

10. Specific cases | Ontario Human Rights Commission

70-88 minutes

10.1 Creed-based holidays, leaves and ritual observances

Work and service schedules in Ontario have traditionally been structured around a Christian calendar. Many creeds require their members to engage in specific acts of worship and celebration at particular times of the day, week or year. When these observances do not coincide with existing work or service schedules, break times and statutory holidays, people may be adversely affected.

Organizations have a duty to accommodate sincerely held creed observances to the point of undue hardship, including by providing time off for religious holidays, leaves, ritual prayers and Sabbath observances.

Example: One of the earliest human rights decisions dealing with accommodating religious days off was the Supreme Court of Canada's decision in *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*^[412] Sears Department Store required its full-time employees to work Friday evening and Saturday shifts on a rotating basis. Ms. O'Malley, an employee, became a Seventh Day Adventist and could no longer work on her Sabbath (from sundown on Friday to sundown on Saturday). She was forced to accept part-time employment with a reduction in earnings and benefits. The Supreme Court of Canada found that the store had failed to show that it could not have done more to accommodate Ms. O'Malley. It further noted that discrimination can arise from neutral rules or requirements that have an adverse effect based on *Code* grounds, whether or not this was intended.

An employer should offer the employee options to have the time off without losing wages.^[413] These options might include special/compassionate paid leave, scheduling changes, overtime, use of lieu time, compressed work week arrangements and, if the employer operates on a statutory holiday, working on the holiday (subject to the pay requirements for work on statutory holidays set out in the *Employment Standards Act*).^[414] Providing several alternatives and choice, or a "menu of options" is always preferable. Forcing an employee to use vacation time instead of exploring other options would likely be discriminatory.^[415]

If the workplace or the employee's individual circumstances are such that the employee cannot make up the time they are absent for religious reasons without loss of pay, other forms of accommodation must be explored. This may include paid days off equivalent to the number of Christian holidays provided in the workplace as statutory holidays (generally two or three).^[416]

Example: The Supreme Court of Canada considered a request by Jewish teachers for access to the special purpose paid-leave provision in their collective agreement that would have allowed them to have Yom Kippur off with pay.^[417] They were told they could take the day off, without pay. The Court noted that Christian holy days of Christmas and Good Friday are provided for in the school calendar. Therefore, Christian employees were able to observe their religious holidays with

pay. As this was not the case for the Jewish teachers, in the absence of some accommodation by the employer, the effect would be discriminatory. Accommodation through scheduling changes was not an available option here, because a teacher can only work when schools are open. Therefore, the employer was required to permit the use of paid days off provided for under the collective agreement.

At the same time, there is no automatic entitlement to paid days off for religious holidays and observances.^[418]

Example: The Ontario Court of Appeal considered the grievance of a member of the Worldwide Church of God, who needed 11 days off per year for religious holidays.^[419] The employer's policy permitted two days off with pay and then allowed employees to fulfill remaining religious obligations through scheduling changes. The employee was presented with a variety of proposals to meet his religious requirements, but he rejected them arguing that he was entitled to the 11 days off with pay. The Court found that the employer's policy met its duty to accommodate.^[420]

Persons should not be penalized in any way, or be denied benefits or opportunities, as a result of being accommodated.

Example: An employee who was unable to work on his Sabbath days alleged that an employer's Attendance Recognition Program discriminated against him, because employees with perfect attendance received bonuses while he was denied them due to his Sabbath absences. The HRTO found that the employer's requirement that the applicant attend work on all scheduled days to have perfect attendance and receive bonuses discriminated based on creed.^[421]

Leaves of absence may also be required for other creed-related observances, such as performing a creed-based pilgrimage, rite of passage, or mourning and bereavement ritual.

Example: "Shiva" is a week-long mourning period observed in Judaism for immediate family members. For seven days after the burial, the bereaved "sit Shiva" in the home of the deceased. Students and staff who are sitting Shiva at a school are accommodated by being given the necessary time off to mourn during this period.

The duty to accommodate prayer times, Sabbaths, religious holy days and observances applies in employment – and also in all other social areas of the *Code*.

Example: An Ontario farmer alleged that his right to be free from discrimination in contracts based on creed was infringed by the Ontario Milk Marketing Board's policy regarding farmers who, for religious reasons, would not ship milk on Sundays. The Milk Board allowed farmers to be recognized as "no Sunday shippers" and arranged for milk pickups on Saturdays and Mondays but at an extra cost to the farmer. The Ontario Board of Inquiry (the precursor to the HRTO) found that this did not sufficiently accommodate the dairy farmers who would not ship on Sundays for religious reasons. The Board found that this was the same as passing the cost of a wheelchair ramp onto the people who use it. It would not be undue hardship to spread the cost of accommodation across the dairy farming community, or for the Milk Marketing Board to find some other means to deal with the costs through its regulatory framework.^[422]

Not every sincerely held belief or practice will trigger a duty to accommodate. In some cases, a practice may be found to be more cultural or political than religious or creed-based. There also may not be a duty to accommodate in cases where a creed practice or belief is only marginally significant for, or peripherally connected to, a person's creed.^[423]

An employer may take proactive steps to manage and anticipate religious holidays, for example by developing and referring staff to a calendar, policy, guideline or similar resource that sets out common religious holidays or observances of diverse creed groups that may require accommodation. Such lists, however, should not be viewed as an exhaustive or authoritative account of all accommodation needs. Nor should these lists be used to deny recognition of the duty to accommodate the needs of people practicing lesser-known creed observances, or more well-known observances in uniquely personal but sincerely held ways.^[424] Treating people as individuals is central to the notion of dignity for persons with a creed and to the concept of accommodation.

“Blanket” rules that make no allowances for unique individual needs or circumstances are unable to meet individual requirements and are therefore likely to be found to be discriminatory.

While religious or creed leaders may also be consulted as part of an organization's efforts to anticipate accommodations through inclusive design measures, the views of creed officials may not over-ride or negate an organization's duty to accommodate the potentially differing, sincerely held beliefs and creed-related needs of individual creed adherents.^[425] More information, however, may be needed where it is not clear that an observance connects with a creed right under the *Code*.^[426]

Example: A school board recognized the “significant faith days” of known religions as legitimately warranting a “religious holiday,” but did not accommodate the faith days of those not on its list. A labour arbitrator found this was discrimination. However, the arbitrator accepted the board's practice of presuming leave requests for the known “significant faith days” are legitimate, and requesting more information from employees in other cases involving lesser known creeds to verify the legitimacy of the need for leave. ^[427]

10.1.1 Prayer observances

Some creeds require their practitioners to observe short periods of prayer at set times of the day.

Members of the Islamic faith may perform five daily prayers at specific times which may change throughout the year, depending on the position of the sun and the time of sunrise and sunset. Children may begin praying at an early age. Prayer can be performed individually or in congregation. Men and women generally pray separately. Muslims also attend weekly Friday afternoon congregational prayers. Before prayer, Muslims engage in a process of physical and spiritual purification called ablution, which includes washing the face, hands, head and feet.^[428]

Members of the Jewish faith may pray three times daily – in the evening, morning and afternoon. Many Jewish people try to pray in a “minyan” (congregation), a public quorum that enables the saying of specific prayers. Morning prayers may be said from the time the sun comes up until approximately mid-morning. Afternoon

prayers are said from shortly after midday until the sun sets. Sabbath, which is to be devoted to one's spiritual needs, begins Friday at dusk and ends at nightfall Saturday.^[429]

Where a person is adversely affected and prevented from observing a creed belief as a result of an organizational rule, practice, standard or requirement, organizations have a duty to accommodate the observance short of undue hardship. This duty extends to situations where prayer observances conflict with regular daily routines or hours of work/service.

