
Muslim Women, Dress Codes and Human Rights: an introduction to some of the issues



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Part 1: Introduction

The case of *Police v Abdul Zohoor Razamjoo*¹, relating to insurance fraud, was set down for hearing at the Auckland District Court on 28 July 2004. Two female Crown witnesses wanted to give evidence wearing their burqa. The defence counsel raised an objection, and the judge accepted the need to address the issue before the trial. At issue was the balance between the witnesses' right to practice their religious belief by wearing the burqa and the accused's right to a fair trial.

In a decision given on 17 January 2005 Judge Moore said that the balancing of the competing rights of the defendant to a fair trial and those of the Crown witnesses wishing to wear the burqa were not the only considerations. It was the interests of justice in an overall sense which were determinative. Judge Moore ruled that screens could be used to ensure that only the judge, counsel and female court staff were able to observe the witnesses' faces during cross-examination.

This paper seeks to provide an introduction to the human rights issues which have arisen in that court case and in other contexts.

The paper begins with a brief outline of some of the reasons why women wear Islamic dress and the perceptions of Islamic dress. The next section looks at the human rights standards relevant to wearing religious dress, and, in particular, the right to manifest religion or belief. The final part outlines specific areas where Islamic dress might be worn and canvasses the human rights issues which are relevant in those contexts.

Wearing religious dress in educational institutions is the first area which is examined. In this context the paper looks at the secular nature of the education system and how a blanket ban on the display of religious symbols or wearing religious dress may result in indirect discrimination. Discrimination on the ground of religious belief is also discussed in relation to employment issues. The paper then looks at religious rights issues in the context of identification. The final context discussed is that of the courtroom where the Auckland District Court case is used as a case study to explore the right of witnesses to wear the burqa in manifestation of their religion or belief balanced with the accused's right to a fair trial.

Part 2: Religion and Dress Code

For most people, religion is more than a set of beliefs, given that they often translate their beliefs into action. People choose to observe their beliefs in a variety of ways including the construction of places of worship, the display of symbols, the observance of dietary regulations, and participation in rituals associated with certain stages of life². The wearing of distinctive clothing or head coverings is also a way in which people observe their religious beliefs.

Many people from a broad range of faiths wear religious symbols or dress as a manifestation of their religious beliefs, whether from religious requirement or personal choice. For example, Sikh men wear turbans; Christians may choose to wear a cross; and some Brethren and Hasidic Jewish communities prescribe strict dress codes. The origin and purpose of wearing religious dress or symbols differs from religion to religion. Often within religions there are different elements or sects who adhere to stricter dress codes than others³.

The Islamic dress code⁴

Both men and women are required to dress modestly in Islamic society. Traditional and contemporary forms of Islamic dress conform to a general understanding of modesty based on the Hadith, popular tradition and traditional forms of costume construction⁵. The body is covered in varying degrees depending on whether one is alone, with a spouse, among relatives or friends of the same sex, or in a mixed setting⁶.

While the Islamic dress code applies to both men and women, it is Muslim women who wear the face veil (niqab), headscarf or burqa who have recently become the focus of attention in a number of countries and in a variety of contexts. For example, French legislation to ban all 'ostentatious' religious symbols in public schools sparked enormous debate about the right to wear the headscarf.

There are many reasons why women wear Islamic dress. There are also varying degrees of choice afforded to Muslim women as to what they wear. Women may don Islamic dress in fulfilment of what they see as a religious obligation, it can be a symbol of political conviction, a cultural practice, or a means of avoiding criticism and harassment from men. These reasons, coupled with other factors such as social class and regional or cultural background, may all influence how strictly a woman adheres to the Islamic dress code.

