



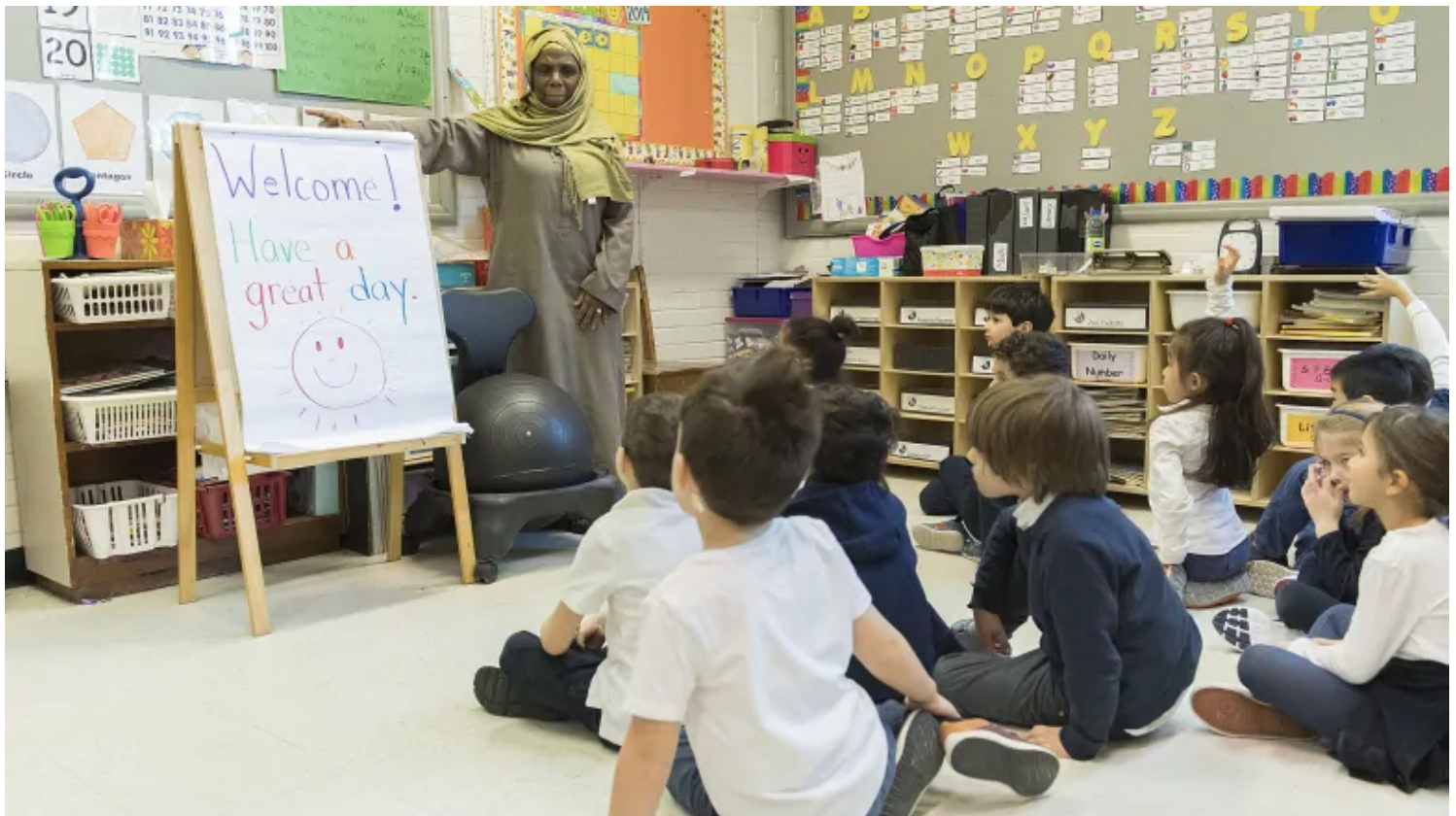
Montreal

English Montreal School Board files legal challenge to Bill 21



Board argues law infringes on minority language education rights and equality of men and women

[Colin Harris](#) · CBC News · Posted: Oct 24, 2019 2:29 PM ET | Last Updated: October 24



EMSB teacher Haniyfa Scott gives a lesson to her kindergarten class in April 2019. The EMSB is challenging the CAQ government's secularism law, which bars newly hired teachers and school administrators from wearing a hijab or any other religious symbol. (Graham Hughes/Canadian Press)

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The legal challenge, filed Thursday by the law firm Power Law on behalf of the EMSB and parent commissioners Pietro Mercuri and Mubeenah Mughal, argues the law contravenes sections of the Constitution that protect minority language educational rights and guarantees the equality of men and women.

