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Towards an Inclusive Secularism
and a Transformative Model of
Community Engagement in Québec

By: Roshan A. Jahangeer | October 2014

About the Institute

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About the Author

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I. EXECUTIVE SUMMARY

In September 2013, the Parti Québécois (PQ)-led government of Québec released their proposal for a “Charter of Québec Values” legislation that would have prohibited public servants, parapublic and some private sector workers from wearing so-called “ostentatious” religious signs or symbols, which included large crosses, headcovers (hijabs, kippas, turbans) and face covers (niqab). Bill 60, released in November, went even further in seeking to prohibit the serving of Kosher or Halal-certified foods in publicly-funded daycares across the province. Bill 60, which was said to enshrine the principle of secularism and gender equality in Québec, followed on the heels of similar proposals and debates in recent years, including the debates over the “crisis” in reasonable accommodation, followed by the *Consultation Commission on Accommodation Practices Related to Cultural Differences* (also known as the Bouchard-Taylor Commission), and Bill 94.

As with those that preceded it, the debates that followed the release of the Charter of Values (Bill 60) led to public turmoil, with many intolerant, xenophobic and at times racist comments targeted toward members of religious minority groups. Vulnerable members of such groups, particularly Muslim women who wore a head or face-cover, were reportedly subject to increased levels of verbal and sometimes physical abuse.

The main issues of concern expressed by Québécois who oppose the Charter of Values (or any similar legislation), including members of religious minority groups who wear a head or face cover (including but not limited to a headscarf, face-veil, skullcap, or turban) are the following: (i) fear of the increase in intolerance and violence directed towards them/their communities; (ii) loss of employment or discrimination in gaining meaningful employment; (iii) the arbitrary or subjective standard for what determines whether a religious sign, symbol or practice is deemed “discreet” versus “ostentatious”.

Conversely, the main issues of concern for Québécois who support implementing a Charter of Values (or any similar legislation) tend to be articulated as follows: (i) gender equality, or rather the concern that some minority practices are threatening the gender equality already achieved by members of the majority; (ii) the need for secularism and neutrality; (iii) the “crisis” over reasonable accommodation and living together (*le vivre ensemble*) while maintaining francophone culture and language as dominant.

The Liberal majority government of Philip Couillard has a responsibility to address these issues

of concern in a way that will not further aggravate tensions between different groups in Québec society, and that will instead effectively address these issues of concerns in a balanced way. This can only be done through proper consultation with all of the concerned parties and groups within Québec, particularly with those who were adversely affected by the initially proposed laws and measures contained in the Charter.

The Québec government should consider the following summary of recommendations in drafting any future version of a Charter that seeks to legislate secularism in Québec:

- Acknowledge the verbal, physical and/or discriminatory acts suffered by vulnerable members of religious minority groups and increase funding for civil society groups that aim to eliminate racism and discrimination, and that encourage empowerment and the positive contributions of racialized, immigrant, and religious minority groups within Québec, currently and historically.
- Take immediate action to remedy the extreme underrepresentation of non-white Francophone Québécois communities within the civil service, and invest in research for development of an action plan that addresses the intersectional nature of barriers to employment that affect some members of minority groups more than others within the wider parapublic and private sectors. Consider extending employment equity legislation to remedy historical discrimination towards such groups in all sectors.
- Refrain from formulating laws or policies that are based on subjective assessments of which religious practices are considered either too “ostentatious” or sufficiently “discreet”, and instead base laws or policies on concrete empirical data and research that demonstrate why it is imperative for the government to circumscribe individuals’ rights and freedoms, particularly those that are protected under both the Québec Charter Human Rights and Freedoms and Canadian Charter of Rights and Freedoms.
- Refrain from enacting laws or policies that may further marginalize vulnerable members of religious minority, racialized, or immigrant communities, including enacting legislation that prohibits the wearing of head or face covers, and other traditional, cultural or religious forms of dress. Instead, focus on measures to increase participation or radicalized or marginalized women in the labour force and in political engagement, and consider creating incentives and/or legislation that encourages hiring such vulnerable persons in the parapublic and private sectors.

- Support an inclusive model of secularism, which aims to ensure the protection of equality and freedom of conscience and religion for all individuals. Support a principle of neutrality that is upheld by reciting an oath of impartiality that conforms to the professional requirements of public servants, including judges, police officers, crown prosecutors, prison guards, and members of the National Assembly.
- Acknowledge the history of First Nations and Indigenous communities in Québec, who have historically been subjected to the prohibition of their ceremonies, dances, songs, religious and spiritual symbols, cultural identities and languages, and consult with them explicitly in addition to other religious minority communities in any further proposals or legislation that may affect them.