Time-sensitive prayer observances may be accommodated by various methods, including by:

- Modifying break policies and hours of work or participation in a service to allow a flexible schedule
- Use of lunch or break times in exchange for early departure or staggered hours of work or participation in a service (e.g. school function)
- Alternative arrival and departure times on the days when the person cannot work or fulfill service requirements for the entire period
- Substituting lieu time or rescheduling days when people's creed beliefs do not permit them to work or be present during certain hours.

Example: A school board advises school administrators to accommodate students and staff who need to observe time-specific prayers, including when these occur during class time. Teachers are advised to keep in mind such prayer observances when scheduling exams, tests, class outings and overnight trips. Sample accommodations include designating private areas or a room for prayer observances; permitting use of a private washroom, or, if not possible, identifying a washroom within the school for washing before prayers; not requiring participation in school activities during obligatory congregational prayer observances; and allowing students and staff enough preparation time to observe Sabbath, especially during days when the sun sets early.^[430]

Employers should offer employees options to take the time off without losing wages or benefits. Generally, insignificant amounts of time required for prayer observances should not result in loss of pay, and should not be placed under more scrutiny than any other short work break.^[431] Flexible scheduling options should be used wherever possible short of undue hardship (subject to, but not necessarily limited by, the *Employment Standards Act*).^[432]

Example: A workplace allows employees to take two 15-minute breaks (one in the morning, the other in the afternoon) in addition to the lunch break. Some employees use the time to have a snack or take a smoke break, while others use the time to fulfill religious prayer observances.

Accommodating prayer observances may sometimes require providing an appropriate private area for individual or congregational devotions, providing this does not cause undue hardship.

When providing a space for creed observances and devotions, organizations are recommended to design them as inclusively as possible to accommodate the diversity of people potentially using the space, and to avoid additional costs later on. This should be done in a way that respects the dignity and privacy of persons with a creed.

The University of Toronto's Multi-Faith Centre for Spiritual Study and Practice accommodates a wide variety of spiritual and faith-based practices, and encourages interfaith dialogue and spiritual development as part of the learning experience for all students. The Centre is supported by the Campus Chaplains Association, which offers chaplaincy services to Buddhists, Christians (Catholic, Orthodox and Protestant), Hindus, Humanists, Jains, Jews, Muslims, Indigenous peoples, Pagans, and Sikhs. The inclusively designed Centre features five rooms of varying sizes that are available for prayer, worship, and other spiritual practices as well as educational events, forums and meetings. The ventilation system in the Main Activity Hall is designed to accommodate Indigenous, Hindu and other ceremonies involving smoke and/or fire. The Main Hall also has a wall facing east that accommodates large congregational prayers. The quiet room and meditation rooms come equipped with yoga mats, meditation cushions and prayer rugs. The Centre also features an on-premises ablution facility.

Occasionally, designated spaces for creed observances may face competing demands from different creed adherents, or persons with other human rights-related needs. In these cases, the OHRC recommends organizations apply the OHRC's competing rights framework for reconciling competing rights.^[433]

Religious and creed observances sometimes take communal forms.^[434] An organization may consider offering on-site space to observe congregational forms of worship, as an inclusive design approach, where people require accommodation during normal business/ service hours to fulfill congregational worship needs.

Example: A high school permits the use of a designated private space to accommodate the weekly Friday congregational prayer observances of its large Muslim student population.

An inclusive design approach that accommodates the needs of the group is generally preferred to removing barriers after they become apparent, or making "one-off" accommodations. This is because it enables accessibility and inclusivity from the start, proactively meets the needs of many people, and minimizes the need for people to ask for individual accommodations.^[435]

While there is a duty to accommodate people's creed-based congregational worship needs and observances, how such needs are met and accommodated may vary from organization to organization, and situation to situation. Accommodating the needs of the group through inclusive design measures such as offering on-site space for congregational observances may not always be possible.^[436] It may also sometimes be complex, particularly where there is significant intra-group diversity and individual differences on how congregational observances should be conducted. While an organization may opt for a form of inclusive design that most meets the needs of the greatest number of people, it must not interfere in "purely religious" matters and forms of worship.^[437] It must also accommodate any individuals whose needs may remain unfulfilled by inclusive design measures designed to meet the needs of the group.

Organizations also need to exercise due diligence to make sure that potential competing rights are also protected, and forms of accommodation are developed that most respect and fulfill the rights of all parties (for more on balancing rights, see the OHRC's [Policy on competing human rights](#)).

When accommodating or inclusively designing to meet the "needs of the group," organizations must:

- Make clear to all involved or affected that this is not an organizationally sponsored activity or endorsement of a particular creed, but rather a way of meeting individuals' religious accommodation

needs

- Be aware of how the participation of persons in positions of power or authority may be received, avoiding exerting indirect pressure, or appearing partisan
- Be as inclusive as possible in developing and providing the accommodation, by consulting with as many directly affected parties as possible, and being attentive to internal group dynamics and differences in accommodation needs
- Treat members of all creed groups requiring accommodation equally, including minorities within creed groups, neither privileging nor disadvantaging, endorsing nor condoning any one over another
- Maintain an environment that is free of pressure or compulsion in matters of religion and belief
- Do not interfere in, or become entangled in, what are purely religious or creedal matters
- Consider and balance any competing rights potentially affected (per the OHRC's [Policy on competing human rights](#)).

10.2 Dress code, appearance rules and requirements

Workplaces, services and facilities often have rules about how people should dress or present themselves. These may involve having to wear a uniform or protective gear, or a requirement that no person may wear a beard or head covering. These rules may come into direct conflict with religious requirements. When they do, there is a duty to accommodate the person, short of undue hardship.

Example: A security company's policy requiring all security guards to wear a hat and be clean-shaven was found to have discriminated against a turbaned Sikh man who wanted to work as a security guard with the company. In finding the company could have accommodated him without creating undue hardship, the Board of Inquiry (as the HRTO was known then) rejected the company's argument that members of the public would be uncomfortable with a bearded and turbaned security guard.^[438]

Considerations when dealing with dress codes include:

- What is the exact nature of the religious or creed observance?
- What is the reason for the uniform or dress code?
- What steps can be taken to accommodate the person short of undue hardship?
- Are there alternatives?
- Are health or safety factors involved?^[439]

Sometimes clothing requirements may adversely affect persons based on their creed, because they conflict with creed-based modesty requirements.

Example: The York Region District School Board's religious accommodation guidelines (at the time of writing this policy) include many sample accommodations relating to clothing requirements. Examples relating to physical education instructional activities include:

- Accommodating students who are not permitted to wear shorts or T-shirts to class by allowing them to wear other safe and comfortable clothing
- Accommodating students who cannot dress for Phys. Ed. in front of others in the change room for religious reasons, by allowing them to change in a stall within the change room, or

to change in an alternate location or time allowing for the needed degree of privacy

- Accommodating students who are not allowed to take part in a swimming class because of the style of swim wear worn, by allowing them to wear an alternate style of swim wear that the family provides and that meets the safety requirements of the pool facility (such as a wet suit or “sun suit”).^[440]

As a general rule, appearance standards and uniform rules that have no health or safety rationale can be modified easily to accommodate creed observances. Organizational style preferences and cultural customs, norms, conventions or traditions are not a legitimate reason for denying dress or comportment-related creed accommodations.

