

to school. It was argued that the danger posed by the *kirpan* was, after the implementation of certain safety measures, not sufficient to limit Gurbaj's religious freedom.

### 3.1.3. School Violence and Fears

A phrase that could be used as an introduction to the question of the violence in schools, and the ensuing safety measures which ban the carrying of weapons in these institutions is given on the website of *The Charter in the Classroom: Students, Teachers and Rights* website, which deals with the Multani case:

In light of recent media reports on incidents of school violence, one might readily agree that rules prohibiting students from bringing weapons to school should be enforced with zero tolerance. But is there any situation in which a no weapons policy should be adjusted to accommodate a student's Charter right to freedom of religion? <sup>5</sup>

Indeed, carrying weapons of any kind in a public space is always a very sensitive question, especially in the case of schools. Both the parents and teachers are very reluctant to allow any potential threat to their children, especially at times when the reports on shooting sprees and school stabbings are a more or less regular part of the news. The Multani case started in 2001. The headlines of some periodicals from this time reveal quite a number of cases of violence exercised by a student on his fellow classmates.

For illustration, in 1999, only two years prior to the beginning of Gurbaj Multani's struggle, "a 14-year-old boy opened fire with a .22-calibre rifle inside W.R. Myers High School in Taber, Alta [Alberta]." <sup>6</sup> The shooter was described as an

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<sup>5</sup> "Multani v. Commission scolaire Marguerite-Bourgeoys." *The Charter in the Classroom: Students, Teachers and Rights*.

<sup>6</sup> "Tragedy in Taber." *CBC News Online*. N.p., 27 April 2004. Web. 17 Mar. 2013. <<http://www.cbc.ca/news/background/taber/>>.

“unpopular kid who was the subject of teasing and name-calling.”<sup>7</sup> He killed one of the students and wounded another. His psychiatrist described him three years later as “delusional and obsessed with violence in movies and video games.”<sup>8</sup>

A year later, in 2000, “a 15-year-old boy accused of stabbing five people at a high school near Ottawa has been charged with attempted murder.”<sup>9</sup> The incident started with an argument. The boy “threatened a fellow student before finally stabbing him with a steak knife.”<sup>10</sup> He then ran through the school, stabbing four more people – three students and one school employee.

These incidents influenced, directly or indirectly, the Canadian perception of violence in schools and the concerns of the school board and parents when considering the *kirpan*. The general public was much more inclined to support a complete prohibition of carrying anything that resembled a weapon within educational institutions. However, as will be shown later on, the question of resemblance, and the borderline between a potential weapon and a mere harmless object are very difficult to grasp.

### **3.1.4. *Kirpan*: a Weapon or a Religious Symbol?**

The fears and concerns presented in the previous section are all based on the threat that a weapon will be used by a student to harm another student. From this point of view, the *kirpan* is a potential weapon and can be used by the owner himself (or by somebody else) to harm fellow students. From the following argument, it is largely evident that the *kirpan* was considered a weapon by the school board. In 2002, the board of the school refused to ratify its usage on the basis that “wearing a *kirpan* at the school violated art. 5 of the school’s Code de vie (code of conduct), which prohibited the carrying of weapons and dangerous objects.”<sup>11</sup> The school board also raised concerns,

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<sup>7</sup>“Tragedy in Taber.”

<sup>8</sup> “Tragedy in Taber.”

<sup>9</sup> “Boy charged with Ontario school stabbing.” *CBC News Online*. N.p., 11 November 2000. Web. 17 Mar 2013. <<http://www.cbc.ca/news/canada/story/2000/04/22/stabbingcharges000422.html>>.

<sup>10</sup> “Boy charged with Ontario school stabbing.”

<sup>11</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6. Web. 17 Mar 2013. 16- 17 <[http://www.law.yale.edu/documents/pdf/Intellectual\\_Life/Multani\\_v.\\_Comm.\\_scolaire\\_Marguerite-Bourgeoys.pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/Multani_v._Comm._scolaire_Marguerite-Bourgeoys.pdf)>.

that the *kirpan* was not only a dangerous object, but that it was “a symbol of violence and [...] it sen[t] the message that using force is necessary to assert rights and resolve conflict.”<sup>12</sup> Lastly, it was claimed, that if Multani should be allowed to wear his dagger in school, other students would soon demand the right to bring their own knives. However, as this section will try to prove, these assumptions are to a large degree contestable.