II. BACKGROUND

In September 2013, the Parti Québécois-led provincial government announced that it would seek to enact what it called a “Charter of Québec Values” in order to implement its vision of a secular, gender-equal Québec. It would later draft Bill 60 (renamed a “Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests”¹), a highly contentious piece of legislation that sought to restrict public servants from wearing what it called “ostentatious religious symbols,” namely the Muslim head-cover (or hijab), face-cover (or niqab), the Jewish skullcap (or kippa), and the Sikh turban. This legislation would have applied not only to public servants, but also to university professors, hospital staff, teachers, daycare workers, and employees of any public, parapublic or private institution that received subsidies or contracts from the Québec government. Among its provisions, Bill 60 would also have made it illegal to serve either Kosher or Halal-certified foods to children enrolled in Québec daycares. Lastly, it would have made it mandatory for those seeking government services to do so with their faces uncovered – similar to the infamous Bill 94 of the previous Liberal government.

In December 2013, the Québec government solicited briefs for Bill 60 from the public and civil society groups in order to ascertain its level of support and to determine whether amendments were necessary. Québec society remained bitterly divided on the constitutionality and necessity of the bill, with both the Québec Human Rights and Youth Rights Commission (CDPDJ)² and the Québec Bar Association³, among several other civil

¹ *Bill 60: Charter affirming the values of State secularism and religious neutrality and of equality between women and men, providing a framework for accommodation requests.* (2013). 1st reading Nov. 7, 2013, 40th legislature, 1st session. Retrieved from the National Assembly of Québec website: <<http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-60-40-1.html>>

² Commission des droits de la personne et des droits de la jeunesse (CDPDJ). (February 2014) “Brief to the National Assembly Commission on Institutions. Bill 60, Charter affirming the values of state secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests” <http://www.cdpcj.qc.ca/Publications/memoire-resume_PL_60_charte_valeurs_EN.pdf>

³ Barreau du Québec. (December 2013) *Memoire du Barreau du Québec: Projet de Loi N 60 Charte affirmant les valeurs de laïcité et de neutralité religieuse de l'État ainsi que d'égalité entre les femmes et les hommes et encadrant les demandes d'accommodement.* <<http://www.barreau.qc.ca/pdf/medias/positions/2014/20140116-pl-60.pdf>>

society groups, arguing that the Bill violated fundamental human and civil rights protected by both the Québec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms. Although parliamentary hearings were held from January 14 to February 20, 2014, only a fraction of the submitted briefs were ever heard, as Premier Pauline Marois chose to call an election before the end of the parliamentary hearings – thus turning Bill 60 into an election issue.

In April 2014, after a month-long of campaigning, the minority government of the Parti Québécois suffered a historic defeat at the hands of the Liberal Party in the Québec provincial elections. Although Bill 60 is now defunct, the majority government of Philip Couillard's Liberal Party has promised to release its own version of a Charter of Values/Secularism once the National Assembly resumes in the fall. However, the track-record of the Liberal Party on the issue of religious accommodation does leave room for concern.

The Liberal minority government of Premier Jean Charest first addressed the issue of “reasonable accommodation” in early 2007, when a series of incidents reported by the media evoked furor among some Québec residents, who claimed that religious minorities were asking for accommodations that were undermining the secular character of the Québec nation. Among these incidents includes a Montreal YMCA that agreed to frost the windows adjacent to a Synagogue after members of the Synagogue's congregation complained that its teenagers were being subjected to the view of “scantily-clad” women exercising⁴. This incident and others were widely reported in the media, (sometimes incorrectly) and some claimed that there was a “crisis in accommodation”. As a result, the Premier decided to call for a non-partisan commission headed by well-known professors, Charles Taylor and Gérard Bouchard, who would examine the state of accommodation practices in Québec and make recommendations for the future.

