

How to Get to Hérouxville: Reasonable Accommodation Blowback and Interculturalism in Quebec

David Edward Tabachnick

Professor of Political Science, Nipissing University – Email address: davidt@nipissingu.ca

Abstract: This paper explores “reasonable accommodation blowback” in Canada and, in particular, the province of Quebec. As will be argued, the “accommodation crisis” in Quebec resulted from two related developments: i) a misapplication of the term “reasonable accommodation” taken from disability law which has allowed it to be perceived as providing undeserved preferential treatment to minorities and; ii) the practice of interculturalism that then magnifies this perception of preferential treatment as obstructing the integration of minorities into the dominant French-language culture. In part, this explains why the accommodation crisis occurred in Quebec and has sparked a far more virulent blowback in that province than in the rest of Canada. This suggests that, while some might argue that interculturalism is “complementary” to multiculturalism, multiculturalism can also be in opposition to and even antagonistic to the goals of interculturalism.

Keywords: multiculturalism, interculturalism, Quebec, Canada, reasonable accommodation, Charles Taylor, Supreme Court

Résumé: Cet article explore “un retour à l’hébergement raisonnable » au Canada et, en particulier, dans la province de Québec. Comme nous le ferons valoir, la « crise du logement » au Québec résulte de deux développements connexes : i) une application erronée du terme « accommodement raisonnable » tiré de la loi sur l’invalidité qui lui a permis d’être perçu comme offrant un traitement préférentiel imméritée aux minorités et, ii) la pratique de l’interculturalité qui augmente cette perception de traitement préférentiel comme entrave à l’intégration des minorités dans la culture dominante de langue française. En partie, cela explique pourquoi la crise du logement s’est produite au Québec et a déclenché un retour beaucoup plus virulent dans cette province que dans le reste du Canada. Ceci suggère que, tandis que certains pourraient prétendre que l’interculturalité est « complémentaire » au multiculturalisme, le multiculturalisme peut aussi être en opposition et même antagoniste aux objectifs de l’interculturalisme.

Mots-clé: le multiculturalisme , l’interculturalisme , Québec , Canada, accommodement raisonnable , Charles Taylor , la Cour suprême

This paper is an exploration of “reasonable accommodation blowback” in Canada and, in particular, the province of Quebec. As will be argued below, the “accommodation crisis” in Quebec resulted from two related developments: i) a misapplication of the term “reasonable accommodation” taken from disability law which has allowed the term to be perceived as providing undeserved preferential treatment to minorities and; ii) the unique promotion and practice of interculturalism in the province of Quebec that then magnifies this perception of preferential treatment as obstructing the integration of minorities into the dominant French-language culture. In good part, these related developments explain why the accommodation crisis occurred mostly in Quebec and have sparked a far more virulent blowback in that province than in the rest of Canada. The character of the crisis suggests that, while some might argue that interculturalism is “complementary” to multiculturalism (Meer and Modood, 2012: 175) or “does not contradict the stated multicultural ideology” (Anctil, 2011: 4), multiculturalism can also be in opposition to and even antagonistic to the goals of interculturalism. As will be argued below, it is confusion over the use of reasonable accommodation and the way this confusion feeds into and warps the very concerns that back the practice of interculturalism. An explanation of this complex relationship will allow for a clearer understanding of the “accommodation crisis” in Quebec as well as problems with the practice of interculturalism within liberal democracies such as Canada.

I

The term “reasonable accommodation blowback” is a reference to strong negative responses to the discussion and application of reasonable accommodation rather than existent anti-immigrant, racist sentiment or ethnic strife. In Canada, a well-known example of reasonable accommodation blowback is the so-called “Hérouxville Affair,” which refers to the controversy

over the “life standards”, “code of conduct” or “rules of behaviour” charter issued in early 2007 by the municipal council of the rural farming town of Hérouxville and designed to warn new immigrants that they were obliged to leave behind cultural practices that did not conform to the dominant values of the Québécois. As widely reported in the media, this document, which originally included a prohibition against “killing women in public beatings,” was not the product of brewing racial conflict or any event specific to the municipality. Hérouxville, with a population of 1300, is ethnically, religiously, and linguistically homogeneous. It has almost no immigrant population and, by default, no local racial or anti-immigrant tensions. Instead, the “charter” was created as a direct response to the wider discourse on multiculturalism and the application of reasonable accommodation in Quebec and, more specifically, the island of Montreal, where the vast proportion of immigrants to Quebec settle.

André Drouin, Hérouxville town councilor and the main author of the document, explained his motivation during his testimony at the “Consultation Commission on Accommodation Practices Related to Cultural Differences”, more widely known as the “Bouchard-Taylor Commission” hearings headed up by Quebec academics Gérard Bouchard and Charles Taylor and charged with investigating the practice of accommodating cultural minorities in the province about a month after the Hérouxville Affair. Referencing specific controversies over accommodation in the province, Drouin exclaimed that “we demand that the practice of Canadian courts of accommodating religion in Canada and Quebec cease immediately” and that “The Charter of Rights and Freedoms is a tool to destroy our country” (Drouin, 2007). In their final report, *Building the Future: A Time for Reconciliation*, Bouchard and Taylor recognized the common acceptance of Drouin’s view in the province:

Many Quebecers have expressed the fear that freedom of religion, which is protected by the charters, may be cited to justify practices that run counter to the principle of gender

equality. This fear was often reinforced by mistrust of the courts, which were suspected of promoting an overly lax or permissive interpretation of freedom of conscience, thus supporting practices that should not be tolerated in a liberal democracy (2008: 56).

