



Quebec Provincial Association of Teachers

L'Association provinciale des enseignantes et enseignants du Québec

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QPAT Brief on Bill 21: *An Act respecting the laicity of the State*, concerning the prohibition on the wearing of religious symbols in Québec's public institutions

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2019

Following the tabling of Bill 21, An Act respecting the laicity of the State, the Quebec Provincial Association of Teachers (QPAT), which represents the eight thousand (8,000) teachers working in the province's English public school system, presents its position and recommendations with regard to the Bill, the purpose of which is to assert the secularism of our society's institutions. Our comments will focus mainly on the provisions we regard as being problematic, namely those set out in Chapters II, V and VI of the Bill as tabled.

Although QPAT is strongly in favour of asserting the secularity of our public institutions and the neutrality of the services they provide, we object to the fact that the Bill as tabled directly contravenes the Québec and Canadian charters of rights and freedoms by calling into question, without justification, the fundamental rights of some of our fellow citizens. Moreover, the preventive use of the notwithstanding clause to exempt the Bill from examination by the courts – a process we believe is absolutely necessary for such an important decision – trivializes the use of a measure that should be exceptional. QPAT is particularly worried about the impacts a bill such as this may have not only on our fellow citizens from religious minorities, but also on Québec's social climate in general. The Bill, in addition to making certain forms of discrimination acceptable, also runs the risk of exacerbating the xenophobic and Islamophobic views already held by a marginal portion of Québec's population. In QPAT's view, the Government's approach to secularism directly contradicts the values of openness and tolerance that are conveyed by the Québec Education Program, and in doing so, casts doubt on our mission of forming tolerant citizens who are open to the world and to diversity.

QPAT believes, on the contrary, that Québec's society is open, tolerant and democratic. Our aim with this brief is to make a constructive contribution to the current debate and to the process of reflection, with a view to ensuring that the content of the Act, when it is eventually adopted, is conducive to social unity in Québec and does not foster the exclusion and stigmatization of particular citizens. In QPAT's view, it is possible to assert the secularism of Québec's public institutions and ensure the neutrality of the services they provide without placing the burden on the shoulders of the people who work in them.

## **A violation of the individual rights guaranteed by the Canadian and Québec charters of rights and freedoms**

In QPAT's view, the prohibition on the wearing of religious symbols by public employees in positions of authority, including teachers, constitutes a direct violation of the basic individual right to hold religious convictions. *The Canadian Charter of Rights and Freedoms protects those basic rights and freedoms so that our society remains free and democratic. Since the Charter is part of the Constitution, it is the most important law we have in Canada.* (Guide to the Canadian Charter of Rights and Freedoms, Government of Canada Publications.)

The fundamental role of a charter such as this, in a democratic society like ours, could not be clearer:

*It ensures that neither the government nor one of its agents may unreasonably remove or limit these rights or freedoms. It constitutes a basic lever for progress, protection, compassion and equity, and protects the fundamental rights of minorities against all forms of discrimination.* (Guide to the Canadian Charter of Rights and Freedoms, Government of Canada Publications.)

**From this standpoint, the Charter is the only line of defence to protect the rights of minorities from the tyranny of the majority.** Québec's French-speaking citizens, as a linguistic minority in Canada and North America, should understand and acknowledge the importance of this type of protection.

The Charter contains 14 prohibited grounds for discrimination: age, social condition, political convictions, civil status, pregnancy, handicap, gender identity or expression, language, sexual orientation, sex, race, colour, ethnic or national origin, the means to palliate a handicap, and religion. It is clear to jurists that, in a conflict of rights, a solution must be sought that is as respectful as possible of the rights at issue.

In the present case, the government has invoked a conflict between the rights of individuals to exhibit their religious convictions and the collective right of Québec's citizens to a secular State. It is QPAT's view that the collective rights of Québécois are not threatened in the current system. The adoption of such a law would in no way improve the quality of life or the rights of Québec's citizens, but it would create collateral victims.