The *Consultation Commission on Accommodation Practices Related to Cultural Differences*, also known as the Bouchard-Taylor Commission, conducted a number of different consultations with individuals, specialists, and representatives from different sociocultural

⁴ Séguin, R. (9 Feb 2007) “Québec strikes commission to resolve minorities debate.” *The Globe and Mail*. <<http://www.theglobeandmail.com/news/national/Québec-strikes-commission-to-resolve-minorities-debate/article17990747/>> (Accessed 31 Aug 2014)

organizations throughout 2007-08. It conducted research projects with specialists from different universities in Québec, organized focus groups, held meetings with experts and representatives of sociocultural organizations, and set up an advisory committee with specialists from various disciplines. It also conducted public consultations throughout Québec and its regions, including four province-wide forums in Montreal. The commission received more than 900 briefs from the public and held over 300 individual hearings with the authors of the briefs; it heard testimony from 241 individuals and held over 22 evening citizen forums, attracting over 3400 participants⁵. Many more watched the coverage of the forum discussions on television across Québec and Canada. Although the Commission attempted to engage the public in an exercise of participatory democracy, the xenophobic and, at times, racist remarks that were heard from some of the participants at the hearings often aggravated tensions between minority and majority groups, often pitting them against one another⁶.

After nearly a year of consultations and \$5 million spent organizing its activities, the Bouchard-Taylor Commission released a report in 2008 entitled *Building the Future: A Time for Reconciliation*, containing several key recommendations and assessments of the current state of accommodation practices in Québec. The report found that the crisis over reasonable accommodation was largely a “crisis of perception”, stemming in part from the media’s sensationalized and distorted reporting of several incidents over a relatively short period of time – thereby stoking fears around immigration and religious accommodation among a Québécois francophone majority public that was already anxious over losing its identity. Although there was no actual crisis of accommodation, there had nonetheless been an escalation in tensions among different groups within Québec society over issues of immigration and accommodation and this required a response. In order to remedy some of the tensions that had been provoked during and prior to the Commission itself, the commissioners recommended:

⁵ Taylor, C. and Bouchard, G. (2008) *Building the Future: A Time for Reconciliation*. Abridged Report. Commission de consultation sur les pratiques d’accommodement reliées au différences culturelles. Gouvernement du Québec.

⁶ Mahrouse, G. (2010). “‘Reasonable Accommodation in Québec’: The Limits of Participation and Dialogue,” *Race and Class* 52(1): 85-96.

1. Removing the crucifix above the chair of the president of the National Assembly of Québec, and halting the practice of reciting prayers at the start of municipal council public meetings
2. Prohibiting judges, Crown prosecutors, police officers, prison guards and the president and vice-president of the National Assembly of Québec from wearing religious signs/symbols
3. Promoting an ‘open secularism’ model for Québec, which includes protecting the moral equality of persons and their freedom of conscience and religion, as well as advocating institutional structures that include the separation of Church and State and the neutrality of the State with respect to religions and deep-seated secular convictions
4. Promoting a dejudicialized approach to handling accommodation requests, which favours a contextual, deliberative and reflexive approach
5. Recognizing the skills and qualifications of immigrants, and ending the high rates of underrepresentation and discrimination in employment among these populations
6. Promoting interculturalism as a clear policy model for Québec’s integration of immigrants

Despite many of their recommendations being empirically supported by the commission’s extensive interviews, public consultations, and expert advice, the Charest government rejected most if not all of Bouchard-Taylor’s key recommendations – including the recommendation to remove the crucifix in the National Assembly. The matter died down temporarily following the release of the report, but the government had missed its opportunity to act in resolving these tensions.

In 2010, the issue of reasonable accommodation re-emerged – this time because of a news report that a woman wearing a face-cover (or *niqab*) had reportedly refused to remove her face-cover while receiving French-language instruction in a government-subsidized school. She had been subsequently expelled from the school after several appeals and attempts at accommodation. Media commentators weighed in on the issue, and similar to the “accommodation crisis” of 2007, opinions quickly became polarized. Instead of calling for calm, Premier Jean Charest called for legislation that would prohibit the wearing of a face-covering⁷ while accessing government services. The proposed legislation became known as

⁷ This followed on the heels of similar but more extensive bans that had been proposed in France and in Belgium in 2010-11.

Bill 94, on which the Tessellate Institute has written a detailed response⁸.

While Bill 94 received the full support of the Liberal government, it did not receive sufficient support from other opposition party members, particularly as members of the PQ wanted the ban on face coverings to be more extensive. Ultimately, the Liberal government was unable to pass the bill due to another election being called in the summer of 2012. This time, it was the PQ minority government of Pauline Marois that was elected in September 2012, with a promise to implement its own Charter of Secularism (which became known as the Charter of Québec Values, or Bill 60, as discussed above).