The Islamic dress code, in particular for Muslim women, is often subject to negative connotations. Some commentators see it as an instrument of oppression and persecution⁷, linked with suffering which impedes the personal growth and social development of women⁸. Some support the banning of the headscarf (for example in public institutions including schools), as "a vital protection of young women against a repressive symbol forced on them by a male-dominated society."⁹

Leila Ahmed¹⁰, on the other hand, argues that the veil is now laden with meanings¹¹. She contends that it is just one issue in Muslim women's struggle for equality and that it is as much a matter of women's rights as the social prescription of particular items of clothing to Western women's struggles¹². She considers that Muslim, as well as non-Muslim, women should reject the androcentrism and misogyny of whatever culture they find themselves in, but that this does not mean that they must adopt the values of another culture or reject Arab culture or Islam comprehensively¹³.

There is thus a considerable amount of debate about the significance of the headscarf, or women's Islamic dress. There are also a variety of reasons why women wear Islamic dress and how strictly they adhere to an Islamic dress code. However, Muslim women do often wear Islamic dress, whether the headscarf or the burqa, in fulfilment of what they see as a religious obligation. If certain dress is worn in order to practice a religion or belief, then it may be protected as a human right under international law and under New Zealand's domestic law.

Part 3: Religious Dress and Human Rights Law

International law

While the United Nations Charter makes some reference to religious rights¹⁴, the references contained in the Universal Declaration of Human Rights (UDHR) are more significant. Article 2 of the UDHR forbids distinctions of any kind, including on the basis of religion, in the enjoyment of the rights and freedoms contained in the Declaration. In relation to freedom of religion, article 18 states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The rights to freedom of thought, conscience and religion, manifestation of religion or belief and the rights of minorities to profess and practice their religion in community with others¹⁵ are also contained in the International Covenant on Civil and Political Rights (ICCPR). While the freedom of thought, conscience and religion cannot be derogated from, the right to manifest religion or belief can be limited, but only if such limitations are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others¹⁶.

In terms of women's rights, a fundamental aspect is individual autonomy and choice. These are violated both where women are forced to wear a head covering and where they are banned from doing so¹⁷.

New Zealand law

Sections 13 and 15 of the New Zealand Bill of Rights Act 1990 (NZBORA) affirm the rights to freedom of thought, conscience, and religion and the manifestation of religion or belief. Limits can be placed on rights affirmed in the NZBORA through the application of section 5, as long as the limit is prescribed by law and can be demonstrably justified in a free and democratic society.

Other rights affirmed in the NZBORA which may be relevant include the right to be free from discrimination by reason of religious or ethical belief (section 19), the right to freedom of expression (section 14) and the

rights of minorities to profess and practice their religion (section 20). The Human Rights Act 1993 also prohibits discrimination on the grounds of religious belief in certain contexts (section 21(1)(c)). Appendix 2 contains relevant extracts from the NZBORA and the Human Rights Act.

Part 4: Religious Dress and Human Rights in Context

A: EDUCATION

New Zealand

In New Zealand, primary school education is required by law to be secular¹⁸, although there is provision for religious instruction to take place if approved by the School Board¹⁹. Students are, however, able to opt out if their parents make a request in writing²⁰. There is no legal requirement that secondary school education be secular. The Board of Trustees is responsible for the management of a school which means that it has the responsibility of setting uniform policies which it would normally do in consultation with the community.

While there are no specific national guidelines on school uniform policies, Boards of Trustees are obliged to provide a safe physical and emotional environment for students according to National Administration Guidelines²¹ and this may have a bearing on their policies. Requiring students to remove items of religious clothing could result in students feeling insecure in their school environment.

A blanket ban on religious symbols or dress may also impact disproportionately on students who adhere to certain faiths, thereby constituting indirect discrimination under section 65 of the Human Rights Act 1993, unless there is good reason for it²². 'Good reason' could be to address health and safety concerns or where the practice disrupts other students' rights. These reasons may also go towards an assessment as to whether a limit on the right to wear religious dress is justifiable under section 5 of the NZBORA.

The Human Rights Commission has received complaints over the years concerning the wearing of religious dress in school. Two in particular related to school uniform policies where only Maori students had been allowed to wear taonga outside their clothing but other jewellery had to be worn under clothing. Other students had complained that they were discriminated against by not being able to wear jewellery of spiritual or religious significance to them outside their clothing. Both schools either considered or agreed to review their uniform policies. Another complaint involved a school which refused to allow a female Muslim student to lengthen her skirt and wear a headscarf. The complaint was resolved by a Ministry of Education facilitator.

