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Religious symbols law is cruel, but notwithstanding clause makes it legal: court

Judge upholds much of the province's secularism law but rules it cannot be applied to English-language school boards and MNAs.

Paul Cherry • Montreal Gazette

Apr 21, 2021 • 4 hours ago • 3 minute read •  45 Comments





Protesters rally against Bill 21 in Montreal in September 2019. PHOTO BY JOHN KENNEY /Montreal Gazette

Quebec Superior Court has struck down parts of Bill 21, the province’s law banning the wearing of religious symbols for state workers deemed to be in a position of authority, like teachers, judges and police officers.

In his 242-page decision delivered Tuesday, Justice Marc-André Blanchard ruled part of Bill 21 violates Canada’s Charter of Rights and Freedoms.



Blanchard ruled Bill 21 does not apply to the English Montreal School Board, which challenged the bill. Two elected members of the school board, including a practicing Muslim, also challenged the legislation.

He declared several sections of the bill are “inoperative” because they would violate Charter protections of minority language educational rights. The bill would therefore be inoperative to other English school boards.

When Blanchard heard arguments in November, the EMSB said three of its teachers could not work for the board because they wore hijabs, and Bill 21 “severely limited” the board’s ability to promote teachers who wear religious symbols to a position like that of principal.

The judge also struck down a section of Bill 21 that covers “persons considered to be personnel members of a body for the purposes of measures relating to services with face uncovered” — meaning members of the National Assembly.

He ruled that specific section of the law violates Section 3 of the Canadian Charter that protects the right of every Canadian to have “the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.”

While it does not apply to teachers, Blanchard’s decision concerning MNAs was made within the context of a case brought to court by Ichrak Nourel Hak, a Muslim woman who was studying to be a teacher at Université de Montréal when the provincial government adopted Bill 21. She argued that Premier François Legault’s message that “other positions are available” to teachers who want to wear religious items while at work contravened previous Supreme Court of Canada decisions.

Blanchard agreed there are “serious and negative consequences for all those who wear religious symbols in public. That includes how Bill 21 does not allow teachers who wear religious objects but are protected by a grandfather clause are not allowed to be promoted to higher positions.

“All these people who aspire to one of these jobs find themselves faced with the following dilemma: either they act according to their soul and conscience, in this case their beliefs, or they work in the profession of their choice. It is easy to understand that this is a cruel consequence which dehumanizes those targeted,” Blanchard wrote.

Other opponents of the legislation who testified included a Sikh teacher and a Catholic teacher.

The decision is critical of Bill 21, but Blanchard noted that, because the Quebec legislature used the notwithstanding clause to override other charter protections, the law remains valid.

“Bill 21 does not violate Canadian constitutional architecture or the rule of law,” Blanchard wrote while listing his reasons in support of the legislation in general.

“The use by the legislator of the notwithstanding clauses appears excessive, because it is too broad, although legally unassailable in the current state of the law.”

Several Muslim women who wear hijabs testified in November that Bill 21 is unfair because it singles them out. Blanchard addressed the issue in a section of the decision that summarizes his conclusions.

“There is no doubt that in this case the denial by Bill 21 of the rights guaranteed by the Charter has severe consequences for the persons concerned. Not only do these people feel ostracized and partially excluded from the Quebec public service, but in addition, some see their dreams become impossible while others find themselves stuck in their positions with no possibility of advancement or mobility. In addition, Bill 21 also sends the message to minority students wearing religious symbols that they must occupy a different place in society and that obviously the way of public education, at the level of preschool, primary and secondary does not exist for them,” Blanchard wrote. “On the other hand, the beneficial effects appear at least tenuous.”

When the case was argued late last year, Quebec’s attorney general argued that Bill 21 represents a continuation of the province’s Quiet Revolution, which began in the 1960s and saw the state take control over institutions previously run the Catholic church like schools and civil registries.

The Quebec government has already announced it plans to appeal the ruling.

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