At least here, Canada's Charter of Rights and Freedoms as well as Quebec's Charter of Human Rights and Freedoms are described as protectors of illiberal cultural practices. Because they protect the intolerant values of minorities under the pretext of freedom of religion and conscience, they are understood to be destructive and detrimental to liberal democracy. On the face of it, this is a rather perplexing dilemma. These documents, designed to protect the values of liberal democracy, are now perceived by some to be obstructions to its practice.

Bouchard and Taylor explain that views like Drouin's, no matter how popular or accepted, are not the result of actual examples of constitutionally protected cultural or religious practices that run contrary to liberal democratic values but are instead articulations of what they call a "crisis of perception" of the meaning of reasonable accommodation. They explain that "after a year of research and consultation, we have come to the conclusion that the foundations of collective life in Québec are not in a critical situation. If we can speak of an 'accommodation crisis,' it is essentially from the standpoint of perceptions" (2008: 13). The anger, fear and mistrust expressed by many Quebecers are simply the result of ignorance or, more charitably, a lack of communication. In turn, the "accommodation crisis" epitomized by the Hérouxville charter can be easily addressed through better public education and consultation. People who are reacting negatively to court protected freedom of religion or conscience are misunderstanding what the law actually allows. In turn, much of *Building the Future* involves investigating and cataloguing specific incidents of these kinds of misunderstandings. For example, the report notes that there was a "widespread perception" that "Men who accompanied their spouses to prenatal classes offered by the CLSC [centre local de services communautaires, local community service

centre] de Parc-Extension were excluded from the courses at the request of Muslim women who were upset by their presence” but that in actual fact this is a service “used, above all, by immigrant women, but men are not excluded from it. Evening prenatal courses for expectant mothers and their spouses are offered in the two other CLSCs affiliated with the Centre de santé et de services sociaux de la Montagne” (2008: 18). Here, and in the dozens of other incidents that were said to amount to a growing intolerance of reasonable accommodation, Bouchard and Taylor convincingly show that accommodation does not give preferential treatment to minorities.

Their conclusion is based on the straightforward observation that blowback is predominantly a function of ignorance. Reasonable accommodation, while not perfect, has been largely successful in Quebec as the province has become more culturally heterogeneous and that the vast majority of its citizens has and can continue to accept the changing demographics of the province. Again, only through misunderstanding, mistrust and subsequent overheated rhetoric in the media and political circles, has there arisen a secondary stigmatization of immigrants resulting in the “crisis of perception” that can be addressed and allayed through open and public dialogue. Overall, *Building the Future* does not identify anything intrinsically wrong with the practice of reasonable accommodation in the province.¹

II

This logic, however, does not really explain the persistence of the specific objection to reasonable accommodation, or why it manifests so intensely in Quebec. Something else is going on. Rather than a “crisis of perception”, blowback is in part a consequence of a misapplication or misappropriation of the term reasonable accommodation that has been magnified by the unique

promotion and practice of interculturalism in Quebec. In Canada, policies of reasonable accommodation have been articulated through interpretations of Section 15(1) of the Charter of Rights and Freedoms which specifies that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” Through various court judgments it was decided that in particular instances there were legal obligations to actively provide an environment conducive to this equality. Initially, the Supreme Court of Canada introduced the idea of reasonable accommodation in the 1985 case; *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.* In a unanimous decision, the Court concluded that “where it is shown that a working rule has caused discrimination it is incumbent upon the employer to make a reasonable effort to accommodate the religious needs of the employee, short of undue hardship to the employer in the conduct of his business” (par. 20; see also Seidle 2009: 85). The Justices built this conception of “reasonable steps to accommodate” religious needs on American laws dealing with the “duty to accommodate” the rights of the disabled as well as the provisions of the 1972 amendment to the American *Civil Rights Act of 1964* (referencing *Reid v. Memphis Publishing Co;* *Riley v. Bendix Corp;* see *Simpsons-Sears*: par. 20).

From here, most of the legal debate has focused on what is meant by “undue hardship” in the original ruling and “reasonable limits” as described in Section 1 of the Charter, which states that rights and freedoms can be “subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” As it has developed, the Supreme Court has endorsed a broad and subjective view of when accommodations must be made. Notably, in the landmark 1985 *R. v. Big M Drug Mart Ltd.* decision, the Court explained: “[t]he essence of

the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses” and that “[i]t is not for the state to dictate what are the religious obligations of the individual, it is for the individual to determine” (at par. 94-95). Similarly, in the more recent *Multani v. Commission scolaire Marguerite-Bourgeoys*, which was precipitated by the prohibition of a student wearing a kirpan in public schools, the Court agreed that, regardless of the traditional institutional practice of a religion, what matters is “reasonable religiously motivated interpretation” (*Multani, supra* note 1 at para. 36) or individual understanding of beliefs and faith. Altogether, the Courts have placed a very high bar on the application of “undue hardship” as well as “reasonable limits” to excuse an obligation to accommodate.²

However, there has been less consideration of the meaning of accommodation itself. As mentioned above, the language of accommodation is brought into Canada through a reference to American laws on civil rights and the rights of the disabled. This origin suggests that accommodation for the practices of religious and ethnic groups and those of the disabled, while different in their particular applications, are of the same kind. Indeed, this is why these groups are placed together in Section 15 and why *Simpsons-Sears*, a case of religious discrimination, was the first Charter case in which Canadian groups representing persons with disabilities intervened. The interveners argued:

Protection against practices creating discriminatory effects is crucial for disabled people because the individuality of their impairments makes them vulnerable to a wide range of superficially neutral obstacles... As a practical matter a narrow interpretation of the word discrimination will expose disabled people and members of other protected classes to unreasonable and arbitrary barriers to equality, in causes where malicious motive cannot be proven (as quoted in Vanhala, 2011: 114).

