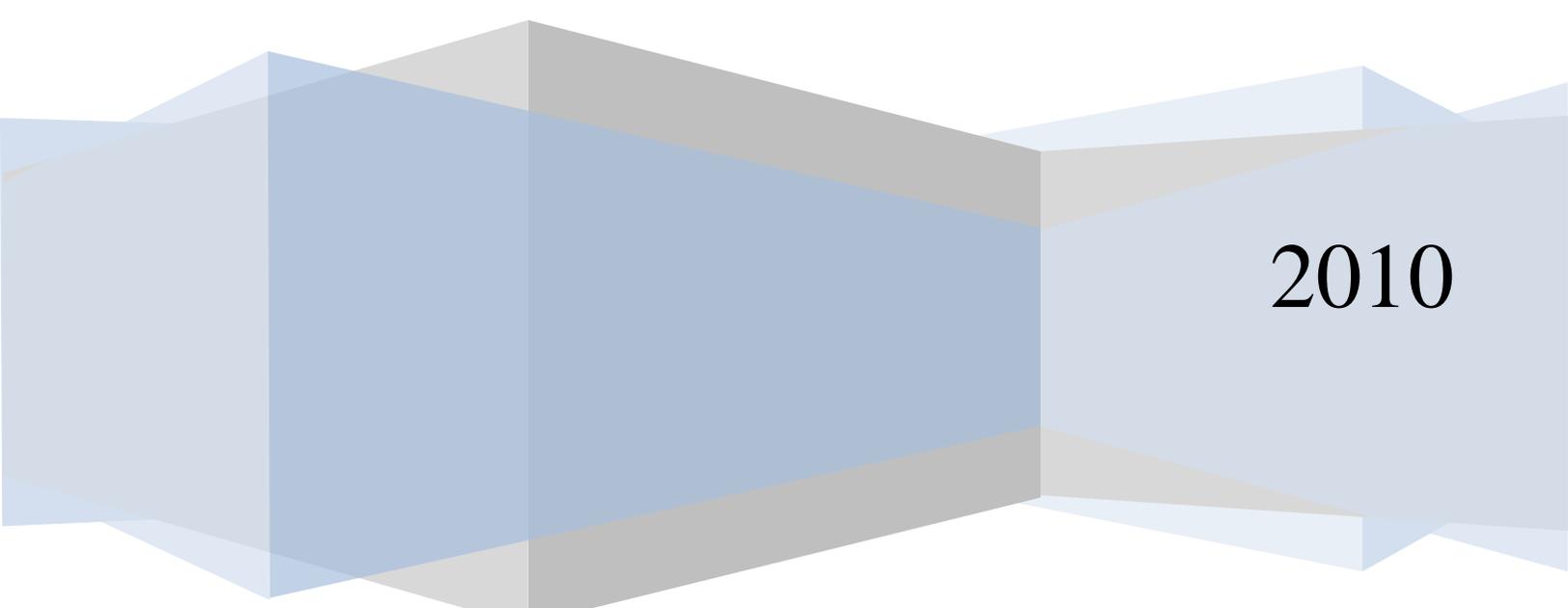




Response to Quebec's Bill 94

It is not the solution.

Ayesha Haque and Katherine Bullock, PhD



2010

Executive Summary

In this TTI policy briefing,¹ we argue that the proposed Bill-94 currently before the Quebec legislature should not be passed. (“An Act To Establish Guidelines Governing Accommodation Requests Within The Administration And Certain Institutions.”) We further argue that other Canadian provinces should not follow suit. We conclude that Bill 94 will isolate, not integrate, Muslim women wearing *niqab*, into Quebec society. Bill 94 violates their right to freedom of conscience and equal treatment as citizens of Quebec. Bill 94 violates the recommendations of the Bouchard-Taylor report, which was commissioned by the Quebec government in 2007 to provide guidelines on how to broach issues of minority integration into Quebec.²

¹ The opinions expressed in this policy paper are those of the authors and not necessarily that of the *Tessellate Institute* or its Board of Directors.