Example: A retail clothing store has a policy that prohibits tattoos, piercing and body art of any kind. A Hindu employee wears a red “bindi” (red dot) on her forehead as part of her religious observance. Another employee who identifies as a practitioner of Traditional African Religion has facial scarification, also for creed-related reasons. The store has a duty to accommodate creed-based expressions in bodily appearance where this can be linked to observing a sincerely held creed belief.

At the same time, organizations need only accommodate actual creed accommodation needs, and not style preferences.

Example: An employer was found to be within their right to ask a female employee if it was possible for her to wear a “religiously acceptable form of hijab” (Muslim head covering) that was more consistent with the employer’s dress code. Upon judicial review, the Ontario Divisional Court distinguished between clothing preferences based on “style” and those based squarely on “creed,” with only the latter receiving human rights protection.^[441]

Safety considerations are often an issue raised when it comes to religious attire or comportment.^[442] If an accommodation is likely to cause significant health and safety risks, this could be considered “undue hardship.” Employers, housing providers and service organizations have an obligation to protect the health and safety of all their employees, clients and tenants, including people who observe a creed, as part of doing business safely, and as part of fulfilling their legal requirements of the *Occupational Health and Safety Act*.^[443] See section 9.9.3 for more on handling health and safety risks.

In some cases, clothing or gear with a health or safety rationale may constitute a *bona fide* requirement.

Example: A Sikh man was removed from his position at a pulp mill because he could not wear a safety mask in an emergency due to the beard he kept as a tenet of his faith. As a “recaust operator,” he was in charge of the area in the mill where poisonous gases are piped and was responsible for emergency shutdowns of the area should a poisonous gas leak happen. A human rights tribunal found that the mill’s enforcement of a Workers Compensation Board regulation that anyone potentially exposed to poisonous gas wear the safety mask was justified as a *bona fide* requirement. It also found that providing an exemption for workers who wear a beard for religious reasons, as requested in this case, would be an undue hardship as it would prevent the mask from properly sealing and undermine the very reason for the regulation, to protect workers

from exposure to poisonous gases. In this case, the risk was not only to the recaust operator but also to other workers. If he became incapacitated from exposure to poisonous gases, he would have to be rescued by co-workers, putting them at risk. As well, he would not be able to carry out the emergency shutdown. Therefore, the employer did not have to accommodate him.^[444]

Even where a dress requirement is found to be *bona fide* for health and safety reasons, the employer or service provider may still be obliged to seek to accommodate the employee; for example, by examining whether the employee can be transferred to another available job that does not require the clothing or gear.

Failing to consistently apply health and safety standards (even when they are *bona fide*), for example by enforcing them selectively in cases involving people with a creed, may result in a finding of discrimination.

Example: The Human Rights Tribunal of Ontario (HRTO) found that a requirement that hardhats be worn at a Home Depot store that was under construction was selectively and inconsistently enforced. A more stringent approach was applied to a Sikh security guard who wore a turban for religious reasons. This violated his right to be free from discrimination based on religion. The HRTO also found that the personal respondent subjected the security guard to discriminatory treatment in the form of rude and offensive comments and conduct. The personal respondent was found to have goaded him to remove his turban to be allowed to work and also to have threatened him with termination. The comments and conduct were derogatory and discriminatory.^[445]

10.2.1 Kirpans

Organizations have a duty to accommodate wearing articles of faith up to the point of undue hardship.

Safety concerns have dominated tribunal and court decisions dealing with wearing kirpans in public institutions and workplaces.

What is a kirpan?

A kirpan is a religious object made of iron or steel that is a stylized representation of a sword (resembling a dagger). It may range in size from 15 to 22cm (6 – 9 inches), though size may vary. Initiated (Amritdhari) Sikhs, both men and women, must wear the kirpan next to the body at all times. It must be sheathed and wrapped in a cloth belt next to the body. The kirpan is one of five articles of faith, often called the 5Ks. It symbolizes spiritual wisdom and the duty to stand up against injustice.^[446]

In the context of education, human rights tribunals have generally rejected arguments by school boards prohibiting wearing kirpans to school for safety reasons, on the grounds that wearing a ceremonial kirpan does not raise sufficiently compelling safety concerns.^[447]

Example: The Ontario Board of Inquiry, upheld by the Divisional Court, found that a school board's policy prohibiting wearing kirpans violated the rights of students and teachers under the *Code*. They rejected the school board's claim that it could not accommodate kirpans without undue hardship.^[448] The Supreme Court of Canada considered the same issue in a 2006 decision^[449] that again found that prohibiting a student from wearing his Kirpan to school, under

any conditions, violated his freedom of religion since it effectively deprived him of his right to attend a public school. The infringement was not found to be justified under s. 1 of the *Charter* as it did not minimally impair his religious right. Instead, the school board could accommodate the student by allowing him to wear his kirpan subject to certain conditions that would ensure safety.

The case law is clear that school policies may not prohibit wearing kirpans to school, even if they may impose certain conditions.

Organizations must take an individual approach to accommodating people's religious needs, with respect to the wearing of a kirpan.

Example: The Supreme Court of Canada rejected a school board's argument that it did not violate the freedom of religion of a Sikh student who believed he must wear a metal kirpan. The school board unsuccessfully argued that because other Sikh students in the same school had agreed to carry a plastic instead of metal kirpan to school, the accommodation seeker should have accepted the same accommodation.^[450]

Wearing kirpans may be prohibited or limited in some circumstances. In *Multani*,^[451] the Supreme Court noted that consideration must be given to the particular context and environment where the rule concerning kirpans is being applied. An aircraft or court environment is much different than an education or employment setting, and the safety considerations are much different.

Example: In *Nijjar v. Canada 3000 Airlines Ltd.*,^[452] the Canadian Human Rights Tribunal dismissed a man's complaint that he had been denied the right to wear his kirpan aboard a Canada 3000 Airlines aircraft because, among other things, he had failed to show that wearing a kirpan in a way consistent with Canada 3000's policies would be contrary to his religious beliefs.^[453]

Recent court decisions and settlements have generally permitted the wearing of kirpans in court, subject to some limitations and individualized risk assessment.^[454]

10.3 Displaying religious or creed-based symbols

There is nothing in the *Code* that necessarily prevents the display of a religious or creed-based symbol in "secular" or "public" space.^[455] Ultimately, a case-by-case approach is required to determine whether the display of a creed symbol may engage, promote or violate *Code* protections.

Allowing someone to display a personal religious or creed symbol in the workplace, housing or service may be an inclusive and equitable practice. It may also be required as part of an organization's duty to accommodate individuals' creed beliefs and practices.

Example: An employee who has been under stress at home and work mounts a small eight-sided mirror ("Ba Gua" or "eight trigrams") in her office facing the door. The employee, who practices Taoism, has the creed belief that the mirror will help to re-establish equilibrium in her office by deflecting negative energy, thereby safeguarding her health and well-being. The employer orders

her to take it down based on an informal “no religion” in the workplace policy, causing her significant distress. The employer’s action may be discriminatory under the *Code*.