So, just as Theresa O'Malley, a Seventh-day Adventist prohibited from working from sundown Friday to sundown on Saturday, was unintentionally discriminated against by her employers'

insistence that she must work during that time, so too are persons with disabilities when faced with “able bodied norms” which obstruct them from equal access and movement.³ And so the idea that both groups required “accommodation” was established.⁴

But, on closer examination, amelioration of discrimination against persons with disabilities and members of “other protected classes” are clearly different things and require different remedies. Adam Keating describes this critical distinction in his analysis of the *Americans with Disabilities Act (ADA)*:

The ADA embodies a fundamental difference from other civil rights statutes which prohibit discrimination based upon race, gender, or national origin. Those statutes prohibit an employer from discriminating against job applicants and employees based upon racial, sexual, or ethnic prejudices. In essence those statutes require the employer to turn a blind eye and ignore the individual’s protected characteristic. In contrast, the ADA requires more than just equal treatment; it requires employers to make reasonable accommodations or adjustments to the workplace for qualified disabled individuals that are not offered to non-disabled individuals (2010: 4-5).

Keating distinguishes reasonable accommodation of the disabled from the distinct goals of racial, gender and ethnic equality. As he explains, where the former are accommodated by being treated equally, demanding the employer to ignore or “turn a blind eye” to their differences, the latter are accommodated by a full and complete recognition of different needs and abilities and an explicit adaptation of the work environment. Karlan and Rutherglen put this distinction in even clearer terms, writing that “under the civil rights statutes that protect women, blacks, or older workers, plaintiffs can complain of discrimination against them, but they cannot insist upon discrimination in their favor; disabled individuals often can” (1996: 3).⁵ They further explain that:

Put in the broader context of debates over equality, the ADA embraces both a ‘sameness’ and a ‘difference’ model of discrimination... In a sameness model, the decisionmaker [sic] must ignore the irrelevant characteristic. Treating every worker identically, regardless of the presence or absence of a particular disability, satisfies the sameness model of equality.... A difference model, by contrast, assumes that individuals who possess the quality or trait at issue are different in a relevant respect from individuals who don’t... Reasonable accommodation clearly rests on a difference model of discrimination

since it requires employers to treat some individuals-- those disabled persons who would be qualified if the employer modified the job to enable them to perform it--differently than other individuals (1996: 10-11).

They conclude that: "This emphasis illustrates the profound differences between reasonable accommodation and antidiscrimination as methods of regulation" (1996: 14). Notably, this same thinking is found in Canada, where the Court decided that, when it comes to ethnicity, race, and religion, discrimination means making "distinctions based on presumed rather than actual characteristics" whereas avoiding discrimination of the disabled requires "taking into account the actual personal characteristics of disabled persons" (*Eaton* 1997: 66). So, where equality means overlooking difference for one group, it means fully and explicitly recognizing and accommodating difference for another.

We can further understand this 'sameness' and 'difference' distinction by applying Isaiah Berlin's well-known categories of "negative liberty" and "positive liberty." The sameness model corresponds to Berlin's definition of negative liberty:

Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by other persons from doing what I could otherwise do, I am to that degree unfree; and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved. Coercion is not, however, a term that covers every form of inability. If I say that I am unable to jump more than ten feet in the air, or cannot read because I am blind, or cannot understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced. Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act. You lack political liberty or freedom only if you are prevented from attaining a goal by human beings. Mere incapacity to attain a goal is not lack of political freedom (1969: 122).

This definition of liberty or freedom applies to cases where an individual is obstructed, and thus coerced, from being able to work, go to school, or attend any public institution because of their religious practice, culture, or gender. It follows that a government wanting to promote a free

society would apply this definition by removing such obstructions. However, as Berlin goes out of his way to note, this definition does not also mean that someone with an “inability,” such as being blind, is also obstructed or coerced. Somewhat less clearly, the difference model corresponds to his definition of positive liberty:

The ‘positive’ sense of the word ‘liberty’ derives from the wish on the part of the individual to be his own master. I wish my life and decisions to depend on myself, not on external forces of whatever kind...I wish to be somebody, not nobody; a doer...conceiving goals and policies of my own and realizing them...I feel free to the degree that I believe this to be true, and enslaved to the degree that I am made to realize it is not (1969: 131).