² Gérard Bouchard and Charles Taylor, The Consultation Commission on Accommodation Practices Related to Cultural Differences Complete Report (CCAPRCD), Quebec 2009.

<http://www.accommodements.qc.ca/index-en.html>

Background

In March 2010, the Minister of Justice, Madame Kathleen Weil, introduced Bill 94 to require that the face be visible during a person’s interaction with the government’s employees, including government departments, agencies, school boards, health and social services and daycare. Requests for accommodation should be denied. Madam Weil, Premier Charest and the Minister for the Status of Women proclaimed their commitment to maintaining gender equity and secularism. Public support on this issue was tremendous since Bill-94 directly confronted one recent case of reasonable accommodation in which a *niqabi* was asked to remove her face veil in order to continue in French class.

Issues of Interest

Gender Equality

The emphasis on restricting the activities of those who wear *niqab*, reflects a disproportionate response to reasonable accommodation requests. The realities of gender inequity in Quebec and Canada remain problematic, across all ethno-cultural groups within Canada. The *niqab* allows some women access to the public sphere by creating a comfortable space for

women to conduct themselves - a “*niqab* passport.”³

In relation to shared societal values, and gender equity, the visibility of the *niqab* in public space challenges Quebec’s interpretation of gender equality. Christine St-Pierre, Quebec’s minister responsible for the status of women, called *niqabs* “ambulatory prisons.”⁴ However, in considering gender relations, there are a multiplicity of views and approaches to equality. Research reveals that, especially in Canada, many women adopt the face veil willingly, and consider themselves as equal to men.⁵ While this notion is readily discounted by political elites as a form of ‘false consciousness,’ it is not for the Quebec government to legislate on women’s dress and women’s concept of equality and male-female relations.

Bill 94 is especially punishing as it denies in advance any requests for reasonable accommodation, claiming that gender equality ought to deny requests for same-sex service. And yet in health care settings, social agencies, and police services,

³ Anisee van Engeland, “Chador Passport and the Empowerment of Iranian Women Under the Islamic Republic,” unpublished.
<http://www.veiledconstellations.com/speakers.html>
No-Bill 94 Coalition, 2010

⁴ Andrew Chung, “Quebec niqab bill would make Muslim women unveil. Landmark bill would make women unveil if they want access to public services,” *Toronto Star*, Thursday, Mar 25 2010.
<http://www.thestar.com/news/canada/article/785036--quebec-niqab-bill-would-make-muslim-women-unveil>

⁵ Rana Abdel Latif, *Voices Behind the Veil*, documentary, Masters in Journalism, Ryerson University, 2008.

requests by women from many different backgrounds for same-sex staff are routine. In other provinces, for example, women in *niqab* cooperate fully with authorities in security issues. The Ontario government allows for same-sex requests by women in *niqab*, which has not unduly strained the Ontario pursue. Can Quebec not do the same? Or are there not enough women employees in Quebec governmental institutions?

Integration

Supporters of Bill 94 claim that it will address the issue of integration into Quebec society. In fact it will achieve the opposite. Since women who wear *niqab* are convinced of its religiosity, or cultural identity, they will most likely access services less than they do at present. During the 1930s in Iran, when the Shah tried to “modernize” by forcing women to unveil (on pain of having the veil ripped off by a policeman in public), many women chose to stay home, rather than unveil - for the seven years that the law endured.⁶ Even if it will “liberate” a woman who is being pressured by her family to veil, it will not “liberate” her more completely, since the family will pressure her not to go places where she must uncover.⁷ A *niqabi* seeking to learn French is seeking to integrate. A

⁶ K Bullock, *Rethinking Muslim Women and the Veil*, Herdon, VA, IIIT, 2002, p.223.