Two schools, Wellington East Girls' College and Mt Roskill Grammar School, provide examples of how New Zealand schools have managed increased diversity

among their students. Wellington East does not have a policy in relation to the wearing of headscarves but allows girls to wear them as long as they are in one of the school colours. Wellington East also allows Muslim girls to wear long skirts in order to cover their ankles. Mt Roskill changed the school uniform policy a number of years ago following a complaint to the Human Rights Commission to allow both girls and boys to wear long trousers in order to conform with Islamic dress. Students are permitted a dispensation from the school's uniform policy for religious or medical reasons. The wearing of headscarves is a very common practice and Muslim boys are allowed to have beards on application from their parents to the principal. Students are also allowed to wear long pants for religious reasons in order to play sport.

International

Wearing the headscarf or other religious dress, in school and other educational institutions, has become a contentious issue in many European countries. In the case *Leyla Şahin v Turkey*²³, relating to a ban on wearing headscarves at Istanbul University, the European Court of Human Rights held that there was no violation of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (which guarantees the right to manifest religion or belief). The Court accepted that upholding the principle of secularism may be regarded as necessary for the protection of the democratic system in Turkey. The Court noted the emphasis placed in the Turkish constitutional system on the protection of the rights of women.

The Court accepted that secularism was the paramount consideration underlying the ban. In such a context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that it was considered contrary to such values to allow the Islamic headscarf to be worn at the University²⁴. The Court also decided that there had been no breach of the right to education; the right to respect for private and family life; the right to freedom of expression; and the right to be free from discrimination.

In another case, the Court similarly held that a complaint by a teacher prohibited from wearing a headscarf at work was inadmissible on the basis that the ban had pursued the legitimate aim of ensuring the neutrality of state primary education²⁵.

Some commentators, for example Human Rights Watch, do not agree with the position adopted by the European Court of Human Rights on the ground that the protection of religious freedom is consistent with secularism in state institutions and, "demonstrates the very respect for the diversity of religious conscience on which the secularism of public institutions is founded."²⁶ Human Rights Watch also considers that the impact of the ban in Turkey has meant that many women who feel that they cannot remove their headscarves feel that they have been denied access to education permanently²⁷.

In France, legislation has recently been passed prohibiting, in public schools, all 'ostentatious' religious identifications including the headscarf worn by Muslim girls²⁸. Some German States are also in the process of legislating against allowing headscarves to be worn in public schools. However, headscarves, and other forms of dress conforming to Islamic practice are permitted in schools in the United Kingdom²⁹. In the Asia-Pacific region, Singapore banned the headscarf from schools in a bid to avoid racial and religious tensions between its ethnic Chinese majority and the Malay Muslim minority³⁰. Headscarves are permitted in Malaysian schools.

B: EMPLOYMENT

New Zealand

Discrimination on the grounds of religious belief can arise during many phases of the employment process including interviews, hiring decisions and during employment itself. According to section 28(3) of the Human Rights Act 1993 employers are obliged to accommodate the religious practice of employees unless the adjustment of the employer's activities would be unreasonably disrupted by doing so.

A neutral dress or grooming requirement imposed by an employer for genuine business reasons may nevertheless have an adverse impact on employees whose religious beliefs require them to observe a particular dress or grooming code³¹. Such indirect discrimination may be justified if the employer can show good reason for it (this may overlap with issues concerning whether accommodation of the religious belief would unreasonably disrupt the employer's activities)³².

There is some anecdotal evidence on the experiences of Muslim women attempting to access, or who have accessed the job market in New Zealand. A member of the Islamic Women's Council has said that it is often difficult for women to access jobs wearing the headscarf because of the negative connotations now associated with the garment. She said that she receives many complaints from Muslim women in employment in regard to the issue but many do not have the confidence to lay an official complaint. She said there have been instances where headscarved women have been told by potential employers that they would not fit into the culture of the workplace. There have also been reports of Muslim women being told to remove their headscarves because they were a disincentive to customers³³. A migrant employment coordinator at the Canterbury Employers' Chamber of Commerce has mentioned that, in her experience, employers are often happy to allow women to wear the headscarf but may require them to adjust their normal style of dress to don uniforms for health and safety reasons which the women have so far appeared happy to do.