Here, a government promoting this kind of freedom would be obliged to facilitate a citizen’s route to autonomy providing a means for them to gain self-mastery unobstructed by external forces. So, for example, with positive liberty a blind person, if they so choose, has the right to do a job or go to a school that requires reading even though they, under ordinary circumstances, are unable to read. In other words, the government must recognize that what might not be an impediment for the many is for the few or even for the one and, in turn, is obliged to provide special treatment to remove that obstacle. This different treatment or positive discrimination would involve an accommodation. The ADA and other laws promoting the rights of the disable function under this conception.

So, unlike in cases dealing with the disabled, where “barrier-removal” accommodation is required, the other groups listed in Section 15 instead most often require changes that would fall under what Karlan and Rutherglen call antidiscrimination regulations. Leaving aside the finer points of the legal arguments, in the *Multani* case, the school board had to allow the wearing of the kirpan. In *Amsellem* (referenced in endnote 2), the condominium had to allow the Succah on the balcony. In *Simpsons-Sears* and *Big M Drug Mart*, employers had to allow their employees

to work or not to work on particular days. At least in this list of examples, there really is no accommodation as such, only a requirement to overlook difference. On the face of it, laws and policies were changed not to provide any preferential treatment for these individuals, but the very opposite: the equal or same opportunity to practice their religion like everyone else. Even though they may have not been malicious in their conception or intent, the laws and policies at issue in these cases were flawed because they were discriminatory and in turn required amendment.

Altogether, we should be wary of confusing these two distinct remedies and avoid calling amendments to a discriminatory law or policy an accommodation because, in the true sense of the term, they are not. Lori Beaman sums this problem up well. She argues that: “The language of reasonable accommodation, as with the language of tolerance, moves us further from, rather than closer to, equality... [allowing] space for arguments based on colonial fear and racism rather than on any genuine disadvantaging or inequality. By framing the discussion in the language of equality, there is less room for these types of responses” (2011: 443). Arguably, if the accommodation narrative could be replaced with an antidiscrimination or equality narrative, the erroneous conclusion of unwarranted preferential treatment would be less likely.

And yet, the way reasonable accommodation was introduced in Canada by the Supreme Court, suggests these remedies have indeed been confused. The results of this confusion are on clear display in *Building the Future*:

During our consultations, a number of participants called into question the legitimacy of accommodation requests for religious reasons. The rightfulness of an adjustment that allows, for example, a female or a male student to wear a headscarf or a kirpan, respectively, is not obvious to everyone. Similar exemptions may be granted for health reasons: a young girl must cover her head on her physician’s orders or a diabetic child must bring a syringe and a needle to school. No one would dream of objecting to such exceptions. We also know that accommodation aimed at ensuring the equality of pregnant women or the physically disabled is readily accepted. Québec (and Western)

public opinion thus reacts much more harshly to requests motivated by religious belief (2008: 143).

The authors of the report rejoin that these criticisms stem from the belief that religion is a choice whereas a disability is not. We are sympathetic to the infirmed or disabled because they have no choice but to live with their circumstances whereas a “Muslim or a Sikh can always choose to no longer practice his religion or to practice it differently.” They continue: “A number of people thus ask themselves why society should adapt its norms to accommodate personal religious choices and occasionally assume the cost of such choices. Does this not come down to according religious choice unacceptable preferential treatment in relation to other personal choices?,” and respond by asking, “However, is this not a rather precipitous or cursory manner in which to deal with the questions of identity and deep-seated convictions that dwell in the human heart?” and later claim that: “In accordance with the law, the harmonization measures requested or granted for religious reasons proceed from the same logic” as those provided to people with a physical disability (2008: 161). This confusion continues in the final sections of the report:

We recommend that studies be carried out to clarify the situation of various sub-groups and, in particular, to monitor the social development of young people from racialized minorities. For the reasons that we have indicated, immigrant women also appear to warrant special attention, along with the disabled and homosexuals. These categories of citizens are subject to what we called multiple discrimination. Here again, there is an obvious need to elaborate indicators to measure the impact of the existing programs (2008: 261).

Bouchard and Taylor miss the point. The “calling into question” of accommodation stems from a narrative that confuses the needs of the disabled with the needs of other protected groups. The take away for “a number of participants” is that, where one group (i.e. the disabled) deservedly gets special treatment, the other group (i.e. the religious or ethnic) does not. Maryse Potvin does well to summarize how this concern about “special privileges” given to religious and

ethnic minorities became the central refrain in the Montreal mass media during the accommodation crisis (2010). So, while Bouchard and Taylor argue back that freedom of religion is not a flexible choice but a right on par with the rights of the disabled, they also seem to recognize that the objection stems from a concern about undeserved or unjustified preferential treatment. Therefore, the blowback against reasonable accommodation might be mitigated by a more accurate and limited use of the term accommodation that more properly implies preferential treatment to those who require and deserve it and not to those who do not.

III

If all of Canada is subject to the same confusing use of accommodation, why did the “accommodation crisis” occur in Quebec? Bouchard and Taylor explain near the end of their report that, where the rest of Canada adopted a policy of multiculturalism toward a goal of pluralism, the province of Quebec instead embraced “interculturalism” where “respect for diversity was made subordinate to the need to perpetuate the French-language culture” (2008: 117). Pierre Anctil further suggests that “Perhaps, because of its unique political culture and history, Québécois society seemed to be out of tempo with the more sedate approach to pluralism found in Anglophone Canada” (2011: 4). However, as will be argued below, the practice of interculturalism does not simply mean that Quebec is “out of tempo” with the rest of Canada when it comes to pluralism but often in conflict with it. In his review of the development and practice of multiculturalism in Canada, Michael Dewing notes that interculturalism is not a subdivision of multiculturalism but quite distinct in that:

[interculturalism] is mainly concerned with the acceptance of, and communication and interaction between, culturally diverse groups (cultural communities) without, however,

implying any intrinsic equality among them. Diversity is tolerated and encouraged, but only within a framework that establishes the unquestioned supremacy of French in the language and culture of Quebec (2009: 15).

