



**“Accommodation and Differences.  
Seeking Common Ground: Quebecers Speak Out”**

**Brief presented by B’nai Brith Canada – Québec Region  
as part of the public consultation by the Consultation Commission  
on Accommodation Practices Related to Cultural Differences**

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## **Introduction**

B'nai Brith Canada – Quebec Region is pleased to take this opportunity to offer its input to the Bouchard-Taylor Consultation Commission on Accommodation Practices Related to Cultural Differences (CCPARDC). In recent months, against the backdrop of a heated debate on reasonable accommodation, many Quebecers have expressed concerns over the place that cultural and religious differences have in Quebec society. The Commission has invited broad participation in its consultation process and it is in this spirit that B'nai Brith offers its expertise.

This submission will be organized as follows: In Section I, we offer a summary of our credentials on the broad issues within the Commission's mandate. In Section II, we look at the ramifications of the current debate, while in Section III, we clarify the meaning and application of the term Reasonable Accommodation in lights of the myths and misconceptions that currently surround the issue. Section IV discusses the need to accommodate religious and cultural minorities in broader ways in order to foster acceptance of all Quebecers within society. A concluding section proposes recommendations for the Commission to consider.

## **Section I - B'nai Brith Quebec Region: Promoting Respect for Human Rights and Freedoms**

B'nai Brith Quebec Region plays a pivotal role in the work of the national parent organization, B'nai Brith Canada. A significant part of organization's human rights and social justice work takes place in Quebec. With a presence in Canada since 1875, The organization has been respected for its groundbreaking work on matters relating to antisemitism, racism and human rights, its strong advocacy on the pressing issues of the day, and the important social services it provides. Advocating on behalf of communities in distress, it intervenes with the federal and provincial governments, as well as in international fora, on a wide range of issues spanning the civil, political, religious, and cultural sectors.

The organization's *League for Human Rights* is tasked with combating antisemitism, racism, and bigotry. Its maintains a twenty-four hour a day, seven day a week, Anti-Hate Hotline offering assistance to victims of antisemitism and hate-motivated incidents. *League* professionals interact on an ongoing basis with the community, the police, synagogues and schools, legal and legislative experts and government agencies that deal with racism, in an effort to provide victims of hate-related crime with assistance, support and referral, as necessary, to law enforcement, human rights bodies and/or legal assistance.

For more than two decades the *League* has published an annual *Audit of Antisemitic Incidents*. The *Audit*, which provides documentation of antisemitic incidents by region and an analysis of patterns of occurrence, is the single most credible source on antisemitism in this country and is cited world-wide by government agencies, social policy planners and law enforcement bodies. According to Statistics Canada, the *Audit* is likely "the best data available on the incidence of hate crimes, providing a unique historical record of a particular form of hate activity in Canada".

B'nai Brith has been at the forefront of anti-racism and human rights education through the League's *Taking Action Against Hate* program, which empowers vulnerable minorities to counter bias and prejudice against them. It has engaged in human rights cases affecting all minorities and spanning a range of human rights issues.

Throughout its presence in Quebec, as well as other provinces, the organization has helped with the integration of new immigrants into the community from Europe, the former Soviet Union, South America and the Middle East. It is particularly sensitive to the needs of victims of racism and trauma experienced in their mother countries, for example, offering assistance to elderly survivors who are still having difficulty overcoming their experiences of loss, brutality and suffering in Europe during the Nazi-era. Recognizing the need for education about the past as an integral part of human rights education, B'nai Brith has mounted Holocaust commemoration initiatives such as the Holocaust and Hope Educators Missions, and the "Unto Every Person There is a Name" program. It has opposed modern-day genocide as well, protesting the ongoing atrocities in Darfur and elsewhere, urging assistance for the victims, and mounting emergency relief campaigns following natural disasters or terrorist attacks.

B'nai Brith Quebec Region has also been involved in ongoing outreach to the province's many varied ethnic and religious communities, engaging in a successful Judeo-Christian Dialogue Series, for example, as part of a series of outreach programs designed to address issues relating to racism and discrimination in the province. Whether at the school or community level, or in the workplace, the organization seeks to engage all Quebec citizens in ongoing dialogue on fighting racism and countering all forms of discrimination.

