

Townshippers' Association

Brief

Bill 21: An Act respecting the laicity of the State

April 2019

SUMMARY

Following careful consideration of the proposed changes to existing legislation put forth in Bill 21, Townshippers' Association is compelled to react and highlight issues and concerns as they may apply to Quebec's diverse English-speaking minority language communities; it is our considered opinion that Bill 21 is not a measure that will enhance the values and personal freedoms already enshrined in both the Canadian and Quebec Charters of Rights and Freedoms. The adoption of this bill and the application of Section 33 of the Canadian Charter of Rights and Freedoms as a work around against any potential charter challenges will only serve to deepen divisions among Quebec residents and increase the isolation of minorities.

Parliament, i.e. the National Assembly, must apply the Canadian and Quebec Charters of Rights and Freedoms as *the* measure for the legitimacy of any and all legislation; Bill 21 would see all future laws conform to the radical definition of state secularism it refers to as "State laicity" and as such is an assault on the core values central to a democratic state. In stark contrast to what is outlined in Bill 21, the legal obligations of the state are enshrined in the form of government known as "Constitutional Democracy" whereby even Parliament is bound by the rule of law as outlined in the Charter of Rights and Freedoms. To set aside individual rights in order to impose a set of at-present undefined state values flies in the face of the spirit and application of Western Democracy.

INTRODUCTION

Townshippers' Association insists that Bill 21 be withdrawn; we contend that this bill is an imposition that undermines the intent, purpose and the very meaning of two documents fundamental to a civilized society, the Canadian and Quebec Charters of Rights and Freedoms. How can the Premier claim his government's intent "to unite as many Quebecers as possible"¹ given the measures outlined in Bill 21 guarantee a step backwards for members of Quebec's diverse religious communities and for its minorities in general by essentially legislating which members of society may become teachers, judges, lawyers, municipal workers, school board commissioners, the staff of provincial government bodies, and more². We have outlined our concerns in five parts:

¹ "[Quebec government's proposed secularism law would ban public workers from wearing religious symbols](#)". CBC News. March 28, 2019.

² "[Quebec's new 'laicity' bill to override provincial, Canadian rights charters](#)". iPolitics. March 28, 2019.

THE SEPARATION OF STATE AND RELIGIONS

The opening paragraph of the preamble to Bill 21 states that “the Québec nation has its own characteristics, one of which is its civil law tradition, distinct social values and a specific history that have led it to develop a particular attachment to State laicity”³ however it does not define its specific characteristics, distinct social values nor how the definition of State laicity that appears throughout this legislation is a natural progression from the secular model brought about by the Quiet Revolution of the 1960s. In public discourse, Minister of Immigration, Diversity and Inclusiveness Jolin-Barrette has described Bill 21 as the “logical follow-up” to Quebec’s Quiet Revolution, referencing the period in Quebec’s history where the role and influence of the Catholic church in Quebec society were diminished⁴. With draft legislation that leaves terms such as the “characteristics of the Quebec nation” “and distinct social values” undefined, the introduction of state-sponsored sanctions to be wielded against individuals who display religious characteristics in the public spheres of an undefined Quebec nation can only be interpreted as an attack on every value that affirms individual rights and freedoms. If the intent of Bill 21 is to provide an improved functional model of secular neutrality regarding all matters pertaining to services provided either directly or indirectly by the state, much clarification is required.

Given the close relationship between Catholic Church and State that existed in Quebec in the past, such a bill might be appropriate were it not for the changes brought about by the Quiet Revolution. In fact, Quebec presently functions with as a modern secular society, with the Catholic Church no longer playing a major role in public life. How does Minister Jolin-Barrette clarify the distinction between State laicity as outlined in Bill 21 and State secularism as it is commonly understood by the general public?

Townshippers’ Association asserts that the application of Bill 21 as it is written would take us back to a time when Quebec society was divided along religious lines into *us* and *them* and stands in complete contradiction with Premier Legault’s position that his “goal is really to unite Quebecers” under this legislation.