## An abusive and unjustified use of the “notwithstanding” clause

The government’s decision to use the notwithstanding clause at the time Bill 21 was tabled, to exempt it from the provisions of the Charters and the Canadian Constitution, was an acknowledgement by the government that the Bill’s proposed contents are contrary to the current constitutional framework and would therefore be invalidated by the courts.

It is true that the Charter takes into account the fact that, even in a democracy, rights and freedoms are not absolute. The first section of the Charter refers to the possibility that the government may limit rights and freedoms, but asserts that *this may only be done subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.* (Canadian Charter of Rights and Freedoms, Government of Canada Publications.)

Section 33 of the Charter, otherwise known as the notwithstanding clause, allows the legislator to adopt laws that may violate specific Charter rights. However, most constitutionalists believe this clause should be used prudently, in exceptional circumstances only. In QPAT’s view, it is clear that, by invoking the notwithstanding clause when tabling the draft Bill, the government is effectively acknowledging that the Bill’s contents would not pass the test of the courts with respect to the criteria set out above (section 1 of the Charter). In addition, the measure cuts short the judicial/legislative dialogue that is required in a democratic law-governed State.

In this particular case, there is the question as to exactly what the government wishes to protect Québécois from, in using such an exceptional measure. The first *As* clause in the preamble to Bill 21 mentions the *civil law tradition, distinct social values and a specific history* that have led Québec society to develop a particular attachment to State secularism. QPAT can see no threat to the collective rights of the Québec people or to Québec’s distinct nature, as identified by the government, that would justify a violation of the fundamental rights of certain citizens and the use of an exceptional measure, such as the notwithstanding clause, to prevent potential objections.

**QPAT therefore considers the use of the notwithstanding clause in such a context to be illegitimate.**

## Secularism for institutions, not people

QPAT is definitely in favour of the separation of Church and State, and of secularism in Québec's public institutions. We believe public services, including educational services, must be dispensed in a neutral manner. In the area of education, however, QPAT believes secularism should apply – as has been the case for many years now – to the institutions themselves, to the schools' rules and to education programs, but not to the teachers' clothing.

To justify the Bill's application to teachers, the government invokes the fact that teachers are in a position of authority with respect to their students, and that the students are in a position of vulnerability. Implicitly, the government appears to be saying that teachers who wear religious symbols are not worthy of trust or are not able to provide neutral, professional instruction because of the way they are dressed. QPAT believes neutrality derives from a state of mind and a state of being; in other words, on how the public service is dispensed, not on how the person dispensing it is dressed. **Compliance with the requirement of neutrality in teaching is assessed on the basis of the teacher's professional conduct, not on his or her appearance, regardless of whether a religious symbol is worn.**

QPAT therefore believes the prohibition on the wearing of religious symbols by teachers is unjustified, violates the fundamental rights of individuals from certain communities and constitutes discrimination based on these individuals' religious convictions.

## **A useless, harmful solution to a non-existent problem**

In our schools, there are teachers who have worked for years while wearing symbols attesting to their religious allegiance, and yet no complaints appear to have been received concerning any kind of actual or attempted evangelical persuasion of students. On the contrary, not only do these teachers exhibit the same level of professionalism as their colleagues in their interactions with students, but they also teach the same curriculum. In any case, even without Bill 21, evangelical persuasion is already prohibited by the current regulatory framework. If such a situation were to occur, we feel it should be addressed individually, as is the case for any other complaint against a teacher. To our knowledge, children who have been exposed to religious symbols worn by their teachers have never expressed any discomfort. They tend to see the person, not the religious symbol.

QPAT therefore believes Bill 21 offers only the appearance of neutrality, as opposed to an actual guarantee of neutrality. Generally speaking, a responsible government in a democratic society such as ours should focus on legislating solutions to existing problems rather than to hypothetical problems or impressions. QPAT is convinced that it is not too late to step back and remove teachers from the scope of the Bill.

