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Brief Present by The League for Human Rights of B'nai Brith Canada on its opposition to Bill 21: An Act respecting the laicity of the State

INTRODUCTION

B'nai Brith Canada, founded in 1875, is the independent grassroots voice of the Jewish community.

As a community organization, our work is divided into two main areas; community volunteer services which provides aid, food to families in need as well as housing for low-income seniors, and through our advocacy arm of the League for Human Rights, which is dedicated to fighting all manifestations of antisemitism, racism and intolerance. The League operates a 24-hour anti-hate hotline for victims of antisemitism and other hate crimes.

For 37 years, the League for Human Rights of B'nai Brith Canada has been monitoring the evolution of antisemitism in Canada and has been analyzing the underlying factors of hatred against the Jewish community which is published in our Annual Audit of Antisemitic incidents, the only such document in of its kind in Canada. This report is known around the world and is often consulted and cited by government agencies, social policy makers, law enforcement agencies as well as Statistics Canada.

Although B'nai Brith is a Jewish community organization dedicated to fighting antisemitism, we recognize that antisemitism is only one aspect of the broader scourge of intolerance, racism and discrimination that affect our society. Thus, any action we undertake to combat antisemitism also addresses the larger problem of intolerance plaguing our society. Our organization's involvement on this subject for the past many years, gives us a particular expertise in the field.

QUEBEC'S FUNDAMENTAL VALUES

The fundamental values of Quebec have been reflected since 1975 in the Charter of Human Rights and Freedoms ("Quebec Charter"). The Quebec Charter in a way has defined Quebec society. It recognizes that every human being has fundamental and intrinsic rights and freedoms designed to ensure everyone's protection and development.

It recognizes, guarantees and solemnly affirms the protection of these fundamental rights that all human beings are equal in worth and dignity and are entitled to equal protection of the law. The Charter recognizes that importance of securing respect for the dignity of the human being, the equality between

women and men, and the recognition of their rights and freedoms as constituting the foundation of justice, freedom and peace; and that the rights and freedoms of the human person are inseparable from the rights and freedoms of others and their general well-being.

In the case proposed by Bill 21, it seeks to amend the Charter of human rights and freedoms to specify that persons must maintain proper regard for State laicity in exercising their fundamental freedoms and rights. Furthermore, the bill has effect despite certain provisions of the Charter of Human Rights and Freedoms and the Constitution Act, 1982.

The proposition being made by Coalition Avenir Quebec, does not only restrict the employment of choice against certain people who hold onto their religious convictions, but also claims that the wearing of religious symbols interferes with maintaining one's duty towards the neutrality of the state and thereby finding it an absolute necessity to amend the Quebec Charter, thereby limiting one's right when exercising their fundamental rights and freedoms.

However, there currently exists no such study which would demonstrate any danger to the community or the justification of the proposed measures which prohibits certain persons from wearing religious symbols while exercising their functions.

REASONABLE ACCOMMODATION

In the quest to guarantee these fundamental rights and freedoms, the courts had to develop a mechanism of balance so to not discriminate against an individual either directly or indirectly. From this came the legal term of "Reasonable Accommodation".

Bill 21 proposes to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies.

However, a framework for requests has already been established in order for Reasonable Accommodation to be applied. It requires cooperation from both parties concerned. Whereas the person requesting to be accommodated, is therefore obligated to facilitate the implementation of the said accommodation whenever a reasonable proposition has been made to accommodate.

Misunderstandings of the concept of Reasonable Accommodation has divided the Quebec society and thus created a climate of animosity and mistrust of new immigrants but also towards the existing cultural and religious communities. Anyone who is perceived as different, in many cases, subsequently becomes "the other". The proposed Bill 21 does nothing to reframe the debate in a constructive way.

Bill 21 raises significant barriers to the integration of these communities rather than creating a climate that encourages productive relationships between different groups. The allegations that immigrants and religious minorities are overly demanding of the already established Quebec society, have reinforced negative and dangerous stereotypes.