THE RELIGIOUS NEUTRALITY OF THE STATE

Townshippers’ Association asserts that in the present context, state neutrality should mean that one’s religious affiliation or non-affiliation should have no bearing on hiring, promotion or firing in the public

³ “[Bill 21: An Act respecting the laicity of the State](#)” Minister of Immigration, Diversity and Inclusiveness. Quebec Official Publisher. March 28, 2019.

⁴ “[Quebec’s new ‘laicity’ bill to override provincial, Canadian rights charters](#)”. iPolitics. March 28, 2019.

and para-public service; Bill 21 represents a distressing step backward with regard to the employability of Quebec's diversified population and will have an immediate impact on the career opportunities and futures of thousands of graduating student with visible religious affiliations across the province.

In today's Quebec, especially within the specific context of multisector/industry worker-shortages, both newcomers and established residents with visible religious affiliations must have a chance to acquire meaningful employment based solely upon qualifications. The outcome of State laicity as described in Bill 21, the brand of radical secularism currently being promoted by Quebec's highest level of leadership, is that certain professions are inherently off-limits to anyone who displays religious characteristics in the public spheres of an undefined Quebec nation; promoting an *us versus them* dichotomy in the name of religious neutrality.

THE EQUALITY OF ALL CITIZENS

Another troubling issue in Bill 21 is the nuance that, by invoking the principle of the equality of men and women there is an implication that opposition to the bill implies opposition to the principle of gender equality. This is most emphatically not the case. The equality of men and women is already enshrined in both the Canadian and Quebec Charters of Rights and Freedoms. Why does the proposed legislation place the legitimacy of these Charters in question? We strongly believe that the "State laicity" espoused by Bill 21 is not a value but rather a framework to remove established rights and freedoms while rejecting group difference in the name of common public behaviour and discouraging the entry of those with religious affiliations into Quebec's public sphere.

A pressing question in relation to amending the Charter of Rights and Freedoms is the issue of the undefined characteristics of the "Quebec nation", and by proxy, who is included in this nation? Where is the place of the First Nations communities, English-speakers, visible minorities and those whose religious affiliations are deemed to conflict with what this bill's *Explanatory Notes* refer to as "Québec's cultural heritage that testify to its history"⁵? We argue that Bill 21 is not so much about solving a decades old issue as this government has asserted⁶, but rather a policy to engineer social conformity and blatant discrimination based upon observable differences. Without clear language and definitions, we have no idea how the members of Quebec's diverse English-speaking community, among others, will be impacted regarding their place in Bill 21's "Quebec nation"; presently Bill 21 claims a definition of

⁵ "[Bill 21: An Act respecting the laicity of the State](#)" Minister of Immigration, Diversity and Inclusiveness. Quebec Official Publisher. March 28, 2019.

⁶ "[Quebec's new 'laicity' bill to override provincial, Canadian rights charters](#)". iPolitics. March 28, 2019.

“inclusion” which is, in practice, a definition of “exclusion” based on a set of characteristics that this bill does not explicitly define (Schedules I, II, and III outline who’s freedoms of religious expression are removed but there is no Schedule outlining what qualifies as a “religious symbol” under Bill 21).

FREEDOM OF CONSCIENCE AND FREEDOM OF RELIGION

Townshippers’ Association has serious reservations as to whether the members of Quebec’s National Assembly realize the far-reaching implication of both invoking Section 33 of the Canadian Charter of Rights and Freedoms and amending the Quebec Charter of Rights and Freedoms to accommodate this bill.

Section 33 of the Canadian Charter of Rights and Freedoms invoked within the context of squashing legal opposition to Bill 21’s enactment can only be interpreted by this organization as the Quebec government’s recognition and admission that its proposed legislation does “something that the courts have said violates rights and is not justified⁷”. We find this cavalier approach to the application of Section 33 dangerous and divisive; the necessity of having to enact a highly contentious clause to override established rights and freedoms and muzzle opposition is demonstrative of this government’s orientation towards governance.

