A new step in processing requests for accommodations on religious ground

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On July 1st, 2018, the provisions of 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,* RLRQ, c. R-26.2.01 ("Act") came into force.

This Act applies to the "public bodies" that it defines, but remains of interest to any Quebecois employer called upon to process a request for accommodation since it establishes a general framework for analyzing such requests on the basis of principles generally adopted by the courts.

For almost three decades, Canadian and Quebecois courts have heard many disputes over the processing of requests for accommodations on religious grounds made by employees to their employers. The decisions rendered, in particular by the Supreme Court of Canada, have identified the main guidelines that must be observed when analyzing these requests. However, these guidelines are established on fluid concepts like the existence of a sincere religious belief, the discriminatory effect of a measure, or the qualification of the constraint imposed by the accommodation.

Debates surrounding the adoption of the Act, in October 2017, mainly focused on the issues of the religious neutrality of the State, such as the issue of openly providing and receiving services from any body associated with the State in any way. There has been much less focus on the utmost important provisions that require a method of analyzing accommodation requests made by staff members of these bodies.

The Act implicitly codifies that guidelines adopted by the courts, not only in religious matters, but also regarding other grounds that may constitute an infringement of the right to equality recognized, in particular, by the *Charter of Human Rights and Freedoms*, RLRQ, c. C-12 ("Charter").

In this respect, the Act does not modify the state of the law, but specifies the terms of its application, although only in the area of the freedom of religion and its exercise.

On the other hand, the criteria adopted by it are sufficiently generic enough to be extended, by simple analogy, to different grounds, such as those for people with disabilities.

Article 11 of the Act lists four criteria that should be considered when processing a request for accommodation:

1. *that the request is serious;*

2. *that the accommodation is consistent with the right to equality of women and men and the right of every person to be treated without discrimination;*

3. *that the requested accommodation respects the principle of State religious neutrality; and*

4. *that 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.*

By an unusual legislative process, Article 12 of the Act provides that the Minister of Justice must establish guidelines "*in order to support bodies in their application of Article 11*."

These guidelines were published on May 9, 2018[1] and provide a guide for the application of Article 11 of the Act as well as Article 13, which specifically addresses requests that involve an absence from work.

They propose several definitions of notions and concepts involved. In particular, they illustrate several situations in which the requests

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may be made, as well as the circumstances that make it possible to assess whether the resulting constraints are excessive and justify not proceeding.

They clearly state that any request for accommodation on religious grounds requires a contextual and personal evaluation, confirming that in this respect, it is essential to proceed on a case-by-case basis, despite the criticisms that this approach raises in some areas.

It should be noted that the Act and its guidelines are explicit on the obligation of cooperation on the part of the person making the request for accommodation: failing that, this request may be dismissed.

The Act does not contain, in a strict sense, penalty measures for non-compliance with its provisions. However, since it is closely linked to the application of the Charter, the mechanisms provided by the Charter are accessible to those who feel dissatisfied by the decisions made by a reporting body, as will remain the arbitration process, as the case may be.

The Act applies to public bodies, which it defines in a very broad manner in order to include, for example [2], public transit companies, early childhood centers, government regulated private institutions and intermediary resources in the health sector.

One would think, however, that it will provide an informal reference on how to process accommodation requests, regardless of the work place.

It would therefore be useful for managers of other entities to draw on the guidelines adopted when they must process accommodation requests and it would also be appropriate to consider the approaches proposed in the guidelines.

The goal that fundamental rights be exercised equally is not just a State matter ; it is, above all, a social matter.

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1. https://www.justice.gouv.qc.ca/fileadmin/user_upload/contenu/documents/Fr__francais_/centredoc/publications/ministere/dossiers/neutralite/PL62-lignes-FR.pdf (accessed June 21, 2018).
2. A directory of the organizations concerned is available at: https://www.justice.gouv.qc.ca/fileadmin/user_upload/contenu/documents/Fr__francais_/centredoc/publications/ministere/dossiers/neutralite/Liste_organismes_PL62.pdf (accessed June 21, 2018).

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