CULTURAL IDENTITY OF QUÉBEC AND RELIGIOUS NEUTRALITY

According to Bill 21, titled; An Act Respecting the Laicity of the State, the Legault government proposes the necessity of such an Act is in effect due to the idea 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." On the contrary, the Act respecting the secularity of the state in the manner proposed by Bill 21, endangers the fundamental values of Quebecers, as they were created in the Quebec Charter. If the state's secularism Act was ratified, by amending the Charter of Human Rights and Freedoms (Chapter C-12), it will go against Quebec's current values and principles.

The state cannot on the one hand recognize the principles regarding the equality of all citizens, as well as; freedom of conscience and freedom of religion, and yet on the other hand deny those same basic rights to those employed in the public sector because they choose to adhere to their religious convictions. Bill 21 imposes an undue burden and obligation on those employed in the public sector without improving the guarantee of neutrality that already exists.

Th Act respecting the laicity of the State confuses religious freedom with freedom of religious expression. The expression of a religious affiliation is done by wearing a symbolic object such as a cross, a Star of David or a hand of Fatma, among other symbols. Although these objects demonstrate religious affiliation, they are not held by religious obligation. However, the Bill does not distinguish between religious objects worn to express religious affiliation and those who are held by a sincere belief in a religious obligation. The wearing of such an object or clothing would be formally prohibited to those employed by the state regardless of the reason for which it is worn.

For some, the wearing of a religious garment, such as a kippah, a turban or a veil is not simply an act of religious expression, but a sincere belief in a religious act that is imperative for them to respect. For instance, the kippah always serves to remind the Jewish man that there are principles that are superior to him. Thus, the kippah raises awareness of each of his daily actions so that he obeys the ideals of justice and ethics. Like the kippah, religious symbols have a much deeper dimension than the mere expression of belonging. These symbols constitute physical metaphors of moral values, which certainly come from a religious precept, but which are very often universal values. Prohibiting the wearing of such symbols would be considered tantamount to denying them the right to practice their religion. For a religious person, the wearing of a headgear can in no case be limited to just the private sphere.

In addition, only certain religions require the wearing of a religious symbol such as a turban, a kippah or a veil. Therefore, prohibiting the wearing of these objects would be discriminatory only towards certain religions, which is formally prohibited by the Canadian and Quebec Charters.

Furthermore, the religious neutrality of the state and public bodies has been defined by the highest court of Canada as follows: "State neutrality is ensured when the state does not favour or oppose religious beliefs; in other words, when it respects all positions with respect to religion, including none, while taking into consideration the competing constitutional rights of affected persons. This definition does not impose a duty of religious neutrality on state officials. On the contrary, it illustrates that the neutrality of the state must be achieved by an inclusive respect for all religious beliefs.

There is no reason to suspect that the religious beliefs of staff members in the public sphere affect the neutrality with which they perform their duties. Furthermore, there have not been any studies to contradict otherwise. There is no reason to believe that state neutrality is at stake. We are confronted with a radical bill before we even ascertain the existence of a real problem or make a solution that would not infringe on fundamental rights and freedoms. It is quite evident that those employed by the government of Quebec are obligated to adhere to neutrality in accordance with the Act Respecting Administrative Justice.

The State, acting as a government and an employer, has an obligation to respect the freedom of religion of its employees. In fact, by infringing this right, the State is requiring its employees to choose between respect for their religious convictions and the preservation of their employment. Such a law would be equivalent to discrimination in labour matters, which is formally prohibited by section 16 of the Quebec Charter.

A fundamental right or freedom of the person derives from the natural law. It is essential for the well-being of an individual and is inherent equally to all human beings, without discrimination. Bill 21 seeks to amend the Charter of Human Rights and Freedoms by asserting that a stricter duty of restraint regarding religious matters should be established for persons exercising certain functions, resulting in their being prohibited from wearing religious symbols in the exercise of their functions.

The fundamental right of the person to practice his religion according to his beliefs and moral sense is recognized by the Universal Declaration of Human Rights, the Canadian Charter and the Quebec Charter. As the definition of a right or freedom of the person quoted above indicates, it is indivisible, inalienable and essential to the well-being of an individual. By preventing religious expression in the public domain, the State acts in a discriminatory manner, on the basis of religion, and violates one of the fundamental rights of the universally recognized person.