## **Section II - The Reasonable Accommodation Debate Needs to be Re-framed**

According to a recent poll by CROP-LA PRESSE, when asked if « [p]ersonnellement, craignez vous que les pratiques d'accommodement reliées aux différences culturelles-les accommodements raisonnables-ne dérapent et deviennent hors de contrôle? », 73% of Quebecers responded "yes" to the above question. The consultation document recently published by the Quebec Ministry of Immigration and Cultural Communities for the public consultation on "Respecting Planning for 2008-2010 Quebec Immigration Levels" also reveals that the recent debate on reasonable accommodation « [a] été source d'incompréhensions et de tensions et [s'est] accompagné[ ], à l'occasion, de gestes d'intolérance vis-à-vis des immigrants ou de certains groupes ethniques et religieux en particulier. » It is apparent from the reaction of Quebec society, as reflected above, that there exists some confusion about what Reasonable Accommodation actually encompasses, with a tendency to pre-judge in a subjective manner the merits of a request, rather than respecting the ability and willingness of one group to accommodate the request of another group in a reasonable manner.

Misunderstandings about the concept of Reasonable Accommodation have served to fuel this debate, dividing Quebec society along minority/religious group lines, thus creating a climate of animosity and mistrust towards new immigrants, as well as existing cultural/religious communities. This widespread reaction has also served to erect greater barriers to integration for these communities, as opposed to creating a climate that nurtures productive relationships between different groups. Allegations that immigrants and religious minorities are making excessive demands on established Quebec society have reinforced negative and unhealthy stereotypes. We are concerned that there is mounting tension in the province, contributing to an increased climate of

hostility towards anyone perceived as different and therefore classed as “the other”. This debate needs to be reframed in more constructive ways in order for the Commission to be successful in its broad mandate.

### **Section III - What is Reasonable Accommodation?**

It is necessary to start from a clear understanding what the concept of reasonable accommodation does and does not require, in the context of the overarching requirements of the law in terms of ensuring respect for all minorities in Quebec.

Reasonable Accommodation is a compromise required by law to guarantee the equality of every individual. It is aimed at rectifying the unintentional discriminatory effects of standards, practices or policies that at first glance appear to be neutral.

The purpose is to avoid the infringement of rights guaranteed by the Canadian *Charter of Rights and Freedoms* and/or in the case of Quebec, *the Quebec Charter of Human Rights and Freedoms*.

These *Charters* protect fundamental rights and freedoms in order to uphold the basic framework of a free and democratic society. The principles that are enshrined in both Charters prevail over any other statute, regulation, standard, practice, policy, contract or agreement.

The *Charters* guarantee the following rights to all individuals:

- A - **The fundamental freedoms** of conscience and religion, thought, belief, opinion and expression, peaceful assembly and association;
- B - **The right to equality**, freedom from discrimination based on race, colour, gender, marital status, sexual orientation, civil status, age, religion, political conviction, language, ethnic or national origin, socio-economic status, or physical or mental handicap.

In the context of defending these rights and freedoms, a mechanism was developed that would prevent discrimination by requiring the necessary accommodation, hence the legal term: **Reasonable Accommodation**. This obligation is not a matter of imposing individual needs on society as a whole, but a justifiable rights-and-freedoms measure in a free and democratic society.

Reasonable Accommodation often pertains to special arrangements for the purpose of accommodating physical handicaps, religious practices or certain specific individual needs. The application of the concept of Reasonable Accommodation requires the cooperation of all parties concerned. They are obligated to negotiate a reasonable compromise, or else the courts will impose one.

*Examples where Reasonable Accommodation would apply*

- In 1990, the Supreme Court of Canada held that an employer had to accommodate an employee who wanted to take one day of unpaid leave on Easter Monday, because preventing him from doing so infringed on his freedom to practice his sincerely held religious beliefs.

In making its decision, the Court took into consideration that the employer tolerated the absence of employees who were sick or took holidays on Mondays, and that a similar accommodation granted to a person because of his religion was reasonable.

- In 2004, the Court Martial Appeal Court of Canada held that the Canadian Armed Forces had to accommodate one of its officers who had no religious convictions, and refused to remove his cap when prayers were said during parades. This was because forcing him to do so infringed on his freedom to refrain from participating in religious customs.

The Tribunal held this was a Reasonable Accommodation that was equivalent to accommodations already granted by the Canadian Armed Forces to other classes of persons based on various religious considerations, such as the wearing of the Sikh turban or Jewish *kippah* (traditional head covering worn by males).

- In 2006, the Supreme Court of Canada held that allowing a person to wear a *kirpan* (a ceremonial dagger worn by Sikh males) was a Reasonable Accommodation under certain conditions, because preventing an individual from doing so infringed on one of his fundamental freedoms.