Accommodating a person’s creed needs by allowing them to wear or display a creed-based symbol need not imply that an organization is endorsing or privileging one creed over another.^[456]

Example: The Federal Court rejected a claim that the RCMP Commissioner’s decision to allow Sikh officers to wear turbans compromised the Sikh officers’ and RCMP’s ability to appear religiously neutral before the public. The Court noted that there is nothing religious involved in the interaction between the member of the public and the officer, and there is no compulsion or coercion of the member of the public to take part in, adopt or share the officer’s religious beliefs or practices. The only action demanded from members of the public is to observe the officer’s personal religious affiliation. This was not held to religiously bias the RCMP as an organization, or violate the religious freedom and equality rights of individual members of the public.^[457]

At the same time, not every individual expression of religion or creed is protected under the *Code*, or triggers the duty to accommodate.

Example: The HRTO dismissed an applicant’s claim that his creed rights were violated by an online shopping service when it required him to remove his “Christ fish” avatar (containing the words “Jesus Christ, God’s Son, Saviour”) from its online forum. The company’s Forum Rules prohibited potentially controversial content, including religious and political threads. In its decision, the HRTO held that not every personal manifestation of an individual’s creed engages *Code* protections. The applicant here did not assert that his use of the Christ fish avatar was objectively or subjectively required by his religion. Nor did his use of the avatar appear to engender for him any significant or deep personal connection to the divine. Rather, he described his use of the Christ fish as more of a personal and outward display of his religious beliefs, which he compared to a T-shirt or a tattoo. While this made him feel good and reminded him of his faith, the HRTO ruled that it was not a significant enough aspect of his religious belief or practice to engage the *Code*’s protection against discrimination based on creed.^[458]

There is a significant difference between an individual person expressing their creed belief by using a symbol in a private capacity, and an organization displaying or endorsing a creed-based symbol. Whether the display of a creed symbol in a social area may comply with the *Code* may depend on several factors, including: who is displaying the symbol and why,^[459] the symbol’s location, visibility,^[460] or contemporary significance, the extent it may be associated with the organization as a whole versus an individual person,^[461] and whether the display has any significant negative impact (for example, by causing creed-based pressure, exclusion or discrimination against others).^[462]

Example: A municipality has a large number of street signs named after various Roman Catholic saints. The street signs may simply be an artifact of historical demographics and heritage, as opposed to indicating any current religious bias or affiliation of the municipality.^[463]

Organizations, and individuals functioning in an official organizational capacity, have a responsibility to treat all people equally based on their creed, and to maintain an environment free from any religious or creed-based pressure or discrimination. In some cases, the best way to do this may be to prohibit the organizational display of any creed symbol (although this may not negate the organization's duty to accommodate individuals' creed observances).

Example: To preserve its religious neutrality, a courtroom has no religious symbols on display on its walls.

Alternatively, an organization may promote equality through universal design and equal recognition and inclusion of diverse creed symbols.

Example: A recreational facility equally displays a wide variety of symbols and information about diverse (religious and non-religious) belief systems, inclusively reflecting the cultural and creed diversity of the community it serves.

The individual or organizational display of religious or creed-based symbols in workplaces, services or housing may be limited or prohibited where its display can be shown to interfere with a *bona fide* requirement, create undue hardship, or contravene the rights of others, for instance by:

- Creating an unequal environment for employees, residents or service users (examples include organizationally privileging or disadvantaging one creed over another, or providing a more or less welcoming organizational environment for people based on their creed)
- Creating a poisoned environment for members of a *Code*-protected group
- Exerting religious or creed-based pressure on persons to comply or agree with a particular creed belief, practice or system of beliefs.

Not every exposure to a creed symbol in a social area will be considered to exert religious pressure or to contravene the religious equality or freedom rights of others.^[464]

Requiring a person to display an object with religious or creed-based significance in a *Code* social area may violate *Code* rights based on creed or other grounds, depending on the circumstances.

Example: An employer required a Jehovah's Witness employee to put up a Christmas poinsettia display in a store, even though the employee advised that this was contrary to his faith. When the employee refused, the employer told him that to keep his job, he must comply. There was no evidence that the employer could not have accommodated the man. However, rather than exempting him from this activity, the employer effectively required him to choose between his faith and his job. This was found to be discriminatory.^[465]

10.4 Photos and biometrics

Requiring that a person be photographed as a condition of access to a service, employment or benefit may violate the *Code*, if there is a failure to accommodate (to the point of undue hardship) people whose creed beliefs do not allow them to be photographed.

Example: A labour arbitrator found that a company could have accommodated its Pentecostal employees' religious objection to biometric hand scanning for company security without creating undue hardship. The company failed in its procedural duty to accommodate because it did not do enough to explore what it could do to accommodate the grievors. In terms of the substantive accommodation, the arbitrator rejected the company's argument that it would have to scrap biometric scanning altogether if the grievors were exempted on religious grounds.^[466]

An organization requiring photos to be taken will need to consider whether the requirement is a *bona fide* (legitimate) requirement under the *Code*.^[467] This requires determining, among other things, if the purpose for the photograph can be achieved in other ways, without creating undue hardship.

Example: Ontario government services requiring photo identification allow for exemptions for a variety of reasons, including people's religious beliefs that forbid the taking of photographs. Service Ontario has a longstanding relationship with the Mennonite community and has put in place a general exemption for health card photos for orthodox or old order members of the community.^[468] When capturing required health card photos, Service Ontario accommodates Muslim women who wear a head covering in a variety of ways, depending on the nature of their sincerely held religious belief.^[469]

Health and safety and cost considerations under the *Code*, or security-related concerns under section 1 of the *Charter*, may limit the duty to accommodate individuals by exempting them from taking photographs based on their creed, for identification purposes.

Example: In 2003, the Province of Alberta adopted new regulations that made the photo requirement for drivers' licenses universal. The photos were to be stored in the province's facial recognition data bank. This was to reduce the risk of drivers' licences being used for identity theft, a growing problem. The new law was challenged in court by members of the Hutterian Brethren colonies, who believe that the Second Commandment prohibits them from having their photograph willingly taken. The Supreme Court of Canada accepted that the universal photo requirement violated their freedom of religion.^[470] However, the majority of the Court concluded that the requirement was justified under s. 1 of the *Charter*.

10.5 Creed-based exemptions

Where a person would be adversely affected based on their creed, the duty to accommodate can sometimes require organizations to exempt individuals from taking part in activities that would contravene their creed beliefs or practices. Exemptions are a type of accommodation.

Example: An employer breached the Newfoundland *Human Rights Code* when it suspended an employee because, for religious reasons, he refused to sell tickets to a social event at which alcohol would be sold.^[471] The man was an active member of the Pentecostal church and asserted that a tenet of the Pentecostal faith is that its members must abstain from consuming alcohol and must not encourage its use in any way. The Newfoundland Tribunal found that once the employer

learned of his religious objection, rather than suspending the employee, it should have accommodated him by having someone else sell the tickets.

