

GUIDELINES

for dealing with requests
for accommodations
on religious grounds



“There is a broad consensus in Québec concerning the need to clarify the guidelines that interveners and managers must follow in the handling in their milieus of harmonization requests. Some people believe that the existing guidelines are inadequate or insufficiently affirmed. Here, it would be a question of adopting new norms and more firmly supporting them.”

Charles Taylor and Gérard Bouchard, “Building the Future: A Time for Reconciliation,” Final report of the Consultation Commission on Accommodation Practices Related to Cultural Differences, Québec, Gouvernement du Québec, 2008, p. 167. [Online]

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Introduction

The Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies (hereinafter the Act) provides for the following measures in particular:

State religious neutrality

Personnel members of public bodies must be religiously neutral in the exercise of their functions; this implies being careful to neither favour nor hinder a person because of the person's religious affiliation or non-affiliation or because of their own religious convictions or beliefs or those of a person in authority.

Public services with face uncovered

Personnel members of public bodies and certain other bodies, as well as elected persons, must exercise their functions with their face uncovered. In addition, persons who request a service from one of those persons must have their face uncovered when the service is provided. These obligations aim to ensure quality communication between persons and allow their identity to be verified, and for security purposes.

Criteria to be met for a request for an accommodation on religious grounds to be granted and guidelines for dealing with those requests

The criteria according to which accommodations on religious grounds may be granted, as well as the specific elements to be taken into consideration when dealing with requests for accommodations on religious grounds, are provided for in the Act. These criteria codify jurisprudential concepts, among other things.

The Minister of Justice establishes the guidelines for dealing with requests for accommodations on religious grounds in order to support the State bodies concerned.

The duty to accommodate stems from the application of the right to equality set out in the Charter of human rights and freedoms (hereinafter "the Charter"). Section 10 of the Charter provides for the following:

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

Bodies have already been dealing with requests for accommodations within their organization for the different grounds provided for in section 10 of the Charter, whether they are submitted by their users or employees. To do so, they have been relying until now on the criteria developed over time by the courts.

Following years of discussions in Québec society, the Act establishes, in particular, the criteria to be considered when dealing with a request for an accommodation on religious grounds. It aims at establishing guidelines for living together harmoniously.

What is the objective of the guidelines?

With a view to facilitate dealing with requests, these guidelines propose ***an analysis process***. They describe the elements that must be taken into consideration by the bodies concerned and are aimed at achieving great consistency in the application of those concepts and in dealing with those requests for accommodations on religious grounds.

The objective of these guidelines is to support to the bodies referred to in the Act in dealing with requests for accommodations in accordance with section 11, which provides for the following:

11. When dealing with a request for an accommodation on religious grounds resulting from the application of section 10 of the Charter of human rights and freedoms (chapter C-12), the body must make sure that

- (1) the request is serious;
- (2) the accommodation requested is consistent with the right to equality of women and men and the right of every person to be treated without discrimination;
- (3) the accommodation requested is consistent with the principle of State religious neutrality; and
- (4) the accommodation is reasonable in that it does not impose undue hardship with regard to, among other considerations, the rights of others, public health and safety, the proper operation of the body, and the costs involved.

An accommodation may be granted only if the person making the request has cooperated in seeking a solution that meets the criterion of reasonableness.

These guidelines do not dictate the decisions to be made when dealing with a request for an accommodation but, instead, they specify the steps for dealing with a request and the criteria that must be met for the request for an accommodation on religious grounds to be granted. In so doing, requests for accommodations will be dealt with objectively.

There is therefore no single response. A request may be reasonable in a large organization, but unreasonable in a small one. The analysis is carried out on a case-by-case basis. It is important to be innovative and creative to find a solution acceptable to all.



What is an accommodation?

An accommodation is a measure aimed at correcting or preventing a situation of discrimination. For the conditions provided for in section 11 of the Act to apply, the request must be based on religion, which is one of the grounds of discrimination prohibited by the Charter.

The purpose of any accommodation is to avoid that a person be deprived, for example, of access to services or employment because of personal characteristics that cannot be modified without affecting in particular the person's identity. Its purpose is not to grant privileges or preferential treatment to certain individuals but to ensure actual equality. Each request for an accommodation must be examined on a case-by-case basis.