Where are the documented complaints about public and para-public service employees using their positions to promote their own religious values, what is the impetus to legally articulate the separate roles and functions of church and state yet again? What facts are at use to demonstrate that this bill is rooted in legitimate and documented concern and not a by-product of the widespread populist narratives that are now part of the public discourse in North America and Europe and the fear created by those narratives?

It is an unfortunate reality that all societies, and Quebec is no exception, include bigots, racists and xenophobes among their ranks who are eager to impose their ideologies and fears upon others. However, with history as our witness, it is these individuals and those discourses who present a clear and present danger to our well-being, and not women wearing head scarves and burkas or men wearing kippahs. Should an individual refuse treatment in hospital by a female physician wearing a head scarf, or a black man, or someone speaking French with an English accent, the focus should be placed on the unacceptable behavior of the bigot and not the victim of intolerance. Xenophobia, like all phobic

⁷ [“A very serious matter’: What is the notwithstanding clause?”](#) CTV News. February 10, 2018.

conditions, is a treatable psychological condition, while bigotry is best addressed through education, contact between and among groups, and, when necessary, with legal intervention. Since Bill 21 provides a platform and legitimacy for discriminating against individuals with visible religious affiliations, we at Townshippers' Association believe that the real issue is what measures this government will introduce to protect those at risk.

IMPLEMENTATION AND ASSOCIATED COSTS

This legislation would require all municipalities, health and social services establishments, educational institutions, and government agencies, as well as companies and individuals working either directly or indirectly for these bodies, to actively discriminate against individuals based upon a dress code. The bill itself does not provide clear definitions of what it considers to be a "religious symbol", nor does it outline what bureaucratic structures might be required to control, inspect and follow-up in the long-term implementation of this legislation, but it is clear that, given the already very public opposition⁸ to its contents, Bill 21 will inevitably require additional spending. The anticipated litigation in order to ensure compliance alone will be costly, endless and sure to cast an indelible black mark upon Quebec; do we know what the total costs associated with Bill 21's implementation will be, financial or otherwise?

CONCLUSION AND RECOMMENDATIONS:

Since the introduction of Bill 21 two distinct points of view have evolved in the public debate regarding the content of this bill. On one hand, is the position that the most fundamental of our values must be to support and encourage the rights and freedoms of all citizens. The role of government is to protect and defend these rights, and as such it must put into place policies and procedures that encourage inclusion and integration of all groups into Quebec society.

On the other hand, is the position that the government must engage in a form of social engineering through legislation that requires individuals and institutions to display what it believes are the collective's desired values by defining and outlawing what is undesirable with the goal of producing uniformity in the public service, and by extension, in the general population.

⁸ "[Lester B. Pearson School Board won't enforce Quebec's secularism bill](#)" Global News. March 29, 2019; "[A very important day: CAQ tables controversial religious symbols bill](#)" CTV News. March 28, 2019.

With such a marked difference in value orientations, this legislation can only further divisions between groups, exacerbate the isolation of minorities, and expose the province to litigation which can serve no useful end. Townshippers' Association strongly encourages the National Assembly to withdraw Bill 21: at the very least, it is a solution looking for a problem and at the very worst it will lead to an escalation in unwarranted acts of bigotry toward members of minority groups. Our Charters of Human Rights and Freedoms work, but only when they are applied; the equality of men and women is already enshrined in law, as is the right to religious affiliation. Newcomers to Quebec, whom we need desperately in a society with a dangerously low birth rate and growing worker shortage, will integrate more quickly if they are made to feel welcome and are able to find meaningful employment, whether in the public service or the private sector. Graduating students with visible religious affiliations need to feel that Quebec is the place for them to establish their careers, families and futures.

Bill 21 is deeply divisive at a time when we should be focusing our energies on building a prosperous, inclusive society; if discrimination is accepted and officially encouraged on the grounds of religious affiliation, is it really out of the realm of possibility that the state will find it necessary to discriminate on other bases (i.e. racial background, sexual orientation, or language) because it serves the ideological interests of the day?

Townshippers' Association strongly believes that withdrawal of Bill 21 from consideration is the only course of action that will promote harmony and equality in today's Quebec.