

## Local News

# Court challenges against Bill 21 to begin Monday

*The law bans certain public servants from wearing religious symbols such as a hijab, crucifix, turban or kippah while on the job.*

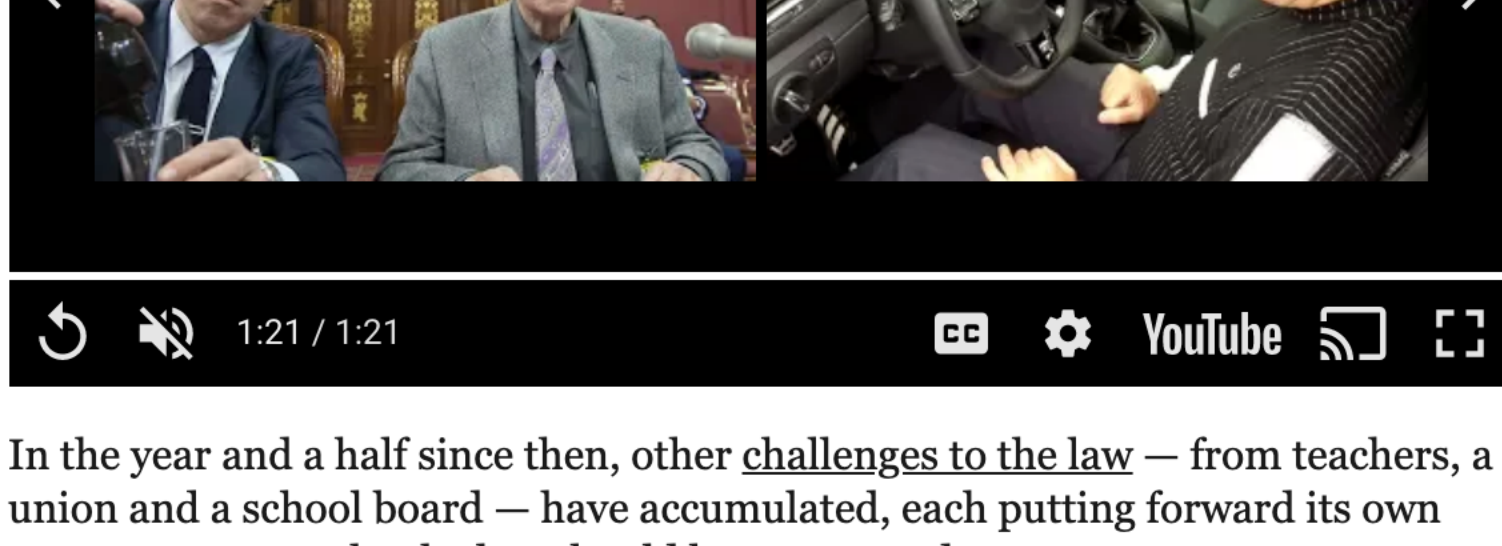
Jesse Feith • Montreal Gazette  
Nov 01, 2020 • Last Updated 1 day ago • 5 minute read



Despite the barrage of criticism and frequent protests, the CAQ government pushed forward with Bill 21. PHOTO BY ALLEN MCINNIS /Montreal Gazette

The day after the Quebec government adopted its controversial [secularism law last year](#), two civil rights groups made their way to the Montreal courthouse. Only 12 hours after passing into law, Bill 21 faced its first legal challenge.

Standing on the steps of the courthouse, the groups decried the legislation as a blatant violation of fundamental rights and vowed to fight it before the courts on behalf of everyone whose careers or lives were altered by it.



In the year and a half since then, other [challenges to the law](#) — from teachers, a union and a school board — have accumulated, each putting forward its own arguments as to why the law should be overturned.

The cases have since been combined and, starting Monday, are expected to be heard in Superior Court over at least the next month.

Here's a brief overview of how we got here and what's at stake.

## What the law entails

Officially called an Act Respecting the Laicity of the State, Bill 21 was passed [into law in June 2019](#). It bans certain public servants in positions of authority from wearing religious symbols such as a hijab, crucifix, turban or kippah while on the job.