The effect of Bill 21 would be to remove the freedom of religious belief of employees in the public and parapublic sector by imposing a choice between their work or religious belief and conscience. It is contradictory for Bill 21 to respect the religious beliefs of professionals in the private sector, but not to do the same with employees in the public or parapublic sectors.

Furthermore, since women are already disproportionately represented in public and parapublic employment sectors, either within departments or in the educational services industry, the proposed ban on religious symbols will almost certainly affect women to a greater degree than men. It would be very ironic if Bill 21 were to become law and was challenged and declared unconstitutional because it discriminated against women, while claiming to support the equality of sexes. For instance, the Bill stipulates the equality between women and men but at the same time it takes away the chance of working in Quebec's public sector by those women who wear headscarves. A right to employment for which women have struggled for years and in turn symbolizes their liberation.

Cultural diversity is a reality. The exposure of citizens to realities other than those they live within their immediate environment is a fact of life in society. Since the government's role is to protect its most vulnerable citizens, asking them to hide their religious affiliation will never achieve this goal. To think that the very fact of exposing citizens to different religions undermines the neutrality of the state amounts to rejecting the multicultural reality of society and ignoring the obligations of the Quebec state.

CONCLUSION

Unfortunately, this bill contributes to the divisions that already exist within Quebec society. It will establish a clear division in society between those employed in the public sector and those in the private sector as well as between people from religions without obligatory symbolism and those whose religion requires a mandatory symbol.

This assault on cultures and religions considered to be "non-discreet" by this Bill, goes against Quebec's interests, which counts on immigration and seeks to encourage it for its future, as well as and by advocating a militant form of laicity to the detriment of religious individuals and communities that cannot be justified as being of benefit to Quebec society.

Furthermore, there has been an increase of discrimination, racism and violence towards minority groups in North America, with Quebec not being immune to these acts of hate. With the introduction of Bill 21, our experience tells us that these acts of hate will not diminish but will very likely increase. The perpetrators will find more reason to discriminate. Visible religious minorities, specifically those wearing religious headgear will continually feel left out from certain employment, and even when employed within the private sector, they may feel stigmatized by their colleagues, supervisors or both.

Additionally, our Annual Audit of Antisemitic Incidents reveal the ever-increasing trends of racism and discrimination that has befallen the Jewish community. Through independently collected data, we in fact continue to see a rise of intolerance in Quebec, not just towards the Jewish Community, but towards visible minorities in general. The intolerance towards Jews has been steadily rising in Quebec for the last five years.

Our Annual Audit of Antisemitic Incidents aims to not only show the levels of antisemitism that keeps garnering momentum each year but also serves to educate on how to combat intolerance. B'nai Brith's Eight-Point plan to tackle antisemitism addresses the important steps governments should follow in adopting a national plan to help stop this phenomenon.

If Bill 21: Act respecting the laicity of the State is passed, it will do nothing to stem the flow of intolerance towards visible minorities within our society, that we and other like-minded organizations are working hard to diminish. With the rise of extreme right-wing groups in Quebec and their growing animosity towards minorities, Bill 21 will be perceived as a justifiable means of discrimination.

Furthermore, this proposed bill by the Legault government not only discriminates towards certain religious minorities and their employment of choice, but it will further complicate our legal system with the introduction of a not-withstanding clause. If such a clause was to be implemented, then what is the purpose of our Justice System if our government cannot be legally challenged in the courts? The effect of a not-withstanding clause in this case would parallel authoritarian regimes and not that of a free democracy.

Unfortunately, the introduction of Bill 21, An Act Respecting the Laicity of the State and the disingenuously negative framing of requests for accommodation is a step in the wrong direction in that it projects an image of an intolerant Quebec and creates an atmosphere that is not conducive to integration and social cohesion.

We believe that the Quebec government has a duty to its citizens and an important role to play in terms of raising awareness in Quebec society of tolerance and an effective way of dealing with racism and discrimination. Our government must, in our view, strive to transmit to all members of Quebec society a fair and appropriate moral vision of Quebec.

Unfortunately, the introduction of Bill 21, by affirming the values of secularism and religious neutrality of the state and there by negatively framing requests for accommodation as harmful to Quebec, is a step in the wrong direction. We urge the government, in the strongest possible terms, to scrap this Bill and continue guaranteeing the rights and religious liberties of all Quebeckers