## A Bill that directly contradicts the Québec Education Program

The prohibition on the wearing of religious symbols by teachers working in the public education system directly contradicts the mission of public schools to educate citizens who are open to the world, are free of prejudice and have a critical mindset. To use the words of the QEP adopted in 2001, the Program: “should be comprehensive and diversified, have a long-term perspective and be open to the world. These are the orientations that can best prepare the citizens of tomorrow to meet the challenges of a pluralistic society that welcomes diversity, a knowledge-based job market that is constantly evolving, and economic globalization.” (Québec Education Program, Chapter 1, page 2, 2001). It is also appropriate to point out that Premier Legault was the Minister of Education when the QEP was adopted.

The mission of schools is not only to instruct and educate, but also to socialize students. It is therefore essential to regard schools not only as educational institutions, but also as living environments. In the QEP, schools are described as follows: “As learning communities and microcosms of society, schools bring together students of diverse social and cultural origins. This makes the school an ideal place to learn to respect others and accept their differences, to be receptive to pluralism, to maintain egalitarian relationships with others and to reject all forms of exclusion.” (QEP, Broad Areas of Learning, Citizenship and Community Life, p. 50, 2001).

Given this, QPAT is convinced that the school environment should reflect the diversity of society in general, and should therefore be inclusive for everyone, including teachers. **The prohibition on the wearing of religious symbols sends a contradictory message to students. The program conveys the values of openness and respect for diversity, and yet the Bill states that it is not acceptable for teachers and school principals to display their religious convictions.** QPAT believes this is probably the biggest problem of Bill 21 from an educational and pedagogical standpoint, and is concerned about the ability of schools to train future citizens who are open to the world and respectful of diversity.

## **A rigid version of secularism that fuels prejudice and discrimination and constitutes an obstacle to integration**

By adopting such a rigid vision of secularism, the Québec Government runs the risk of fuelling certain prejudices rather than fighting them, and also opens the door to employment discrimination. The fact of telling certain members of the population that they will not have access to specific professions, including teaching, because of their religious convictions, sends the message to these people that they are not worthy of trust. This does not encourage them to integrate into the society in which they live; on the contrary, it will likely lead to greater stigmatization and may well help to create a sense of exclusion and greater insularity. It also produces two classes of citizens by calling into question the perception these people have of themselves as full members of Québec's society, and by influencing the majority's perception of certain minorities.

The example of France provides some guidance as to the negative consequences of a rigid approach to secularism for the integration, education, career path and personal identity of Muslim girls and women. A study conducted by two researchers from Stanford, reported by Pierre-Yves Geoffard (professor at the Paris School of Economics and Director of Studies at EHESS), has this to say about the unwanted and unexpected consequences of the law adopted by France in 2004, banning the wearing of the veil and other religious symbols:

*"(...) The number of young girls claiming to have been victims of racism or discrimination increased, trust in schools declined, and the sense of national identity increased, since the girls who were questioned for the study reported a stronger attachment to their country of origin (...). As for the differences in the career paths of women who were old enough to have escaped the law's consequences and those who were impacted by it, they were major and similar in effect: overall, the younger group was less active, had more children, and were more likely to live with their parents and less likely to have jobs. (Loi contre le voile à l'école: l'heure des bilans, Libération, March 18, 2019, translation of the original French text)*

The French government's intention at the time was probably good, since the law was meant to protect girls from pressure to wear the veil. Fifteen years later, however, the data clearly show that the policy, although supported by a significant majority of French people, has in fact produced the opposite effect. Although we acknowledge that Bill 21 does not go as far as the French law, we nevertheless believe that the measures it contains are based on the same logic and run the risk of producing similar impacts for many of our Muslim citizens.