International

The accommodation of religious dress in the workplace has featured in a number of European countries. In the

London Metropolitan Police Force police officers are allowed to wear uniforms according to their beliefs and Muslim women are accordingly allowed to wear the headscarf³⁴. In Norway the Gender Equality Ombudsman held that a furniture store could not prohibit employees from wearing headgear unless it was a danger for life and health³⁵. In Denmark, some businesses have begun to prepare special uniforms for employees who wear headscarves³⁶.

In the complaint of *Bhinder v Canada*³⁷ made to the United Nations Human Rights Committee, the Committee ruled that the legislative requirement that a hard hat be worn did not violate any provision of the ICCPR in relation to Sikhs who wear the turban. The limitation on their right to manifest their religious belief was justified pursuant to article 18(3)³⁸. There have also been many cases in the United Kingdom where strict uniform requirements have been held not to contravene the right to manifest religion or belief on the grounds of protecting public health and considerations of health and hygiene³⁹.

C: IDENTIFICATION

New Zealand

Muslim women in New Zealand are allowed to wear headscarves for passport photos as long as the full face is shown. If a Muslim woman is concerned about men being able to see her face during the processing of her passport, the Passports Office will ensure that a woman carries out the processing of the application from beginning to end⁴⁰. Customs officials also accommodate the needs of Muslim women wearing the niqab or burqa when authenticating their identity.

International

The United Arab Emirates, Jordan and Kuwait, require that women do not cover their faces in ID pictures⁴¹. Many countries accommodate religious practice to the greatest extent possible when processing and checking identification documents such as passports. For example, some countries enable women to have their identity authenticated by a woman official in a separate room when going through customs. In the United Kingdom Muslim women are allowed to wear headscarves in passport photos as long as the full face is shown, although veils are not permitted⁴².

The case of *Freeman v State of Florida*⁴³ was concerned with the requirement of the Department of Highway Safety and Motor Vehicles for Ms Freeman to replace her old driver's licence photograph (in which she was wearing her niqab and headscarf – the only facial features visible were her eyes) with one showing her entire face. Ms Freeman asserted that this violated her constitutional right to the free exercise of religion. Ms Freeman's case was not upheld on the ground that security concerns outweighed religious freedom. The decision has been criticised by some commentators arguing that, "the state's requirement that Freeman take an unveiled photograph

does little to support governmental interests of maintaining 'maximum safety' for individuals who use public highways since there are more than 800,000 temporary licenses and/or driving permits that have been issued in Florida in the past five years without photographs.⁴⁴"

D: THE COURTS

During the case of *Police v Abdul Zohoor Razamjoo*⁴⁵ in the Auckland District Court in October 2004, Judge Moore heard submissions and received evidence on the issue of Crown witnesses wearing the burqa in court while giving evidence. The Crown witnesses asserted that they wore the burqa in manifestation of their religious belief. The assertion of the right to manifest religious belief by adopting a certain practice can have repercussions for other people, so it becomes necessary for the law to specify which of them can be permitted, and when⁴⁶.

The right to a fair trial

Article 14(1) of the ICCPR contains the right to a fair trial which incorporates the following rights: equality before courts and tribunals and a fair and public hearing by an independent and impartial tribunal. Article 14(3) of the ICCPR outlines the minimum guarantees a person is entitled to in the determination of any criminal charge against him or her.

The ICCPR fair trial rights, including minimum standards of criminal procedure, are incorporated in section 25 of the NZBORA. While section 25(a) stipulates the broad right to a fair and public hearing, sections 25(b) to (i) also detail elements of the 'fairness' principle and the more detailed rules of criminal procedure⁴⁷.