The Court reached its conclusion after determining that the *kirpan* did not constitute either a weapon or a dangerous object when worn under certain conditions.

*Example where Reasonable Accommodation does not apply:*

- A YMCA in Montreal agreed to frost its windows pursuant to a request from a religious house of worship situated next door that was concerned that its members would not be able to avoid viewing women in revealing exercise clothes, which is contrary to the group's religious convictions. This was a compromise entered into voluntarily between neighbours, and *not* a Reasonable Accommodation imposed by law, since there was no discrimination pursuant to the Charter at issue.

*Example where Reasonable Accommodation was outweighed because of a competing right:*

- In 1999, the Canadian Human Rights Tribunal held that the prohibition against wearing a *kirpan* aboard an airplane was justified, given the special environment that prevails on airplanes. In this case, the Court ruled that the Reasonable Accommodation that was sought could not be upheld because there was a competing consideration that took precedence, i.e. possible concerns over passenger safety.

*Example where Reasonable Accommodation was not imposed because of the undue hardship it would cause:*

- In 2007, the Supreme Court of Canada found that an employer was not required to continue to employ a disabled employee who was off the job for a long period. The Court ruled that the employer could dismiss the disabled employee, pursuant to a collective agreement that provided for the automatic dismissal of employees absent more than three years due to illness or accident.

In order for the law to require an accommodation, and for the accommodation that is applied to be considered "reasonable", the following three conditions must each be met:

1. The existence of a standard, practice, or policy that appears to be neutral, but has an adverse or discriminatory effect that infringes upon a right guaranteed by the *Charters*;
2. The proposed accommodation must not constitute undue hardship for the party who is obliged to make the accommodation. In cases where that party can prove there would be undue hardship, the courts will not enforce the obligation to accommodate.
3. The proposed accommodation must not significantly infringe on the rights of others.

#### **Section IV - A Broader Interpretation of Accommodation is Necessary to Ensure Integration**

The current focus on religious and cultural accommodation has diverted attention away from what integration really means in a rights-respecting society. The dialogue between the Commission and Quebecers must rest on a solid foundation of certain fundamental principals including Quebec's unwavering commitment to promoting and defending basic human rights. These are the unalterable parameters that must guide the examination of any integration policy for Quebec. Whatever measures may be implemented to revise, and presumably improve, Quebec's integration policy, should always be consistent with basic human rights and freedoms as set out in the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Rights*.

Notwithstanding our good efforts and intentions as a society, there is never a time when we can be satisfied with what has been accomplished. The problem of discrimination and racism in the world is pervasive and complex, and Quebec is not immune to the scourge of racism - an ongoing struggle. There is unfortunately no vaccine that will eradicate this phenomenon, which is as old as civilization itself.

Debate on the integration of minorities in Quebec society should focus, for example, on the removal of barriers to the employment of cultural minorities in the public and quasi-public sector. For example, the lack of representation of such communities on the judiciary of the Court of Quebec is shocking, notwithstanding that the appointments are made by the government. If the government will not lead by example, who will? Public and quasi-public bodies should reflect society as a whole. Good intentions and policies are insufficient without effective action, implementation and accountability. This occupational dimension is another facet to integration that could complement debate over the cultural integration of minority groups in a way which is productive.

Of the issues discussed recently, the place of religion in public space seems to give rise to emotional, as opposed to constructive, debate. While we understand that in recent history greater movement toward secularism has taken on more of an emphasis in Quebec society and that many Quebecers feel religion should only be confined to the private sphere, it remains important that both immigrants and established minority communities feel welcome and know that their diversity may

be expressed freely. To guarantee the equal rights of all citizens, religious practices should be accommodated, wherever possible. In an open and tolerant society, religion should not have to be restricted solely to the private sphere; rather, religious practices should be permitted in the public arena with the determining condition being that they do not infringe upon the rights of others.

The Supreme Court of Canada has expressed its collective view on such issues. In 1985 in *R. v. Big M Drug Mart Ltd.*, a case involving the Lord's Day Act, then Chief Justice Brian Dickson stated that religious freedom includes freedom of religious speech, including "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination." In a case in which B'nai Brith Canada's League for Human Rights intervened, *Syndicat Northcrest v. Amselem*, a 2004 case involving the right of condominium owners in Montreal to build ritual tabernacles on their balconies during the Jewish holiday of Succoth, the Supreme Court of Canada took a broad view of religious freedom in ruling that the State cannot regulate religious beliefs and reaffirming that obligatory and voluntary expressions of faith should be protected under the Quebec (and the Canadian) Charter.