This rejection of the equality of diverse cultural communities stands in clear opposition to the central aim of reasonable accommodation, some of the main features of the *Charter of Rights and Freedoms*, and Canada's various multicultural laws, including the *Canadian Multiculturalism Act* which declares a policy to "promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation" (1985: 3c). So, on the face of it, while there may be some similar openness to communication and interaction and acceptance of diversity, the goals of interculturalism (e.g. to maintain the supremacy of the French language and culture) are not complimentary to the goals of multiculturalism (i.e. the full and equal participation of all cultures). Consider the clearly "intercultural" sentiment at the heart of the controversial Hérouxville charter that first focused attention on the crisis and spurred the creation of "Bouchard-Taylor." Echoing the tenets of interculturalism, the document is introduced with an invitation to "all peoples...without regard to race or to the color of skin, mother tongue spoken, sexual orientation, religion, or any other form of beliefs" to "move to this territory" and is even framed as a guide "to help [immigrants] make a clear decision to integrate into our area."⁶

This assertion offers a partial explanation why there was an accommodation crisis in Quebec and not in the rest of Canada. Through the lens of interculturalism, the perception that reasonable accommodation provides an unnecessary "preferential treatment" for minorities is understood as not only unfair but, unique to Quebec, also a threat to the continued practice of the dominant Québécois culture or a means by which minorities can waive their obligation to

integrate. Gérard Bouchard further clarifies this distinctive Québécois concern in his article

“What is Interculturalism?”:

In the context of Quebec, feelings of insecurity are also fueled by the growing presence of immigrants and cultural minorities, largely concentrated in the area surrounding Montreal. This feeling is justified since it is an expression of the fragility of francophone Quebec in America, a condition accentuated by globalization and by uncertainty over the francization of immigrants. It is also justified to the extent that it affirms the importance of preserving fundamental values like gender equality and the separation of church and state. Finally, it is accentuated by the fact that the national question remains unresolved and even seems to be sliding towards an impasse (2011: 447).

In this context, unlike in the rest of Canada, the main objective is to direct immigrants and cultural minorities toward integration with the “French-language culture” majority and, at least according to Bouchard, the constitutionally protected policy of multiculturalism is felt to be a surreptitious means or backdoor to obstruct the realization of this objective in the province. To be clear, the outrage of people like Hérouxville town councilor Drouin stems from the idea that groups protected under the banner of multiculturalism are treated as though they are unable or “disabled” from participating, receiving undeserved special treatment, when, in his view, they are simply unwilling to participate.

This becomes all the more problematic because the “French-language culture” is further associated with Christian traditions, well exemplified by the crucifix hanging in Quebec provincial legislature, the National Assembly.⁷ In turn, it is not surprising that superficial features of minority religious and ethnic practice, whether kirpans, kippahs, hijabs or niqabs, often become the focus of the debate and Québécois cultural anxiety is directed at Sikhs, Orthodox Jews, and Muslims living in the province. Advocates of interculturalism place the difficult demand on these minorities in particular to, at least, outwardly conform to the “civic” and historical traditions of Quebec because they necessarily reject the idea that things like

religious and ethnic dress should be accommodated. As described in the section above, this conflict is the result of the Court's misappropriation or misapplication of the concept of accommodation from the disability jurisprudence to other protected classes, recasting or reconfiguring minorities as a distinct kind of citizen unable to fully participating in the prevalent culture. So, in the context of Quebec's accommodation crisis, multiculturalism as practiced through policy of reasonable accommodation is seen as an obstruction rather than complimentary to interculturalism.

Charles Taylor also seems to agree that the multicultural goal of equality should sometimes be subordinate to cultural supremacy. For example, in the "Politics of Recognition", he claims that:

A society with strong collective goals can be liberal... provided it is also capable of respecting diversity, especially when dealing with those who don't share its common goals; and provided it can offer adequate safeguards for fundamental rights. There will undoubtedly be tensions and difficulties in pursuing these objectives together, but such a pursuit is not impossible, and the problems are not in principle greater than those encountered by any liberal society that has to combine, for example, liberty and equality, or prosperity and justice (1994: 59-60).

He decides that we can "weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometime in favor of the latter" (1994: 61). In other words, Taylor's view of liberal society can allow for demands for group conformity to what he calls "strong collective goals", even though it seems to marginalize those that are not part of the dominant culture nor share in its ends. Notably, his view is offered with a considerable set of provisos including a capability to respect diversity, the ability to offer safeguards for fundamental rights, as well as the capacity to circumvent tensions and difficulties.