Generally, organizations should first try to find ways to accommodate people's creed beliefs and practices in a way that best promotes their integration and full participation, unless it can be shown that segregation, or full exemption from an activity, is the best way to achieve equality in the circumstances.^[472]

Example: Rather than having to withdraw from participation in an after-school City-run recreational art program, a student who is not allowed to draw or paint human faces for religious reasons is accommodated by permitting her to work with silhouettes and/or masks or to apply design elements in non-representational ways. Another child who is not allowed to include nationalistic symbols in his artwork for religious reasons is instead invited to create a design reflecting his appreciation of something about living in Canada.^[473]

People exempted from an activity because of their creed should not be penalized or disadvantaged, or lose privileges given to others, as a consequence of their exemption. The accommodation process and arrangement must preserve the dignity and privacy of the accommodation-seeker.^[474]

Accommodations taking the form of an exemption may be limited by undue hardship, or denied because the activity is a *bona fide* requirement. Where taking part in an activity can be shown to be a *bona fide* requirement, organizations are still required to accommodate to the point of undue hardship (for instance, by assigning an employee an alternative assignment, or moving them elsewhere in the organization).

Example: After becoming a Jehovah's Witness, an Ontario nurse would no longer perform certain blood transfusion steps. She worked in the intensive care unit, and following intensive Bible study, concluded she could no longer "hang blood" for a blood transfusion.^[475] The employer dismissed her, arguing that hanging blood was essential to a nurse's duties.^[476] The majority of the Labour Arbitration Board found that the employer should have accommodated rather than dismissed the nurse, by offering her a nursing position elsewhere in the hospital, where it was possible to have another nurse hang the blood.^[477] However, the board found that the employer was not required to allow the nurse to remain in her specific position in the intensive care unit (or to work in the emergency room) since a requirement that all nurses in these units be able to hang blood was reasonably necessary to be able to respond quickly in an emergency situation to ensure the health and safety of patients in these units.

When granting an accommodation in the form of an exemption, organizations must also consider the competing rights of others. Exemptions from activities contravening a person's creed belief may not always be possible where these substantially infringe on people's competing rights, and/or pose a significant harm or risk.

Example: A medical facility accommodates a doctor who does not prescribe contraception pills due to her creed beliefs, while considering the competing rights of patients to equally access health services. The facility takes proactive steps to make sure any service not provided by the accommodated doctor is still provided by the facility to patients in need.

Requests for exemptions can sometimes arise in school settings from parents, students or teachers concerned about curriculum content or activities that contravene their beliefs or are deemed inappropriate for creed-based reasons.

Article 18(4) of the *International Covenant on Civil and Political Rights* calls for state parties (including Canada) “to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”^[478] Freedom of religion under the *Charter* extends to the right of parents to raise their children in conformity with their own religious convictions, free from any compulsion or indoctrination in education pertaining to their children’s religion, creed or morality.^[479]

The duty to accommodate a person’s creed-related needs may include providing exemptions from aspects of school curriculum that adversely affect people based on their creed.

Example: A school integrates Halloween activities into its Fall curriculum. Children march in a Halloween parade throughout the school wearing costumes. Children who do not celebrate Halloween for religious reasons are exempted from taking part in the parade, and take part in alternative equally fun and educational activities so they do not feel isolated or left out.

As discussed in section 7.4, there is no broad right not to be exposed to views and beliefs that contradict with or differ from one’s own, including in school curriculum.^[480]

“Children encounter [some cognitive dissonance] every day in the public school system as members of a diverse student body. They see their classmates, and perhaps also their teachers, eating foods at lunch that they themselves are not permitted to eat, whether because of their parents’ religious strictures or because of other moral beliefs. They see their classmates wearing clothing with features or brand labels which their parents have forbidden them to wear. And they see their classmates engaging in behaviour on the playground that their parents have told them not to engage in. The cognitive dissonance that results from such encounters is simply a part of living in a diverse society. It is also a part of growing up. Through such experiences, children come to realize that not all of their values are shared by others. Exposure to some cognitive dissonance is arguably necessary if children are to be taught what tolerance itself involves.” – Supreme Court of Canada^[481]

Court decisions to date suggest that parents wishing to exempt their children from school curriculum inconsistent with their creed will have to provide evidence to show how being exposed to such ideas and views objectively infringes on their or their children’s freedom of religion, for instance by:

- Interfering with the ability of parents and children to practice, observe, express or transmit their faith (including parents’ ability to pass their faith on to their children)
- Amounting to indoctrination or compulsion in religious or creed-related matters
- Creating an unequal environment, for instance by privileging or disadvantaging one creed over another, contravening the principle of neutrality and non-discrimination.

Example: The Supreme Court of Canada rejected the claim of some Quebec parents that their ability to pass on their Catholic faith would be compromised, and their children harmed, by exposure to a new required course instructing students about a variety of religious and secular

ethical traditions.^[482] The Court affirmed that the government cannot set up an education system that favours or hinders any one religion or vision of religion, and recognized the right of parents to raise their children in their own faith free from compulsion. However, it held that the applicants had failed to show how the program objectively interfered with their raising their children in the Catholic faith, and dismissed the claim that the program was not neutral, or that exposure to a comprehensive presentation about various beliefs would result in indoctrinating students. It further found that the early exposure of children to different realities is a fact of life in Canada's multicultural society and is arguably necessary if children are to be taught what tolerance itself involves.

In some situations, participation in a program, course or curriculum component may be a *bona fide* requirement to fulfill the required educational learning goals and receive recognition or credit. While flexible alternative arrangements to meet learning goals should be sought, it may not always be possible to accommodate students in fulfilling the goals in an alternative way that does not create undue hardship. In these cases, students should still be treated with dignity and respect.

10.6 Creed-based food restrictions

Persons with a creed may have creed-based dietary restrictions or food practices. Such restrictions may extend to producing, storing, processing, handling, transporting or consuming food. Organizations have a duty to accommodate people's sincerely held creed-based food requirements, up to the point of undue hardship. Not doing so may infringe on a person's right to equally access, take part in or benefit from housing, services, employment, a contract, or membership in a union or professional association.

Example: A person in a mental health facility requires vegetarian food options, based on her creed. She is not allowed off the premises to find appropriate food, and she is not able to prepare her own food. The facility has a duty to accommodate her creed-based food requirements up to the point of undue hardship by making appropriate food options available to enable her to stay at the facility.

Example: To accommodate employees who cannot physically handle pork products for religious reasons, a food processing plant assigns them to positions that do not require handling these foods.

The best way to handle creed-based food restrictions is to inclusively design food arrangements in advance, to equitably meet people's creed-based dietary needs.

The York Region District School Board's (YRDSB) religious accommodation guidelines (at the time of writing this policy) offer many examples of inclusive design in dealing with creed-based dietary restrictions. The guidelines advise teachers and cafeteria staff to be aware of food restrictions and to take special care to keep vegetarian and non-vegetarian food separate, and to make sure the same spoons and serving utensils are not used to serve both kinds of food. It further advises that food and snacks prepared using animal by-products (e.g., lard, beef tallow) be properly labelled and not served to students whose religious dietary restrictions do not allow them to eat such foods. Where possible, the YRDSB advises teachers or schools to consider making available packaged foods and snacks that have reliable kosher or halal certification markings visible on the

packaging. Teachers or schools are also encouraged, where appropriate, to adjust their snack, pizza days, fun fair or lunch programs to accommodate students' religious (and other) dietary restrictions.

People sharing a creed may observe creed-based food restrictions in different ways and to differing degrees. It is the individual's sincerely held creed belief that must be accommodated. People who have identified creed-based dietary requirements should therefore be consulted about the precise nature of their food restrictions, to avoid relying on any preconceptions or group-based generalizations about those restrictions.

There may not be a duty to accommodate where this changes the essential nature of an organization's services.

