

Religious Accommodation in Post-Secondary Institutions:

The Case of Queen's University

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Abstract

As the categories of religious identification continue to diversify in Canada, questions of religious accommodation persist. Following a contentious religious accommodation request at York University in the Fall of 2013, concerns arose regarding the responsibilities post-secondary institutions had to their students as well as to their instructors and community members in relation to requests for religious accommodation. The objective of this research essay – *Religious accommodation in post-secondary institutions: The case of Queen’s University* – is to examine the state of religious accommodation at Queen’s University using primary and secondary sources in order to produce an analysis of the particular situation as well as broader practical, implementable recommendations applicable not only to Queen’s University but also other post-secondary institutions across the province of Ontario. The majority of the data in this essay is derived from survey results and interview responses gathered solely for the purpose of this inquiry. The results of this project speak not only to Queen’s University instructors’ views of religious accommodation requests, but additionally, their roles in a changing post-secondary system, which must evolve in order to fulfil the needs of all community members and stakeholders.

Introduction

During the fall semester of the 2013-2014 academic year, a male student at York University requested an exemption from the in-person portion of an online class on the basis of his religious beliefs, which forbade him from having any contact with women. The instructor of the online course refused to grant the student's request for religious accommodation, as he would not be an "accessory to sexism". He was overruled by the University Provost, who reversed the instructor's decision based on the fact that the instructor was not accommodating the student up to the point of undue hardship.¹ By the time the story got to the media, the student in question had already withdrawn his request and proceeded with the assignment as it was originally given. There are countless 'unknowns' in this case but what we do know is that it catapulted questions of religious accommodation in Ontario, specifically in post-secondary institutions, into the headlines.

The media response to the York University religious accommodation case fixated on questions of gender equality as well as the belief that the York University Provost acted against the greater interests of the Canadian post-secondary institution he represented. During the weeks that this case was being discussed, it appeared as though everyone had an opinion on it, including Peter MacKay, Canada's Justice Minister, who stated: "It is Canada's uncompromising commitment to gender equity and inclusivity which makes us proud to call ourselves

¹ Tristin Hopper, "York University standing by choice to excuse student from group work with women over religious beliefs", *National Post*, January 9th 2014, accessed July 1 2015, <http://news.nationalpost.com/toronto/york-university-appears-to-be-standing-by-choice-to-excuse-student-from-group-work-with-women-over-religious-beliefs>.

Canadian... We did not send soldiers to Afghanistan to protect the rights of women to only see those same rights eroded at home.”²

Where the Canadian media, and in this case Justice Minister MacKay, failed in presenting a nuanced understanding of the issue at hand, was in their inability to see beyond the questions of gender equality. The York University case, regardless of what we still do not know about it, showed Canadians that they are not well equipped to deal with issues of religious accommodation. Rather, Canadian institutions must continue to make efforts to ensure that all stakeholders have access to resources that will equip them with the knowledge necessary to navigate the complex intricacies of precedent setting Canadian Supreme Court cases and the Ontario Human Rights Code that deal with religious rights.

Taking inspiration from the York University religious accommodation case, the following essay will examine and evaluate how instructors at Queen’s University in Kingston, Ontario, deal with religious accommodation requests from students. This project took a primary source approach, and all primary source data used was collected for the sole purpose of this project. The data used is derived from three primary sources: the results of a mass survey emailed to all 1243 Queen’s University teaching staff, transcripts from interviews conducted with the Queen’s University Chaplain, staff in the Queen’s University Equity Offices and the Queen’s University Human Rights Office and finally, transcripts from interviews conducted with Queen’s University teaching staff who indicated at the end of their surveys that they would be

² “MacKay, Mulcair voice criticism of York U’s religious accommodation”, *CTV News*, January 10th 2015, accessed May 26 2015, <http://www.ctvnews.ca/canada/mackay-mulcair-voice-criticism-of-york-u-s-religious-accommodation-1.1633063/>.

willing to respond to follow up, in person questions.³ Although the participants were all given the same core set of questions, the follow-up interviews ranged from 7 to 55 minutes in length.

Although this report will provoke more questions than it will answer, its intentions are to bring to light holes in an exceptionally complex system before they become irreparable. Unfortunately, it seems that Ontario is still asking many of the same questions that should have already been resolved.

Section One

From Christian to Multicultural – Canada’s non-linear path

Canada’s contemporary commitment to the rights of minority groups is the result of a complex process dating back to the original need to integrate the “minority” French and First Nations people into the predominantly English-speaking British colony. Following the Second World War there was a new emphasis placed on understanding human rights regulations. With that came a reinvigorated discussion about how Canada, a country of ever diversifying groups of immigrants, was to confront its history as a relatively homogenous, Christian country, given the realities of the changing face of the population. In 1971, then Prime Minister of Canada Pierre Elliot Trudeau announced to the House of Commons the implementation of multiculturalism and bilingualism across the country. At this point in Canadian history, this gesture was intended to calm tensions between English majority and French minority interests and had no explicit references to the reorganization and facilitation of the integration of immigrant minority groups. Rather, its primary purpose lay in the regulation of language laws and the implementation of

³ The Queen’s Human Rights and Queen’s Equity Offices function as two separate entities. Representatives from these two offices decided to be interviewed together. Thus, although in discussions of the interview with the two representatives these two offices are referred to jointly, they do in fact operate as two separate entities.

countrywide bilingualism. It concerned itself with such issues as bilingual education as well as the ability for individuals to access resources in their language of choice (English or French).⁴

Along with increased federal concern for protecting human rights were provincial developments on the same issue. In 1958, an official “Anti-Discrimination” commission was established in Ontario, which eventually changed its name to the Ontario Human Rights Commission in 1962. The Ontario Human Rights Commission constitutes five members who are in charge of responding to, and evaluating potential violations of the Ontario Human Rights Code that are referred to as “applications”. Applications can be filed reporting violations to any of Ontario’s set protected identifiers, which include but are not limited to: race, ancestry, creed, sex, sexual orientation, age and disability.⁵ Today, protection against discrimination on the basis of creed is provided in the following spheres of life: access to goods, services, facilities, employment, occupancy, the right to enter into contracts as well as the rights to join trade unions and vocational associations.⁶

The shifting face of Canada in the 1960s encouraged the country to undergo a change in identity from a “Christian” nation that prioritized Christian interests, holidays and observances to one that made active efforts to support difference. Canada’s road to disestablishing Christian hegemony was still in process throughout the majority of the twentieth century as demonstrated by the fact that up until the 1960s, Canada forbade immigration by self-proclaimed atheists as they were said to lack the Christian moral framework that distinguished Canadian attitudes and value systems.⁷ Additionally, the loosening of immigration restrictions began to open the

⁴ Terrance Meyerhoff, “Multiculturalism and language rights in Canada: Problems and prospects for Equality and Unity”, *American University International Law Review* (1994): 968.

⁵ Ontario Human Rights Commission, “The Ontario Human Rights Code”, 2015.

⁶ The Ontario Human Rights Code uses the word “creed” as opposed to “religion”.

⁷ Ontario Human Rights Commission. “Human Rights and Creed Research and Consultation Report”, *Ontario Human Rights Commission*, 2013, 15.

proverbial Canadian door to people outside of Europe, which in turn opened Canada up to unprecedented religious diversity. Due to increased immigration, specifically from Asia, Africa and the Middle East, Canadian religious categories of identification have diversified significantly since the early 1970s.⁸ From its inception Canada has been a country of immigrants, yet it took until after the Second World War for Canada to openly extend the right to immigrate to non-Christians and non-Europeans *en masse*. The changing face of Canada provoked ethnic minority groups to criticize the original draft of multiculturalism as it was seen as inadequately providing the framework for minority group growth, enhancement and preservation.⁹

Throughout the mid-twentieth century, immigrant communities such as the growing Ukrainian population thought multiculturalism was inadequate from its original inception. They felt betrayed by Trudeau's attempt at multiculturalism because although the policy seemed like it should ease their integration into Canada, they felt as though it had no actual impact on their experience. This led the community to make official complaints to the federal government forcing a reconsideration of the utility of multiculturalism as it was first imagined.¹⁰ This perception of multiculturalism as insufficient has not subsided over time. Professor and acclaimed Canadian scholar of multiculturalism Paul Bramadat speaks of the idea that multiculturalism "placates" rather than actively engages with religious minority groups, and although it may legitimate claims for recognition, it does not provide a space for minority groups to engage with and within the public sphere.

In 1982 the Canadian Charter of Rights and Freedoms was repatriated and the mention of multiculturalism was added to S. 27: "This Charter shall be interpreted in a manner consistent

⁸ Pew Research Center, "Canada's Changing religious Landscape", June 27 2013, accessed July 8 2015, <http://www.pewforum.org/2013/06/27/canadas-changing-religious-landscape/>.

⁹ Meyerhoff, "Multiculturalism": 975.

¹⁰ Patricia K. Wood and Liette Gilbert. "Multiculturalism in Canada: Accidental Discourse, Alternative Vision, Urban Practice", *International Journal of Urban and Regional Research* (2005): 680.

with the preservation and enhancement of the multicultural heritage of Canadians”.¹¹ Reflecting on this Charter amendment, the Department of Canadian Heritage proposes: “Through multiculturalism, Canada recognizes the potential of all Canadians, encouraging them to integrate into their society and take an active part in its social, cultural, economic and political affairs”.¹² What the Department of Canadian Heritage fails to speak to is *how* this integration is intended to occur and in what way minority groups are intended to see multiculturalism as part of their heritage when there are no active measures being taken by the department to determine what it means to “encourage integration”.

There is no denying that Canada is multi-cultural, as the country is diverse in terms of its peoples’ ethnic, linguistic, religious and historical origins. As of 1994, 31% of Canadians traced their ancestry to somewhere other than France or Britain; this number has only increased since.¹³ Yet the Canadian claim of welcome and intrinsically important difference, along with trying to differentiate themselves from the “melting pot” of the United States, is an insufficient platform with which to build “Canadian-ness” if Canada is unwilling to move beyond mere discussions of the importance of the mosaic model of integration. It is therefore valid to conclude that the original intentions of multiculturalism were not representative of the changing diversity of Canada that would take place from the 1970s onwards.

Multiculturalism symbolized the theoretical acknowledgment of difference as opposed to the active taking of steps to curb disadvantage based on difference (ethnic, racial, religious, cultural) while acknowledging that Canada benefitted from, rather than had “to deal with”, its

¹¹ Canadian Charter of Rights and Freedoms S. 27.

¹² Government of Canada, “Canadian Multiculturalism: An Inclusive Citizenship”, 2012, accessed March 2015, <http://www.cic.gc.ca/english/multiculturalism/citizenship.asp>

¹³ Meyerhoff, “Multiculturalism”: 923.

new diversity.¹⁴ The initial admission of multiculturalism's shortcomings gave rise to what is now referred to as "religious accommodation" or "reasonable accommodation". The Canadian Supreme Court established the legal duty of "reasonable religious accommodation" in 1985 following *Ontario (Human Rights Commission) v. Simpsons-Sears*, which dealt with an employee's desire to have Saturdays off following a religious conversion that required practicing the Sabbath on Saturdays as opposed to Sundays.

Although the obligation for institutions to provide religious accommodations came from the Supreme Court, there are differences regarding how each province defines religion, and consequently religious accommodation. The Canadian Supreme Court defines religion broadly as

[t]ypically involving a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith....¹⁵

The Canadian Supreme Court uses the word "religion" as opposed to "creed" or a combination of the two. The Supreme Court does not make references to the importance of subjectivity in interpretations of the word religion, therefore implying that a more limited definition of the word is to be used within the federal judicial system. The Canadian Supreme Court ruling that reaffirms the limits of religious accommodation states: "trivial and insubstantial accommodations

¹⁴ Lori Beaman and Peter Beyer, *Religion and the Social Order: Religion and Diversity in Canada* (Leiden: Brill, 2008), 17.