Firstly, the issue of whether the *kirpan* can be considered a harmful weapon will be addressed. The definition of this symbol given by the website of the World Sikh Organization of Canada – a non-profit organization set-up to protect and promote the rights of Sikh Canadians - states the following:

The *kirpan* most closely resembles a sword in a metal sheath, which is wrapped in a fabric cloth (*gathra*). It is worn close to the body, either on top of or underneath one’s clothing. The *kirpan* serves as a reminder to a Sikh of his/her mortality. It is an enjoiner to make the most of one’s life, and to take personal responsibility to protect the weak and stand up against injustice.<sup>13</sup>

It is important to notice, that even though this definition acknowledges the resemblance of the *kirpan* to a sword, it does not say a word about it being a weapon. In a different article from this website, WSO underlines the non-violent and symbolic nature of the *kaka*:

The *kirpan* is often described as a dagger or a miniature sword, which is what it resembles, but that description is so far removed from the purpose of a *kirpan* as to make it misleading. The *kirpan* is an article of faith that plays a role in the Sikh religion that is similar to that of a

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<sup>12</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6. 7

<sup>13</sup> "Kirpan." *World Sikh Organization of Canada*. N.p., Web. 17 Mar 2013.  
<<http://www.worldsikh.ca/book/sikhism/kirpan>>.

Christian cross, a Jewish Star of David, or a Muslim hijab,  
[...].<sup>14</sup>

The comparison to the Christian cross, Jewish Star of David, or a Muslim hijab is a rather interesting one, as it puts the Sikh symbol in a larger context of Canadian multi-cultural issues. It also points out the fact that the Christian symbols are largely tolerated, while at the same time the minority religions are looked upon as potentially threatening.

However, this simile is not without importance even if one tries to understand the value of this article as a non-violent symbol of faith. Just like a Christian would be reluctant to attack anyone with a holy cross, a Sikh would be opposed to any aggression executed by means of his *kirpan*. As Marcus Gee, a Canadian journalist, points out in his article for *The Globe and Mail*, addressing this controversy: “[...] Sikhs never think of drawing their *kirpan* in anger. For them, it is a purely religious object, one of the five symbols [...] that they are required to wear.”<sup>15</sup>

Apart from the argument that it is a potentially harmful weapon, the school board in the Multani case presented a second assertion. They claimed that it was not only a potentially dangerous weapon; it was also a symbol of violence. However stylized, it is still a sword sending the message that force is necessary to resolve conflicts. This supposed message was qualified as unacceptable in the school environment. The Supreme Court ruling addressed this argument very simply and very unambiguously by stating that it was “not only contradicted by the evidence regarding the symbolic nature of the *kirpan*, but is also disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism.”<sup>16</sup>

The third claim- that other students would also demand to carry knives- was also dealt with very effectively. The ruling advised to the school board to promote the

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<sup>14</sup> "Understanding the Kirpan." *World Sikh Organization of Canada*. N.p., Web. 19 Mar 2013. <<http://worldsikh.ca/page/understanding-kirpan>>.

<sup>15</sup> Marcus Gee. "Restricting kirpans would inflict wound on tolerance." *Globe and Mail*. N.p., 07 Apr 2010 Web. 19 Mar 2013. <<http://www.theglobeandmail.com/news/toronto/restricting-kirpans-would-inflict-wound-on-tolerance/article621804/>>

<sup>16</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, 2006 SCC 6. 47

concept of religious tolerance to those students, who would find this exception inappropriate. The statement of the Supreme Court was:

Religious tolerance is a very important value of Canadian society. If some students consider it unfair that G[urbaj] 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.<sup>17</sup>

In conclusion, we have firstly seen that the potential threat of the *kirpan* being used to harm other students was answered with the argument that it was a mere peaceful religious symbol. The claim that it was a symbol of violence and aggression was labeled by the Supreme Court as disrespectful. Thirdly, the statement that the exception for the *kirpan* would inspire other students to demand the right to carry weapons was addressed with the notion of respect of the religion of others – the carrying of the ceremonial dagger by the Sikh students is not a personal fancy but a sincere religious belief.

Therefore, the Supreme Court granted Multani the right to wear his *kirpan*. However, this exception was not unconditional and certain safety measures had to be met. These safety measures will be analyzed in the following section.

### **3.1.5. *Kirpan* Safety Measures**

The previous section showed that the *kirpan* was not considered a weapon by the Supreme Court in the Multani case. Nevertheless, certain conditions had to be met in order to fully ensure the safe school environment without limiting the pupil's right to wear the ceremonial dagger.

