RELIGIOUS ACCOMMODATION IN SCHOOLS: FIRST AND FOREMOST, GUARANTEEING UNIVERSAL ACCESS TO EDUCATION

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ABSTRACT

Students' adaptation to religious diversity in a school setting is a complex problem. It involves not only the law and the dominant norms of plurality acceptance in society, but also, and especially, equal access to education. The law upholds mandatory reasonable accommodations that stem from freedom of conscience and equality. Society, for its part, can be more reluctant to make particular religious exceptions within the public sphere. As for schools, they must fulfill their educational mission to teach and educate, as well as expose students to pluralism. However, there is no way of promoting openness to diversity if expressions of religious diversity are not allowed within the schools. Thus, it seems that reasonable accommodation can be an asset in carrying out the schools' mandate.

Historically, Quebec's school system was founded on the basis of a confessional division between Catholics and Protestants. Despite the upheavals within Quebec society over the last few decades, the choice of school system has been guaranteed by many levels of legislation, including the Canadian Constitution. However, in July 2000, we witnessed an accelerated secularization of the school system and of the State organizations that ensured its functioning. In September 2008, denominational religious study programs, both Catholic and Protestant, were replaced by Ethics and Religious Culture, a non-religious compulsory curriculum.

In this structurally secular context, many questions remain to be answered regarding the status of religious identity within the school. They pertain chiefly to those who wear religious symbols (veil, turban, kirpan), but also to those who demand to be exempted from certain pedagogical activities. The most common demands are to be excused from certain classes or activities (dance, music and physical education – especially swim class), to modify exam schedules which conflict with religious holidays, and to refuse to attend certain public outings. Even if all the participants involved in the school agree that the harmonious integration of students of all origins into the school system is important, not everybody agrees about the role that religious diversity must play within the school's norms and practices.

Some people want schools to be a place where, in the name of an all-encompassing integration, all religious distinctiveness must be excluded. Conversely, others believe that by systematically forbidding all types of religious expression, schools risk excluding public school students and bypassing one of education's fundamental goals, which is to impart openness to religious diversity and co-existence. This mission became concrete with the implementation of the Ethics and Religious Culture curriculum, which, among other objectives, explicitly aims to promote "openness to religious diversity," and in doing so, permits students to develop "appropriate behaviours toward religious diversity, notably tolerance, respect and openness to dialogue."[1]

The *Policy on Educational Integration and Intercultural Education*[2], which identifies intercultural education as one of the school's basic objectives, emphasizes the need to consider the multifaceted differences in the school environment, particularly in relation to accommodations. This holds true for all schools, even the most homogeneous ones. However, the multi-ethnicity rate is higher in larger urban centers; certain schools see rates of more than 80%, as is the case in several schools in the Montreal area. There are no *Ministère de l'Éducation, du Loisir et du Sport* statistics on the religious diversity rate in Quebec schools, but it can be hypothesized that religious diversity is more present in areas with strong ethnic diversity.

REASONABLE ACCOMMODATION FOR RELIGIOUS PURPOSES

Under the current state of law, the religious aspects of students' lives must be managed mainly by "reasonable accommodations" (RA). The obligation to accommodate for religious purposes can stem from an infringement on the right to equality or to freedom of religion, both of which are guaranteed by the Canadian and Quebec Charters. The concept of reasonable accommodation is defined very precisely by José Woerhling:

> *"Compulsory accommodation (or adaptation) obligates, in certain cases, the State and the people or private businesses to modify legitimate and justified norms, practices or policies that apply to everyone without distinction, to take into account the specific needs of certain minorities, notably religious minorities. [...] The aim is to remove an obstacle created by a general policy or legislation that is justified and legitimate, but that brings about prejudicial consequences for certain people or certain groups, because of the characteristics that set them apart from the majority." (Woerhling, 2008, p.43)*

Accommodation is also used in cases of *indirect* discrimination. As early as 1995, the *Commission des droits de la personne* stated that, regarding the hijab, obligatory accommodation is not determined by the more or less liberal interpretations of the exegesis of the Koran: "[…] religious freedom includes the right to wear a particular type of garment for religious purposes. This right is infringed, in principle, when a female Muslim student is forbidden to wear the hijab, contrary to her beliefs. [...] and so these rules infringe the right to equality; they must be adapted in a way that will eliminate their discriminatory impact. Schools are obliged, in this regard, to provide reasonable accommodation."[3] In this instance, the commission analyzes the problems related to wearing religious symbols by taking into consideration the measures found in the Quebec Education Act. That is to say that the most basic issue, from a legal and educational standpoint, is not that of aligning an individual religious symbol and secular school policy, but that of aligning the right to education and the accommodations aimed at respecting that right.