¹⁵ Ontario Human Rights Commission. "Human Rights...", 57. There is a noticeable discrepancy between the definition of religion used by the Canadian Supreme Court and academic definitions of religion. Although there is no consensus between academics regarding a definition of religion, countless scholars since the Enlightenment have attempted to define "religion". The majority of these definitions represent the fields of study that they were conceived within: philosophy, psychology, sociology or in some cases, theology. Notable scholars such as Sigmund Freud (1913, 1927); E.B. Tylor (1979); James Frazer (1911-1915); J.Z. Smith (1995); Paul Tillich (1957) Clifford Geertz (1993); Émile Durkheim (1915) and Wilfred Cantwell Smith (1991) have all contributed

that do not interfere with or threaten actual religious beliefs or conduct are not obligatory to accommodate”.¹⁶

Given that this project will be examining the state of religious accommodation at an Ontario institution, it is imperative to examine how Ontario’s definition of “religion”, which they refer to as “creed”, differs from the Supreme Court’s understanding of “religion”. The Ontario Human Rights Code defines the word “creed” as

[i]nterpreted to mean “religious creed” or “religion.” It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. Religion is broadly accepted by the *OHRC* to include, for example, non-deistic bodies of faith, such as the spiritual faiths/practices of aboriginal cultures, as well as bona fide newer religions (assessed on a case by case basis)...¹⁷ The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.¹⁸

This definition of creed is directly followed by the proclamation that the definition is to be interpreted “subjectively” taking into consideration: “personal religious beliefs, practices or observances, even if they are not essential elements of the creed provided they are sincerely held”.¹⁹ Currently, protection on the basis of creed does not include protection against discrimination on the basis of “secular, moral, ethical or political convictions”.²⁰

Although the definition of creed centralizes the importance of including spiritual/religious practices that do not fit the Christian prototype we must acknowledge the origins of the word “creed” as innately Christian, given the fact that it is derived from the Latin word *credo*, and is linked in the Christian tradition to the Apostles’ and Nicene creeds which

¹⁶ Ontario Human Rights Commission, “Human Rights”, 70.

¹⁷ Note the capitalization of “God” and the lack of capitalization of “gods” demonstrating the innate Judeo-Christian bias of the *Code*’s definition of “creed”.

¹⁸ Ontario Human Rights Commission. “Policy on creed and the accommodation of religious observances”, 1996.

¹⁹ *Ibid.*

²⁰ Ontario Human Rights Commission. “Policy...”, 5.

early on set the foundations of belief that Christians were intended to abide. Through their broad definition of what qualifies as “creed”, Ontario is undoubtedly trying to be inclusive, yet the terminology that they use in trying to do so still implies an innately Christian prototype of what religion, or in this case creed, is intended to look like.

There is a discrepancy in regard to what the Supreme Court deems worthy of a religious accommodation and what the Ontario Human Rights Code deems justifiable to receive “creed” accommodations. This is best seen in an example given by the 2013 *Human Rights and Creed Research and Consultation Report* published by the Ontario Human Rights Commission.

The report presented three situations where an individual who kept a vegan diet felt it was within their right to ask for an accommodation: in the first situation the person asking for the accommodation was a Jain who kept a vegan diet in accordance with their religious faith, the second person was a vegan who happened to also be a Christian and felt like they were being the best Christian when they were vegan, the third situation was an atheist who happened to also be a vegan. Under the current definition of creed only the observer of Jainism would receive the religious accommodation outright according to Canadian Supreme Court case law. A substantive argument could be made for the Christian who happened to also be vegan to receive the accommodation, as he/she believed that observing a vegan diet was a part of their religious faith according to the Ontario Human Rights Commission definition of “creed”. Under the current definition of creed the atheist vegan would not be entitled to an accommodation on the basis of creed as their observance of this diet is not linked to a *religious* belief system.²¹

As of 2015, each of the three examples presented would elicit a different response from the institution from which the request for accommodation was being requested made as well as from the Ontario Human Rights Commission regardless, of the fact that the accommodation

²¹ Ibid.

would be identical for each of the three cases: vegan food would be provided. This is due to the fact that the Ontario Human Right's Code definition of "creed" takes into account individual enactments of religiosity when it falls within an individual's official religious doctrine as well as when it is purely the religious beliefs of the individual. Alternatively, the Ontario Human Right's Code definition of "creed" does not allow for accommodations for non-religious belief systems, such as ethical veganism.

The judgments on these three situations would differ if they were interpreted by the Canadian Supreme Court as opposed to the Ontario Human Rights Commission given the above mentioned notion that accommodations that do not jeopardize an individual's ability to follow their religion, as officially prescribed, as not to be accommodated. Thus, the vegan who happens to also be a Christian would have a more difficult time defending their request for a religious accommodation at the federal level than at Ontario's provincial level.

The Ontario Human Rights Commission has formally established the rights and duties of both parties involved in the request of religious accommodations:

- PREQ (person requesting the religious accommodation): must take the initiative to request an accommodation
- PRES (person responsible for evaluating the request): Must respect the dignity of the person seeking accommodation
- PREQ: explain why accommodation is required
- PRES: assess the need for accommodation based on the needs of the group of which the person is a member
- PREQ: Provide notice of request in writing, and allow a reasonable time for reply
- PRES: Reply to the request within a reasonable time
- PREQ: Explain what measures of accommodation are required
- PRES: Grant requests related to the observance of religious practices
- PREQ: Deal in good faith
- PRES: Deal in good faith
- PREQ: The individual may request details of the cost of accommodation if undue hardship may be a factor

PRES: if accommodation is not possible because of undue hardship, explain to demonstrate why this is so....²²

Although there are many issues with this prescribed list of rights and responsibilities, the primary problem lies in the fact that many of these rights and responsibilities contradict one another.

When the Ontario Human Rights Commission asks employers to “deal in good faith”, requests for explanations as to why the observance is “required” would seem incongruent with the other responsibilities of the employer. Additionally, given that the definition of the word “creed” used by the Ontario Human Rights Code takes into consideration all individual enactments of religiosity/spirituality with no concern given for official religious/spiritual doctrine, the idea of a practice being “required” directly opposes this idea. The intricacies of the Ontario Human Rights Commission’s definition of “creed”, and the effects of this definition on issues of religious accommodation will be explored in the next section.

Section Two

The Ontario Human Rights Code: “Creed” or “Religious” Accommodations?

The definition of “creed” that the Ontario Human Rights Code uses is complex and demands that both the person asking for the accommodation, as well as the institution being asked to provide it, have a profound familiarity not only with the Code itself, but also with late twentieth and early twenty-first century understandings of post-modern scholarly conceptualizations of spirituality and religiosity.²³ Following the official definition of “creed”,

²² Ontario Human Rights Commission, “Policy”, 8.

²³ Paul Heelas. “Introduction: on Differentiation and Dedifferentiation”, in *Religion, Modernity and Postmodernity*, (Blackwell Publishers, 1995), Phillippa Berry and Andrew Wenick. *Shadow of Spirit: Postmodernism and religion*, (Routledge, 1993), Lawrence Cahoon. “Introduction”. in *From Modernism to Post-Modernism* (Blackwell Publishers, 1996), John O’Neill, *Religion and Postmodernism: The Durkheimian Bond in Bell and Jameson*, *Theory, Culture and Society* (1988), Ernest Gellner. *Post Modernism, Reason and Religion*, (Routledge, 1992).

the Ontario Human Rights Code states that the definition of “creed” is to be interpreted “subjectively” taking into consideration: “personal religious beliefs, practices or observances, even if they are not essential elements of the creed provided they are sincerely held”.²⁴ Currently, protection on the basis of creed does not include protection against discrimination on the basis of “secular, moral, ethical or political convictions”.²⁵ An institution’s obligation to an employee requesting a religious accommodation increases in complexity when one takes into consideration the Canadian Supreme Court’s views on the weight that the legitimacy of religious/spiritual practice is intended to have in debates on religious accommodation.

Given that the Canadian Supreme Court does not protect religious beliefs that they deem insubstantial or unnecessary to religious and spiritual practices, there is a clear discrepancy between what Ontario expects of institutions and what the Canadian Supreme Court expects of them.²⁶ As we have determined from Ontario’s definition of “creed”, the Ontario Human Rights Code does not take into consideration whether or not a practice is “trivial or insubstantial” as long as it is “sincerely held” as seen in the 1996 “Policy”, which explicitly states that “individuals may legitimately seek accommodation for religious practices or observances that do not conform to established dogma, or they may seek to observe a practice that is not shared by all members of the creed”.²⁷

During the first ten years of the twenty-first century two precedent setting cases helped shape legislation and practice in regard to religious accommodation in Canada. In the precedent setting *Amselem* case (2004) that dealt with the building of a Jewish Succah on the balcony of a Montreal apartment building, the Canadian Supreme Court alternated between emphasizing the

²⁴ Ibid.

²⁵ Ontario Human Rights Commission. “Policy”, 5.

²⁶ Ontario Human Rights Commission. “Human Rights”, 70.

²⁷ Ontario Human Rights Commission. “Policy”.

importance of the practice's biblical origins to ignoring its origins completely through deeming the practice's religious foundations irrelevant.²⁸

The second precedent setting case, the *Multani* case, dealt with a young Sikh boy's desire to wear a kirpan (ceremonial dagger) to public school. In this case, as in the *Amselem* case, the verifiable place of the practice within the religious tradition at hand played a major role both within the case itself as well as within the rhetoric surrounding media and popular conversations around it.²⁹

The inclusion of discussions on the authenticity of a specific religious practice to a religious tradition at the Supreme Court level is a reflection of the fact that the Canadian Supreme Court's definition of religion and religious accommodation does not explicitly state where official religious doctrine is intended to fit into discussions of the legitimacy of requests. If these cases had occurred in Ontario, in accordance with the Ontario Human Rights Code, discussions of the practice's traditional religious or doctrinal origins would not only not have occurred, the idea of it occurring would have been demonized. This is due to the fact that the Code's definition of 'creed' does not grant religious accommodations on the basis of a practice's importance to official religious doctrine.

Both the Canadian Supreme Court as well as the Ontario Human Rights Commission understand that an institution's obligation to provide a religious accommodation ends at the point of what is referred to as "undue hardship" as dictated by *Ontario [Human Rights Commission] v. Simpsons-Sears* (1985). The concept of 'undue hardship' is regarded by the "Policy on creed and the accommodation of religious observances", as a relative concept whose definition differs

²⁸ Solange Lefebvre, "Between Law and Public Opinion: The Case of Québec", in *Religion and the Social Order: Religion and Diversity in Canada*, ed. Lori Beaman and Peter Beyer (Leiden: Brill, 2008) 194.

²⁹ *Ibid.*

depending on the size, profitability and capability of each individual institution.³⁰ Thus, when determining whether or not accommodating an individual's religious adherence has the potential to cause undue hardship, factors such as the potential costs, as well as health and safety risks, must all be taken into consideration.³¹ It can therefore be presumed that a larger company that has more employees and larger profit margins can be held to higher standards of accommodation than a smaller company that could easily be disrupted by accommodating all religious requests.

The 2013 "Human Rights and Creed Research and Consultation Report" published by the Ontario Human Rights Commission makes a clear distinction between refusing an accommodation due to undue hardship and ulterior motivations for refusal, as institutions have:

[the] duty to accommodate individuals' creed observances up to the point of undue hardship, regardless of whether established organizations norms, standards, rules or requirements adversely affect creed adherents' ability to follow the tenets of their creed by design, intent or simply effect.³²

This statement indicates that although there is room for an institution to deny an individual's request for a religious accommodation, they cannot do so based on anything other than their genuine inability to accommodate without causing a profound negative impact on their ability to function.

What should be taken away from a discussion on "undue hardship" is the complexity of the concept and the difficulty institutions face when they are put in the situation to determine whether or not they can deny a request based on a genuine inability to accommodate. In large institutions, such as universities, there are resources that are available to individuals who are put into the situation of dealing with requests for religious accommodation. Yet, often these resources are under used or seen as overly bureaucratic. Therefore, employees are left to their

³⁰ Ontario Human Rights Commission. "Policy", 10.

³¹ Ibid.