The list of people affected includes judges, police officers, government lawyers, [elementary and high school teachers](#) plus principals and vice-principals.

The bill has a grandfather clause for employees already wearing symbols. However, they can only keep them as long as they don't change schools or take a promotion.

## How Bill 21 came to be

Long before the law faced legal challenges, it was subject to a larger societal debate, facing harsh criticism from human rights activists, university professors [and political opposition](#).

While Premier François Legault's Coalition Avenir Québec and proponents said it was necessary to ensure the religious neutrality of the state, others argued it amounted to an attack on minorities, particularly Muslim women.

Vocal critics included Charles Taylor, one of the co-authors of Quebec's 2008 report on reasonable accommodation. Taylor called it both "[clear discrimination](#)" and a poor attempt by the government to fix a problem that doesn't exist.

Despite the [barrage of criticism and frequent protests](#), the CAQ government pushed forward with the bill.

When asked about one of the main criticisms against it — the idea that people could lose their jobs for no other reason than their religious beliefs — Legault drew the ire of many by answering: "[there are other jobs available.](#)"

In the end, after a tense debate in the Quebec legislature during a marathon weekend that saw several last-minute amendments, the bill was passed into law. Seventy-three MNAs voted in favour, 35 against.

"At last the government is acting in the name of Quebecers," [Simon Jolin-Barrette](#), then the Immigration, Diversity and Inclusiveness Minister, said at the time.

Twelve hours later, the first court challenge was launched.

## The challenges

The [first legal challenge](#) came from the National Council of Canadian Muslims, the Canadian Civil Liberties Association and a Université de Montréal student, Ichrak Nourel Hak, who was training to become a teacher but wears a hijab.

A second challenge followed, by three teachers who wear religious symbols, two Muslim and one Roman Catholic, with the backing of lawyers and community groups.

The third was filed by the [English Montreal School Board](#) and the last by the Fédération autonome de l'enseignement, which represents 45,000 teachers in Quebec.

Because the Quebec government invoked the notwithstanding clause in passing the law, it cannot be challenged on grounds that it violates religious liberties outlined in the Canadian Charter of Rights and Freedoms.

But the parties each argue the law is unconstitutional while also challenging it on other sections of the Charter.

Though the trial will involve complex legal arguments, Noa Mendelsohn Aviv, of the Canadian Civil Liberties Association, said it's important not to lose sight of the "significant" harm the law is already causing people.

"There are people who feel there's now a stigma attached to their religious symbol," Aviv said in a recent interview. "They feel uncomfortable and unwelcome and are worried about their children's future and what kind of options will be available to them."

## The injunction

Monday will not be the first time the law, or sections of it, will be tested in court.

At the same time the two civil rights groups filed their application to challenge it on constitutional grounds, they had requested an injunction to suspend the law's two most controversial sections until the main case could be heard.

The injunction request was rejected by a Superior Court judge the next month. The groups appealed that decision, but that bid, too, was rejected by Quebec's appellate court last December.

In a 2–1 ruling, the three judges agreed the law is causing certain people irreparable harm but two ruled their hands were tied by the government's use of the notwithstanding clause in the matter.

The groups then attempted to have the Supreme Court of Canada hear the case, but the country's highest court decided not to in April. They were disappointed with the decision, but stressed it wasn't the end.

"The main fight is yet to come," Aviv said at the time, referring to the trial starting this week.

## Law students to protest

McGill University law students plan to show their opposition to [Bill 21](#) by holding a sit-in outside the courthouse Monday morning.

The protest will be "peaceful and socially distant," the Muslim Law Students' Association and the Radical Law Students' Association of McGill's Law Faculty said in an emailed statement.

"Bill 21 fosters systemic discrimination, and as law students we feel it's important to speak out," said third-year law student Emily Knox. "Under Bill 21, many of my peers in law school will be barred from public employment for their religious beliefs, and our justice system will be worse off for it."

[jfeith@postmedia.com](mailto:jfeith@postmedia.com)