ON RELIGIOUS ACCOMMODATION AND DISCRIMINATION IN THE EXPERIENCE OF JEWISH COMMUNITIES IN ONTARIO

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ABSTRACT

Jews came to Canada as early as the 19th century fleeing religious persecution in their homelands to become a small but well established minority in Canada and in Ontario in particular. Despite the antisemitism Jewish immigrants faced and their outsider status in a largely Christian society, they looked to Canada as a haven of tolerance. They sought and obtained religious accommodation while demanding few changes to the largely Christian community as they worked to strengthen human rights legislation and seek accommodation as they could. The paper explores new stresses on accommodation as traditionally sought by the Jewish community in light of growing religious diversity and competing rights. Hard earned accommodations have become a focus of debate as demands of multiculturalism are broadened and challenged. The difficulty around the debate will be explored in light of misunderstandings as to what accommodation entails and emerging messaging dissuading religious groups to ask for perceived special treatment.

Jews have had an ongoing presence in Canada since its early days. According to Statistics Canada there are some 348,605 Jews currently living in Canada.[1] Canada is in fact home to the fourth largest population of Jews around the world, coming after United States, Israel and France. Yet Jews make up only one percent of the country's total population.

From the outset Jews had to seek accommodation. Since the French had declared that only Roman Catholics could enter the colony, there were no Jews officially on record in the 18th century. After 1760, British records document the active presence of Jews in the British army. Ezekiel Hart, the son of a retired British general, became the first Jew elected to the Lower Canada legislature in 1807. However when he took the oath of office on a Hebrew Bible, the Catholic population was so incensed that Hart was expelled. Despite the support of the Governor General of Lower Canada and his subsequent re-election, Hart was not allowed to take office. This would change a couple of decades later. In 1829, the law requiring the oath "on my faith as a Christian" was changed to allow Jews to not take the oath. In 1831, a law which granted full equivalent political rights to Jews was passed, a first for the British Empire.

As the number of Jews in Canada continued to grow, their very presence began to lay the foundation for Canada's multicultural approach. Jews arrived to find a Christian society not at first ready to accept a non-Christian group into there midst. However, their presence forced the Canadian polity to open the doors of accommodation. Jews also faced a French –English divide that on one hand through its duality recognized that Canada could be made up of differing groups. On the other hand, Jews would at times become the punching bag of tensions between that duality.[2]

According to Harold Troper[3], Jews came to Canada for many reasons including a desperate need for refuge.

> *Jews also came to Canada in search of refuge. Over the years there were those who arrived in flight from the pogroms of turn-of-the-century eastern Europe, those few who somehow survived the Nazi blood lust of the 1930s and 1940s, and still later, those who sought shelter from the anti-Jewish and anti-Zionist policies of Soviet and Arab regimes. Fleeing oppression in the old world, they hoped that Canada would provide a land if not free from antisemitism - that was too much to hope - then at least free enough from antisemitism that they and their children might have no fear for their personal safety. Canadians, not always appreciating the horror from which the oppressed were escaping and too often shutting their eyes and turning their backs on those in need, still provided sanctuary to those who managed to enter their borders.*

By 1850, there were still only 450 Jews living in Canada, mostly in Montreal. The population would start to grow significantly from 1880 until the end of World War One with the intensification of pogorms in Eastern Europe. Between 1880 and 1930, the Jewish population of Canada grew to over 155,000. Restrictive immigration policies in the years before and immediately after World War II which included placing Jews in Non-preferred categories at the very time they were facing a genocidal threat limited the growth of the Jewish community in Canada during those years.[4]

By the 1900's, there was evidence of Jewish communal institutions in all major cities of Canada. Excluded form Christian based organizations, Jews got busy setting up their own institutional structures that would provide social and other services. Where accommodation was not immediately available, Jews not wanting a confrontation or unable to make a change set up parallel organizations. Such was the case for example in the structuring of hospitals where Jewish medical students blocked by quotas or discrimination obtained training positions.

As the Jewish immigrants settled into their new life in Canada, Jews sought changes that would ensure legislative guarantees of respect and tolerance for all communities. They would seek religious accommodation at work, at school and in their living quarters. Jewish religious practices tested the willingness of the then dominant Christian majority to compromise, set against backdrop of continuing antisemitic attitudes. The observance of a Sabbath that started on Fridays, differing religious days, varying religious garb (the kippah) — all gave rise to human rights questions at work places now reflected in the creed policies of the Commission and other institutions. Jewish students that did not fall into the practices of the Catholic or Protestant school systems (ex school prayer) gave rise to new challenges. Observant university students needed the right to write exams on days that did not conflict with their religious practices.