³² Ontario Human Rights Commission. "Human Rights", 67.

own devices to navigate the complex web of religious accommodations, which often results in decisions being made that do not comply with the regulations set out by the Ontario Human Rights Code. This is further complicated by the fact that there are different “tiers” of instructors all of whom operate with a different type of commitment to the University as well as different levels of familiarity with resources offered. Where a tenured instructor may be comfortable contacting a University Chaplain or Human Rights Office, an adjunct instructor may not only be less comfortable seeking guidance, but may also not be aware of the resources available.³³

Questions of religious accommodation have the potential to impact all institutions and thus, all people in the province of Ontario. Universities and post-secondary institutions are in a unique position as they employers as well as service providers. Both employees and students are in the position to request and have religious accommodations granted. Although post-secondary institutions provide resources to their staff and faculty that are intended aid in the resolution of religious accommodation requests, often, instructors take it upon themselves to remedy these situations without utilizing the resources available to them. This can be seen as inevitable as students wishing to receive an accommodation contact the instructors from whom they first require the accommodation. Often, this occurs without conflict, as students and instructors are able to come to an agreement without either party feeling as though their rights have been violated. Yet, without proper knowledge of their rights, instructors may provide accommodations that they do not need to as a result of their lack of knowledge and reluctance to contact services such as a human rights office, an equity office or a Chaplain’s services. Ontario’s definition of creed makes the granting or denial of religious accommodations exponentially more complicated

³³ The researcher recognizes that a question on the survey regarding the participant’s employment status (Professor, Associate Professor, Assistant Professor, tenure-track, contract instructor, adjunct instructor, PhD student...) would have been beneficial.

as all stakeholders, in order to follow the proper proceedings, must take it upon themselves to study the Ontario Human Rights Code in all of its intricacies and complexities.

In order to get a glimpse into the state of religious accommodation in Ontario’s post-secondary institutions, this project will now turn its attention to the results of an examination of Queen’s University’s policies and practices on the matter of religious accommodation.

Section Three

Queen’s University at Kingston

Queen’s University, located in Kingston, Ontario was established in 1841 and currently has approximately 24 580 students enrolled in its programs.³⁴ The University was established as a College by a royal charter from Queen Victoria and was originally primarily funded by the Presbyterian Church in Scotland.³⁵ In 1912 Queen’s University was created in order to formally separate from the Scottish Presbyterian Church, a move the University now credits to the changing “secular times”.³⁶ The theological training centre continued as Queen’s Theological College, a separate but affiliated institution that would divide the Christian-centric goals of the school’s theological program from the “secular university”.³⁷ One hundred years later, in May 2012, Queen’s School of Religion (as the Theological College was now called) was reintegrated back into Queen’s University. A steady decrease in enrolments saw the decision in 2014 to suspend enrolments into the School’s theology programs, and a process was initiated to close these programs by late 2015.

³⁴ Quick Facts | Queen's University, accessed May 1 2015, www.queensu.ca/discover/quickfacts.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

Although it was over 100 years ago that Queen's University made the conscious decision to distance itself from the Presbyterian Church, there is no denying the University's historic ties to Christianity. Very much like the history of Canada, the history of Queen's University is an evolution from a Christian-centric institution to one that has been forced to change along with the changing face of Canada.

What makes Queen's University a suitable case study for a discussion of religious accommodation is the fact that although it is located in the small city of Kingston, 95% of students enrolled come to the school from outside the city.³⁸ Nevertheless, there is very little demographic data available regarding the cultural, geographic and religious backgrounds of Queen's students. According to the 2013-2014 Enrolment Report, 6.1% of accepted students were international, while only 0.7% of students came from Québec.³⁹ There are students enrolled at Queen's from over 70 countries.⁴⁰ China, the United States and South Korea represent the three countries with the most undergraduate students enrolled.⁴¹ India, along with China and the United States are the three countries with the highest number of graduate students enrolled.⁴² The high percentage of international students suggests that the face of Queen's is evolving to become more diverse, which will require a more nuanced understanding of topics such as religious accommodation.

Due to privacy constraints, there is no data available regarding the religious backgrounds of students. It is therefore impossible to anticipate the types of religious accommodations that will arise. Consequently, issues that do arise are often dealt with in the moment or retroactively.

³⁸ Ibid.

³⁹ Queen's University, "2013-2014 Enrolment Report", December 2013: 4, accessed May 1 2015, <http://www.queensu.ca/provost/enrolmentplanning/SEMGWhitePaperSeptember.pdf>

⁴⁰ Queen's University, "2013-2014 Enrolment Report", December 2013: 8.

⁴¹ Ibid.

⁴² Ibid.

The Queen's University website does provide some information regarding religious accommodation policy and practice at the University. The bulk of the information available on the topic is found under the minutes from meetings that took place during May and June of 2011 for the Human Rights Legislation Group, which consisted of unit heads from all academic and non-academic groups on campus or their designates.⁴³ The purpose of this group is outlined on the website:

Co-chaired by Queen's Legal Counsel and Access and Privacy Co-ordinator Diane Kelly and Human Rights Director Irene Bujara, the purpose of the group is to provide the units with the information they need to understand recent changes in human rights-related legislation, amendments that give employers and services providers additional responsibilities to prevent breaches of human rights.⁴⁴

During the May 2011 meeting, the participants were introduced to community faith leaders who spoke to them regarding important faith dates and gave them contact information to be used regarding further questions that they may have.⁴⁵ Given the complexity of Ontario's definition of the word "creed" and the consequential complexity of the expectation to provide accommodations that lie outside the realm of "faith dates", one can easily state that this meeting did not provide vested personnel with the information they would require to enact religious accommodations in line with the expectations of the Ontario Human Rights Code.

During the meetings, the participants were also presented with information on precedent setting court cases that inform the way that institutions are to deal with requests for religious accommodation. The case studies cited dealt with a variety of issues including: religious dress, "holy days", special interest organizations (e.g., Catholic high schools), collective agreements, occupational requirements, undue hardship and the allocation of prayer space. It is unclear how this information was presented to the participants at the meeting.

⁴³ Ibid.

⁴⁴ Queen's University.

⁴⁵ Ibid.

The information available to the Queen's community on the Human Rights section of their website is unclear and difficult to navigate. This section of their website mentions three examples that deal with employment, but only one example that deals with student requests for religious accommodations to instructors.⁴⁶ The example they give is "Refusing to move an exam scheduled on a faith day for which abstention from work/study is required"; an issue that could be remedied if instructors utilize the interfaith calendar provided by the Human Rights Office. The website does not provide any information regarding more complex issues such as religious objections to course content, religious objections to in-class seating arrangements or time off requested for days that do not doctrinally require time off.⁴⁷

The Queen's Human Rights Office does have a section on their website that outlines "creed" as well as what violations to "creed" could look like at a post-secondary institution. The primary issue with the information available is that it presents the legal cases without providing any context regarding how the decisions made are to impact religious accommodation at Queen's University. Therefore, instructors who do make the effort to find out what the University has to say on the matter are left to their own devices to decode the legal language in order to come to conclusions regarding how best to apply the information presented by the University to the reality of requests for religious accommodation. It is also important to note that nowhere on this webpage does the University define the word "creed" or discuss the centrality of the Ontario Human Rights Code to questions of religious accommodation in the province of Ontario.

⁴⁶ "Creed", *Queen's University*, Accessed May 26 2015, <http://www.queensu.ca/humanrights/advisory/issues/creed.html>.

⁴⁷ An example of this would be a case presented in an interview where an instructor had an exam scheduled for Saturday in between Good Friday and Easter Sunday and a student stated that according to the way he practiced his faith, he felt compelled to attend Mass on the Saturday.

The only documentation that Queen's University instructors receive in regard to student requests for religious accommodation is access to the online interfaith calendar, which is provided and funded by the Queen's Human Rights Office. During this researcher's interview with representatives from the Human Rights and Equity Offices (who asked to remain anonymous), the representatives expressed concern regarding the practical utility of the "pricey" interfaith calendar.

Given the lack of concrete information provided to Queen's University teaching staff an investigation into the University's religious accommodation practices is imperative. The urgency of the issue amplified following the media frenzy surrounding the religious accommodation request at York University in 2013. In order to prevent a similar situation from occurring at Queen's, this researcher made the decision to survey the University's teaching staff in order to investigate how they understand religious accommodation as unfolding at the University and the place they believe teaching staff should have in handling requests. Although this project focuses on a single institution as a case study, the findings speak to broader questions of religious accommodation across various institutional spheres in the province of Ontario.

Section Four

Theoretical and Methodological Approach

This project developed out of the researcher's desire to investigate how teaching staff at Queen's University understand their role in dealing with requests for religious accommodation and consisted of three steps, each of which intended to provide the researcher with insight into how different factions of the Queen's University deal with requests for religious accommodation. The first part of the project consisted of surveying all 1243 teaching staff through email.

According to the Queen's Office of Research Services, surveys of this nature elicit a 7-9% response rate;⁴⁸ this survey saw a 39.3% response rate with 489 instructors completing the survey. The intention of this survey was to acquire mass data regarding how instructors understand religious accommodation and the resources available to them.

The survey consisted of four main questions: 1) Have you ever received a request for a religious accommodation, 2) Approximately how many requests have you received per semester, 3) What has been the nature of these requests and, 4) If you have had or were to have a request for a religious accommodation that you felt did not have a clear cut answer, who would you look to in order to for guidance?

The final question of the survey asked participants whether or not they would be interested in partaking in a follow up interview that would elaborate on the questions presented in the survey. These follow up interviews became the second part of the project. Ten instructors were interviewed in person and five instructors requested to answer the follow up questions over email. Interviews ranged in time from 8-25 minutes in length and differed depending on the direction that each individual Professor decided to take the discussion.

The third part of the study consisted of interviewing the Queen's University Chaplain, Kate Johnson, as well as representatives from the Human Rights Office and the Equity Offices. The researcher wanted to examine the role that each saw themselves playing in the issue of religious accommodation.

One theme that was continuously brought up in survey responses as well as follow up interviews was the comparison between religious accommodation and disability accommodation. A proper examination of the differences and similarities between these two types of accommodation is outside the scope of this project. What is imperative to discuss is Canadian

⁴⁸Conveyed in a personal email to me / to my supervisor.

accommodation theory, as it informs the way that the Human Rights and Equity Offices and the University Chaplain conceptualize their roles in dealing with questions of religious accommodation.

Reflecting on Québec's Bouchard-Taylor Report regarding reasonable religious accommodation, sociologist and philosopher Charles Taylor states: "Religious accommodation can be seen as the recognition that although all Canadians may be equal, they are not identical".⁴⁹ It is this idea of creating equity, where it otherwise would not exist, that informs the overarching mandate of religious accommodation. The Ontario Human Rights Commission defines the term "accommodation" in the case of religious accommodation as:

Aim[ing] to facilitate equality of treatment by addressing and seeking to remedy the disadvantages encountered by minority group members in society as a consequence of structuring institutions and services in ways that often inadvertently better meet the needs of dominant group members.⁵⁰

This process is intended to overcome "constructive discrimination", which is understood as unintentional discrimination as a result of majority, often-Christian privilege. It helps to provide accommodation for needs such as days off for religious celebrations, the allocation of time and space for prayer, the modification of dress codes and/or safety requirements, alternatives to photo and biometric identification tools, alternative food options and exempting individuals from

⁴⁹ Charles Taylor, "Politics of Recognition", *Ethics*, 1994. In 2007 then Premier of Québec Jean Charest called upon two individuals to head up a commission to delve deeper into how Québeckers perceived the state of religious accommodation within their province: Gérard Bouchard, a historian and sociologist and Charles Taylor, an author and philosopher. Aptly named the Bouchard-Taylor Commission, the inquiry's mandate was explicit: "[to] accurately take stock of accommodation practices related to cultural differences and analyze the attendant issues bearing in mind, in particular, experience outside Québec; conduct an extensive consultation among individuals and organizations that wish to intervene in respect of the question of accommodation practices related to cultural differences; formulate recommendations to the government aimed at ensuring that accommodation practices related to cultural differences conform to Québec's values as a pluralistic, democratic, egalitarian society..." (Charles Taylor and Gérard Bouchard, 2007).