Which bodies are concerned by the guidelines?

The guidelines apply to all government departments and bodies generally considered to be government agencies. They also apply to persons or institutions considered as such bodies because of the public nature of their functions.

Sections 2, 3 and 8 of the Act define the scope of the guidelines. The Act applies in particular to the following bodies:

- government departments;
- State bodies, including budget-funded bodies, bodies other than budget-funded bodies and government enterprises, such as Hydro-Québec;
- school boards, except as provided for in the Act;
- public general and vocational colleges, as well as public or subsidized university-level educational institutions;
- institutions accredited for the purposes of subsidies under the *Act respecting private education* at the elementary, secondary or college level;
- public institutions of the health and social services network, except as provided for in the Act;
- private institutions under agreement, intermediary resources and family-type resources governed by the *Act respecting health services and social services*;
- bodies to which the National Assembly or any of its committees appoints the majority of the members, such as the Commission des droits de la personne et des droits de la jeunesse;
- municipalities, metropolitan communities, intermunicipal boards and municipal housing bureaus, except as provided for in the Act;
- public transit authorities, the Autorité régionale de transport métropolitain and any other operator of a shared transportation system;
- childcare centres, home childcare coordinating offices, subsidized day care centres and recognized subsidized home childcare providers.

What are the responsibilities of the bodies concerned?

The Act provides that the person exercising the highest administrative authority of each body concerned by these guidelines has the following responsibilities:

Take the necessary measures to ensure compliance with the guidelines and the provisions of the Act in dealing with requests for accommodations on religious grounds

The measures available to the bodies to assume this responsibility are numerous and may vary depending on each organization. The bodies will be able to rely on the guidelines for support in dealing with requests for accommodations on religious grounds.

The bodies are invited to adopt directives, develop guides for their employees who are called upon to deal with requests for accommodations, provide training for their personnel, inform their employees and raise awareness through internal communications, and develop guides or explanatory documents for their clients.

Designate an accommodation officer within the personnel

The functions of the officer consist in advising the person exercising the highest administrative authority and the personnel members of the body regarding accommodation matters, and making recommendations or giving opinions to assist them in dealing with any requests received.

By considering, for example, the number of employees, the services provided directly to the public and the number of anticipated requests, each body will designate, within the personnel, the person best able to perform that function.

Bodies must make known, within their organization, the names of the officers or units responsible for dealing with requests for accommodations so as to enable their employees to refer citizens toward the appropriate resources for dealing with their requests.

How to deal with a request for an accommodation on religious grounds?

Every request for an accommodation on religious grounds must be the subject of a personalized assessment. The body must carefully analyze the request. However, it does not have the obligation to accept every request. The analysis process is comprehensive and must be carried out objectively, regardless of any opinions, beliefs, biases or stereotypes that are likely to skew the analysis. In avoiding such behaviour, the body will properly assume its roles and responsibilities in matters of reasonable accommodation. It is necessary to act in good faith and be proactive when looking for solutions.

Note: not all requests are requests for an accommodation.

When dealing with a request for an accommodation, it is recommended that the body seek to answer the following questions:

- **Does the person making the request claim to be discriminated against because of a religious belief? What is that belief?**

These guidelines pertain to requests for accommodations on religious grounds. A request for an accommodation on other grounds may also be made, but these guidelines will not apply.

- **What is the body's rule or practice that comes into conflict with that belief? What is the basis of the rule or practice? What effect does the application of the rule or practice have on the person making the request?**

- Does it interfere with the person's *sincerely* held belief?
- Does it hinder, in a manner that is *more than trivial or insubstantial*, the person's capacity to conform to that belief?

Identification of the rule or practice and of its effects on the person making the request enables the body to understand why the person claims to be discriminated against. It is important to bear in mind that the intent to discriminate is not necessary to cause discriminatory treatment.

- **How can the body adapt the application of the rule or practice within the particular context of its activities without sustaining undue hardship?**

This component of the evaluation enables the body to determine the reasonableness of the requested accommodation by taking account in particular of the impact on the provision of services, its mission or its capacity to provide quality services.