One of the justifications proposed by those who defend the Bill is the principle of male-female equality. However, if the Bill is adopted, a woman who wears a hijab will not, for example, be able to obtain employment as a teacher, but her husband, who does not wear a religious symbol, could

become a teacher or even a school principal. QPAT believes this example highlights one of the clear contradictions between the theoretical aims of the Bill and the actual consequences of its application: it would, in reality, play a role in maintaining male-female inequality rather than reducing it. Moreover, more than 75% of all teachers in Québec are women and it is clear that Muslim women will be affected disproportionately by the Bill, therefore fuelling the perception that they are in fact directly targeted by it.

Similarly, although we do not believe the government wants to fuel xenophobia, Islamophobia or racism, we are worried about the impact Bill 21 may have on the attitudes of certain citizens towards the religious minorities. Many unpleasant, aggressive and wholly inappropriate comments have already appeared on social media, reflecting an obvious ignorance on the part of the people who post them. We are convinced that a law such as this could strengthen or consolidate this type of prejudice and ignorance of other people's situations.

For example, many of the comments suggest that it would still be possible for all citizens of Québec to obtain the jobs concerned, provided they agree not to wear religious symbols. However, this opinion, although widespread, does not take into account the real-life situation of the people impacted by the measure. For them, the wearing of a religious symbol is a reflection of a deeply held belief or conviction. It forms part of their identity. Removing the religious symbol is simply not an option for them.

**The Bill therefore creates an impossible dilemma for these citizens of Québec: respect their deeply held religious convictions or practise their chosen profession. QPAT believes that forcing them to make such a wrenching choice is completely unfair and discriminatory.**

## **An ill-advised decision, given the labour shortage**

We acknowledge that the grandfather clause will allow teachers already in employment to keep their jobs. However, the Bill will significantly limit their career prospects and professional mobility, and will have a negative impact on their image of themselves and their status as citizens of Québec.

The fact that the prohibition applies to new teachers not only introduces an obvious employment discrimination for many candidates, but it also places the Bill's provisions at odds with the labour market's urgent need for teachers. Many students currently enrolled in teacher training programs wear religious symbols. Many teachers leave the profession in the first five years of their career thereby creating a shortage, and it is becoming more and more difficult for school boards to recruit new, legally qualified teachers to fill vacant positions. The anticipated increase in student numbers in the coming years will therefore pose a considerable challenge. Given all this, it seems illogical to eliminate candidates due to their religious convictions. Recent statistics suggest that enrollments in teacher training programs have declined dramatically in many of Québec's universities. The addition of a hiring discrimination for new teachers is absolutely contrary to the aim of attracting more candidates to the profession. The government does not appear to have considered the fact that Québec, like most western societies, will be facing unprecedented demographic challenges in the coming years. Declining birth rates, combined with population aging, will force us to turn to immigration in order to maintain a demographic equilibrium and to fill vacant positions in many sectors of our economy, including teaching.

In a context such as this, QPAT believes the adoption of a law that would constitute an additional obstacle to employment for certain citizens and many immigrants is senseless, especially since the labour shortage in the teaching sector is expected to continue for years, if not decades to come.

## Conclusion

In conclusion, QPAT reiterates its objection to Bill 21 as tabled by the government. Although we acknowledge that some compromises have been made to the original draft, to render it more acceptable, we still believe these adjustments are insufficient in a society such as ours that claims to be open and democratic. The way a society protects the rights of its minorities is a basic indicator of the health of its democracy. In our view, the fact that some public employees, including teachers, assert their convictions by wearing religious symbols does not call into question the secularity of our institutions or the neutrality of the services they provide. The use of the notwithstanding clause to limit the fundamental rights of certain citizens is completely unjustified and illegitimate in the current context, and sets a dangerous precedent. QPAT is also concerned about the impacts of such a law on the social climate and the sense of exclusion it will generate among a segment of Québec's population, creating two classes of citizens. Lastly, we assert once again that a policy such as this directly contradicts the democratic values conveyed by the Québec Education Program, and we believe it constitutes a threat to the social climate in Québec.

**If the Bill cannot be withdrawn completely, QPAT therefore asks that it be amended to exempt teachers working in Québec's public education system from the application of the prohibition.**