⁵⁰ Ontario Human Rights Commission, "Human Rights ", 67-68.

engaging in activities that violate their religious restrictions (e.g., the selling of alcohol; interaction with pork products).⁵¹

The information derived from the researcher's primary sources was supplemented by secondary sources, which included but were not limited to scholarly articles, Ontario Human Rights Commission reports, Canadian Supreme Court case law and Queen's University policies and public documents. Although the idea of "evening the playing field" is a common theme found throughout all different forms of accommodation, what applies to one type of accommodation, does not necessarily apply to another. Rather, each different type of accommodation (religious, disability... etc) comes with its own set of nuances that must be properly understood for their proper enacting.⁵²

Section Five

Religious accommodation policy and practice at Queen's University

Survey results

The initial results of the survey revealed that over half of participating Queen's instructors receive at least one religious accommodation request from a student per semester. Question #1 of the survey, asked instructors simply whether or not they have ever, in their teaching careers, received a request for a religious accommodation. 53% of participants admitted to having received a request for a religious accommodation, which is a sizeable percentage given the complexity of the issue and the lack of explicit resources available (see Appendix 1). Survey question #2 asked instructors how often, per semester, they received requests for religious

⁵¹ Ontario Human Rights Commission, "Human Rights", 9.

⁵² Human Rights and Equity Offices Interview, January 2015.

accommodation. 284 instructors who responded stated that they receive between 1-5 requests for religious accommodations from students per semester. 12 stated that they receive more than 5 per semester (see Appendix 2). Question #3 asked instructors to identify the nature of the requests that they receive. 208 out of 489 participating instructors stated that they had received a request that involved a student needing time off or an extension for an assignment or test. 29 participating instructors stated that they had received a request that involved a student requiring an alternative in class assignment due to a conflict with the given assignment for religious reasons. 13 instructors responded stating that they had had a student request an alternative meeting/seating arrangement due to a religious requirement and 12 instructors stated that they had received requests to avoid particular topics due to a student's religious beliefs. 46 instructors responded to the 'other' option and provided examples of the types of religious accommodations that they have received (see Appendix 3).⁵³

The vast majority of requests that instructors receive for religious accommodation are straightforward and deal with students requesting time off or extensions in order to be able to observe a religious holiday. Yet, instructors also spoke of more complex requests that they have received such as: the need for a practicum to be in a specific city where religiously approved food was available, refraining from all personal greetings such as handshakes, leaving class to pray, time off to sit *Shiva* and excusal from a Saturday lab for the Jewish Sabbath (which the instructor remedied by filming the session). These are but some examples of the complex situations instructors spoke of having had to deal with in the survey.

Most instructors spoke of these accommodations as relatively easy to handle and as something that they were happy to do for students. This view was not shared by all, however.

⁵³ Note that instructors were able to select more than one option for this question. The researcher also recognizes that the options for this question should have been more specific in order to determine if there were specific requests that occurred more often than others.

Responding to the “other” option for Question #3, one instructor stated: “Many of these alternatives are incompatible with our academic objectives”. One of the objectives of this research project is to find a way to re-educate instructors regarding their rights and responsibilities dealing with religious accommodations in order to help them see it as a part of a diversifying Canada as opposed to “incompatible with academic objectives”.

Although the results of Question #1 may force a reconsideration of the need to deal with and gain a greater understanding of student requests for religious accommodation at Queen’s University, it is better contextualized when one takes into consideration the results of Question #4, which asked participants to state the resources they would consult in they were unsure as to how to deal with the religious accommodation request. 20% of participants stated that the first resource they would contact when confronted with a request they were unsure how to handle would be their department head (see Appendix 4). Yet, Queen’s University department heads have received no more training than individual instructors have received. Additionally, they have no supplementary access to online resources that would help them provide guidance to instructors seeking advice.

The Queen’s University Chaplain: Underused not Ill-equipped

According to responses to Question #4 of the survey, which asked instructors to identify who they would contact if they were unsure how to proceed with a complex request for a religious accommodation, only 20 instructors out of a possible 489 stated that they would first contact the Queen’s University Chaplain. This position has been held Kate Johnson since 2013, a graduate of the Queen’s University Master’s of Divinity program. Chaplain Johnson participated in an hour-long interview with the researcher during January of 2015. Chaplain Johnson sees

herself as an “interfaith Chaplain”, a somewhat confusing statement given the intense Christian association with the position of “Chaplain”.⁵⁴ Chaplain Johnson does not personally identify as Christian but rather: “a Universalist in theology, Buddhist in practice”. On her website it also mentions that she is a member of the Religious Society of Friends (Quaker). She does recognize that she is most familiar with the Bible of all sacred texts.

When asked what she believes her role to be in dealing with issues of religious accommodation, Chaplain Johnson stated that she is looked to throughout the University as an authority on all issues of this nature. Of course, given that only 20 out of 489 participating instructors stated that she would be the first point of contact if they had a concern, one must question why the Chaplain sees her role differently than instructors do. When asked whether or not she thinks that the University provides instructors with the necessary tools to navigate issues of religious accommodation, she admitted that although resources do exist, they are not properly marketed and are thus underused. Consequently, by the time that issues come to her, they have often become “messy”, which she believes could often be avoided if she were to be contacted first.

Chaplain Johnson sees it as her job to facilitate the acquisition of religious accommodations for students by being the “go-to” person to help instructors make sane judgments that fall in line with the Ontario Human Rights Code. Chaplain Johnson sees it as her duty to surround herself with reputable religious authorities who can in turn guide her in her goal

⁵⁴ Although Chaplain Johnson does recognize the inherently Christian association with the position of “Chaplain”, she stated that Christians are the faith group that utilize her often the least often. She credits this to numerous factors: the fact that Queen’s calendar ensures that Christians have the least difficult balancing their academic requirements and their religious faith and secondly that some Queen’s University community Christians felt as though the decision to appoint a non-mainstream Christian Chaplain was further evidence of Queen’s alienation their Christian roots and Christian stakeholders.

to inform instructors regarding the best way to negotiate their dealings with student requests.⁵⁵ Most of the recommendations that come out of the Chaplain's office are directly in line with the expectations articulated in the Ontario Human Rights Code. This would be what the Chaplain refers to as "the baseline" of religious accommodations. Yet, there are always situations that require both her office as well as instructors to reconsider the baseline. This often takes the form of "friendly accommodations", which will be discussed later in this project.

When Chaplain Johnson receives queries from instructors regarding complex student requests for religious accommodation, she consults the necessary resources and produces a timely recommendation for the instructor. This takes the decision-making and research responsibility off the individual instructors. The vast majority of queries she deals with concern both the December as well as April exam schedules. Chaplain Johnson credits this to what she refers to as the "incompatibility of the exam schedule with all faiths other than Christianity". This is best demonstrated by the fact that exams are held on all days of the week, except for Sundays, the Christian Sabbath. Additionally, there are often conflicts between the Jewish celebration of Hanukkah and the December exam schedule as well as the Jewish holiday of Passover, which often falls during the April exam period.

When asked by the researcher whether or not she anticipates an eventual move to hold exams on Sundays, Chaplain Johnson stated that she could see it happening but believes that it would be "a mess for me and the whole university" if it does. She sees the shift as inevitable given that the rest of Ontario culture has primarily moved to treating Sunday like any other day, which consequently forces us to question whether or not cultural Christians are "observing the Sabbath in a meaningful way". If they are not, Chaplain Johnson sees no viable argument against

⁵⁵ Chaplain Johnson also deals extensively with students, given that this project's focus is on instructors' dealings with religious accommodation, it is outside the scope of the researcher's topic to discuss the student perspective.

holding exams on Sundays just as Queen's already does on Fridays and Saturdays (sacred days to Islam and Judaism respectively).

Taking into consideration the role that Chaplain Johnson sees herself playing within the University's dealings with student requests for religious accommodation, there is no doubt that she has the potential to play an integral role in ensuring that both instructors as well as students feel as though their needs are being met. What we must question is why she is underused. In their survey response, Professor C stated: "I'm knowledgeable enough to decide. No religious authority (like the Chaplain) can interfere with the academic process". In the face of such attitudes, Queen's must make efforts to rebrand the Chaplain as someone whose intentions are to be an ally to both students and instructors alike, as opposed to an individual whose intentions could lead to the corrupting of the academic process. Given her intentions to abide by the Ontario Human Rights Code, contact vested religious officials and produce recommendations to instructors in a timely manner, the productive handling of religious accommodation requests at Queen's has the potential to be greatly helped, not hindered, by the Office of the Chaplain.

The Human Rights Office and the Equity Offices

A sizeable number of instructors indicated in Question #4 of the survey that when confronted with a complex student request for a religious accommodation, they would contact the Human Rights and Equity Offices for guidance. This researcher interviewed two anonymous representatives from the Human Rights Office and the Equity Offices in January of 2015; both interviewees requested anonymity. As noted above in footnote 3, although these are two separate offices at Queen's the representatives opted to be interviewed together and agreed with one another such that they can be referred to jointly.

When asked to describe the role that the Human Rights and Equity Offices plays in matters pertaining to student requests for religious accommodation, the representatives responded with the following:

Our mandate is to both educate and inform but also to take concerns and try and address them in an informal way with an informal side of a procedure that we have. We are mandated to take concerns forward. There is a formal process that people can do but we can guide people through that but we're not a part of it. We provide as much education and programming as we can but a large part is people asking us for advice or someone coming to us saying I requested this and it was denied. That's typically how things come to us, it's when people have questions about their human rights generally and their entitlement to an accommodation and when someone has run into difficulty... when it comes to the actual accommodation (classrooms, work places), we may or may not be involved in the actual negotiations of that but more if the negotiation arises concerns.

What is evidently missing from the representatives' discussion of the role they perceive their office playing in dealing with requests for religious accommodation are specifics regarding "the procedure", "formal process", "education", "programming" and "negotiations". Although the researcher attempted to have these words clarified, it appeared to be a dead end. What was made clear was that the Human Rights and Equity Offices do not seek to help the Queen's community better understand issues of religious accommodation. Rather, for the most part they react to situations as opposed to being proactive in setting policies and procedures. When it comes to "education" and "programming", the vast majority of this is limited to sparse online resources (which have previously been discussed).

Unlike the vast majority of instructors interviewed who believed that the bulk of requests for religious accommodation were straightforward and could be easily handled, the Human Rights and Equity Offices admitted that the requests are getting more complex. The representatives also stated that the number of gender related requests for accommodation, not too different from the one featured in the York University case, are "happening", although not increasing exponentially. According to the Human Rights and Equity Offices, accommodations

that involve this type of complexity require a profound understanding of the way the Ontario Human Rights Code examines conflicts of rights; an inevitability in some requests for religious accommodations:

There are parts of religious accommodation that do not jive with each other... how a person lives their religion, maybe the religion doesn't say that you can't be in a classroom with women... on the other hand, maybe that's the segregation of roles, which this person takes very seriously and to that limit. When the Ontario Human Rights Code says, "how someone lives their faith", there are limits, it just can't be anything. Accommodations dealing with gender are increasing. Democracy requires something, so how you go about segregation will be different and religion has agreed with this. We must examine what the need is to fulfill what the person is trying to do.

The Human Rights and Equity Offices rely on the Ontario Human Rights Code as well as precedent setting cases in order to make their judgments and recommendations. The Office recognizes the issues that arise by not having a set University policy but still believe that a policy would be nearly impossible to institute given the number of "weasel words" such as "normally"... "will normally"... "will usually" that would be required to make the policy as flexible as it would need to be. The Offices, like the Ontario Human Rights Code, sees flexibility as an intrinsic part of religious accommodation. The Offices' use of the word "creed" recognizes that every individual's religion manifests itself differently and consequently has the potential to require a completely different religious accommodation from someone who may seem to identify similarly. This forces a questioning of the practical utility of relying on precedent as the Offices function on the notion that all religious accommodation cases must be handled on a case-by-case basis, taking primary concern for the individual's personal enactment of their religiosity or spirituality.