The right to examine witnesses for the prosecution

The right to examine the witnesses for the prosecution was an element of the right to a fair trial that was of particular relevance as the Crown witnesses wished to wear the burqa in court. The right is affirmed in section 25(f) of the NZBORA:

The right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution:

The purpose of the right is to ensure that, "prosecution witnesses are exposed to the probing effects of cross-examination."⁴⁸

The Issue in *Police v Abdul Zohoor Razamjoo*

Judge Moore described the issue before the Court as having to determine whether or not two female witnesses for the Crown may, whilst giving evidence, be attired in their burqas.

He described the burqa worn by one of the witnesses as "having two principal components or sections: a head covering over the entire head, face and hair save only for

a narrow slit through which the eyes can be seen; that head covering is atop an overall loose fitting garment covering the entire body and almost touching the floor. So the overall effect is that, apart from height and a very general (possibly misleading) sense of body bulk, none of the facial features or physical characteristics of the wearer are observable. Some forms of burqa have the eye slit partly obscured by mesh. Apparently that is not intended here, though the difference is in the circumstances immaterial.”

The evidence on wearing of a burqa

The prosecution led evidence from two witnesses involved in the substance of the case: Mr Salim and Mrs Salim, who gave evidence whilst wearing her burqa; and from an expert witness, Professor Morris, Professor of Religious Studies at Victoria University, Wellington. The defence led evidence from Mr Maudsley, a member of Employment Tribunals in London.

Limits to judicial determination

In discussing the limits on judicial determination of the “validity” of particular beliefs Judge Moore made the following comments:

- a. “the original justifications for, and ‘validity’ of, particular beliefs and customs ... are subjects for disputation – scholarly and otherwise – but they are generally not amenable to judicial determination. Further, the wording of the NZBORA does not require fine analysis of categories of belief. All are protected.”
- b. “As s.13, s. 15 and s. 20 [of the] NZBORA imply, it is no business of the state or its institutions (including the Court) to pronounce as to the correctness or otherwise of any person’s faith or culture.”
- c. “This Court cannot be drawn into attempting to determine the theological or other ‘validity’ of the practice of wearing the burqa.”
- d. “This Court accepts the evidence of Mrs Salim’s faith and beliefs. It accepts that to require her to remove her burqa in public (dire emergencies or other very compelling reasons excepted) would be to shame and disgrace her both in her own eyes and in those of the community of like believers whose customs and beliefs she is proud to uphold.”
- e. “That is by no means determinative of the outcome of this matter, but in the context of religious faith and cultural practice it is all the factual findings the Court needs to make.”

Evidence from a burqa-attired witness

Judge Moore added to the above findings the Court’s evaluation of receiving evidence from a burqa-wearing witness. He described there being “a strong sense of disembodiment ... It was all slightly unreal.”

He considered that it was “...hard to envisage evidence given from within a burqa having as much impact as evidence from a person (even one physically elsewhere) whose face can be observed.”

He commented that “...it seems as inevitable that evidence given from beneath a burqa would, consciously or unconsciously, be accorded less weight than the same evidence given by that witness when her face was visible. The [prosecution] submits that downgrading is acceptable. The Court is doubtful. Such an approach creates a lesser class of witness. It undermines the central concept of the equality of all before the law. It hearkens of legal systems very different to our system in which a person’s sex, race, or social position determines how much weight can be given to their evidence.”

Cross-examination

The submissions on behalf of the prosecution and the defence focused largely on the ability of Court to draw conclusions as to demeanour and on counsels’ ability to draw attention to aspects of witness demeanour. The Court did not consider these to be major considerations with some possible exceptions. It did however consider cross-examination to be a far more important factor touching upon a fair trial. Judge Moore commented that “Circumstances in which a Court can conclude that there can be a fair trial without the defence having the opportunity to cross-examine a vital witness, either prior to trial or during the trial itself, are likely to continue to be very rare.”

He observed that cross-examination involves “... an ongoing evaluation of how the witness is performing and, particularly, what are sensitive areas from that witness’s point of view. Tiny signals, quite often in the form of, or involving facial expressions, are received and acted upon almost, sometimes completely, unconsciously by the cross-examiner.”