- **What impacts would the requested accommodation have on the body's employees and users? Is the accommodation consistent with the principle of State religious neutrality?**

Through this component of the evaluation, the body ensures in particular that the accommodation requested will be consistent with the right to equality of those who would be affected by the request. It will also ensure that the State does not favour or disfavour any belief or adhere to any particular belief.

- **Is the person making the request willing to take part in the search for solutions?**

What criteria must be met for the request for an accommodation to be granted?

For a request for an accommodation to be granted, the body must ensure that each of the following criteria is met.

1. The request results from the application of section 10 of the Charter (discrimination)

First, the person making the request must demonstrate that he or she is discriminated against by reason of the rule or practice for which an accommodation is requested, because:

- He or she is treated differently;
- The difference in treatment is based on religion; and
- The difference in treatment has the effect of impairing his or her right to full and equal recognition and exercise of a human right or freedom guaranteed under the Charter.

Section 10 of the Charter states the principle that every person has a right to full and equal recognition and exercise of their human rights and freedoms, without discrimination based on one of the grounds provided for therein, including religion. It provides that discrimination exists where a distinction, exclusion or preference has the effect of nullifying or impairing such right.

A request that is not based on religion is not concerned by these guidelines. **The notion of religion includes:** to believe or not to believe, to belong or not to belong to a religious denomination, as well as to practice a religion or another or not to practice any.

2. The request is serious (sincerely held belief)

Second, to meet this criterion, the person making the request must sincerely believe that he or she needs to conform to a practice when exercising his or her faith or to a religious conviction.

In other words, the religious belief that is asserted must be in good faith, neither fictitious nor capricious, and must not be an artifice. It is not necessary for that practice or belief to be based on a religious precept recognized by established religious authorities or shared by a majority of believers.

What is the effect of the rule or practice on the person making the request?

Does it undermine the sincere belief of the person?

Does it hinder, in a manner that is more than trivial or insubstantial, the person's capacity to conform to that belief?

3. The accommodation requested is consistent with the right to equality of women and men and the right of every person to be treated without discrimination

Third, the accommodation requested must be consistent with the right to equality of women and men.

What impacts would the requested accommodation have on the body's employees and users?

This requirement refers to section 10 of the Charter, which provides that every person has a right to full and equal recognition and exercise of his or her human rights and freedoms, without discrimination based on sex. This requirement also refers to the preamble and section 50.1 of the Charter, which provide that the rights and freedoms set forth in the Charter are guaranteed equally to women and men.

The accommodation requested must also be consistent with the right to be treated with full equality, without discrimination based on any of the grounds mentioned in section 10 of the Charter. The prohibited grounds of discrimination include race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

This criterion is assessed by taking into account the effects of the requested accommodation on other users and the personnel members of the body dealing with the request, not on the person making the request.

4. The accommodation requested is consistent with the principle of State religious neutrality

Fourth, the request for an accommodation on religious grounds must be consistent with State religious neutrality, which stems from the freedoms of conscience and religion protected by the Charter.

Would granting the request cause the State to favour or disfavour a religion over another?

Hence, by expressing no preference or disfavour with regard to any religion in particular, the State ensures that it preserves a neutral public space that is free of discrimination and in which true freedom to believe or not to believe is enjoyed by everyone equally, given that everyone is valued equally. Moreover, neutrality is required of institutions and the State, not of individuals. This means that an employee of a body concerned who wears a religious symbol while performing his or her work would not be violating the principle of State religious neutrality.

This criterion means, for example, that the bodies concerned cannot stop providing a public service to accommodate a person because of the person's religious practice.

5. The accommodation is reasonable

Fifth, the request for an accommodation on religious grounds must not cause undue hardship for the body concerned.

The notion of undue hardship is used to determine whether the accommodation is reasonable or not. Undue hardship is assessed on a case-by-case basis, taking into account the specific context of the body concerned and the impact of the requested accommodation.

How can the body adapt the application of the rule or practice within the particular context of its activities without sustaining undue hardship?

It is not sufficient for an accommodation measure to cause inconvenience for it to constitute undue hardship. Simple hardship is not undue hardship per se. An accommodation may generate some irritants without necessarily constituting undue hardship.