Just as Queen's University does not currently have a set policy in regard to the handling of student requests for religious accommodation, universities across Canada have not come to a consensus regarding how best to handle the management of religious diversity. The Human

Rights and Equity Offices consider Queen's as having the potential to become a leader within the field in terms of handling religious accommodation, given the fact that Queen's does not leave all decisions in the hands of lawyers, as some universities do. Rather, Queen's "mixes the social need with the absolute legal bottom line", which the Human Rights and Equity Offices understands as giving the University a noticeable and important advantage when dealing with queries regarding religious accommodation.

Regardless of the potential issues that would surround the development of a University-wide policy on religious accommodation, the Human Rights and Equity Offices are not entirely against the idea. The representatives expressed a desire for a policy statement that would state that instructors would "take accommodation requests seriously and will make every attempt [to accommodate]. Additionally, they expressed that the policy statement would benefit from an explicit list of resources available to University community members dealing with complex requests for religious accommodation. What we must question is how best the Human Rights and Equity Offices could distribute this policy document in order for it to reach its maximum utility. Given the issues they have had with marketing the "interfaith calendar", we must consider what measures could be taken to better distribute information on a potential policy statement.

As previously mentioned, Human Rights and Equity Offices have invested in a "costly" interfaith calendar intended to help instructors schedule around as many official faith dates as possible. Although both representatives stood by the importance of giving instructors access to an interfaith calendar, they admitted that it was not utilized to its greatest potential primarily due to the fact that it was not a resource that instructors consulted when designing their syllabi.

Rather, instructors are more inclined to consult the University “Events Calendar”, which does not currently factor in interfaith faith dates.⁵⁶

The Human Rights and Equity Offices deal with a host of diversity matters such as disability accommodation, which was often compared to religious accommodation during the researcher’s follow-up interviews with instructors. The representatives from the Office made clear that comparisons between the two types of accommodation were not only counter-productive but that case law on the topic of religious accommodation has mandated that they are innately different and cannot be compared or conceptualized in the same way. In reference to instructors who ask students for “notes” providing or legitimating religiosity, the representatives stated:

It’s not something that’s located in the body, its been recognized that there’s no earthly authority that can make any kind of assessment of someone’s faith, it is possible for some people to get “notes” but most people would not, and in fact the case law says that requiring a note is not acceptable. What the courts have said is what we must look at is how an individual lives their faith not necessarily how a faith leader will say this is what you should do.

There is no doubt that the Human Rights and Equity Offices’ policies and position on religious accommodation falls directly in line with the Ontario Human Rights Code given the way that they emphasize the importance of religion as individual “creed” that is in no way bound to official religious doctrine or the expectations of religious officials.

The Office of the Chaplain and the Human Rights and Equity Offices acknowledge that rather than Queen’s having their own religious accommodation policy, they rely on the Ontario Human Rights Code to inform the way that they manage religious diversity. Where these Offices differ is in their understanding of the role that religious officials play in determining which requests for religious accommodation are to be granted and which are not to be. The Office of

⁵⁶ The Human Rights and Equity Offices representatives stated that it was their objective to have interfaith faith dates included within the University Events Calendar.

the Chaplain sees her role as the “go between” between University teaching staff and religious officials who are able to inform her, and consequently instructors, regarding the intricacies of the religions, religious festivals and religious practices that are in need of accommodation.

Alternatively, the Human Rights and Equity Offices acknowledge that when dealing within the confines of the Ontario Human Rights Code definition of “creed”, the role that religious officials have the ability to play in helping to determine the legitimacy of requests is negligible. Therefore, although the Office of the Chaplain and the Human Rights and Equity Offices see each other as partners in dealing with questions of religious accommodation, they are examining the question from two alternate positions. This is not necessarily a bad thing, especially if one frames it as varying perspectives contributing to a complex discussion. Where the issue arises is in the fact that the University is not presenting a unified understanding of the rights of students, the responsibilities of instructors or the community’s understanding of student requests for religious accommodation.

University Department Heads and the Question of Authority: Looking for answers in all the wrong places

A sizeable number of the instructors who agreed to and answered follow up interview questions were themselves department heads.⁵⁷ Although they all expressed having experienced requests for religious accommodation, none of the department head participants, with one exception (Professor A), presented themselves as the authority amongst their colleagues on the issue.

⁵⁷ The exact number of instructors who were interviewed that are department heads is unavailable due to confidentiality agreements.

Professor A is the department Head of a large department at Queen's University.⁵⁸ They are the only department head interviewed that believed themselves to be an authority within their department on the issue of religious accommodation.⁵⁹ Due to their partner's Jewish background, they saw themselves as being proportionally more religiously literate than their colleagues, especially in regard to Judaism, the religion they believed most often needed accommodation at the University.

As department head, Professor A decided to institute a policy that was intended not only to deal with requests for religious accommodation, but rather, all accommodations that needed to be made in the event of "extenuating circumstances". The *Declaration of extenuating circumstances* is a document available for students to download and print on Professor A's departmental website (see Appendix 5). Professor A has found that since the institution of this *Declaration*, requests for all accommodations (e.g., varsity sport participation, illness, religion, personal stress, family emergency) based on "extenuating circumstances" have decreased exponentially. They credit this to students' reluctance to lie on a form they have signed, as opposed to requesting via an email or in person. Professor A refers to the requests that have fallen to the wayside as the "spurious ones".

Professor A expects that all students in their department follow the procedure of completing and submitting these *Declarations* to their individual instructors as well as the administrative assistant in order for there always to be a paper trail. The *Declaration* does not ask for specifics, but rather asks for the nature of the extenuating circumstance such as: "religious festival" for a religious accommodation or, as Professor A bluntly put it, "vomit" in the case of illness.

⁵⁸ Professor A is not the Director (= Head) of the Religious Studies department at Queen's University.

⁵⁹ The pseudonyms attributed to each participant are in no way correlated to the first names, last names, faculties or departments of the individual contributors to this research project.

In many ways Professor A's *Declaration of extenuating circumstances* seems like an ideal solution. By putting the onus on the student to declare their need for accommodation and create a paper trail, instructors are not the ones left to determine the limits of "undue hardship" in dealings of religious accommodation. In this circumstance, a religious accommodation is being treated no differently than an accommodation that would be given for a student who felt unwell enough to attend class on a particular day, therefore eliminating the complexity of issues such as "creed" and 'undue hardship' from the topic of religious accommodations in post-secondary institutions.

Following the interview with Professor A, the researcher interviewed Professor B, a member of Professor A's department. When asked the standard interview question regarding whether or not they had received any direction from the University or their department regarding specific procedures to take when requests for religious accommodation occur, Professor B stated that the issue had never been discussed and that their department had no official procedure on the matter. Similar to Professor A, Professor B stated that they would not treat requests for extensions due to religious commitments any differently than they would a request for an extension in light of lack of preparedness, computer issues or a family emergency. Although this "one size fits all" model of accommodating students who require days off or extensions may work, other forms of religious accommodation are not so easily dealt with.

Whether or not Professor B is an anomaly within Professor A's department is difficult to know without having interviewed other members of the department. What is evident is that Professor A's *Declaration of extenuating circumstances* is not as widely used as the department head perceived it to be.

As the only instructor who saw themselves as a knowledgeable authority on issues of religious accommodation, Professor A felt as though the *Declaration* took the onus of responsibility and decision making off the individual instructors in his department and put it onto the students looking for any kind of accommodation. Given that the *Declaration* was not specifically geared to address issues of religious accommodation, it does have some shortcomings, specifically when dealing with issues such as religious conflicts with course content or religious objections to seating arrangements or personal greetings. When asked about this, Professor A gave the example of a course that required the students to perform a dissection: regardless of the reasoning behind why the student opposed the activity, they would all be granted the same type of accommodation.

The example of Professor A and Professor B demonstrates that although department heads may consider themselves to be the ‘go to’ person regarding issues of religious accommodation, there is no telling how individual instructors perceive the matter. Similarly, there is no guarantee that department heads will see themselves as Professor A does: an authority on determining the legitimacy of religious accommodation requests. Professor A took it upon themselves to become an authority on issues of religious accommodation: the University provided no training, and no procedure or policy was recommended by the faculty or administration.

Other department heads interviewed by the researcher in no way felt as though they were equipped with the proper resources to deal with requests for religious accommodation. They not only felt unprepared to deal with requests that they themselves received, but they did not feel as though they were in the place to provide other members of their department with guidance or even the proper knowledge of resources to which to point instructors.

Question #4 asked participants who they would look to in order to determine the request's legitimacy if the request did not appear to have a clear cut answer. This question of the survey permitted participants to enter their own answers under the option of 'other'. While some respondents said that they would speak to their colleagues or University Deans, others did not believe that consulting with available resources was the proper channel to take.

Professor C responded to this question by stating: "I'm knowledgeable enough to decide. No religious authority (like the Chaplain) can interfere with the academic process". Professor C agreed to a follow up interview where they elaborated on this idea. When asked how they would proceed in the event that a request was made that did not have an obvious solution, Professor C referred back to the two memorable requests that had occurred during their tenure at the school: "With the two students that asked for religious accommodations, I knew the students names so I could associate them with their religion through their appearance and ethnic traits". Not only did Professor C feel as though a student's evident ethnicity or religiosity was sufficient "proof" of religiosity, this instructor understood the overarching idea of religious accommodation to be fine as long as students are prepared to keep their religiosity to themselves, therefore defeating the purpose of religious accommodation as its mandate is equity as opposed to the masking of religious identity.

Professor C's belief that resources such as the Chaplain's office are a detriment to the "academic process" is but one reason why a more open discussion regarding religious accommodation in post-secondary institutions is vital.

University Deans: Policy not Practice

When responding to Question #4 of the survey, instructors named numerous University officials as the resource they believed to be most knowledgeable regarding issues of religious accommodation. These responses included: the Arts and Sciences Office Associate Deans, Arts and Sciences Dean of Undergraduate Studies, faculty relations office (Associate Vice-president – faculty relations and Associate Director – faculty relations), Queen’s University Faculty Association⁶⁰, Associate Dean of Law, student accommodations department⁶¹, the University Ombudsman and the Registrars Office. In order to determine whether or not these University officials felt as though answering queries regarding student requests for religious accommodation was a part of their job profile, all of these offices (that actually exist at the university) were contacted and asked to respond to the following question: could you please outline what you believe your responsibilities to be in dealing with instructors who are unsure how to respond to requests for religious accommodation from students.⁶²

The Associate Director of Faculty Relations responded to the researcher’s query on behalf of his office as well as the Associate Vice-President (faculty relations).⁶³ The Associate Director started off his response by stating that the first step his office would take would be to refer “faculty members to colleagues who have direct responsibility for such matters”. The Associate Director did not divulge who these faculty members or colleagues were specifically. The Associate Director then stated that the office would direct faculty to the Human Rights Office page where they could find material on “creed” as an Ontario Human Rights Commission

⁶⁰ QUFA was contacted numerous times regarding their participation in this project; all attempts at contact went unanswered.

⁶¹ This department does not exist.

⁶² Given that all Queen’s University Officials were responding to the researcher’s query in their official capacity, their titles have not been disguised.

⁶³ The query was responded to via email on May 18, 2015.

sanctioned ground for discrimination. In addition to directing instructors to the online information regarding “creed”, the Faculty Relations office would recommend that instructors complete free, online training on human rights, including, but not limited to issues of religious accommodation. Online tutorials are provided by the Human Rights Office and are intended to provide Queen’s University Community members with basic, applicable information regarding Canadian and Ontario human rights legislation and protocols.

Throughout the follow-up interviews conducted with Queen’s University teaching staff, one of the common themes articulated was the bureaucratic nature of the post-secondary system, which resulted in teaching staff being continuously bombarded with emails and recommended online tutorials that the majority said they never took the time to read or complete. This was brought up when the researcher asked teaching staff if the University had ever provided documentation to teaching staff on issues of religious accommodation.

Professor D, the undergraduate chair of a University department stated the following regarding the influx of information and recommendations to take online tutorials via email sent to instructors on a weekly basis and whether or not they have ever received information regarding how to proceed with complex requests for religious accommodation: “You don’t remember [anything you’ve read] until you’re confronted with the issue... that’s just the nature of work in a bureaucracy... you don’t remember all the forms that you’ve read, it doesn’t mean that they’re not there, I just have no idea”. Professor D’s frustration with the bureaucratic way the University distributes information was in no way isolated.