But, there is an obvious problem with this formulation. As Thomas L. Dumm points out in his essay "Strangers and Liberals," not only does Taylor require the placement of one culture

in a hierarchically superior position to all others, he also privileges “quasi-permanent cultures” over new or impermanent ones (169).⁸ Similarly, Patrick Morag points out: “Taylor draws normative conclusions in favour of shared allegiance to a particular historical community and reaffirms the republican thesis that it is a precondition of a free regime that citizens have a deeper patriotic identification” (37). So, while Taylor may want to deal with the “sense of marginalization” of those outside of the dominant culture “without compromising our basic political principles” (1994: 63), it simply remains to be seen how this can be achieved while still holding onto the notion that patriotism to and the survival of Québécois culture is more valuable than all of the other cultural groups that happen to reside within the province.

Of course, Taylor is quick and forceful in his claim that he is not engaging in anything like ethnocentricity. Instead, he calls for the application of Hans Georg Gadamer’s “fusion of horizons” (1994: 67), which in this context describes the way interaction between individuals broadens and enriches their own sense of self including their ideas, opinions and beliefs and which may eventually alter each individual’s culture as a result. While Taylor’s idea may be an important addition to a debate about liberal conceptions of the self, it does not really solve the problem at hand. It may allow members of cultural groups to better understand and accept each other but it does nothing to provide criteria by which we can judge the value of one culture and its collective goals over another.⁹ This dichotomy between understanding and value seems to be what Taylor is getting at when he finally decides that:

...one could argue that it is reasonable to suppose that cultures that have provided the horizon of meaning for large numbers of human beings, of diverse characters and temperaments, over a long period of time—that have, in other words, articulated their sense of the good, the holy, the admirable—are almost certain to have something that deserves our admiration and respect, even if it is accompanied by much that we have to abhor and reject (72).

So, in the example of Quebec, the French language culture can be placed in a hierarchically superior position because it has provided meaning for a large number of people over a long period of time. At least for Taylor, this is the justification for an interculturalism that is not simply a fusion of horizons of diverse groups but includes a demand for conformity to the strong collective goals of the prevalent culture, which seems to challenge the liberal democratic goals of equality and tolerance.¹⁰ While it is beyond the immediate purpose of this paper to fully explore the global implications of this conflict between multiculturalism and interculturalism, this critique has some obvious relevance to other liberal democracies, particularly in Europe, struggling with the tension between changing ethnic and religious demographics and the desire to maintain their traditional cultural heritage.

All told, in their other writings, both Bouchard and Taylor seem to recognize the tension between multiculturalism and interculturalism and yet in their report they conclude that the accommodation crisis is a crisis of perception. But, as argued above, the accommodation crisis in Quebec is not a crisis of perception at all but a consequence of a clash of the goals of multiculturalism and interculturalism. Again, where multiculturalism empowers individuals to articulate their own unique sense of identity, interculturalism demands conformity to the prevalent culture.

It should be noted that this does not mean that interculturalism necessarily implies an absence of equality or respect for diversity. Quebec has been able to assert laws and policies toward the goal of French-language cultural survival that sometime limits individual rights as well as the achievement of the cultural goals of other groups and still remains a culturally diverse society. The tensions and difficulties that have developed in the province as a result of these laws and policies, such as debates and legal challenges sparked by the introduction of the *Charter of*

the French Language- widely known as Bill 101- have eventually been deemed constitutional by the Supreme Court of Canada, which recognized “the pressing and substantial concern” to maintain a *visage linguistique* or French face to Quebec (*Devine v. Quebec*: par. 820).

Nonetheless, it was just at this same time that the Supreme Court seemed to go in the opposite direction with its ruling on a series of Charter challenges based on Section 15 mentioned above. They decided that other cultural groups have the right to “reasonable accommodation” when subject to discrimination by the predominant class. So, having given credence to the cultural goals of the Québécois, the Court then goes about reaffirming the different cultural goals for minorities in the province and the rest of the country. Whether it was the intention of the court to strike a balance between the prevalent culture and the minority cultural is hard to say but the upshot of these decisions seems to be an effort to mitigate the possible excesses of the unrestricted application of the dominant cultural goals on minority groups. Unfortunately, the misapplication of reasonable accommodation combined with the practice of interculturalism created a strong and complicated reaction or “blowback” against reasonable accommodation in the province.

In the years after the “Hérouxville Affair” and the “Bouchard-Taylor Commission,” questions and conflicts around reasonable accommodation remained central to political debate in the province. Running on a promise to establish a “future charte de la laïcité,” the separatist Parti Québécois won a minority government in the 2012 election and soon promised to introduce a “Charter of Quebec Values” that included regulations prohibiting provincial workers from wearing “conspicuous” religious symbols and a mandatory requirement that one’s face had to be uncovered when providing or receiving a state service. More moderate in its language, this Charter more or less embraced the same interculturalism at the heart of Hérouxville’s “code of

conduct.” The ensuing controversy around the Charter, the defeat of the PQ only 20 months later, and the return of a majority Liberal government might be interpreted as a firm and final end to the accommodation crisis. However, despite a 2015 Supreme Court ruling that a ban on face veils during citizenship ceremonies was unconstitutional, Quebec’s Liberal government maintains that public services must be dispensed and received with the face uncovered. In other words, while it may no longer be making as many headlines, the same conditions that led to the accommodation crisis remain.

