Veganism as a Human Right? Ontario's Expanded Definition of "Creed"

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In a new policy released in December 2015 (the "Policy"), the Ontario Human Rights Commission expanded the definition of "creed" in an attempt to capture Ontario's modern landscape of belief. But how far does it go? A vegan may, for example, consider their veganism to form a central part of their identity. Would this be protected by the Policy? And is veganism as worthy of protection as religious beliefs, for example?

The argument that beliefs such as veganism should receive human rights protection is bolstered by statistics indicating that today's society is becoming less religious and more secular, and that people tend to draw their beliefs from a variety of sources. In 2011, over 7.8 million Canadians responded that they had no religious affiliation (including agnostics, atheists, and humanists), compared to about 65,000 traditional or indigenous spiritualists, 330,000 Jews, 367,000 Buddhists, 500,000 Hindus, 1 million Muslims, and 22.1 million Christians.[1]

While Ontario 's *Human Rights Code* (the "Code") has always protected creed in the areas of employment, housing, contracts, services, and professional associations, it has never provided a definition of the term. Historically, the Human Rights Tribunal of Ontario has focused on "creed" as a synonym for religion, and the Commission's previous policy on the subject — in place since 1996 — was entitled "Policy on creed and the accommodation of religious observances."

Now, however, the Commission has provided expanded guidance for the Tribunal and for employers and others with Code obligations. The Commission explains that the fact Ontario has chosen the term "creed" for its human rights legislation — as opposed to "religion", "religious belief", or "religious creed", as used elsewhere — suggests that "creed may have a meaning that is distinct from these other closely related terms."[2]

The Commission provides the following framework for determining whether a Code-protected creed has been established:[3]

Given the evolving nature of belief systems over time and the need to apply a liberal and purposive interpretation to Code protections for creed, this policy does not provide a universal, "once and for all" definition of creed. However, the following characteristics are relevant when considering if a belief system is a creed under the Code . A creed:

1. is sincerely, freely and deeply held;
2. is integrally linked to a person's identity, self-definition and fulfilment;
3. is a particular and comprehensive, overarching system of belief that governs one's conduct and practices;
4. addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a Creator and/or a higher or different order of existence;
5. has some "nexus" or connection to an organization or community that professes a shared system of belief.

In its summary of the Policy online,[4] the Commission also offers the following guidance:

Given the breadth of belief systems that have been found to be a creed under the Code — from Raelianism [a UFO religion] to the "spiritual cultivation practices" of Falun Gong — organizations should generally accept in good faith that a person practices a creed, unless there is significant reason to believe otherwise, considering the above factors.

Further, when determining if a creed exists, it is not generally relevant to evaluate the quality, reasonableness, or scientific soundness of the belief system.

While the Policy expands the definition of creed, it does affirm that the term has limits. To date, Ontario has not protected political belief or conviction (though it is possible that a comprehensive philosophical or political belief system could amount to a creed, or could intersect with a creed). Only creeds are protected, and not individual preferences of style or convenience. Human rights protections for creed do not extend to practices and observances that are hateful, that incite hatred or violence against other individuals or groups, or that contravene criminal law. The right to practice or express creed beliefs may also be limited when it interferes with other rights under the Code or the *Charter of Rights and Freedoms* (the "Charter") .

Employers will be required to find accommodations for those claiming creed-based restrictions. As always, an employer's duty to accommodate a person's creed only extends up to the point of undue hardship, and the individual also bears responsibility for actively participating in the accommodation process.

Examples

Employers are required to accommodate those who wear religious attire, those with different days of rest, and those who have other religion-based restrictions or obligations. Similarly, employers are not permitted to engage in constructive discrimination through rules that appear neutral but have discriminatory effects, such as requiring a Rastafarian to shave and cut his hair to comply with a company dress code. The Code also protects against systemic discrimination: a company's regular get-togethers over drinks, seen as important networking and mentoring opportunities, effectively exclude those who do not drink alcohol for creed-related reasons. A failure to provide additional, more inclusive activities could be discriminatory.

Now, these protections could extend to non-religious creed such as veganism. The Policy provides the following example of accommodating a person's creed-based food restrictions:[5]

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

However, the Policy also places limits on this duty. It states, for instance, that "it is not discrimination if a steak house that only serves animal-based products does not accommodate a vegetarian patron... However, a restaurant that already offers vegetarian food options may be required to... [use] cooking utensils that have been cleaned and removed of any traces of meat, unless this can be shown to cause undue hardship."[6]

Other possible accommodation requests might include finding non-leather uniform options, granting exemptions from classroom animal dissections, or not holding important company meetings at meat-only restaurants.

Ontario's new Policy is not entirely without precedent. In 2002, a federal inmate won the right to have a vegetarian meal in prison based on his conscientiously-held, non-religious moral beliefs — though this was based on a Charter challenge and the wording of the legislation governing corrective services.[7] In Ontario, however, the issue had never been decided. In 2012, a student at Ryerson University argued that she had been discriminated against for introducing animal rights issues into her academic work, and that her ethical veganism amounted to a creed. The application was dismissed on other grounds, though, and the Tribunal did not decide whether her creed rights had been engaged.[8] Similarly, the Tribunal opted not to address the question of whether veganism could be a creed when dismissing an application against a housing co-op on the grounds it had no reasonable prospect of success.[9]

While the Commission's new Policy is not binding law, it is seen as authoritative in many cases before the Human Rights Tribunal. Employers should be aware of this updated approach to the meaning of "creed" in Ontario human rights law, and take steps to ensure their policies and practices are in line.

[1] 2011 National Household Survey, Religion.

[2] Policy, page 19.

[3] Policy, page 19-20.

[4] https://www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed.

[5] Policy, page 100.

[6] Policy, page 101.

[7] *Maurice v. Canada (Attorney General)*, 2002 FCT 69.

[8] *Ketenci v. Ryerson University*, 2012 HRTO 994.

[9] *T.A. v. Grace MacInnis Cooperative Inc.*, 2012 HRTO 1123.

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