The Faculty Relations Office’s insistence on using online tutorials as the primary resource for instructors seeking advice dealing with complex requests for religious

accommodation is unrealistic and demonstrates the gap between the needs of instructors and the resources available.

In their follow up interview Professor E, a Queen's University department head, discussed their experience with a complex question of religious accommodation and the University's failure to provide adequate resources. Less than five years ago, in the few weeks leading up to April exams, a student in Professor E's large course approached them with an issue regarding the scheduling of the exam. The exam was scheduled for the Saturday evening between Good Friday and Easter Sunday. This student was adamant that their personal religiosity required them to attend Saturday Mass with their family, outside of Kingston, although in no way was it prescribed as a requirement by the student's religion. This personal commitment prohibited the student from taking the exam as scheduled. Professor E's initial reaction was not to permit the accommodation as they felt as though it would invite other student's to try and receive the same accommodation in order to take advantage of the long weekend. Regardless of the fact that the exam schedule had been released months prior to the student's request for religious accommodation, the student was adamant that the University make an exception and allow the accommodation.⁶⁴

Professor E did what they thought was necessary: researched the religious tradition, contacted the responsible faculty Dean as well as the University Chaplain. Professor E received different recommendations from each contacted resource: the Chaplain recommended providing the student with a "friendly accommodation" (the religious tradition stated that attending Mass on Saturday was in no way mandatory and thus did not need to be recommended) and the faculty Dean deemed themselves unsuited to deal with the issue as the Mass did not occur on an

⁶⁴ This example demonstrates that although the majority of religious accommodations concern individuals who identify with minority faith groups, there are instances where Christian students require religious accommodations.

‘organized feast day’ and thus, they had no protocol on the matter.⁶⁵ Professor E was consequently left to their own devices to come to a conclusion regarding how to proceed and made the decision to permit the accommodation, as it would have been more problematic to deny it.

Professor E’s experience with this religious accommodation request is important for numerous reasons, one of which being that this case involved a Christian accommodation. It is important to discuss student requests for Christian accommodations as many instructors interviewed stated that they believed accommodations only arose regarding minority religious traditions.

Professor F, the head of another department, stated in their interview that we hold non-Christian students to higher standards than Christian students when it comes to expecting them to be familiar with, and divulge details of, their religiosity in order to receive accommodations. That is, the University expects non-Christian students to be familiar with faith dates and upfront about their accommodation needs whereas Christian students fall under the radar given that their holidays are accommodated by statutory holidays. Professor E’s experience demonstrates that this is not always the case.

Professor E’s encounter with religious accommodation demonstrates that although questions of religious accommodation usually arise in regard to non-Christian religious practices, there are instances where Christian students do need to be accommodated, specifically when they choose to enact their religion in ways that fall outside the mainstream of Christian practice.

In contacting religious authorities, the University Chaplain and the faculty Dean, Professor E was attempting to utilize the resources available. This instructor was hindered by the fact that although these offices all consider themselves to be ‘authorities’ on issues of religious

⁶⁵ The idea of ‘friendly accommodations’ will be discussed later in this paper.

accommodation, there was no consensus between them regarding how queries should be dealt with. This therefore leaves already overwhelmed instructors to come to conclusions on their own, without the help of resources provided by the University. If Professor E had utilized the Interfaith Calendar provided by the Human Rights Office, they would have had no further insight regarding how to proceed. Additionally, chances are that an online tutorial would not have pointed Professor E towards information that would have helped make the decision process easier.

Professor E was told by their faculty Dean that regardless of the fact that the student had received the exam schedule months prior to bringing up the religious conflict, that they should still go ahead and grant the student their request for religious accommodation. That goes against the Ontario Human Rights Code list of rights and responsibilities, which explicitly states that individuals requesting the religious accommodation must give adequate notice. Professor G spoke at length about the University's lack of concern for the rights of instructors in situations similar to Professor E's:

I go in [to my classes] and I say no late papers, unless you're sick or have had a death in your immediate family because I think, imposing a kind of discipline on everyone is good for class morale and sets a clear expectation and teaches them something, which should be the bare minimum of an education, which is "turn in your work on time". Once your pedagogical preference for an equitable classroom gets ravaged by all of these special accommodations and then students see well "so and so" is turning their paper in late or "so and so" seems to get an extension on this but I can't, to me, as an instructor it corrodes the equity I try and create in a class, for reasons you cannot explain to students: "why did so and so get to turn this in on this date"... I think it interferes with your ability to treat all students equitably.... This is a secular institution as far as I am concerned and so I don't know why we acknowledge religious holidays but the trend is... which you can see with all the discussion of depression and mental health, is that whole new categories of accommodations are being created every year as certain issues rise and others fall and so as an instructor you're confronted with so many reasons to accommodate, it's gone.... The ship has sailed and you can see your authority in the classroom dwindle each time you have to allow an exception to a policy you've created, which you believe to be both administratively and pedagogically sound.

There is no doubt that instructors have the obligation to accommodate students who, following the regulations set out by the Ontario Human Rights Code, ask for religious accommodations. The sentiments that Professor G expressed regarding their feeling that instructors have lost all ability to say “no” to any type of accommodation is unacceptable and does jeopardize the state of education within the University. When the researcher asked Professor G whether they follow a certain type of procedure when asked to accommodate a student’s requests, they stated:

Not anymore, because it is always seconded by someone down the line and it’s not worth the effort to discern whose faking and who’s real. If a student comes to you a few days before to say they can’t hand something in they’ve known about for months because of a religious accommodation, in your gut you’d want to say well you knew about it... it would be interesting to put it in a syllabus, if you see a conflict with a due date then your paper is due the day before... but now you just surrender.

If the University is going to utilize the Ontario Human Rights Code as their “go to” policy for dealing with religious accommodation requests, they must use the Policy in its entirety. The code explicitly states that the person requesting the accommodation must “Provide notice of request in writing, and allow a reasonable time for reply”.⁶⁶ “Reasonable time” does not mean days before an examination or hours before an essay is due. “Reasonable time” must account for the time an instructor needs to evaluate the request, contact any resources if necessary and reply to the student prior to when the accommodation is needed in order for the student to make the arrangements necessary for the accommodation. If Queen’s University is unwilling to move towards creating a religious accommodation policy of their own and want to defer solely to the Ontario Human Rights code, they must do so in its entirety in order to preserve the morale of University teaching staff who feel as though they have had to “surrender”. Professor G articulated this sentiment when they explicitly stated: “Who gives a damn... and once that spirit

⁶⁶ Ontario Human Rights Commission, “Policy”.

enters your teaching, it's a pernicious thing"; this is the problem at hand that needs to be remedied before it saturates the 'academic system' so many instructors feel is being jeopardized.

Undue Hardship, 'Friendly Accommodations' and a Lack of Resources

Nearly all of the instructors that agreed to follow up interviews stated that the majority of requests for religious accommodation that they receive are from Jewish students. Although the familiarity of instructors with Judaism varied, all instructors interviewed as well as many instructors who limited their responses to the survey, spoke of Jewish students asking for religious accommodations that had to do with receiving time off or extensions on assignments for religious holidays as well as the time needed to travel home to be with family for these occasions.⁶⁷ One holiday that was brought up in many interviews and in survey responses was Hanukkah, specifically because it usually falls near or during the December examination period.⁶⁸ What makes Hanukkah an important holiday to discuss is the fact that it has no religious objections against work or school. Additionally, it does not require fasting or the attending of religious ceremonies. Yet, many instructors stated that Hanukkah is the holiday that students most often request time off for.

In regard to responding to complex requests for religious accommodation, Professor A spoke about Hanukkah:⁶⁹

⁶⁷ Given the number of instructors who spoke about having Jewish students ask for religious accommodations it would be interesting to know whether they are the largest minority religious group at Queen's University or whether they are just the most vocal regarding their need for religious accommodations.

⁶⁸ The researcher recognizes that in Question #3 of the survey, which asked participants to identify the nature of religious accommodation requests that they have received, it would have been beneficial to be more specific in order to identify specific holidays that most often demand accommodation.

⁶⁹ As previously stated, Professor A believed themselves to be the department authority on Judaism as their partner self-identifies with the religion.

Hanukah is one of the least important holidays and yet we continually have students who act like it is major and vital to the central dogma of Judaism... and that's just not legitimate... It is not a significant holiday, it does not correspond with a particular period, I know there is a desire to spend time with your family, but it's not the kind of holiday that I would normally accommodate if there was any kind of problem to do so.

The question of whether or not instructors should accommodate a holiday like Hanukah is complex and made more complex by Ontario's definition of "creed". If a student were to state that the observance of Hanukah was integral to their religiosity, an argument could be made that would oblige instructors to accommodate student requests for accommodations. Yet, the vast majority of the time, students are not invoking the Ontario Human Rights Code's definition of creed; they are more simply asking instructors to move exams in order for them to spend Hanukah at home with their families.

The University Chaplain spoke directly to this issue when she shared the story of one student who approached her after having been denied time off to go home to be with their family for Hanukah. The student stated that they felt as though this was the "final straw" and felt inclined to leave the University because of the issues they had experienced trying to get time off for various Jewish holidays over the course of their tenure at the University. Of course, we know very little about this specific example. Yet, what is made clear is that although Professor A may deem Hanukah to be "one of the least important holidays", this is not a sentiment that is necessarily shared by practitioners. Consequently, although Professor A's understanding of Judaism may not emphasize Hanukah, there is nothing to say that one of their students might feel differently and feel as though it is central to the enactment of their personal "creed".

Given the relative lack of importance that Hanukah observance has within Judaism and the fact that there are no religious requirements to the observance of this eight day long celebration, instructors would be within their right to state that accommodating Hanukah goes

against the Canadian Supreme Court statement, which states that “trivial and insubstantial accommodations that do not interfere with or threaten actual religious beliefs or conduct are not obligatory to accommodate”.⁷⁰ Section 3.5 of the Ontario Human Rights Code addresses the discrepancy between the Canadian Charter of Rights and Freedoms interpretation of “Religious Freedom” and “religious accommodation” that draws the line at “trivial and insubstantial accommodations” and the Ontario Human Rights Code, which appears to say very little on the topic:

While the *Charter* analysis has tended to focus on individual liberty and allow for wide scope of interpretation of what constitutes minimal infringement, the human rights approach focuses on goals of equality and equal access to and enjoyment of societal goods, benefits and services, imposing a duty to accommodate limited by undue hardship....⁷¹

Presented with this dilemma, the Queen’s University Chaplain discussed ‘friendly accommodations’:

[Hanukah] is the grey zone, legally there is no obligation, for either Hanukah or Passover, there are some days where people can’t work, the problem we get into is that culturally, people want to be home with their families on their particular cultural/religious holidays and the Christians/cultural Christians get to do that no matter what but the other students have a barrier because they don’t get to be home with their families. There is no religious obligation to be home with your family but that doesn’t mean it’s not really hard on their heart... so what I tell instructors is that they have no legal obligation but if its humanly possible for them to do what we call a “friendly accommodation” to allow that student to be home with their family is obviously a generous thing that they have the option of doing.

The Queen’s University Chaplain touches on two essential points in her discussion of “friendly accommodations”: the advantages experienced by Christian and culturally Christian students that

⁷⁰ Ontario Human Rights Commission. "Human Rights", 70. In a survey response, one Professor spoke of an instance where they utilized the Charter guidelines for “trivial and insubstantial” religious accommodations when a student requested time off without penalty to go the Christian themed theme park “The Holy Land” in Orlando, Florida. The Professor deemed this a “trivial and insubstantial” element of religious practice and therefore did not give the student permission to attend without academic penalty.

⁷¹ Ontario Human Rights Commission, “The Ontario Human Rights Code”, 2015.

follow mainstream Christian traditions and the fact that in these “grey zone” situations, which occur in religious accommodation requests from all represented religions, instructors have the final say on how these accommodations are dealt with.