For there to be undue hardship, the accommodation measure must have a significant impact on the provision of services, the body's mission or its capacity to provide quality public services.

Before concluding that there is undue hardship, the body must evaluate all possible solutions for the person making the request not to be discriminated against.

Below are examples of criteria to determine whether there is undue hardship:

- The significance of the impacts on human, material and financial resources (the availability of the personnel, the actual cost of the requested accommodation, the nature of the body);
 - Will the measure cause a work overload for the other employees? If so, to what extent? Are there ways to counter it?
- The significance of the impacts on the body's functioning and work organization (the adaptability of the premises, the duration and extent of the accommodation);
 - Is resorting to a bank of on-call employees possible?
 - Would personnel members be willing to switch shifts?
 - Is there a labour shortage within the organization?
 - Does the organization have sufficient space or rooms?
 - Could the person making the request help minimize the impact of the accommodation measure on work organization?
- The risks of infringement of the rights of other users and employees (the risks to health or safety);
 - What is the safety level to be maintain?
 - Is the risk real or hypothetical?
 - What prejudice could occur?
 - How probable is the risk?
 - Who would be affected if the risk occurred? Would it affect vulnerable persons (children, ill persons or persons with decreasing autonomy, etc.)?
 - Is there serious or trivial infringement with the rights of others?
 - Can the person making the request help minimize the impact of the measure on the safety or rights of others?

- The legal requirements otherwise applicable.
 - Can the person making the request help minimize the impact of the measure in order to comply with existing laws, regulations and collective agreements?

Examples of criteria for evaluating whether there is undue hardship in various sectors

Education

- Teacher availability;
- Room availability;
- Safety of students and personnel.

Municipal services

- Individual identification requirements;
- Safety of the people within the territory of the municipality;
- Size of the municipality and number of employees.

Health care services

- Clinical assessment and application of protocols;
- Public health;
- Safety of the patient and personnel;
- Quality of care.

Public safety

- Safety of citizens, clientele and personnel;
- Quality of services;
- Identification requirements and requirements related to the function.

Child care services

- Safety of children;
- Minimum number of qualified child care workers required to care for the children (ratio);
- Availability of the qualified child care workers required.



In the case of a request involving an absence from work

It should be pointed out that if the accommodation requested by a personnel member involves an absence from work, section 13 of the Act specifies certain elements that must be taken into account by the body. It provides for the following:

13. When a request for an accommodation on religious grounds by a personnel member involves an absence from work, more specific consideration must be given to the following factors:

- (1) the frequency and duration of absences on such grounds;
- (2) the size of the administrative unit to which the person making the request belongs, the ability of the unit to adapt, and the interchangeability of the body's workforce;
- (3) the consequences of the absence on the work of the person making the request, on the work of other personnel members and on the organization of services;

- (4) the possible arrangements by the person making the request, including modifying their work schedule, accumulating or using their bank of hours or vacation days, or their undertaking to make up the hours missed; and
- (5) fairness with regard to the employment conditions of other personnel members, including the number of days of paid leave and work schedules.

In the case of a request concerning an elementary or secondary school student

Similarly, if the requested accommodation concerns an elementary or secondary school student, section 14 of the Act provides for the following:

14. If a request for an accommodation on religious grounds concerns a student attending an educational institution established by a school board, the school board must take into account the objectives set out in the Education Act to ensure that the request does not compromise

- (1) compulsory school attendance;
- (2) the basic school regulations established by the Government;
- (3) the school's educational project;
- (4) the mission of schools, which is to impart knowledge to students, foster their social development and give them qualifications, in keeping with the principle of equal opportunity, while enabling them to undertake and achieve success in a course of study; and
- (5) the ability of the institution to provide students with the educational services provided for by law.

In the case of a request concerning the obligation to have one's face uncovered

A person who, for religious reasons, wears clothing covering the face could request an accommodation regarding that obligation, which must comply with the criteria provided for in section 11. When assessing whether the accommodation is reasonable, the body must also take into consideration the objectives set out in section 1 of the Act, namely, to ensure quality communication between persons and allow their identity to be verified, and for security purposes.