While the secularism law, also known as Bill 21, invokes the notwithstanding clause in the Charter of Rights and Freedoms, that clause does not apply to Section 23, which protects the education rights of anglophones in Quebec and francophones in the rest of the country, nor to Section 28, which protects equality between women and men.

While Section 23 has been tested in court, McGill University's faculty of law Dean Robert Leckey said that, to his knowledge, Section 28 has not.

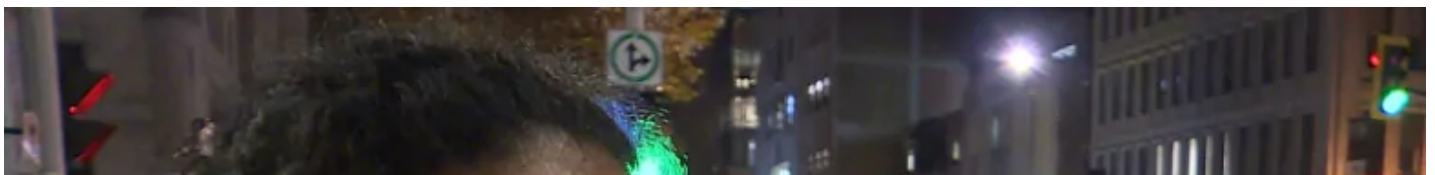
"There really hasn't been court interpretation of what Section 28 means," said Leckey. The section was added to the charter as extra protection to guarantee the equality of men and women.

"It has to mean something."

In Thursday's filing, the board argues that Bill 21 "rewrites how teachers, particularly female teachers, in Quebec's English public education system can embody and express their religious identities."

It says the law targets women and "historically disadvantaged religious minorities."

It also argues the law has an uneven effect, particularly on Muslim women, as it only bans religious clothing and not religious facial hair.



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EMSB parent commissioner Mubeenah Mughal said that Bill 21 amounts to 'legislated discrimination' that particularly affects women. (CBC)

Parent commissioner Mubeenah Mughal, whose name is listed on the legal challenge, described the law as "legislated discrimination" and said she's been vocal in her opposition to it since the beginning.

"It's heartbreaking that children are growing up in a world — children that might wear religious symbols — to know that when they are older, they won't be able to teach at their school," she said.

"it's also for staff, to say 'we're going to fight for you so you can have a job here.'"

'It's not sexist,' education minister insists

"It's not racist. It's not sexist. It's just the way that Quebecers want to have people with authority," said Education Minister Jean-François Roberge after the EMSB filed its challenge.

For Mughal, that response isn't good enough.

"As a white man, how can he speak for a community and say, 'no, this law doesn't affect you.'"

The filing mentions that at least three qualified female candidates who had been interviewed prior to the tabling of Bill 21 are not working at the board because they wear hijabs.

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When the EMSB [announced its intention to launch a legal challenge](#) to the law last month, Quebec Premier François Legault said he was confident the government would win, calling the challenge a "big show."

- [EMSB prepares legal fight over secularism law that chair says 'breeds intolerance'](#)



The English Montreal School Board says is challenging Bill 21 under Section 23 of the Canadian Charter of Rights and Freedoms. (Verity Stevenson/CBC)

The Quebec government has argued that the law applies evenly to all Quebecers, but the legal documents filed by the EMSB point to material on the CAQ website that called for a ban on certain religious clothing worn by Muslim women, as well as comments made by the CAQ's minister for the status of women saying that [the hijab is a "symbol of oppression."](#)

As a legal remedy, the EMSB is proposing that the sections of the law that refer to the banning of religious symbols be struck down for everyone, or just for English school boards, which Leckey said may result in a "checkerboard" application of the law, if this challenge is successful.

"We just need to start getting in our heads that it's not going to be an all or nothing matter,"

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Bill 21 is already facing a legal challenge filed by the National Council of Canadian Muslims and the Canadian Civil Liberties Association. Other legal challenges are also being planned.

The EMSB also plans to use Section 23 in a court challenge of the Coalition Avenir Québec government's school reform bill, should it become law.

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