Consequently, we must question whether “friendly accommodations” should follow the same rules of “undue harm” that formal religious accommodations follow.⁷² Although the Queen’s University Chaplain recommends that instructors try and make the “friendly accommodations if it is “humanly possible”, whether or not instructors allow these accommodations has more to do with available resources. On the topic, Professor A stated: “A lot of times you’ll have an alternate exam set up for people and it really makes no difference to you if someone else sits it....” Professor F articulated a similar sentiment when they stated:

We do not have a good ratio of faculty and teaching assistants, other staff, who proctor things, so when something unusual happens, it is really quite difficult to accommodate, not because you do not think someone should be accommodated but just practically speaking, it is hard.... We’re missing people to supervise as well as the space to hold extra things... it would be useful to have some help in thinking through how to design syllabus or curriculum differently so they can be more flexible... it doesn’t seem right as far as human rights go to say we won’t accommodate but we don’t have the institutional resources to accommodate everyone... we need to rethink and that is a bigger fix.

The sentiments expressed by Professor F are representative of larger University issues that impact more than just questions of accommodation. Yet, it demonstrates that the allocation of “friendly accommodations” that are in no way legally binding, are not as simple as whether or not an instructor deems the accommodation “humanly possible”. Given the fact that instructors feel bogged down by the different types of accommodations that they are left to navigate alone, accommodations that are legally binding and do have the potential to greatly help a student are

⁷² Accommodation, <http://www.queensu.ca/humanrights/advisory/issues/accommodation.html>, June 2, 2015. The only online resource explaining “undue hardship” that Queen’s University provides their community is the following paragraph: “Accommodation can only be denied if the University or any of its supervisors can provide quantifiable evidence that the required accommodation would pose significant and irreparable harm to the operation of the University. Some considerations in determining undue hardship include: cost, outside sources of funding, if any, and health and safety concerns”.

regarded as a pain and a detriment to the “academic system”. Professor G spoke to this idea of “friendly accommodations” when they stated: “It’s an idea that on the surface sounds generous and charitable but it leads to making classrooms more chaotic, especially when you take into account all of the other forms of accommodation.”

Non-essential, “friendly” accommodation requests give insight into the fact that instructors are barely able to accommodate the students whose requests are legally binding. When an instructor is presented with a situation that would result in granting a “friendly accommodation” or in some cases, a straight forward religious accommodation, there are often doubts regarding the sincerity of strongly held religious belief, yet the majority of instructors interviewed stated that it is not within their best interest to question whether or not a student is truly as religious as they are claiming to be.

As previously stated and as was reiterated by the representatives from the Human Rights and Equity Offices, it is unlawful to ask for any type of “proof” of religiosity, be it from the student’s religious official or from a parent. Therefore, the decision as to whether or not to grant a religious accommodation relies solely on the honour system, both on the part of the instructor who grants the accommodation, as well as on the part of the student who is to assume that the instructor is doing everything within the limits of “undue hardship” to accommodate. Only four instructors who participated in the survey stated that they would require a student to provide proof of religiosity from a religious official, akin to a note from a doctor in the case of a medical accommodation. This number may seem negligible, but actions still need to be taken by the University to ensure that this practice never occurs.

Professor D spoke to the issues with asking for “proof” of any kind when dealing with student requests when they stated:

When you get into a situation where you're asking for proof of everything all the time, it becomes sort of absurd. Are you an adult yet? Are you sometimes going to lie? How concerned am I? Not that concerned. What it comes down to for me is the question of is what you're doing creating unfairness for the other people in the class and if it is, then it's a problem, if it's not, then... you're not going to do as well – there will be other types of consequences to missing classes and such, it's not for me to hold your hand or tell you off. If I started saying “well I don't believe that you're really Jewish...” what a ridiculous thing to start saying... or I don't believe that you're entirely committed to the festival of Passover... of course we have our suspicions about this but... how much time do you have to dwell on it? Do you want to distrust everybody all the time – no. There have been a few times where I just know you want the long weekend....

Professor D hits on numerous important points specifically in regard to a statement that was reiterating by the Human Rights and Equity Offices: no one has the authority to judge an individual's religiosity or spirituality. Consequently, in order for the system to function productively, the person requesting the accommodation, as well as the person granting the accommodation, must understand their rights and responsibilities that have been set out by the Ontario Human Rights Code.

Many instructors that agreed to participate in a follow-up interview stated that they avoid the issue of “proof” and the validity of requests by treating religious accommodation requests for time off or extensions as they would a request for time off or extension in the event of exhaustion, lack of preparedness or a broken computer. Given that students are taking time off in order to observe a religious holiday and not to do academic work, there should be no issue with taking an exam or submitting an assignment the day prior to the religious festival. Yet, many instructors stated in the surveys as well as in follow up interviews that it was counter productive to propose alternatives such as having students write tests or exams or submit assignments the day before the religious holiday as students were more likely to rescind their request for accommodation than to submit work or write a test the day before the holiday.

Although never explicitly stated, one could attribute instructors' reluctance to discuss the intricacies of religious accommodations to the taboo nature of religion and the fact that many instructors believe religion to be a "private" matter that should not have to be discussed or elaborated. There is not an easy solution to this issue as an individual's personal beliefs regarding the place of religion within the public sphere is often deeply held. It is within the rights of instructors to ask students to explain why they need the specific religious accommodation that they are requesting. Rather than asking for proof, instructors should be made to feel more comfortable asking students to elaborate on their needs in order for them best to be met.

The anecdotes presented in this project have illustrated the types of issues, queries and concerns that instructors face when trying to deal with religious accommodation requests from students. Although resources like faculty Deans, the University Chaplain and the Human Rights Office and the Equity Office exist, the services they are offering do not necessary have the ability to help instructors manage untimely and complex requests. The logical next step for this project would be to talk to students vis-à-vis how they feel their instructors and their University meet their needs for religious accommodation. Instructors are only of the half the equation. In order for the University to make meaningful strides towards accommodating students and preserving the rights and dignity of instructors, active measures need to be taken in order to determine what both sides feel as though is missing from the conversation on religious accommodation at Queen's University.

Section Six

Moving Forward: Recommendations and Reflections

The following recommendations are derived from the results of the survey, interviews with the University Chaplain and the Human Rights and Equity Offices as well as the follow-up interviews with instructors who indicated on their surveys that they would be interested in participating in a follow-up, in person interview.

University Policy Statement on Religious Accommodation

The Human Rights and Equity Offices representatives discussed the potential issues with an official Queen's University Policy on religious accommodation that would be used congruently with the Ontario Human Rights Code. Alternatively, the two anonymous representatives proposed a "policy statement" that would emphasize the need for instructors to make an active effort to accommodate requests whenever possible. The policy statement would also benefit from including the Ontario Human Rights Code's list of rights and responsibilities for individuals requesting religious accommodations and individuals who receive these requests. Additionally, this policy statement would provide contact information for resources such as the Ontario Human Rights Code, the Canadian Charter of Rights and Freedoms, the interfaith calendar, the University Chaplain's Office and the Human Rights and Equity Offices. One issue that was discussed was that of marketing tools such as the interfaith calendar. A way to ensure the active use of a University policy statement on religious accommodation would be to mandate its posting on all undergraduate and graduate course syllabi thus ensuring that instructors and students alike can familiarize themselves with their rights and responsibilities in regard to religious accommodation requests.

Amendments to Courses Syllabi

Currently, instructors are not obligated to include any information regarding accommodations of any kind on their course syllabi. Although some instructors take it upon themselves to include information regarding the University's policies on health and disability accommodations, whether or not they do so is completely up to them. In order to ensure that students follow the Ontario Human Rights Code guidelines in regard to giving their instructors adequate time to respond to requests for religious accommodations, instructors would benefit from including a statement (such as the suggested University policy statement) on the matter on their course syllabi. It would be within the rights of instructors to ask students to submit all requests for religious accommodation within the first three weeks of a course. This would consequently give instructors time to process the request and seek guidance from resources such as the Human Rights and Equity Offices or University Chaplain's Office if necessary. Unlike the *Declaration of Extenuating Circumstances* used by Professor A's department, a simple note on a syllabus would acknowledge the difference between a request for a religious accommodation and the need to take time off for illness. The note on the syllabus could also include a statement regarding examinations that would give students between ten days and two weeks after the exam schedule is posted to discuss any potential conflicts with the instructor.

Varying Perspectives on the Ontario Human Rights Code

The noticeable discrepancy between the way that the University Chaplain's Office and the University Human Rights and Equity Offices understand the role of religious authorities in matters of religious accommodation is not necessarily something that needs to be changed. The

Human Rights and Equity Offices and the University Chaplain's Office would benefit from a better branding of their differing mandates. Where the University Chaplain's Office is more concerned with treating students as individuals with human needs fueled by familial love and connections to tradition, the Human Rights and Equity Offices examine each case within the confines of the Ontario Human Rights Code as well as precedent setting case law. By outwardly defining their differing mandates, instructors can make informed decisions regarding where to seek guidance from depending on their specific, case-by-case needs.

Department Heads: A Potential Resource

One of the issues most often articulated by instructors in both the survey as well as follow-up interview was that of functioning within a bureaucratic system. One way to eliminate the need for online resources such as those recommended by the faculty Deans is to provide department heads with the necessary information regarding how to respond to requests for religious accommodations. Given the fact that the majority of instructors indicated in the survey that their department heads would be the first resource that they would consult in the event that they were presented with a complex request, it is irresponsible not to equip department heads with even rudimentary knowledge regarding the rights and responsibilities mandated by the Ontario Human Rights Code for instructors dealing with religious accommodation requests. By moving knowledge on the issue down to the departmental level, there is great potential to alleviate the bottleneck that occurs when all instructors are seeking guidance from the same administrative personnel. The question remains how best to equip department heads with this information without the use of online tutorials or repetitive emails. By mandating instructors to include a brief University policy statement on religious accommodation within their course

syllabi, department heads would empower their instructors to gain a better understanding of their rights as mandated by the Ontario Human Rights Code.

Improving Online Resources

The online resources that are currently available through the Human Rights and Equity Offices websites are insufficient and ineffective. Without providing proper context for the precedent setting cases, these online resources are not properly equipping Queen's University community members to deal effectively with complex requests for religious accommodation. In order to improve these resources while still preserving the Human Rights and Equity Offices' mandates to seek guidance from these cases as well as the Ontario Human Rights Code, the legal language must be contextualized and made relevant to the Queen's community. Efforts must be made to provide instructors with examples that they are likely to see within the classroom as opposed to ones that do not apply to the post-secondary institutional setting. Additionally, it is essential that Human Rights and Equity Offices online resources identify the rights and responsibilities of students as well as instructors when dealing with requests for religious accommodation.

In keeping with the recommendation for the University Chaplain's Office to better brand their mandate to contact religious officials in order to provide instructors with further information on the religious traditions they have been asked to accommodate, it would be beneficial if instructors could submit their requests for further information online via the Chaplain's Office website. Although Chaplain Johnson stated that she was looked to as an authority within the University community regarding issues of religious accommodation, nowhere on the Chaplain's Office website is religious accommodation mentioned. In 2015

instructors are most likely to use online resources to identify where to seek guidance within the University community on issues such as religious accommodation. The fact that Chaplain Johnson does not identify herself as an authority on issues of religious accommodation online could be but one reason why so few instructors identified her as their first point of contact when confronted with a complex query. Additionally, given the way that the Chaplain's Office handles queries regarding requests for religious accommodation, it would be beneficial for the Office to list the different religious traditions with which they have relationships in order for instructors to determine whether or not contacting the Chaplain's Office would benefit their individual case of inquiry.

Conclusion

It is impossible to predict how a case similar to that which happened at York University would have been handled at Queen's University. What is evident is that questions of religious accommodation at Queen's are common, unpredictable and unevenly handled. What Queen's is not lacking is available, qualified resources. The Queen's University Chaplain's Office as well as the Human Rights Office and the Equity Office have the potential to productively, constructively and legally-mindedly guide instructors through the complex web of the Ontario Human Rights Code, the Canadian Charter of Rights and Freedoms, precedent setting Canadian Supreme Court judgments as well as "human" and "friendly" options for accommodation. The issue that so often appeared in both survey responses as well as follow-up interviews was that of instructors feeling bogged down by an academic system that they no longer perceive is on their side. Rather, instructors see an academic system plagued by bureaucracy, a lack of human resources and a misunderstanding of when to prioritize student interests for the sake of pleasing "the customer".