6. The person making the request has cooperated in seeking a solution that meets the criterion of reasonableness

Sixth, the requirement to seek a solution lies with the body concerned and also with the person making the request, who cannot expect a perfect solution but a reasonable one. Given that seeking a reasonable accommodation measure requires an effort on the part of all the parties and that it is important to get the person making the request involved in the process to find a joint solution, the person making the request must cooperate by providing the information relevant for dealing with the request, contribute to the search for solutions and make an effort to try to reduce the hardship that the request for an accommodation may cause.

Is the person making the request willing to take part in the search for solutions?

When the cooperation of the person making the request is required, that person's failure to do so would cause the request for an accommodation to be dismissed.

Conclusion

When a decision concerning a request for an accommodation is made, it must be explained to the person making the request. This step is important. If the accommodation is granted, the conditions and limits of the measure must be presented to the person making the request. If the accommodation is dismissed, the decision must be justified, as it is important that the person making the request properly understands the reasons for the decision.

These guidelines address the requirement provided for in section 12 of the Act. That section stipulates that the Minister of Justice must establish guidelines for dealing with requests for accommodations on religious grounds in order to support bodies.

Relevant provisions

Charter of human rights and freedoms

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies

1. This Act affirms the religious neutrality of the State in order to ensure that all are treated with proper regard for their recognized rights and freedoms, including freedom of religion for personnel members of public bodies. To that end, the Act imposes a duty of religious neutrality, in particular on personnel members of public bodies in the exercise of the functions of office.

A further purpose of the Act is to recognize the importance of having one's face uncovered when public services are provided and received so as to ensure quality communication between persons and allow their identity to be verified, and for security purposes.

The Act also sets out criteria to be taken into consideration when dealing with requests for accommodations on religious grounds resulting from the application of the Charter of human rights and freedoms (chapter C-12).

11. When dealing with a request for an accommodation on religious grounds resulting from the application of section 10 of the Charter of human rights and freedoms, the body must make sure that

- (1) the request is serious;
- (2) the accommodation requested is consistent with the right to equality of women and men and the right of every person to be treated without discrimination;

- (3) the accommodation requested is consistent with the principle of State religious neutrality; and
- (4) the accommodation is reasonable in that it does not impose undue hardship with regard to, among other considerations, the rights of others, public health and safety, the proper operation of the body, and the costs involved.

An accommodation may be granted only if the person making the request has cooperated in seeking a solution that meets the criterion of reasonableness.

12. The Minister must establish guidelines for dealing with requests for accommodations on religious grounds in order to support bodies in their application of section 11.

The guidelines must be published on the website of the Ministère de la Justice.

13. When a request for an accommodation on religious grounds by a personnel member involves an absence from work, more specific consideration must be given to the following factors:

- (1) the frequency and duration of absences on such grounds;
- (2) the size of the administrative unit to which the person making the request belongs, the ability of the unit to adapt, and the interchangeability of the body's workforce;
- (3) the consequences of the absence on the work of the person making the request, on the work of other personnel members and on the organization of services;
- (4) the possible arrangements by the person making the request, including modifying their work schedule, accumulating or using their bank of hours or vacation days, or their undertaking to make up the hours missed; and
- (5) fairness with regard to the employment conditions of other personnel members, including the number of days of paid leave and work schedules.

14. If a request for an accommodation on religious grounds concerns a student attending an educational institution established by a school board, the school board must take into account the objectives set out in the Education Act to ensure that the request does not compromise

- (1) compulsory school attendance;
- (2) the basic school regulations established by the Government;
- (3) the school's educational project;
- (4) the mission of schools, which is to impart knowledge to students, foster their social development and give them qualifications, in keeping with the principle of equal opportunity, while enabling them to undertake and achieve success in a course of study; and
- (5) the ability of the institution to provide students with the educational services provided for by law.

This section also applies to institutions accredited for purposes of subsidies under the Act respecting private education, except such institutions that provide college instruction services, with the necessary modifications.

17. It is incumbent on the person exercising the highest administrative authority over the personnel members referred to in Chapters II and III to take the necessary measures to ensure compliance with the measures set out in those chapters. For that purpose, the person must designate an accommodation officer within the personnel.

The functions of the officer consist in advising the person and the personnel members of the body regarding accommodation matters, and making recommendations or giving opinions to assist them in dealing with any requests received.