Justice in public

Judge Moore noted that “focus on the concept of a fair trial as being one which enables the decision maker to reach a fair result cannot blind the Court to wider considerations.” He quoted from a 2004 decision of the House of Lords:

“A criminal trial is a public event. The principle of open justice puts, as has often been said, the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process.”

He went on to observe that “It is of vital importance that Courts go about their business in ways which entitle them to the confidence of the public. Earning and retaining that is an ongoing process. Whilst the rights of those whose beliefs or culture set them apart from the community generally must never be lightly encroached upon, a sense of what is acceptable as fair process by the community

generally has to be kept in mind. Whilst the Court needs to take into account the special characteristics (whether expressed as rights or otherwise) of a witness which may make their giving evidence in the ordinary way an unreasonable burden so that either or both of their rights and the interests of a fair trial require that burden to be reduced, care has to be taken to try to avoid the adoption of procedures which are so obviously out of keeping with the expectations of the community generally as to seriously call into question confidence in the justice system.”

Discussion

In addition to the matters summarized above, the decision deals with:

- the procedural rules and the relevant principles of the law of evidence;
- the essence of the case against the defendant;
- the relevant sections of the NZBORA and conflicts between rights;
- the submissions of the parties;
- overseas decisions of relevance.

His decision ends with a general discussion and his conclusions. He said that “... criminal trials should be fair and in public is not just a right of accused persons. It is one of the essential foundations of a free and democratic society. It is a mechanism essential for the protection of many of the other rights affirmed by the NZBORA.”

He quoted from a decision of the New Zealand Court of Appeal that:

“there are limits on the absoluteness on the rights and freedoms affirmed in the Bill of Rights. They reflect the fundamental consideration that individual freedoms are necessarily limited by membership of society and by the rights of others in the interests of the community.”

He followed this by stating that “While the rights of thought, conscience, religious and other belief affirmed by s. 13 can be regarded as absolute, rights of manifestation such as those affirmed by s. 15 and s. 20 must necessarily be subject to constraints of many types. Obvious examples of contexts far removed from the subject matter of the present case include public health and hygiene, environmental health, work place and safety.”

He considered that the submissions of the prosecution were too narrow in focus as they did not bring public rights into the balance. “... (T)he thrust of the submissions of the [prosecution] – that this matter falls to be determined by whether or not a fair trial for the defendant is possible if certain witnesses give evidence whilst veiled in burqas - is far too narrow. Nor is a balancing of the competing rights of the defendant and such witnesses determinative. Public rights need to be brought into that balance. The widening of focus does not cease there.”

Turning to the nature of the application before the Court, he said that “It is an application to the Court to exercise inherent powers as to its procedures, in particular to depart from normal trial procedures. The Court has those inherent powers so that justice might the better be done. It is the interests of justice in an overall sense which are determinative. Whilst the NZBORA rights of those affected are important they are far from being the only considerations.”

He said that public interest considerations “well beyond the scope of rights” are relevant. “They include the need to maintain public confidence in the criminal justice system. The need for consistency within that system means that Courts should follow normal and accepted processes except (where permitted by law) to the extent justified by all the circumstances of a particular case. The more extreme the departure from normal process the greater the justification required.”

He completed his consideration of the public interest considerations relevant to the application by stating that “It is fundamental to the values of a free and democratic society that criminal justice be administered publicly and openly. In general that means that the public should be able to see and hear the participants. Some limitations on that can and are permitted but it is essential for public confidence in the justice system that those limitations are well justified on a case by case basis. The witness totally masked or hidden so that in practical terms they cannot be seen (directly or indirectly) even by judge, jury and counsel, represents, in conceptual terms, a challenge to the basic values of the New Zealand type of society.”

Conclusions

Judge Moore noted that: “in determining whether or not to use its inherent powers to depart from normal procedures the Court had to make an overall evaluation of a range of rights, legitimate expectations and public interest factors.”