Unlike states such as France which has banned the conspicuous display of religious symbols in its schools under a 2004 law, Canadian courts have upheld the right of individuals to wear their symbols of faith in the public domain. For example in the 2006 decision by Supreme Court of Canada of *Multani v. Commission scolaire Marguerite-Bourgeoys*, a Sikh student was allowed to wear a *kirpan* at a public school. The United States guards the separation of state and church as set out in its constitutional Establishment Clause and confirmed in court decisions which, for example, ban the public display of religious symbols such as the Ten Commandments on state court buildings. However, individuals are free to wear a *kippah*, cross, turban or *hijab* in the public sphere as legitimate expressions of faith subject to reasonable accommodation.

Freedom of religion and conscience are fundamental freedoms that are not less or more important than others. Religion and conscience are inherently personal and individual. Religion should not be imposed on others, whether members of majority or minority communities. The respect of an individual's right to practice religion according to his/her sincerely held religious beliefs is inherently linked to respect of a person's identity and dignity.

The neutrality of the state in respect to religion does not require the prohibition of all forms of religious expression in the public domain. To do so would exclude people of faith from public institutions, resulting in unlawful discrimination against them. In this day and age, we would not tolerate discrimination on the basis of one religion against another. Why would we consider discriminating against individuals holding sincere religious beliefs by those who do not?

Prohibiting religious expression in public institutions is not necessary to protect the legitimate interests of the public at large. Indeed, what harm would society incur if a doctor in a hospital or a teacher in a school wears a religious symbol, whether a *kippah* or a crucifix? Some people may not like it and others may be offended by it, but the particular tastes or idiosyncrasies of members of the public should not prevail, even if they are in the majority. In a truly free and democratic society, any restriction on individual freedom must be shown to be justified to protect a greater public interest, and not be merely convenient to satisfy a preference of the majority. Indeed, this is a litmus test for a free and democratic society. Individual freedom should not be the servant of political correctness.

## Conclusion - Recommendations

We are hopeful that the Commission on Accommodation Practices Related to Cultural Differences will serve as an effective springboard for fostering constructive debate and long-term solutions on how to best deal with different religious and cultural practices. Innovative solutions are needed to encourage equal and respectful treatment of all its citizens. Quebec society has to show that it is willing to accept different customs and provide the necessary measures to counter intolerance and discrimination wherever they may arise. As well, it is necessary to look for ways to enhance the integration into society of all Quebecers, whatever their beliefs, traditions and practices, interpreting the term ‘integration’ in its broadest possible sense. To this end, the following recommendations are made:

- 1) Prohibiting religious expression in public institutions should not be allowed, lest we exclude people of faith from public institutions – and thereby from full participation in Quebec society – resulting in gross discrimination against them that will contravene their Charter rights.
- 2) There should be no hierarchy of fundamental rights. Each issue, as defined by a given set of facts, should be resolved in a manner which, as fairly as possible, promotes and defends the fundamental rights of all parties.
- 3) The issue of integration of minorities into Quebec society should be expanded beyond its current narrow focus on cultural integration, to include a focus on breaking down the barriers to employment of cultural minorities in the public and quasi-public sector.
- 4) Proactive measures are needed to counter the backlash against minority groups emanating from the current debate on Reasonable Accommodation. A strong statement by the Commission is necessary on this point.
- 5) There needs to be an intensified, province-wide educational campaign to clarify the legal parameters of Reasonable Accommodation, as described in this submission.
- 6) There needs to be a strong response by the government and law enforcement authorities to hate-motivated incidents affecting any and all minority groups.
- 7) Government-sponsored opportunities for intercultural education and outreach are clearly necessary to strengthen society as a whole by developing skills to accommodate diversity amidst a spirit of tolerance and open-mindedness.
- 8) Government funding should be earmarked to support community initiatives that support victims of hate-related incidents. An example of such an initiative is B’nai Brith’s 24/7 Anti-Hate Hotline which provides assistance and guidance to victims of antisemitism and hate-motivated crimes.
- 9) There is a need for carefully-researched documentation to support policy development in this area along the lines of B’nai Brith’s *Audit of Antisemitic Incidents*, which is based on community reporting and front line work amongst the victims themselves. This study can be used as a model to support government interventions in the private, public and community sectors.
- 10) The Commission should publicly challenge any expressions of racism included in comments it receives. Allowing such remarks to go unchallenged, whether they are made from ignorance

or overt prejudice – only compounds the problem. We look to the Commission to be role models in this respect.