In the initial phase of the controversy, soon after Multani dropped his *kirpan* in the school yard, the school board “allowed G’s [Gurbaj’s] parents to send their son to

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<sup>17</sup> Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. 7

school wearing the *kirpan*, if it was safely sealed inside his clothing.”<sup>18</sup> The conditions given by the Quebec Superior Court were also very similar:

- the *kirpan* was to be worn under the student’s clothes;
- the *kirpan* was to be placed in a wooden sheath and wrapped and sewn securely in a sturdy cloth envelope, which was to be sewn to a shoulder strap (*guthra*);
- the student was required to keep the *kirpan* in his possession at all times, and its disappearance was to be reported to school authorities immediately;
- school personnel were authorized to verify, in a reasonable fashion, that the conditions for wearing the *kirpan* were being complied with, [...] <sup>19</sup>

The Supreme court basically came back to this decision and upheld it by the following statement:

The risk of G using his *kirpan* for violent purposes or of another student taking it away from him is very low, especially if the *kirpan* is worn under conditions such as were imposed by the Superior Court. It should be added that G has never claimed a right to wear his *kirpan* to school without restrictions.<sup>20</sup>

The Supreme Court thus made it clear, that this Sikh “K” is not a threat, especially if it is safely sown into the clothing. To emphasize even more that the danger was no longer an issue, the statement continues: “Furthermore, there are many objects in schools that could be used to commit violent acts and that are much more easily obtained by students, such as scissors, pencils and baseball bats.”<sup>21</sup> This basically means that if you

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<sup>18</sup> “Multani v. Commission Scolaire: The Kirpan Case: Hanging in the Balance”

<sup>19</sup> Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. 55

<sup>20</sup> Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. 6

<sup>21</sup> Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. 6



want to find a weapon to harm someone, you will be able to do it easily whether you possess a *kirpan* or not.

Other possible suggestions of safety measures, such as carrying a *kirpan* made of other materials than metal, in order to make it less dangerous, were dismissed. This was done on the premises that Gurbaj truly believed that these changes would violate the Sikh prescriptions: “G[urbaj] genuinely believes that he would not be complying with the requirements of his religion were he to wear a plastic or a wooden *kirpan*, and none of the parties have contested the sincerity of his belief.”<sup>22</sup> These measures show a somewhat ambiguous approach to this article: it is not considered a weapon; however, one has to carry it safely to make it one hundred percent harmless.

### **3.2. *Kirpan* as a Weapon – Controversy Continues**

As this thesis tries to prove, the controversies and conflicts between various cultural traditions are part of a perpetual process in multi-cultural countries such as Canada. For this reason, even though the Multani case seems to have resolved the question of whether the *kirpan* is a weapon or not, there are still voices which oppose this decision, as will be demonstrated on the following legal debate.

In 2010 a man was attacked by a Sikh by means of this ceremonial dagger. As Raveena Aulakh reported for *Toronto Star*, this attack “in which a Brampton lawyer was stabbed using a Sikh ceremonial dagger is raising fears about renewed objections to the right to wear the religious symbol.”<sup>23</sup> Aulakh continues to describe the incident:

The crowd of about 150 people was yelling obscenities and threats outside the Sikh Lehar Centre in Brampton when three temple officials stepped out to pacify them.

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<sup>22</sup>Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6. 6

<sup>23</sup>Raveena Aulakh. "Brampton kirpan attack renews debate over Sikh daggers." *Toronto Star* 06 Apr 2010. Web. 21 Mar 2013.  
<[http://www.thestar.com/news/crime/2010/04/06/brampton\\_kirpan\\_attack\\_renews\\_debate\\_over\\_sikh\\_daggers.html](http://www.thestar.com/news/crime/2010/04/06/brampton_kirpan_attack_renews_debate_over_sikh_daggers.html)>.

Within seconds, one in the crowd, clutching a thick steel bangle, punched Manjit Mangat, the 53-year-old president of the Sikh temple, in the face. Witnesses say at least two men brandished unsheathed *kirpans*, the Sikh ceremonial dagger.

