

**Religious and Cultural Accommodation in the Post Secondary Context:
Rights and Responsibilities**

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“The Ethics of ‘Reasonable Accommodation’ in the Post Secondary Context”

- Thanks to Linda, ACLRC and all the organizers for inviting me.
- A few words about the Sheldon Chumir Foundation for Ethics in Leadership and our interest in today’s topic.

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- As many of you know, Sheldon Chumir was an Alberta MLA who died in 1992 leaving his estate to create a Foundation dedicated to nurturing demand for ethical leadership in public life.
- Sheldon was a human rights and civil liberties lawyer—the founder of the ACLRC along with our current president Janet Keeping—and by all accounts a man of principle dedicated to applying the fruits of thoughtful and serious ethical discussion to matters of public policy, governance, business, education and so on.
- One of his first forays into politics was at the Public School Board level where he helped to organize a slate of candidates opposed to the public funding of religious schools. He took a lot of flak for this from within the Jewish community, and it was a testament to his commitment to principle that he was willing to do so for the sake of public policy that aimed to bring people together rather than keep them apart along religious/cultural lines.

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- This theme of how we are to get along in a pluralistic society is the main concern of the Foundation’s Diversity Project launched in October with a symposium entitled, “*Identity and Polarization: Implications for Our Ability to Live Well Together.*”
- So, it is with questions in mind about the ways in which religious and cultural identities matter to people and the ways in which these can sometimes work as polarizing forces that I approach today’s topic of “Reasonable Accommodation” in the post secondary context.

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- Linda has done a very good job of explaining the law on these issues
- I’ve been asked to talk about **the ethics of religious and cultural accommodation in the post secondary context**, and I want to do so from three different angles:
 - (1) The impetus for accommodating religious and cultural differences in a post secondary context;
 - (2) Some thoughts about the limits of religious and cultural accommodation in the post secondary context;
 - (3) Broader questions about how debates concerning “reasonable accommodation” are framed

(1) The impetus for accommodating religious and cultural differences in a post secondary context

- Let me state the obvious about why we try to accommodate religious and cultural differences in a post secondary context:
Because we have many such differences in Canada. Like, DUH!
- We live in an irredeemably diverse, multicultural society and, for the most part, this is a good thing.
- But just because we live in a diverse society, does it follow that we should protect and even promote this diversity in a post secondary context?
- Would we do better to limit or refuse cultural and religious accommodation in the name of some other unifying goal?
- Generally, I think not, for 3 reasons.

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(i) Legal reasons:

- Freedom of Religion is a “fundamental freedom” in our *Charter of Rights and Freedoms*
- Discrimination on the basis of race, national origin, or religion (amongst other grounds) is prohibited by the *Charter* and Alberta’s *Human Rights, Citizenship and Multiculturalism Act*.
- Moreover, Canada’s official multiculturalism policy encourages all citizens to maintain their cultural heritage and identity while participating fully in Canadian life.

(ii) Educational reasons:

- People learn better in an environment in which they are respected and taken seriously as individuals.
- On a related note:

(iii) Ethical Reasons:

- People’s religious and cultural identities and practices matter deeply to them, to their sense of self and dignity. Your religious identity is not just a hat that you take off when you walk onto campus.
- The legal framework Linda described recognizes this fact and any ethical framework that takes seriously people’s deepest commitments should lead us towards a policy of cultural and religious accommodation.
- Insofar as religion or culture may sometimes come into conflict with the rules of institutions such as universities, we should try to find ways to dissolve or work through these conflicts.

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- We can think of many **simple illustrations**, for example:
 - (a) If Muslim students need a place to pray on campus, it is a relatively simple matter to provide such a space
 - (I understand that the interfaith chaplains' office has such a space for use by students of all denominations)
 - (b) If Jewish students need to have their exam rescheduled because of a conflict with Yom Kippur (or some other holiday)
 - no big deal, really
 - In both cases, meeting the request is a fairly simple matter and fits into the well-established framework of accommodations for students with disabilities (The University has specific policies devoted to these issues available at the Disability Resource Centre.)
- Sensible policies here help students to excel at their studies while maintaining their religious commitments, and who can see anything wrong with that?
- Anyone who complains that these kinds of accommodations give "special treatment" or "unfair advantage" to so-called "special interests" is missing the point.
- Measures that recognize and accommodate difference in these ways are by their nature anti-majoritarian, but they are not unfair. Such measures just recognize basic facts such as that there are no exams on Christmas Day and there are sometimes exams on Yom Kippur.
- The Christmas Day closures don't disadvantage Christian or any other students, but failure to be accommodating about the Yom Kippur exam would surely disadvantage observant Jewish students.
- This doesn't mean that the exam should be cancelled, only that other arrangements may be required for some students.
- BUT, and here comes the inevitable but, where the rubber really hits the road is when educational standards and goals come into conflict with requests for accommodation.

(2) The limits of Accommodation:

- And this brings us to the second of my two themes: the limits of accommodation.
- Linda has explained the notion of accommodation up to the point of "undue hardship"
- But I want to consider not legal but educational reasons for the refusal of certain types of accommodation requests

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- **As a point of reference:**
- From U of C Reasonable Accommodation policy on disabilities (website):
- Students "are expected to meet all academic and non-academic requirements.... academic accommodations do not relieve students of their responsibility to develop the essential skills and abilities expected of all students."