Example: It is not discrimination if a steak house that only serves animal-based products does not accommodate a vegetarian patron. Offering steak-related food items on its menu may be considered an essential nature of the service the steakhouse provides. However, a restaurant that already offers vegetarian food options may be required to accommodate a customer whose religion requires a vegetarian diet, by cooking a person's vegetarian meal using cooking utensils that have been cleaned and removed of any traces of meat, unless this can be shown to cause undue hardship.

Where a duty to accommodate can be established, the organization has an obligation to bear the associated costs of accommodation.

Example: A Jewish tenant in a supportive housing residence with 10 tenants observes kosher dietary laws that do not permit her to mix milk with meat foods, to store or cook milk and meat together, or to serve them together at the same time. Because the tenant would face exorbitant costs from having to purchase ready-cooked kosher meals to meet her needs, the housing provider buys a second smaller fridge, pots, plates and utensils to enable her to buy and cook her own groceries like the other tenants.^[483] Organizations should also make sure they treat people requiring accommodation equally.^[484]

10.6.1 Fasting

Some creeds require their members to fast or abstain from food for set periods of time. When such observances interfere with a person's ability to perform a task, or comply with a particular rule or work day schedule, people belonging to a creed may be adversely affected.

Organizations have a duty to accommodate employees', service users' or tenants' sincerely held creed observances, including fasting, to the point of undue hardship.

Example: During the month of Ramadan, Muslims may abstain from food and drink from before the rising of the sun to its setting. They may also engage in lengthy night prayers. The prayers, combined with fasting and waking for pre-dawn meals, may take a physical toll. Persons observing the Ramadan fast may need to adjust their schedule to observe the start and end of the daily fast at sunrise and sundown, and/or to observe night prayers. For example, where possible, employers

could permit employees observing the fast to work through the lunch hour in exchange for leaving early to get home in time to break the fast at sunset.

Individuals' understanding and practice of fasting requirements may vary, as may the impact of fasting on them and their accommodation needs.

Sometimes, fasting observances may be physically or mentally demanding. Fasting may also coincide with other intensified forms of religious observance that may have a physical impact. Depending on the person, their physical constitution and sincerely held understanding of the requirements of their faith, fasting may be more or less impairing of a person's ability to engage in physically or mentally demanding activities. Accommodation providers may ask about the extent that a person's belief may allow for flexibility in fasting observances.^[485]

Where a person's ability to perform a task or function, or comply with a standard, practice or requirement, is adversely affected because of fasting, organizations have a duty to accommodate to the point of undue hardship, unless they can show that the rule or activity is a *bona fide* requirement. Accommodation arrangements should fulfill individual accommodation needs, which may be unique for each person. Where a creed practice affects a person's pre-existing disability, there may be a duty to accommodate to the point of undue hardship based on the intersecting grounds of creed and disability (see section 7.6.3).

As with all accommodations, the best approach is to anticipate creed-related accommodation needs in advance through inclusive design.

Example: A school allows use of a separate area (e.g., the library) for students observing a creed-based fast so they can avoid the cafeteria during lunch breaks. It avoids organizing late-night and food-related events (e.g., pizza days, overnight school trips) if there are a large number of students who observe the fast. The school excuses fasting students from strenuous physical activity, and tries to schedule exams during times when most students are not fasting. If this is not possible, exams are scheduled early in the day, or fasting individuals are permitted to defer the exam to a time when they are not fasting. In addition to accommodating students, the school makes an effort to increase staff and student awareness of fasting to help avoid misunderstandings.^[486]

^[412] O'Malley, *supra* note 74.

^[413] The employer's duty to accommodate religious time off work, without loss of regular work hours and associated wages, was explained in *Smith v. Network Technical Services Inc.*, 2013 HRTO 1880 (CanLII) at para. 19:

The Tribunal in *Markovic v. Autocom Manufacturing Ltd.*, 2008 HRTO 64 (CanLII), states:

Sometimes the requirements of employment conflict with the ability of employees to practice their religion, often through the establishment of work schedules which, although adopted for valid business reasons, unintentionally impinge on religious practices. There is a significant body of court and tribunal decisions which have dealt with resolving the conflict between the demands of employment and the freedom to practice religion. Many years ago the Supreme Court of Canada, in *Ontario Human Rights Commission v. Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536 (Simpsons-Sears), established that an employer has a duty

to take reasonable steps to accommodate an employee who is unable, because of religious beliefs, to work in accordance with the established work schedule. The duty to accommodate requires an employer to look for ways to accommodate the applicant's need to absent himself from work for religious purposes. The duty to accommodate may thus require the employer to rearrange the applicant's work so as to enable him to work the hours that would otherwise be available to him, absent his need for religious leave. Whether accommodation up to the point of undue hardship takes the form of make-up assignments or other adjustments to the applicant's schedule, the goal must be to facilitate an opportunity for the applicant to work his full complement of hours, without encroaching on his religious beliefs.

[414] In Ontario, the *Employment Standards Act*, S.O 2000 c. 41 outlines various options relating to work and entitlements on a public holiday. It requires premium pay for work done on a public holiday. Should any provisions of the *Code* and the *Employment Standards Act* conflict, however, the *Code* should prevail, owing to its quasi-constitutional status.

[415] *Shapiro v. Peel (Regional Municipality)*(No. 2) (1997), 30 C.H.R.R. D/172 (Ont. Bd. Inq.). The employer's insistence that Ms. Shapiro use vacation time, lieu time or take unpaid leave for Jewish holidays was discriminatory. Ms. Shapiro's proposal to work overtime to make up the time was a reasonable one and could have been accommodated without undue hardship. The fact that overtime was not available to every employee was not relevant as accommodation is an individualized assessment and not every employee needs to be accommodated in the same way.

[416] This helps to ensure that people from creed minority communities are not adversely affected or unfairly disadvantaged based on their religion or creed, by having to use additional employee benefits such as vacation days to observe their holy days, in comparison to members of dominant religious groups whose needs are accommodated by the statutory holiday calendar.

[417] *Chambly (Commission scolaire régionale) v. Bergevin*, [1994] 2 S.C.R. 525.

[418] For example, in *Koroll v. Automodular Corp.*, 2011 HRTO 774 (CanLII), a member of the Living Church of God alleged that his employer infringed his rights by not giving him time off with pay to observe High Sabbaths. The HRTO followed an earlier (2008) decision in *Markovic v. Autocom Manufacturing Ltd.*, *supra* note 413 and dismissed his claim that he was automatically entitled to paid leave for holy days. In *Markovic*, the HRTO considered a situation where the employer did not provide two days off with pay to correspond to the number of Christian religious days that are statutory holidays. Rather, the employer's policy provided a "menu of options" for accommodation which included making up the time, switching shifts with another employee, working on a secular holiday when the facility is in operation (subject to the *Employment Standards Act*), adjusting shift schedules, using vacation days and taking an unpaid leave of absence. Mr. Markovic complained that Autocom's failure to provide him with a paid day off to celebrate Serbian Orthodox Christmas was discriminatory. The HRTO concluded that by providing a process for employees to arrange for time off for religious observances through options for scheduling changes, without loss of pay, the policy was appropriate and not discriminatory. The HRTO stated:

[T]he obligation on the employer is to design its workplace standards in a way that recognizes differences in religion amongst its individual employees, and accommodates those differences. The task is to mesh its

workplace rules with the needs of a diverse workforce, with the goal of enhancing participation and inclusion. In the case of religious observances, those goals can be met through the provision of options for scheduling changes that do not result in loss of pay (at para 47).

