A SHORT HISTORY OF REASONABLE ACCOMMODATION IN QUÉBEC

1980s

Origin: Canadian juridical notion associated with labor and the situation of workers.

Jurisprudence: The Supreme Court introduced the concept when having to decide on the conflict between two rights:

- Employers’ rights
- Employees’ right to absence for religious observance

The “reasonable” was marked out by the Supreme Court and was assessed according to three criteria:

- the notion of undue hardship (financial, human, material)
- the violation of the rights of other persons or the public
- The smooth running of the organization or institution

Intended as a measure of discrimination (when there is a matter of reasonable accommodation and it has not been made, there is discrimination). In those cases to the contrary, there is no discrimination.

The burden of proof lies with the organization as an administrative measure.

Enshrined in the Canadian Charter of Rights and Freedom, reasonable accommodation applies to thirteen patterns of discrimination:

Race, colour, sex, pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political convictions, language, ethnic or national origins, social condition, handicap.

1990s

The concept of reasonable accommodation is taught in the program-framework of intercultural relations training designed for the Ministry of Health and Social Services of Quebec (MSSS)

Why? Because countering discrimination is treated as a cultural practice – as with all institutional practices here and elsewhere.

Observations:

Reasonable accommodation is seen as a simple tool for conflict resolution, but does provide general orientations for the management of diversity in pluralist societies.
With an intercultural expertise, the analysis of religion – as with all the other patterns of discrimination identified in the Charter – requires seeing oneself and the Other as cultural beings in order to understand multiple worldviews.

The Canadian discriminatory model appears therefore as a cultural construction that must be re-examined in multi-ethnic contexts.

2005-2006

The first journalist applies the concept of reasonable accommodation to Islam. Here it is not defined either in legal or popular terms.

Subsequently, this concept proliferates across public space, but being made outside of juridical space, this usage is not applicable in the legal sense of the term.

Observations:

Two actors exploited this situation:

- The media: in naming accommodation anecdotes without a link to the juridical framework.
- Politicians: where journalists asking for comments on the media are unwittingly playing the game, without knowledge of the subject.

Public opinion is oriented by the media which does not necessarily have expertise in questions related to:

- diversity
- immigration
- integration
- equality
- management of diversity

The numbers of the CBT

Preliminary consultations:

- 31 groups of experts
- Several ministries
- 1 advisory council
- 13 research reports
- 1 forum
Public Consultations:

- 17 cities visited in Québec
- 31 days of hearings
- 328 presentations
- 241 personal accounts
- 3423 participants

Creation and Organisation of the Bouchard-Taylor Commission

Decree of the Quebec government following popular discontent toward “reasonable accommodations” reported in the media.

Nomination:

Gerard Bouchard (sociologist, historian / Université de Québec à Chicoutimi)
Charles Taylor: (philosopher / McGill University)

Mandate:

- Provide an accurate portrait of accommodation practices related to cultural differences and provide an analysis of the issues
- Lead a broad consultation with individuals and organisations
- Formulate recommendations for the government to ensure that practices conform to the values of Quebec society, as a plural, democratic and egalitarian society.

The Commission’s plan involved three steps:

1) organisation and documentation
2) public consultations before the media
3) a final report

(Excerpt from the decree of the Quebec Government 95-2007)

2007-2008: Discourse Formulated during the Commission

Context: Late Modernity and September 11

Discourse of Rejection

- Fear of being taken advantage of
- Threat of male/female equality
- Association with particular groups, i.e., Jewish, Muslim
- Association with fundamentalism
**Positions of political parties in Québec**

ADQ: Preserve the feeling of crisis – does not participate in the work  
PQ: Instrumental appropriation with regard to identity – participates in work  
PLQ: Idea of signing a social contract – participates in work  
QS: Idea of justice/equality/inclusion – takes an active part in the work

**Observations**

The debate is constructed on the inequality of power relations between a minority and a majority.

A complex debate is polarised and reduced to secularism and the management of diversity.

**Conclusions**

An intercultural perspective on the accommodation crisis

**Confusion:**

Obligation to find an agreement

- Therefore accommodate at all costs even when it is not reasonable  
- Many think that they must make a law to fix the problem once and for all when, during a dispute, legislation must be reviewed from within a legal framework and not from political or moral frameworks.  
- Seen as a right to be acquired depending on the context

**A Lack of Intercultural Expertise**

It is urgent to spread knowledge about:

- the principles of reasonable accommodation  
- an intercultural model that allows for the revision of these principles in multi-ethnic contexts.

**Implications at the Political Level**

- This is a legal mechanism and not a policy or framework of reference  
- Impact on the most recent debates on the Charter of Values, which sought to “frame” intercultural relations in a general manner for Quebec society, more and more diversified.