The next moment, Mangat, a prominent Brampton lawyer, was on the ground — his face bloodied and a 5-inch wound in his abdomen.<sup>24</sup>

As it appears, the fact that the attackers used the *kirpan* was not a religious gesture and it did not have any religious significance. Any other weapon could have been used. However the fact that it was the ceremonial dagger raised many concerns. Not only did it unsettle the general public, but it also deeply disturbed the Sikh Canadians, who fear that their long fight for the right to wear their *kirpan* had been thwarted. Gurdev Gil, a Sikh man, is quoted in the *Toronto Star*: “Why would people listen to us when we now say that it [*kirpan*] is ceremonial in nature ... not meant to kill people?”<sup>25</sup>

As it is evident, the Sikh community dissociated itself from this assault and denounced it the strongest possible terms. However, some damage had been done and a strong argument had been given to those who oppose this religious article. In the Multani case, the Supreme Court stated that “not a single violent incident related to the presence of *kirpans* in schools has been reported.”<sup>26</sup> Although this statement remains true, it no longer holds perennial validity.

### 3.3. Concluding Remarks

As for the opinion of the author, I concur with the final decision of the court. I do not think that the *kirpan* is a real threat to the other students and teachers – at least no

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<sup>24</sup> Aulakh, N.p.

<sup>25</sup> Aulakh, N.p.

<sup>26</sup> *Multani v. Commission scolaire Marguerite-Bourgeois*, [2006] 1 S.C.R. 256, 2006 SCC 6. 6

more than a number of other objects available in the classroom. However, the ambiguity of the status of the *kirpan* seems to be very interesting – if the *kirpan* is indeed not a weapon and it is not meant to harm other people, why do so many safety measures need to be implemented? Why does the judge, despite making it clear that the *kirpan* is not a weapon, still think it should be limited by a number of safety precautions?

## Chapter 4: Conclusion

To sum up, this thesis discusses the visible representation of the Sikh religious symbols in Canada. After an introduction into the context of the Canadian multiculturalism and the Sikhism in Canada, the controversy ensuing from the conflict of the turban and the safety helmet while riding a motorcycle had been discussed. The second part of this chapter dealt with the turban in the context of the Royal Canadian Mounted Police. The third chapter was concerned with the problem of the *kirpan* in the Canadian educational institutions.

To conclude, this thesis tried to introduce the struggle of the Sikh Canadians to make their religious symbols accepted by the majority population of Canada. As is clearly visible, the limits of acceptance in a multi-cultural society are part of an ever-changing process that will probably never completely conclude. However, one might argue that the process itself is the reward – it is the debate over the controversies that forces people to understand different cultures, to respect them and, finally, to treat them as an important part of the cultural and ethnic mosaic we call Canada.

The controversies caused by the Sikh religious symbols in contemporary Canada have an equal impact on the Sikh community and the Canadian society as a whole. Even though this is a rather recent phenomenon, the changes in society are already visible. As Mr. Baltej Singh Dhillon, the very first turbaned police officer in Canada, says in an interview recorded some twenty years following his entry into the forces: “I think from visible we have begun to move towards acceptance. We are no longer being tolerated, but accepted without any reservations.”<sup>1</sup> This statement confirms, that the Sikh controversies indeed had a rather significant impact on the visible minorities in Canada.

Canadian multiculturalism is without doubt a system which promotes respect and acceptance of intercultural differences, grounded in the firm belief in democratic values and human rights. However, it is necessary to remain conscious of the fact that the system would never work without the individual people standing up for their religious rights. As Ms. Navneet Sindhu puts it:

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<sup>1</sup> Jain Ajit. "Today, nobody notices my turban, says RCMP's first turbaned cop." *Rediff News*. N.p., 12 May 2010. Web. 11 Apr 2013. <<http://news.rediff.com/report/2010/may/12/baltej-dhillon-rcmp-on-20-years-in-the-force.htm>>.

Canada as a nation has come a long way and we should be proud to be in a country that now respects the cultural differences and accepts everyone as equal. At the same time let us once again salute all those who have forced Canada to change and accept the religious differences in a way that no other country in the world does. We can now look back and be proud of all the struggles that were done by our pioneers -either those who came to Canada first or those that became the change themselves.<sup>2</sup>

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<sup>2</sup> Navneet Sindhu. "Baltej Singh Dhillon- Making History: A Sikh Canadian Hero." *Canadian Sikh Heritage*. N.p.. Web. 11 Apr 2013. <[http://www.canadiansikhheritage.ca/files/Baltej\\_Singh\\_Dhillon.pdf](http://www.canadiansikhheritage.ca/files/Baltej_Singh_Dhillon.pdf)>.

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