

Gov't niqab opposition undermines core Canadian freedoms



By [Jacob Stilman](#)

In yet another resounding defeat for the Conservatives, the Federal Court of Appeal in *Ishaq v. Canada* summarily dismissed an appeal by the government of the lower court [decision](#) that had declared unconstitutional the attempt by Citizenship and Immigration Canada to prohibit niqab-wearing women from taking the Oath of Citizenship.

Although the appeal decision did not actually rule on the constitutional issue, deciding the matter on purely procedural considerations, the result is nonetheless being heralded by many as a victory for civil and religious rights in a multicultural society. However, others are decrying this as a setback for women's equality, or more sinisterly, as an incursion by Islamist values into Canadian society.

Certainly there can be no question that for many Canadians the sight of a woman wearing the niqab causes feelings of discomfort, if not outright aversion. In an egalitarian nation such as Canada, the full face covering is viewed as a symbol of the subjugation of women. The tradition of paternalism that is so oppressive to women within strict Islamic societies is anathema to our sensibilities. This view is not reserved for non-Muslims only; there is wide diversity within the Muslim community, and many of the harshest critics of the niqab hail from modern and progressive women's voices within the Muslim community, who argue that the niqab is nothing but a symbol of an outmoded view that has no place in a modern western society.

However, amongst the critics of the niqab there can be little doubt that there are also darker sentiments at play: those of intolerance and non-acceptance of cultural diversity within Canadian society, particularly where Muslim practices are at issue. In this regard it is arguable that the government's efforts to entrench a "no niqab" policy is disingenuous, based less on a concern for upholding lofty principles of women's equality, than it is a politically motivated wedge issue.

That there are reasonable arguments both for and against the presence of the niqab in Canadian society is besides the point. Our courts are poorly equipped to reconcile contrary religious/ethno-cultural arguments, nor should they be put in that position. The issue, rather, is whether it is the place of the government to dictate what the appropriate values are to be in what amounts to a personal choice by individuals in a pluralistic and culturally diverse democracy. Regardless of one's own perceptions of the true motivations of the government, or where one comes down on the niqab question personally, the fact is that by any measure our legal tradition could not countenance such a profound and brazen infringement of religious practice.

Consider, by way of contrast, the high-profile case of Kim Davis in the United States. Davis, an elected government official, asserts that her right to the free practice of her religious faith entitles her to deny marriage licences to same-sex couples, in defiance of what is now the law of the land. Whatever one's personal view on the subject of same-sex marriage, the problem for Davis is that she is imposing her own religious values on the public, while executing the functions of a state official. That is where her actions become legally indefensible.

The Ishaq case represents the flip-side of this situation: The government sought to statutorily infringe upon a religious practice by prohibiting the wearing of the niqab at a citizenship ceremony. This infringement had no logical connection or component of necessity to the functioning of the ceremony itself: there was no issue of potential fraud, security, or other concern attached to the restriction — it really comes down to the government saying, "We don't like the niqab, we think it is 'un-Canadian,' and we are going to ban it where we can." The flaw in this approach is that it tramples one of our most basic freedoms — freedom of religion. As a state actor it is not for the

government to dictate what an appropriate religious practice is to be, absent concerns for health, security, or the potential for fraud. By contrast, it would be legitimate for there to be a no-niqab policy at a voting booth, an airport security check, or any other situation where visual confirmation of a person's identity is required.

The irony of the Ishaq decision is this: In trying to advance its notion of "Canadian values" the Conservative government in fact undermined one of our core freedoms — that of conscience and religion. The courts have been absolutely correct in barring a policy that, even if one credits it as having been for the purpose of advancing the interests of women, flew in the face of core legal values.

The niqab issue elicits a dissonant response: we may dislike the image of a woman who seemingly cloaks herself in the garb of patriarchy and oppression, but we must nonetheless celebrate her right to do so.