The Quebec debate on reasonable accomodation: Politicians propose amendments to the Quebec Charter and a new constitution for Quebec

Although section 27 of the Charter of Rights and Freedoms (the Charter) officially recognizes Canada as a multicultural nation, Canadians continually debate just how far traditional Canadian institutions and culture should adjust to accommodate religious and cultural minorities. Over the past two years, several high profile incidents brought this 'reasonable accommodation' debate to the forefront in Quebec.

In 2006, the Supreme Court of Canada (SCC), in Multani v. Commission Scolaire[1], ruled that the decision of a Quebec School Board to impose an out right ban on a student wearing a kirpan, a Sikh ceremonial dagger, to school, infringed the student's right to religious freedom under the Charter. The Court noted that conditions imposed by a Quebec Superior Court but overturned by the Quebec Court of Appeal, requiring the student carry the kirpan in a protective case and conceal and sew it into his clothing, adequately balanced his right to religious freedom and the goal of ensuring safety in schools. Later in 2006, a woman started a petition to remove frosted glass windows installed at a Montreal area YWCA [2]. The windows were paid for by a nearby Hasidic synagogue that did not want its members and children to see women exercising. More recently, a soccer referee and a taekwondo organization, citing safety concerns, barred female participants from wearing hijabs (i.e. a muslim head scarf) in competition [3][4].

Further examples of religious and cultural accommodation garnered significant media attention in Quebec and with a provincial election looming, several politicians, in particular ADQ leader Mario Dumont, expressed concern that minority religious practices were taking precedence over Quebec's mainstream traditional values [5].

In January 2007, the debate on 'reasonable accommodation' was further sharpened when the City Council of Herouxville, Quebec, passed a resolution stating the town's "Normes de vie" or "Standards"[6]. Among the standards were controversial prohibitions on covering one's face, except on Halloween, and "killing women by lapidation or burning them alive in public places, burning them with acid, excising them, infibulating them or treating them as slaves" [7]. According to the resolution, the standards are intended "to inform the new arrivals that the lifestyle that they left behind in their birth country cannot be brought here with them and they would have to adapt to their new social identity" [8]. Although the standards have no legal effect, minority groups, such as the Canadian Islamic Congress and

the Canadian Muslim Forum, felt they reinforced misinformed minority stereotypes and threatened to bring a Human Rights Complaint [9].

In response to the heated debate, Quebec Premier Jean Charest announced the creation of a special commission, headed by prominent academics Gérard Bouchard and Charles Taylor [10]. The mandate of the Bouchard-Taylor commission is to conduct extensive public consultation on the issue of reasonable accommodation throughout Quebec. Though the commission is due to report in the spring of 2008, Premier Charest, following a recommendation from the Quebec Council on the Status of Women, recently indicated that he was preparing to submit legislation to amend the Quebec Charter to ensure gender equality is not compromised in the name of other rights, such as freedom of religion [11]. The proposed provision would augment section 10 of the Quebec Charter, which currently prohibits discrimination on several grounds, including gender [12].

According to proponents, the provision would bring the Quebec Charter into line with the the Charter and ensure protection of gender equality [13]. Prior to the adoption of the Charter in 1982, section 28, which states that "[n]otwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons", was inserted at the insistence of women's groups who feared that section 27, which promotes Canada's multicultural heritage, could be used to justify unequal treatment of women [14]. According to detractors, a provision elevating gender equality creates a hierarchy of rights, undermining the notion that all human rights should be given the same weight and raising the possibility that minority rights will be limited at the expense of rights favoured by the majority [15][16].

A glance at Charter jurisprudence reveals that the SCC has generally avoided assigning priority to Charter rights. Rather, the Court indicated, in R. v. Keegstra, that it would take an ad hoc approach to balancing conflicting rights based on the specific law and the nature of the conflict [17]. Specifically, the Court chose to follow a two step process: 1) define the scope of each right independently, and 2) determine whether a conflicting right justifies a reasonable limit on the scope of the other given the context and specific law in question.

The reasonable accommodation debate in Quebec took a further twist, recently, when the leader of the Parti Quebecois, Pauline Marois, tabled the Quebec Identity Act (QIA) in the National Assembly [18]. The legislation proposes to create a Quebec constitution, Quebec citizenship, and to revise the Quebec Charter. Similar to Premier Charest's recently proposed Quebec Charter amendment, the QIA calls for a new interpretative provision guaranteeing gender equality. Going further, the interpretative provision would guarantee the secular nature of public institutions. Controversially, the QIA propose to limit Quebec citizenship and, as a result, the right to run in provincial, municipal or school board elections, and the right to participate in the public funding of a political party, to those with demonstrated proficiency in French.

Several constitutional scholars, as well as Premier Charest and leader of the opposition Mario Dumont, contend that the language requirements in the QIA violate the Charter [19][20]. While section 45 of theConstitution Act, 1982, grants provincial

legislatures the power to amend their own constitutions, no provincial government can legislate in contravention of the Canadian Constitution, including the Charter. Section 3 of the Charter guarantees Canadian citizens the right to stand for election to the House of Commons or a legislative assembly. Requiring proficiency in French to stand for election to the National Assembly may infringe the section 3 rights of English speaking Canadian Citizens. Similarly, the equality guarantees in section 15 of the Charter likely forbid denying membership in a legislative assembly on discriminatory grounds. Furthermore, excluding English only speakers in Quebec from participation in the public funding of a political party likely violates the freedom of expression and association guarantees in section 2 of the Charter. Finally, denying English only speaking parents in Quebec the right to run in school elections may infringe the Charter's section 23 minority language education rights.

As opposed to serious legislative solutions, some commentators see the recent proposals as political moves designed to gain ground among traditional Francophone votes. However, one thing is clear: Quebec's debate on reasonable accommodation is far from over.

Sources:

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