⁷ Human Rights Watch, quoted in Craig and Marc Kielburger, “Ban On Veils Risks Another Form Of Oppression,” *Toronto Star*, Monday, March 15, 2010,
<http://www.thestar.com/news/globalvoices/article/779796--ban-on-veils-risks-another-form-of-oppression>

niqabi who cannot learn French, cannot access health care, government services, or education, or daycare will lead a very truncated and isolated life.

Freedom of Conscience

Irrespective of what others think of the *niqab*, whether it is actually required by Islam or not, a Quebec citizen has the right to freedom of conscience. The Bouchard-Taylor report emphasized throughout as they developed their concept of open secularism that minority integration must not take the form of assimilation to majority values and must accommodate freedom of conscience, unless undue hardship can be demonstrated. As stated above, given the small number of requests to be expected, it is unlikely that undue hardship can be demonstrated.⁸ We will come back to this point.

Reasonable Accommodation

Legally, reasonable accommodation can be denied if undue hardship is created. In Quebec, the law is required to be compliant with the Charter of Rights and Freedoms. There are established freedoms of conscience, religion, moral autonomy in the Charter protecting individuals from discrimination. The solution to social integration of newcomers is to foster greater understanding and dialogue across differences, and allow minorities to integrate into Quebec society. The solution

does not lie in criminalizing religiosity. Interpreting correctness of the *niqab* is not the government's role. The contention over the *niqab* question should be left to the community to deliberate. The government should however, continue to aim towards fairness, legitimacy and uphold the rule of law, respecting above all the criterion set out by Bouchard and Taylor of moral autonomy.

Bill 94 will clog the courts, as it is clear it will not withstand scrutiny according to the Oakes test, whereby limitations on rights or freedoms may be deemed appropriate if it can be established that: (i) the legislative objective is pressing and substantial; (ii) that there is a rational connection between the legislative means chosen and the objectives sought; and finally (iii) that the infringement must be a minimal impairment on the right or freedom in question.⁹

In this case, (i) the issue is not pressing, as the number of *niqabi* women in Quebec is small; (ii) the objectives sought (gender equality and integration) are not rationally connected to the outcome of the Bill (further isolation); and (iii) the right in question is maximally impacted, as it forces a person who would rather not, out of deep seated religious conviction, show their face. Where identification is required for security purposes a same-sex request should be granted. If this is absolutely, genuinely and

⁸ Only 10 of more than 118,000 visits to the health board's Montreal office in 2008-09 involved *niqab*-wearers asking for special dispensation, Cheung, Toronto Star.

⁹ David Kelly, "The Courts, the Charter and Federalism," in *Canadian Federalism* (2nd ed) Herman Bakvis and Grace Skogstad (eds), Oxford University Press: 2008, pp. 41- 60.



sincerely not possible, a *niqabi* will identify herself to a male.

Bill 94, or any legislation, is not the answer to Quebec's issues with Muslim women in *niqab*. What is required, as pointed out by Bouchard and Taylor is respect for freedom of conscience, moral autonomy, openness, and reciprocity.

Recommendations

- 1) Bill 94 or any similar bill should not be passed.
- 2) The Bill's aim of gender equality is better served through the mitigation of systemic inequity. Encouraging child care, employment, education, better health and well being, social services, and poverty reduction are all areas that would contribute to greater gender equality in Quebec and Canada than forcing Muslim women to remove their face veils.
- 3) Public space must remain inclusive and guarantee access to all citizens, no matter their religious orientation. Social cohesion is a common good that can be established by encouraging participation, engagement and contribution by all citizens in social and political associations. Isolation and assimilation do not generate more social cohesion.
- 4) Legislation carries a high cost. A strong social economy is very adept at providing the tools and service delivery to integrate newcomers. Clearly, the government ought not and cannot legislate all norms and customs; it is unpractical and unrealistic to redirect government resources to dealing with conflicts that are easily resolved in the social sphere, especially when supported by a strong social economy.
- 5) Compliance and enforcement are tremendous bureaucratic concerns. Enforcing the Bill and anticipating the legal challenges will be major policy considerations going forward.