Works Cited

- Anctil, Pierre. 2011. "Introduction." In *Religion, Culture, and the State*, ed. Howard Adelman and Pierre Anctil. Toronto: University of Toronto Press.
- Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143.
- Beaman, Lori G. 2011. "It was all slightly unreal": What's Wrong with Tolerance and Accommodation in the Adjudication of Religious Freedom?." *Canadian Journal of Women & the Law* 23 (2): 442-463.
- Berlin, I. 1969. Two Concepts of Liberty. In *Four Essays on Liberty*. Oxford: Oxford University Press.
- Bourchard, Gérard. 2011. What is Interculturalism? *McGill Law Journal* 56 (2): 435-468.
- Bouchard, Gérard and Taylor, Charles. 2008. *Building the Future: A Time For Reconciliation, Abridged Report*. Government of Quebec.
- Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).
- Canadian Charter of Rights and Freedoms. *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
- Canadian Multiculturalism Act. R.S.C., 1985, c. 24 (4th Supp.) Accessed at <http://laws-lois.justice.gc.ca/eng/acts/C-18.7/page-1.html#h-3>
- Dewing, M. 2009. *Canadian Multiculturalism*. Ottawa: Parliamentary Information and Research Service (PIRS) of the Library of Parliament, Political and Social Affairs Division.
- Devine v. Quebec (A.G)*, [1988] 2 S.C.R. 790
- Drouin, André. 2007. As reported by CBC.ca, "Canadian Charter is a Tool of Destruction: Quebec Councillor." Wednesday, October 24. <http://www.cbc.ca/news/canada/montreal/story/2007/10/24/qc-herouxvillebouchardtaylor1024.html>
- Dumm, Thomas L. 1994. "Strangers and Liberals." *Political Theory* 22 (1): 167-175.
- Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241.
- Hérouxville [Municipalité de]. 2007. Normes de vie. At: <http://municipalite.herouxville.qc.ca/normes.pdf>. Note: There is an English language version at: <http://municipalite.herouxville.qc.ca/Standards.pdf>.
- Karlan, Pamela. S. and Rutherglen, George. 1996. "Disabilities, Discrimination, and Reasonable Accommodation." *Duke Law Journal* 46 (1): 1-41.
- Keating, Adam. 2010. "Reexamining Reasonableness: An Analysis of Reasonable Accommodation Under the ADA." Available at SSRN: <http://ssrn.com/abstract=1597416> or <http://dx.doi.org/10.2139/ssrn.1597416>
- Lefebvre, Solange. 2008. "Between Law and Public Opinion: The Case of Quebec." In *Religion and Diversity in Canada*, ed. Lori G. Beaman and Peter Beyer. Brill: Leiden, Netherlands.
- Lentin, Alan and Titley, Gavan. 2011. *The Crises of Multiculturalism: Racism in a Neoliberal Age*. London: Zed Books.
- Maclure, Jocelyn. and Taylor, Charles. 2011. *Secularism and Freedom of Conscience*. Cambridge: Harvard University Press.
- Meer, Nasar and Modood, Tariq. 2012. "How does Interculturalism Contrast with Multiculturalism?" *The Journal of Intercultural Studies* 33 (2): 175-196.

- Morag, Patrick. 2000. "Liberalism, Rights and Recognition." *Philosophy and Social Criticism* 26(5): 28-46.
- Multani v. Commission scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256, 2006 SCC 6.
- Nieguth, Tim and Lacassagne, Aurélie 2009. "Contesting the Nation: Reasonable Accommodation in Rural Quebec." *Canadian Political Science Review* 3 (1): 1-16.
- Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536.
- Potvin, Maryse. 2010. Social and Media Discourse in the Reasonable Accommodations Debate. *Our Diverse Cities: Quebec*, 7, 78-83.
- R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295.
- Reid v. Memphis Publishing Co., 521 F.2d 512 (6th Cir. 1975), cert. denied, 433 U.S. 915 (1977).
- Riley v. Bendix Corp., 464 F.2d 1113 (5th Cir. 1972).
- Ryan, Phil. 2010. *Multicultiphobia*. Toronto: University of Toronto Press.
- Seidle, Leslie. F. 2009. Testing the Limits of Minority Accommodation in Quebec: The Bouchard-Taylor Commission. In *Ties That Bind: Accommodating Diversity in Canada and the European Union*, ed. John E. Fossum, Johanne Poirier and Paul Magnette. Brussels: RLE. Peter Lang.
- Syndicat Northcrest v. Amselem* [2004] 2 S.C.R. 551.
- Taylor, Charles. 1994. "The Politics of Recognition." In *Multiculturalism*, ed. Amy Gutmann. Princeton: Princeton University Press.
- Vanhala, Lisa. 2011. *Making Rights a Reality?: Disability Rights Activists and Legal Mobilization*. Cambridge: Cambridge University Press.