- Inevitably, this involves us in debates over the content of the curriculum in a given subject, and who gets to decide whether certain aspects of the curriculum are required for mastery of the field.

- Consider two examples:

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(a) From a university in Ontario

- A female Muslim student asked for an exemption from the life-drawing assignment in an upper-year Visual Arts course on the religious grounds that she could not be in a room with a naked man to whom she was not married

- She had a letter from the University's Muslim Chaplain confirming this

- She offered to complete all of the other requirements for the course, and take a "0" for this section of the course

- The Instructor refused on the grounds that drawing from a live, nude model is an essential part of learning to draw and paint in the Western tradition and a mandatory part of the course

- The Dean of Arts & Humanities and the Senate backed up the Instructor

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- The Dean said:

"For advanced courses for drawing and painting, we decided we couldn't alter the curriculum for Muslim students or anybody else. It doesn't keep anybody out of visual arts. It will keep some people later on out of specific drawing and painting courses. In those courses, drawing from life models is absolutely critical. It's such an important part of the tradition to be able to represent the human body."

- Now imagine that life-drawing is a core course in a Fine Arts Degree in the Western tradition

- Should a student be exempted from the course on religious grounds and still be able to graduate with a Fine Arts Degree?

- Can they be said to have met all the academic requirements and developed "the essential skills and abilities expected of all students" (U of C policy)?

- Consider another example that raises the same questions:

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(b) Imagine if an evangelical Christian student who does not believe in evolution wants to major in biology.

- What if—for religious reasons—he asks for an exemption from courses on evolutionary theory?

- The point here is not that he doesn't *believe* in evolution. The point is that he does not wish to even study and thus understand evolution because it conflicts with his religious beliefs.

- (You can, of course, understand a theory without thinking it true.)

- Should he be able to complete a biology degree (minus the course(s) on evolution) and go out into the job market with the University's seal on his degree?
- Has he achieved the relevant intellectual skills and understanding of the field to call himself a biologist?

- The point here is not to pick on religious people.
- The issue is that education involves more than taking the courses one wishes to take and avoiding those which conflict with one's beliefs.

- Indeed, where it is simply a matter of having your beliefs challenged, I think it is fundamental to a liberal education that you *do* take the course
- (The nude model example is more complicated in that it involved not just challenging the student's beliefs, but putting her in a situation forbidden by her religious teachings.)

- Education involves being inculcated into certain practices, certain habits of mind, and the mastery—or at least familiarity with—certain concepts, theories, and ideas.
- So, accommodation is not a one-way street.
- Notice the title of today's event includes the phrase: "rights *and* responsibilities."
- Students, not just faculty and administrators, have responsibilities for their education. (I know, I know – boo.)

- Where to draw the line (pun intended) on religious and cultural accommodations may not be clear in the above cases,
- But, I think there are reasonable limits to religious and cultural accommodation in the post secondary context and I think such limits are defensible for educational reasons
- I would be very interested to hear from the audience on this

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- At a minimum we should, ethically speaking, do four things:
 - (i) Start from the default position that requests for accommodation are made in good faith (pun intended), until proven otherwise.
 - (ii) Approach accommodation issues case by case and take into consideration all of the relevant facts.
 - (iii) Do our best to accommodate and articulate reasons either way.
 - (iv) Publicly articulate clear policies on religious/cultural accommodation.

(3) The tone of the debate

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- Finally, I'd just like to make a few quick comments on the tone of the "reasonable accommodation" debate, particularly as it unfolded in Quebec.
- At the Chumir Foundation we are concerned with public rhetoric—with how arguments about ethical issues play out in the public square
- And it is obvious that there are better and worse ways of thinking about "reasonable accommodation"

- Any argument that relies on “us and them” as its basic mode of expression is off on the wrong foot
- Who, after all, is “us” and who is “them” in a country as diverse as Canada?

- And the idea that “we” are extending some special privilege to “them” out of the goodness of our hearts or magnanimity or whatever is mistaken too.
- This idea prompts a backlash against the very idea of “reasonable accommodation” because of a false understanding of what is at stake.
- For example, in grasping for some ill-defined concept of national identity (“us”), people confuse symbolism with deeper values
- Isn’t it far more important that the turban wearing Sikh RCMP is deeply committed to “Canadian values” like the rule of law than that he isn’t wearing a Stetson?
- If the fragile edifice of Canadian national identity will come crashing down because of some headgear, we’re in deep trouble.
- But I’m sure it won’t.

- In the Quebec debate, people moved from “reasonable accommodation” in its strictly legal sense—for example, whether a Sikh student should be allowed to wear his *kirpan* at public school—to bizarre claims that “you can’t make me not eat my pea soup with pork.”
- I think we should be libertarian about things like pea soup (and headgear):
- If you want your pea soup *halal* or *kosher*, go for it; and if I want my pea soup with extra ham hocks, go for it.
- You don’t have to eat mine, and I don’t have to eat yours.

- But we all need to navigate our public institutions as respectfully as possible.
- Being clear about what it is we are accommodating (or not) and why, can go a long way to helping us muddle our way through these issues on a diverse campus and more generally.

- I hope that you’ve found my remarks reasonable, if not accommodating, and I look forward to further discussion.