The HRTO distinguished the Supreme Court of Canada's decision in *Chambly*, because scheduling changes were not available in that situation due to the nature of the workplace, and although the collective agreement allowed for three days of special leave with pay, the employer took the position that they could not be used for religious observances. However, the HRTO did note that there may be individuals for whom none of the scheduling options in the policy would be suitable and in such cases other accommodations must be explored.

[419] *Ontario (Ministry of Community and Social Services) v. Grievance Settlement Board* (2000), 50 O.R. (3d) 560 (C.A.).

[420] *Ibid.* The scheduling options provided for in the policy were deemed: "a viable means of accommodation for employees requiring extra days off over and above the two paid leave days already provided for. It enabled them to schedule their required hours of work in a way that relieved them from having to choose between losing wages or encroaching on pre-existing earned entitlements [i.e. vacation days] and observing their religious holy days." The Court further noted that in *Chambly* the Supreme Court found that it was significant that it would be impossible for a teacher to make up the religious holiday by working an extra day. Therefore, the Court concluded that employers can fulfill their duty to accommodate by offering appropriate scheduling changes, without first having to show that granting a leave of absence with pay would result in undue economic or other hardship.

[421] *Koroll v. Automodular Corp.*, *supra* note 418. The HRTO awarded \$2,000 for injury to dignity and self-respect and directed the respondent to review its Attendance Management Program to remove the discriminatory effect on employees whose religious beliefs require them to be absent from work.

[422] *Janssen v. Ontario (Milk Marketing Bd.)* (1990), 13 C.H.R.R. D/397 (Ont. Bd. Inq.).

[423] See section 9.5.1.

[424] See section 9.3.2 for more on the need to take an individual approach. See section 9.5.3. for more on the need to accommodate sincerely held individual beliefs.

[425] See section 9.6 for more on what information may be requested, and appropriate forms of inquiry.

[426] See section 9.6. The need for more information from the person seeking accommodation may be greater in accommodation requests involving lesser-known creeds (see *York Region District School Board v. Ontario Secondary School Teachers' Federation, District 16* (Faith Day Grievance), *supra* note 329. This case is discussed in an example in section 10.1).

[427] *Ibid.* In this case, the OSSTF District 16 union filed a policy grievance on behalf of one of its members alleging the employer's implementation of "faith day" provisions in the collective agreement contravened, among other things, the *Code*. The labour arbitrator held that if an employee has a sincerely held belief that has

a connection to religion and honestly believes it is obligatory or customary to observe a religious holiday, then the employee should be considered entitled to religious leave, whether or not they are on the Board's list of known faith days. Also, the employee's belief does not need to be supported by official religious dogma or the position of religious officials for the request for leave to be legitimate. At the same time, the arbitrator agreed that an employer is not required to "blindly accept" requests for religious leave for days when members of the employee's faith are not generally required to refrain from working. The arbitrator noted that a claimant still had to prove his/her claim even though the religious beliefs of individuals may be personal or private.

[428] For more information, see *The Multifaith Information Manual*, Ontario Multifaith Council on Spiritual and Religious Care, 2000.

[429] Source: York Region District School Board's (2014) religious accommodation guidelines, *supra* note 280, developed in consultation with the Ontario Multifaith Council on Spiritual and Religious Care.

[430] This example is based on the (2014) religious accommodation guidelines of the York Region District School Board, *supra* note 280.

[431] See section 10.1 for more on dealing with situations where significant amounts of time are required for a creed observance.

[432] Where fulfilling a *Code* right conflicts with a provincial law or regulation, such as the *Employment Standards Act*, S.O. 2000, the *Code* has primacy and will prevail, unless the law says otherwise (*Code* section 47).

[433] See section 9.10.2 and the OHRC's *Policy on competing human rights* for more details. Considerations include (but are not limited to) an assessment of the extent to which a creed belief or practice may be adversely affected, if at all, whether it connects with a *Code* right, and whether the right is infringed at its core or periphery. Organizations may also consider the extent that a creed practice may allow for flexibility in its practice (e.g. extent that a creed practice is time sensitive).

[434] As discussed above, the Supreme Court of Canada has recognized the communal and collective aspects of religious expression in several decisions (most recently, see *Loyola*, *supra* note 8 at para. 60).

[435] See section 9.1 for more on the principle of inclusive design.

[436] In some circumstances, other accommodation arrangements may equally fulfill the religious needs of persons in a way that is not overly burdensome on either party, and does not create undue hardship. If there is a choice between two accommodations that respond equally to a person's or group's accommodation needs in an equally dignified way, then the accommodation provider is entitled to select the one that is less expensive or less disruptive to the organization.

[437] This is in keeping with principles of state neutrality and non-interference in matters of religious belief, doctrine and practice. The Supreme Court of Canada stated in *Amselem*, *supra* note 5 "[J]udicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably

entangle the court in the affairs of religion” (at para. 50). Organizations must also avoid becoming entangled in religious affairs. However, organizations must not extend *Code* protections to practices and observances that are hateful or incite hatred or violence against other individuals or groups, or contravene criminal law (see section 4.2).

[438] *Singh (Ishar) v. Security and Investigation Services Ltd.*, Ontario Human Rights Board of Inquiry, unreported decision of May 31, 1977.

[439] See section 9.9.3 for more on health and safety considerations.

[440] York Region District School Board religious accommodation guidelines (Sample Curricular Accommodations Chart), *supra* note 280.

[441] See *Saadi v. Audmax*, *supra* note 331.

[442] See section 9.9.3 for more on health and safety considerations.

[443] *Supra* note 352.

[444] *Pannu v. British Columbia (Worker’s Compensation Board)* (No. 2) [2000], 38 C.H.R.R. D/494, 2000 BCHRT 56. Note, however, that the employer in this case had actively sought alternative work for the complainant. The issue was whether he was entitled to be accommodated in his particular (recaust operator) position.

[445] *Loomba v. Home Depot Canada* 2010 HRTO 1434 (CanLII). The HRTO bifurcated the case but ultimately did not decide a second aspect of the case: the relationship between the *Code*’s duty to accommodate and the safety requirements of the *Occupational Health and Safety Act*.

[447] See *Pandori v. Peel Board of Education* (1990), 12 C.H.R.R. D/364, *aff’d* (1991), 3 O.R. (3d) 531 (Ont. Div. Ct.), leave to Ont. C.A. refused.

[448] *Ibid.*

[449] *Multani*, *supra* note 183.

[450] *Ibid.* See section 10.2.1 for more on the duty to accommodate wearing kirpans.

[451] *Ibid.*

[452] (1999), 36 C.H.R.R. D/76 (Can. Trib.). In this case, a Sikh man testified that wearing one particular type of Kirpan rather than another was a matter of personal preference, not of religious belief.

[453] Note that this case was decided before even more stringent safety requirements on airplanes have been implemented as a result of the events of 9/11.