Issues continue to arise from time to time needing redress or clarification by human rights commissions and the courts. For example, variation in religious practices and beliefs led to the Supreme Court of Canada recognizing that a sincerely held personal religious belief was to be accommodated.[5] Cases such as the "kirpan" case in which the League intervened established the right to express one's religious beliefs through religious garb in public, subject of course to valid security concerns.[6] That reasoning has since been applied to a wide variety of cases. In a less known but more recent case, a Canadian government employee was subjected to harassment (even death threats) from an unidentified person who appeared to be employed by the same department after she requested accommodation regarding an onerous change in policy on absences relating to religious observances. She was also subjected to unwelcome comments about her manner of dress and her practice to not attend social functions in unkosher restaurants. It was found that there was an onus on the employer to investigate such concerns even if a detailed complaint was never filed.[7]

Issues surrounding requests for accommodation, despite clear legislation and policies, continue to arise. The League for Human Rights continues today to regularly provide support to those seeking legal accommodation. Recent cases include the observant pharmacy student whose annual licensing exam is scheduled on a Jewish religious day; and an owner of a condominium being suddenly told that she cannot affix a mezuzah, a widely observed religious practice, to her outer unit door. These can be seen as the ongoing evolution of the debate.

Certainly there is work to be done in this area. A recent media report on accommodation issues in the school system in Hamilton points out that there is the need for clear accommodation policies on religious practices. Such was the League's experience when assisting Jewish families in areas of British Columbia for example as well.

However, a new challenge has also emerged as Canada's religious diversity expands and the demands and challenges increase to keep the debate civilized.[8]

Misunderstandings about the very concept of reasonable accommodation have served to fuel this debate, creating a climate of animosity and mistrust towards new immigrants,

as well as existing cultural/religious communities. For example in 2007, 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 neighbors, and *not* a Reasonable Accommodation imposed by law, since there was no discrimination pursuant to the *Charter* at issue. Nonetheless, it resulted in racist comments in the public realm and a reversible of the compromise reached between the neighbors.

As pointed out by the League at that time, it is necessary to start from a clear understanding of 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 order to keep the discussion on the right track. 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 provincial human right legislation. Reasonable accommodation 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. That requires the cooperation of all parties concerned.

Tensions can be seen in reactions to more and more demands for changes that challenge established ways. At times incoherent responses to new demands that seem to threaten established ways or norms are resulting in a pull back against publicly accepted rights that the Jewish community and other groups have enjoyed. On one hand, the Jewish experience certainly serves as a model to other newer immigrant communities as they search out their place in Canadian society. However, the Jewish experience is also used as a means by leaders to send a message that there is a limit to what minority groups can or should ask for.[9]

So for example the recent debate in Ontario surrounding prayers in schools resulted in public comments about ending the renting of facilities to Jewish groups for after school religious activities. Such comments seem designed to dissuade minority religious groups to ask for what is perceived by the public as special treatment rather than the exercise of their right to legal accommodation it should be seen as.

The solutions clearly lie in intensifying province-wide efforts to promote tolerance and cross-cultural understanding while encouraging best practices across all segments of society that celebrate diversity and implementation of the current creed/religion policies.

NOTES

[1] Statistics Canada 2001 See also The Jewish Population of the World. Jewishvirtuallibrary.org.

[2] For more discussion on this see Michael Brown Not Written in Stone University of Ottawa Press 2003.

[3] Ruth Klein editor, From Immigration To Integration, B'nai Brith Canada, Toronto Canada 2000., Chapter One.

[4] See Troper for more discussion on this. See also St. Louis 2009 Conference hosted by League for Human Rights of B'nai Brith Canada http://www.stlouis2009conference.ca/pages/English/Sessions/Audio_Recordings and its publication Welcome to Canada, Toronto, 2010.

[5] ***Syndicat Northcrest v. Amselem*** [2004] 2 S.C.R. 551 http://www.canlii.org/en/ca/scc/doc/2004/2004scc47/2004scc47.pdf.

[6] *Multani v. Commission Scolaire Marguerite-Bourgeoy, 2006* SCC 6 http://www.lexisnexis.ca/documents/2006SCC006.pdf.

[7] Labrance v. Treasury Board 2010 http://pslrb-crtfp.gc.ca/decisions/summaries/2010-65_e.asp.

[8] See stats http://www.utoronto.ca/ethnicstudies/ReligionReligiosity.pdf.

[9] See Julian Bauer, "Jews as Symbols and Reality in Multicultural Canada", 2011 www.jcpa.org.