-
- 1 These two interpretations are well represented in the broader literature on multiculturalism. For example, Phil Ryan, in his recent book *Multicultiphobia* (2010), does a good job describing the development and difficulty of the first view in relation to multiculturalism. In the introduction, he writes that fear of multiculturalism or "multicultiphobia", while a product of a "diffuse anxiety" and a "suspension of clear cause-effect thing" backed up by "no evidence," is nonetheless not mere "foolishness", "irrational" or "something else in disguise: racism, nostalgia for a lost WASP world" (4-5). In turn, rather than just dismissing critics as misinformed and bigoted, and thus not worthy of an exchange of ideas, Ryan calls for productive dialogue toward a better understand and implementation of multicultural policy. Alana Lentin and Gavan Tiley do well to describe the second view. They note that the "death of multiculturalism" and the "failed experiment of multiculturalism" has been precipitated in part by "attacks on the illiberalism of minority and Muslim populations, and on the 'relativist' licence multiculturalism has accorded them" (6).
- 2 A similar definition of religious practice was used in the 2004 *Syndicat Northcrest v. Amselem* case. Where the court sided with the claimant's interpretation of his religious obligation to build a Succah (a temporary hut built outdoors as part of the Jewish holiday Succat) on his balcony instead of the communal Succah recommended by Jewish religious leaders and despite condominium by-laws banning structures on balconies "irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials." As Lefebvre does well to summarize, "The *Amselem* judgment was a turning point in the Canadian judicial view of freedom of religion, bestowing it a purely subjective definition" (2008: 192). Arguably, this subjectivity means that the Charter requires accommodation for an incredibly broad array of religious practices or what Jean-François Gaudreault-Desbiens has called "religious supermarkets and do-it yourself religion" (as quoted in Lefebvre, 2008: 193).
- 3 According to Lisa Vanhala, the development of the concept of reasonable accommodation of religious practices in Canada coincided with a similar development in the disability rights movement around the idea of "indirect discrimination based on the idea that an action that is seemingly neutral can be discriminatory if it results in inequality." Because the world is based on "able bodied norms," people with disabilities are more likely to encounter unintentional barriers to equality (113-4).

4 A few years later, with the 1989 *Andrews v. Law Society of British Columbia* decision where Justice McIntyre commented that the “accommodation of differences...is the true essence of equality” (at 169), Section 15 of the Charter came more broadly to mean that certain Canadians were not simply to be protected against discrimination but also that any position of inequality or disadvantage that stemmed from such discrimination had to be ameliorated or accommodated to prevent their exclusion from mainstream society. Lori Beaman explains that “The use of the language of accommodation in the adjudication of religious freedom claims outside of employment law is a recent phenomenon. Reasonable accommodation arose in the context of employment law as a way to articulate the necessary standard to be used by employers in dealing with requests for exemption from particular work requirements. These requests for exemption usually arose in relation to religious beliefs, and the standard of reasonable accommodation, unless it caused undue hardship, was established by the Supreme Court of Canada in a trilogy of cases. *Ontario (Human Rights Commission) v. Simpsons-Sears*, [1985] 2 S.C.R. 536; *Bhinder v. C.N.*, [1985] 2 S.C.R. 561; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489. (pg. 443).

5 As they put it in the introduction of their article:

Should women or African-Americans claim they are victims of discrimination on the basis of disability-because they are regarded as being physically or mentally impaired in the performance of major life activities-rather than on the basis of sex or race? At first, the question seems insulting, suggesting, as it does, that there is something aberrant or defective about not being male or white. Or perhaps the question is merely pointless: if federal civil rights laws broadly prohibit discrimination on the basis of race, sex, religion, national origin, age, and disability-as they do-then what difference does it make how we categorize forbidden conduct? But how the law defines discrimination makes a big difference in the kinds of remedies it provides (2).

6 As Tim Nieguth and Aurélie Lacassagne point out in their article “Contesting the Nation: Reasonable Accommodation in Rural Quebec”:

“Democracy” and its derivatives are used liberally in the description of communal norms in Hérouxville. Thus, the English version of the standards mentions democracy no fewer than ten times in the space of five pages. The preamble to that version references democracy on three occasions, claiming that the Standards themselves “come from our municipal laws being Federal or Provincial, and all voted democratically” (Municipalité Hérouxville, 2007a: 1).

7 <http://www.cbc.ca/news/canada/montreal/crucifix-to-stay-in-national-assembly-drainville-1.1402340>

8 Taylor (1994) writes: “As a presumption, the claim is that all human cultures that have animated whole societies over some considerable stretch of time have something important to say to all human beings” (66).
9 Strangely, Taylor even argues that “the last thing one wants at this stage from Eurocentered intellectuals is positive judgments of the worth of cultures that they have not intensively studied” (70) or “a favourable judgment [about a culture] made prematurely”, as though a Eurocentered intellectual that *did* intensively study a particular culture could then pronounce a mature judgment on its worth or lack of worth.

10 In their co-authored book *Secularism and Freedom of Conscience*, Taylor and Jocelyn Maclure explain:

The diversity of beliefs and values that has taken root as one of the structuring features of contemporary societies often produces ethical and political disagreements that erode the social bond to varying degrees. One of the questions that divides citizens is the legitimacy of measures of accommodation whose aim is to allow certain people to respect beliefs at odds with those of the majority...Some people believe that religious accommodations are at odds with the principles of social justice at the foundation of democratic and liberal political systems. One of the strongest criticisms of these accommodations is based on the principle that public norms and institutions must treat the citizenry as a whole in an *equitable* manner (2011: 62-3).

And, after presenting their sense of the how reasonable accommodation functions, the authors admit that:

And though some maintain that the obligation for accommodation is derived from more general principles of justice, such as the right to equality and freedom of conscience and religion, others believe that religious accommodations are more akin to preferential treatment and are consequently inequitable. These two positions are defended by citizens in the public sphere, by legislators and judges in official forums, and by theorists in the contemporary debates of political philosophy (2011: 64).