Queen's University's decision to utilize the Ontario Human Rights Code as their "go to" religious accommodation policy is sane in the sense that the Code is equipped to protect both the rights of individuals who need accommodations as well as the rights of individuals being asked to provide religious accommodations. Where the University has failed is in familiarizing instructors and students with the Code that they claim is intrinsic to the productive functioning of the institution. Therefore, neither party is given the tools necessary to navigate the system effectively.

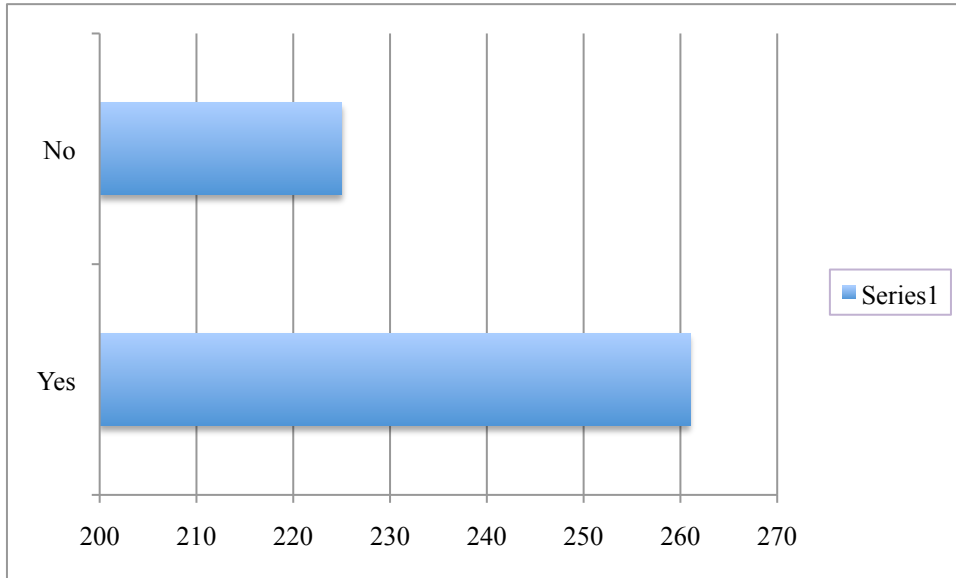
The recommendations outlined here are intended to make the system more transparent and consequently provide all stakeholders with the knowledge necessary to deal with religious accommodation queries from an informed perspective. By including a University policy statement on course syllabi, instructors are making the effort to accommodate students but leaving the onus of responsibility on the student to fulfill their end of the bargain, as outlined by the Ontario Human Rights Code.

The University Chaplain's Office and the Human Rights and Equity Offices have the potential to act as great resources to the Queen's community. The only way that can happen is if they are willing to declare outwardly their mandate in regard to what they can do for instructors (and students) seeking guidance in regard to religious accommodation requests. Additionally, it is vital that both of these Offices improve their online resources as directed by the above recommendations.

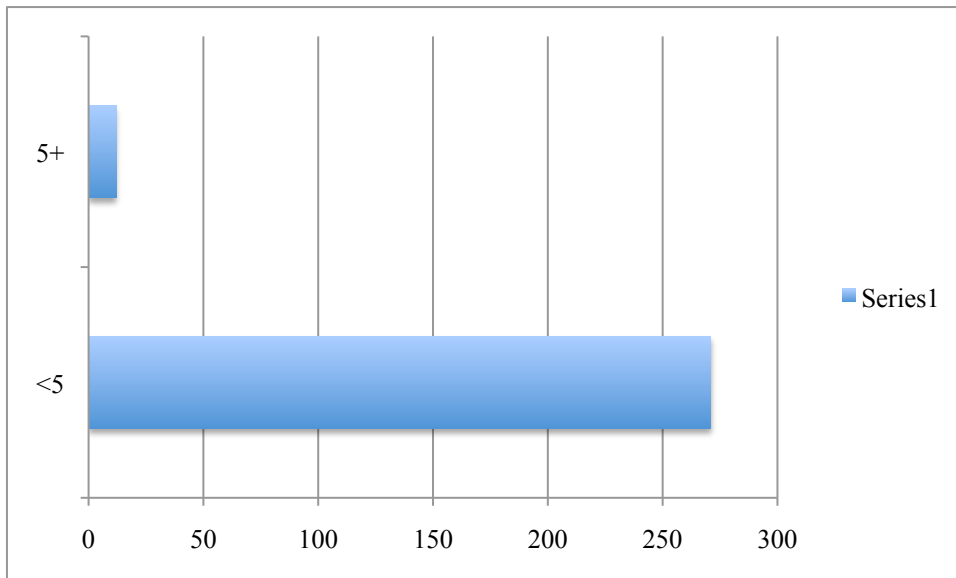
As Canada continues to diversify and the question of reasonable religious accommodation remains a central part of discussions on diversity management, post-secondary institutions will have to take a closer look at how all vested stakeholders are equipped to deal with increasingly complex religious accommodation queries. Although the Ontario Human

Rights Code is a starting point, it is unrealistic for post-secondary institutions to believe that it can solve all religious accommodation requests in all circumstances. In order for post-secondary institutions to tackle questions of religious accommodation productively, they must prepare themselves to help all vested stakeholders to inform themselves and proceed in good faith.

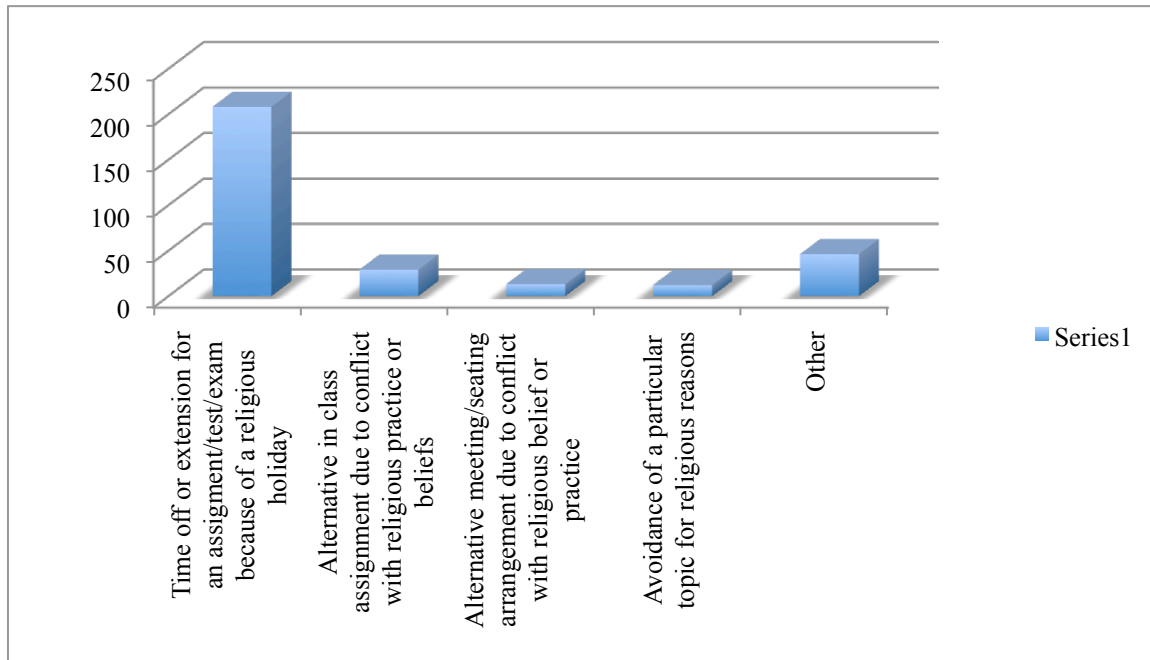
Appendix 1: Have you ever received a request for a religious accommodation from a student?



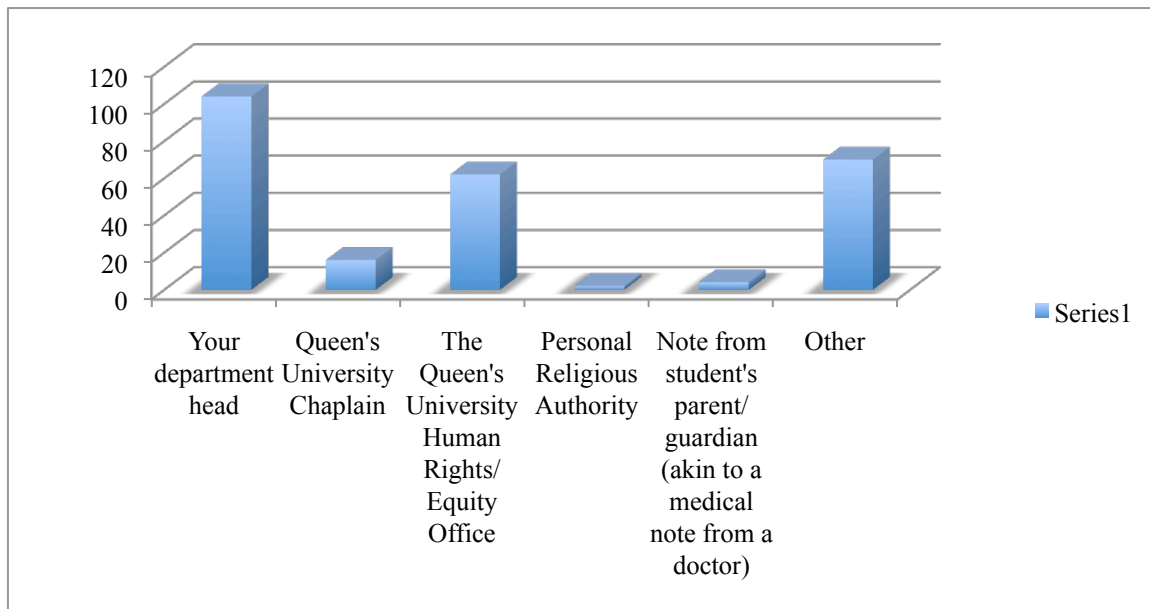
Appendix 2: How many requests for student religious accommodations do you receive (on average), per semester?



Appendix 3: What are the nature of student religious accommodation requests that you have received?



Appendix 4: If you were unsure how to proceed regarding a student request for religious accommodation, which resource(s) would you contact?



Appendix 5: Professor A's Declaration of extenuating circumstances

Student Name (Print) _____ Student Number _____

Declaration of Extenuating Circumstances for Missed Exams

Fill out 2 copies of this form and bring both to the course coordinator within 72h of your exam.

In an effort to ensure that the guidelines for academic integrity are applied to all students, you are asked to sign this declaration summarizing the extenuating circumstances that caused/will cause you to miss an exam.

In signing this form, you acknowledge your awareness of the guidelines for academic integrity regarding Missed Exams, as outlined on the Biology Department Website (<http://www.queensu.ca/biology/undergrad/integrity/missexams.html>)

I (*insert name*), _____ hereby declare that due to extenuating circumstances, I was (or will be) unable to write the exam for the following course BIOL _____. My extenuating circumstances and/or supporting documentation are (*describe below*):

By signing this form, you acknowledge that this statement is truthful. If the statement is false, this will be considered a departure from academic integrity and will be investigated accordingly.

Student signature _____ Date _____

Bring your signed form to the instructor with any supporting documentation. He/She will sign below to acknowledge that the supporting documentation was received and approved, and that you will be permitted to write a makeup exam.

Professor/Instructor signature Date

Optional: The makeup exam will be scheduled as follows:

1 Signed Copy for the student (retain as evidence that the request was approved by the professor).

1 Signed Copy for the Professor/Instructor. This copy will be retained by the Department for 1 year. It will remain confidential but may be consulted by the UG Chair where questions of academic integrity arise.

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