[454] In *R. v. Hothi* (1985), [1985] 3 W.W.R. 256 (Man. Q.B.), aff'd [1986] 3 W.W.R. 671 (Man. C.A.), a Manitoba Court upheld a judge's decision prohibiting wearing a Kirpan in the courtroom. However, the judge in this case was hearing the case of an accused charged with assault. More recent developments have made this decision an exception versus the rule. For example, a 2012 settlement between the Ontario Human Rights Commission, The Toronto Police Service, Toronto Police Services Board and the Ministry of the Attorney General permits persons of the Sikh faith to wear Kirpans in all public areas of Toronto's courthouses. The new court security procedure, however, does allow for some discretion to ensure public safety. This involves individualized risk assessment of such factors as why a person is there, the kind of case being heard, and notable patterns of previous behaviour that could lead to a threat of violence. Other police services and court-justice agencies have followed suit with policies allowing people to enter courtrooms wearing a Kirpan, including in Windsor and British Columbia.

[455] See section 9.11.6.

[456] This is particularly the case where such an individual display results from an organization's duty to accommodate an individual.

[457] *Grant v. Canada (Attorney General)*, [1995] 1 CF 158.

[458] *Clipperton-Boyer*, *supra* note 284. In this decision, the HRTO held (drawing on the Supreme Court decision in *Amselem*, *supra* note 5, at para. 69) that "to engage the protection of the Ontario *Code* against discrimination because of creed, an applicant must demonstrate that he or she sincerely believes that a certain practice or belief is experientially religious in nature in that it is either:

1. objectively required by the religion, or
2. that he or she subjectively believes that it is required by the religion, or

c.that he or she sincerely believes that the practice engenders a personal, subjective connection to the divine or to the subject or object of his or her spiritual faith, and as long as that practice has a nexus with religion" (at para. 16).

[459] For example, there is a difference between the organization displaying a creed-based symbol because of a preference, or an individual, in a personal capacity, because of his or her accommodation need.

[460] For example, a creed symbol that is conspicuously displayed in an area where there is frequent public interaction, such as an organization's front lobby, boardroom or front desk reception area, may give rise to different issues and concerns than if it were displayed in a more private area, such as in an individual's private workspace, where it is less likely to be associated with the organization as a whole.

[461] For example, there is a duty of neutrality for state organizations under section 2(a) of the *Charter*, which may be breached where an organization professes, adopts, or favours one belief to the exclusion of others, without an exemption for this in law (*Saguenay*, *supra* note 41 at para. 83).

[462] For example, a symbol may poison the environment for other *Code*-protected groups, or be excluded from *Code* protections altogether on account of its hateful message (per section 4.2).

[463] While the Supreme Court of Canada in *Saguenay* recognized that “the Canadian cultural landscape includes many traditional and heritage practices that are religious in nature... [and that] not all of these cultural expressions are in breach of the state’s duty of neutrality,” it also cautioned against taking this principle too far. Religious heritage cannot justify the state engaging in a discriminatory practice for religious purposes, which is what happened in the case of the City’s prayer (*supra* note 41 at para. 116).

[464] Merely being exposed to creed symbols in the workplace, service, facility or housing will generally not be sufficient to amount to religious pressure (see section 7.4).

[465] *Jones v. C.H.E. Pharmacy Inc.* (2001), 39 C.H.R.R. D/93, 2001 BCHRT 1. The respondent was ordered to pay the employee damages for lost wages and benefits and for injury to his dignity and self-respect.

[466] *407 ETR Concession Company v. National Automobile, Aerospace, Transportation and General Workers Union of Canada, CAW-Canada*, 2007 CanLII 1857 (ON LA).

[467] See section 9.5.2.

[468] While some Mennonites do not object to photographs, many orthodox and old order Mennonites do. They receive a blanket exemption and do not have to go through the OHIP eligibility review process. A letter from their community’s religious authority is sufficient to qualify them for this exemption.

[469] For example, Muslim women requiring accommodation may take the photo in a private setting at the end of the day when few people are around, or be guided to a private room with a female staff member to take the picture, where this fulfills their accommodation needs.

[470] *Hutterian Brethren*, *supra* note 106.

[471] *Warford v. Carbonear General Hospital* (1988), 9 C.H.R.R. D/4947 (Nfld. Comm. Inq.).

[472] See section 9.3.3.

[473] Example adapted from York Region District School Board’s (2014) religious accommodation guidelines (Sample Curricular Accommodations Chart), *supra* note 280.

[474] This includes making sure that information related to a person’s creed accommodation is shared only with people who need the information for their role in implementing the accommodation, and providing an appropriate accommodation (see section 9.4).

[475] *Re Peterborough Civic Hospital and Ontario Nurses’ Association*, [1981] O.L.A.A. No. 97, 3 L.A.C. (3d) 21 [QL].

[476] She was willing to perform many other aspects of the procedure: record the patient's vital signs, insert the transfusion needle, run saline into the vein, requisition the blood from the laboratory and bring it to the patient's room, and do the necessary paperwork and verification. She was not willing to "hang the blood" which consisted of opening the blood bag, sticking the transfusion tube into the bag, closing the saline solution valve, opening the blood valve and hooking the bag to the transfusion stand.

[477] The board found that it was not necessary that every nurse in the hospital be able to hang blood (in fact about 15% were not qualified to do so). As it was a requirement that two nurses attend a patient who required blood, there was always someone else present who could hang the blood.

[478] Article 26 of the *United Nations Declaration of Human Rights*, to which Canada is a party, also states:

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall *promote understanding, tolerance and friendship among all nations, racial or religious groups*, and shall further the activities of the United Nations for the maintenance of peace.

(3) *Parents have a prior right to choose the kind of education that shall be given to their children* [emphasis added].

[479] See Supreme Court decisions in *Loyola* (*supra* note 8) and *S.L.* (*supra* note 153). Also see the Supreme Court decision in *B. (R.) v. Children's Aid Society*, *supra* note 384, in which Court found that freedom of religion extends to the right of parents to rear their children according to their religious beliefs.

[480] See Supreme Court decisions in *Loyola*, *ibid.* and *S.L.*, *ibid.* and *Chamberlain*, *supra* note 168.

[481] *Chamberlain*, *ibid.* at paras. 65-66; cited in *S.L.*, *ibid.* at para. 39.

[482] *S.L.*, *ibid.*

[483] For example, an organization inquires about creed dietary restrictions and other accommodation needs when sending out event invitations, so it can make appropriate accommodation arrangements in advance. If meat is being offered, the organization strives to provide meat options that also fulfill religious dietary restrictions (when these are raised in advance). An equivalent nutritious meal is provided for people who are vegetarians for creed-based reasons. This enables all interested persons to take part in organizational events in an inclusive and equitable way.

[484] For example, the management of a high tech company requires staff to attend weekly lunch meetings, paid for by management. They provide suitable food options to staff members with food allergies (e.g. gluten-free and vegan) but refuse to accommodate religious dietary restrictions. They contend that unlike food allergies, religion is a choice. Even though the staff members of religious faith may fulfill their dietary needs through their own means (e.g. by bringing appropriate food from home), the organization may still be found to have discriminated by failing to accommodate, and treating employees unequally based on an inappropriate hierarchy of human rights grounds (i.e. accommodating based on disability but not creed).

[485] For example, a creed may allow people to make exceptions to required fasting practices, for instance in situations where a person must perform heavy manual labour as part of their regular job. If the person's sincerely held belief allows for such an exception to be made, which would less negatively affect their performance, they could be requested to refrain from or alter their fasting practice, as long as this does not violate their sincerely held creed beliefs.

[486] Adapted from York Region District School Board's (2014) religious accommodation guidelines, *supra* note 280, in this latter respect.