He identified the rights, legitimate expectations and public interest factors as being:

- a. The defendant and the public had a legitimate expectation of trial by the normal processes except to the extent that departure from those processes is merited in the interests of justice.
- b. Mrs Salim had the right to manifest her religious belief by wearing her burqa in public but she recognised there can be situations in which that manifestation yields to other needs. In addition Mrs Salim had the right, as a witness, of equality with others in terms of how her evidence is evaluated.
- c. The public had rights and legitimate expectations concerning the public nature of the criminal process.
- d. The Court had an obligation to the community to recognise and uphold the values of a free and democratic society.

He concluded it would be contrary to the interests of justice to require that whilst giving evidence Mrs Salim and others of like beliefs have their faces exposed to the view of the public or the defendant.

He also concluded that to authorise the giving of evidence from beneath what is effectively a hood or mask would be such a major departure from accepted process and the values of a free and democratic society as to seriously risk bringing the Court into disrepute.

Accordingly he ruled that screens may be used to ensure that only Judge, counsel and female Court staff are able to observe the witness's face. Provided the witness's face is fully exposed to view, the Court has no objection to the witness expressing their religious sensibilities by wearing a hat or scarf which covers their hair.

Part 5: Conclusion

Human rights issues concerning the wearing of the headscarf, niqab, or other religious dress can occur in a number of different settings. The right to freedom of thought, conscience and religion; the right to manifest religion and belief; and the right to be free from discrimination on the grounds of religious belief are likely to become more prominent as the make up of New Zealand society becomes more diverse, religious groups assert their views more strongly in public life and a 'rights culture' begins to emerge⁴⁹.

When the religious practices of one group come into conflict with another, societies can experience difficulties in finding a balance between the two. A human rights framework is useful in determining this balance and finding a sensible and practical solution.

However, "if practices affect only the volunteer adherents of that religion they should not be legally objectionable. On the contrary, for the sake of a healthy, pluralistic society the law should go out of its way to tolerate diversity and non-conformity."⁵⁰

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Appendix 1

Glossary⁵¹

Burqa: Full-length garment covering a woman from head to foot, typically black in colour.

Hadith: Report of the words and deeds of Muhammed and other early Muslims; considered an authoritative source of revelation, second only to the Quran (sometimes referred to as the sayings of the Prophet).

Hijab: Traditional Muslim women's head, face, or body covering, of numerous varieties across time and space, often referred to as the "veil."

Niqab: Face veil.

Shariah: God's eternal and immutable will for humanity, as expressed in the Quran and Muhammed's example (Sunnah), considered binding for all believers.

Appendix 2

NEW ZEALAND BILL OF RIGHTS ACT 1990

Section 13 Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference.

Section 15 Manifestation of religion and belief

Every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.

Section 20 Rights of minorities

A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practice the religion, or to use the language, of that minority.

Section 25 Minimum standards of criminal procedure

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

- (a) The right to a fair and public hearing by an independent and impartial court:
- (b) The right to be tried without undue delay:
- (c) The right to be presumed innocent until proven guilty according to law:
- (d) The right not to be compelled to be a witness or to confess guilt:
- (e) The right to be present at trial and present a defence:
- (f) The right to examine witnesses for the prosecution and to obtain the attendance an examination of witnesses for the defence under the same conditions as the prosecution:
- (g) The right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:

- (h) The right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the sentence or against both:
- (i) The right, in the case of a child, to be dealt with in a manner that takes account of a child's age.

HUMAN RIGHTS ACT 1993

Section 21 Prohibited grounds of discrimination

(1) For the purposes of this Act, the prohibited grounds of discrimination are-

- (c) Religious belief:

References

1. Auckland District Court (CRN 30044039397-8), 17 January 2005.
2. United Nations Human Rights Committee, General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art 18), CCPR/C/12/Rev.1/Add.4.
3. See for example the difference in dress code between Hasidic Jews and other Jewish sects.
4. Please note that a glossary is attached as Appendix 1.
5. John L Esposito (ed) Oxford Encyclopaedia of the Modern Islamic World 1995, 384.
6. Esposito, above note 5, 384.
7. The Guardian "Behind the Burka" 28 September 2001.
8. Merve Kavakci "Headscarf Heresy" Foreign Policy, May/June 2004, 66 at 67.
9. The New Zealand Herald "Pupils may defy ban on religious symbols" 31 August 2004.
10. Dr Leila Ahmed is professor of Women's Studies in Religion at Harvard Divinity School.
11. Leila Ahmed Women and Gender in Islam New Haven 1992, 166.
12. Ahmed, above note 11, 166.
13. Ahmed, above note 11, 166.
14. See Preamble, article 1(3) and article 55(c), United Nations Charter.
15. See articles 18 and 27, International Covenant on Civil and Political Rights.
16. See article 18(3), International Covenant on Civil and Political Rights.
17. Human Rights Watch Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf 29 June 2004, 24.
18. Section 77 of the Education Act 1964.
19. Section 78 of the Education Act 1964.
20. Section 79 of the Education Act 1964.
21. National Administration Guideline 5 made pursuant to section 60A(1)(c) of the Education Act 1989.
22. See K v M Human Rights Commission C149/94.
23. Application no 44774/98, 10 November 2005, (ECtHR).
24. Leyla Sahin v Turkey, Application no 44774/98, 10 November 2005, (ECtHR), paras 113-116.
25. See Dahlab v Switzerland, 15 February 2001, (ECtHR).
26. Human Rights Watch, above note 17, 24.
27. Human Rights Watch, above note 17, 34.
28. Article L. 141-5-1 of Law No. 2004-228 of the national Code d'Education (France).
29. Islamic Human Rights Commission Briefing: Good practice on the headscarf in Europe <http://www.ihrc.org>, 9 March 2004.
30. BBC News "Headscarves in the headlines" <http://news.bbc.co.uk>, 10 February 2004.
31. Brooker's, Human Rights Law, Wellington, Brooker's, 1996, para C.3.07(3).
32. Brooker's, above note 79, para C.4.09(1)(d).
33. Office of the Race Relations Conciliator Report on Community Consultations by the Office of the Race Relations Conciliator in October and November 2001.
34. Islamic Human Rights Commission Briefing: Good practice on the headscarf in Europe <http://www.ihrc.org>, 9 March 2004.
35. Islamic Human Rights Commission Briefing: Good practice on the headscarf in Europe <http://www.ihrc.org>, 9 March 2004.
36. Islamic Human Rights Commission Briefing: Good practice on the headscarf in Europe <http://www.ihrc.org>, 9 March 2004.
37. A/45/40 vol. II (9 November 1989) 50.
38. Article 18 (3) of the International Convention on Civil and Political Rights states that, "Freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."
39. Johan D. van der Vyver and John Witte Jr. (eds), Religious Human Rights in Global Perspective, Kluwer Law International, 1996, 228.
40. Advice received from an official at the Department of Internal Affairs.
41. CNN "Judge: Woman can't cover her face on driver's licence" 10 June 2003.
42. Islamic Human Rights Commission Briefing: Good practice on the headscarf in Europe <http://www.ihrc.org>, 9 March 2004.
43. (2003) WL 21338619 (9th Circuit).
44. See American Civil Liberties Union of Florida, "ACLU appeals lower court ruling in veil case that permits government to restrict religious freedom without enhancing security", 9 June 2004 at http://www.aclufl.org/news_events/index.cfm?action=viewRelease&emailAlertID=344.
45. Auckland District Court (CRN 30044039397-8), 17 January 2005.
46. Brice Dickson "The UN and Freedom of Religion" (1995) 44 International and Comparative Law Quarterly, 327.
47. Paul Rishworth (et al), The New Zealand Bill of Rights, Oxford University Press, 2003, 675.
48. Rishworth, above note 20, 690.
49. Grant Huscroft and Paul Rishworth (eds), Rights and Freedoms: The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, Brooker's Ltd, 1995, 226.
50. Dickson, above note 19, 327.
51. Most definitions have been taken from: Esposito, John L. (ed) Oxford Dictionary of Islam Oxford University Press (2003).