LIMITATIONS AND CRITICISMS

Reasonable accommodations are mapped out by jurisprudence and have limitations, even though some popular perceptions make it seem as though anything is permitted. Indeed, excessive constraints create limitations to reasonable accommodations; namely, the excessive cost incurred by the institution for the adaptation, to the rights of others, and to the good functioning of the institution.[4]

But there has been a multitude of controversies which have caused the Quebec government to create two review committees. In November 2007, the Consultative Committee on Integration and Reasonable Accommodation in the School Setting (headed by Mr. Bergman Fleury) submitted a report to the Ministère de l'Éducation, du Loisir et du Sport.[5] The report emphasized the fact that demands for reasonable accommodation occur independently of the presence or absence of immigrant students; thus schools report that Catholics, Protestants, and Jehovah's Witnesses, as well as Muslims and Jews are the ones who most often ask for reasonable accommodation. After an investigation of the schools, the committee observed that the adaptation measures' main goal is the students' achievement and the respect of their democratic rights. The school's mandate is what the schools most often refer to when examining the demands. And so, the RA for religious purposes issue is taken into account, not in the context of imposing secular institutional norms upon students, but in the context of the school's educational mission.

The issue of adaptations granted to people for religious purposes has grown into a national political debate that is no longer limited to the issue of schools. One of the high points of the debate is the Quebec government's creation, in March 2007, of the Consultation Commission on Accommodation Practices Related to Cultural Differences (headed by Mr. Gérard Bouchard and Mr. Charles Taylor). Like the Fleury committee, the commission, in its final report[6], recommended that the existing tools used to clarify reasonable accommodations be better distributed throughout the school systems, where 78% of reasonable accommodation demands are of a religious nature. Even though practices in school milieus are relatively successful, according to the testimonies gathered during the commission's inquiries, the school personnel is nonetheless

often under the impression that they are not sufficiently knowledgeable about the RA markers. Despite the fact that, in 1994, the Ministère de l'Éducation published a training module for administrators, there seems to be a persistent lack of distribution and training, especially since reasonable accommodation must always be assessed in a contextual, case by case manner.

IS THE SCHOOL'S MISSION COMPROMISED BY RA?

As I have already pointed out, the accommodation of students' religious identities provokes a certain amount of dissatisfaction within the population. Some might find it paradoxical that the religious structures and symbols of the majority have disappeared from schools while other religions emerge, albeit at different times and in different ways. Incidentally, certain religious symbols are more polarizing than others. The hijab worn by young girls in school shocks part of the population because it supposedly contradicts the school's secularity and gender equality. According to its detractors, by allowing these young Muslim girls to wear a veil in school, the socializing institution confirms the legitimacy of a patriarchal system with this symbol woman's inferiorization and submission. As Marie Mc Andrew reminds us, we must determine to what point this practice actually compromises girls' access to equal education, rather than abstractly analyze the meaning to be given to such a sign.[7] I would add that we must be wary of imposing an ideological meaning to a religious symbol that could effectively compromise the freedom of interpretation of the same women we are trying to save.

The symbolic case of accommodation within a school context that provoked the strongest reactions is, without a doubt, that of the Sikh kirpan. Here, a young student was granted the right to wear the ceremonial dagger, with certain security measures in place, by his school board and later, by the Supreme Court of Canada. This was determined a reasonable accommodation which allowed him to keep attending public school. When reaching their decision on the kirpan, the judges of the Supreme Court assessed the negative effects of being excluded from school and the positive effects of accommodation[8]:

> *If some students consider it unfair that G [a young Sikh] 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 instil in their students this value *that is at the very foundation of our democracy. A total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others. Accommodating G and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to* protecting freedom of religion *and to showing respect for its minorities. The deleterious effects of a total prohibition thus outweigh its salutary effects.* [51 54] [57 59] [67 71] [76] [79] (my emphasis)

Fulfilling the school's mission must remain at the heart of the deliberation over accommodation. In this case, the decision is based on three important foundations which the school, the foremost place for socialization, cannot ignore – as they relate to fundamental aspects of its educational role. They are basic rights, the integration in common institutions, and the school's duty to teach tolerance.[9] If we consider the student body's right to security, it has not been proven that a kirpan, worn in accordance with certain security measures, would send the message that the school now condones violence.

It is in the hands of the State and public institutions, notably the schools, and of the citizens as a whole, to promote deliberation and integration in common institutions and to avoid excessive constraints placed on minority groups that may provoke defensive strategies and even more costly exclusions. It seems to me that recognizing diversity, within reasonable limits, is much more beneficial to integration than radical restrictions in the name of general principles, be it secularism or gender equality.[10]

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