It can be argued that the issue of “reasonable accommodation” of religious minority practices has been grossly exaggerated and has resulted in heavy media attention and debates by at least two successive governments that sought to develop reports, commissions and laws to address the so-called “crisis”. However, many of these seemingly neutral discussions and debates have not only been incredibly divisive and controversial for Québec society, but have also led to racist and, at times, violent incidents that directly targeted some of the more vulnerable members of religious minority communities⁹.

Presently, the Liberal majority government of Philip Couillard has a responsibility to address the issue of religious accommodation in a way that will not further aggravate tensions between different groups in Québec society, and that will instead effectively address the issues and concerns that had been raised in the debate over “reasonable accommodation” and the Charter of Québec Values. This can only be done through proper consultation with all of the concerned parties, particularly with those who were adversely affected by the initially proposed laws and measures.

⁸ For full report, see Haque, A and Bullock, K. (2010) “Response to Québec’s Bill 94”. The Tessellate Institute. Retrieved from <<http://www.tessellateinstitute.com/publications/response-to-Quebecs-bill-94/>>.

⁹ Peritz, I. (2013) “Québec Muslims facing more abuse since charter proposal, women’s groups say”. *The Globe and Mail*. Retrieved from <<http://www.theglobeandmail.com/news/national/Quebec-muslims-facing-more-abuse-since-charter-proposal-womens-groups-say/article14672348/>> (Accessed 3 Sept 2014)

III. ISSUES OF CONCERN

For Québécois who oppose or opposed the Charter of Values (or any similar legislation), including members of religious minority groups and who wear a head or face cover (including but not limited to a headscarf, face-cover, skullcap, or turban):

(i) Increase in Intolerance and Violence

The debate over the Charter of Québec Values (or Bill 60) reignited the deep divisions within Québec that had initially been brought to attention during the “accommodation crisis” of 2006-08. The Charter debate split apart sovereignists, nationalists, feminists as well as neighbours, family members, friends, Montreal and the regions, Anglophones and Francophones, among others.

However, it can be persuasively argued that those most adversely affected by these debates were the vulnerable members of religious minority groups that were directly named in the Charter’s proposals. These included but were not limited to members of the Jewish, Sikh and Muslim communities in Québec. In particular, there were reports from several human rights and civil society groups that there had been a substantial increase in the number of reported incidents of harassment, insults and physical attacks directed towards Muslim women who either covered their hair and/or face. An umbrella group of 17 Women’s Centers in Québec reported that their members had seen a significant increase in violent acts directed against Muslim women wearing headscarves and/or face covers in particular, including spitting, verbal insults and other racist attacks¹⁰. They noted that several women had reported being afraid to leave their homes during the course of the Charter debate. Such reports should not be taken lightly, as similar and more severe patterns of violence directed towards veil-wearing Muslim women have been reported in places such as France, where legislation prohibiting the covering of the hair and/or face in public schools and public space has been in place since

¹⁰ Ibid

2004, and 2010, respectively.¹¹

RECOMMENDATION 1:

The government should acknowledge the verbal, physical, and/or discriminatory acts that vulnerable members of religious minority groups have been subjected to in recent years. In this vein, government funding should be directed towards projects and civil society groups that aim to eliminate racism and discrimination, and that encourage positive portrayals of the contribution of racialized and/or immigrant groups and religious minority groups within Québec currently and historically. In particular, measures should be taken to remedy negative stereotypes regarding women who wear headscarves and/or face covers. Projects that aim to cultivate more positive and diverse image of Muslim women and their contributions to Québec society, as well as disseminating these projects across Québec through province-wide exhibits, should be funded.¹² In addition, groups that have as part of their mandate the empowerment of vulnerable members of these communities to speak for themselves should be given further funding.¹³

(ii) Loss of Employment or Discrimination in Gaining Employment

As reported in a key study prepared for the Québec Human Rights and Youth Rights Commission (CDPDJ), job loss and discrimination are a reality faced by racialized minority

¹¹ The annual reports compiled by the *Collectif Contre l'Islamophobie en France* (CCIF), a human-rights NGO in France, have shown a steady increase in physical, verbal, and discriminatory incidents since 2005, some of the more severe of these (79%) directed specifically against Muslim women who wear headscarves and/or face covers. See 2014 Annual report: <<http://www.islamophobie.net/sites/default/files/CCIF-Annual-Report-2014.pdf>>

¹² For example, the current exhibition entitled “Et Voilà! Le voile musulman dévoilée” at the *Musée des religions du monde* in Nicolet, could be expanded to other museums and public exhibits across the province. See <<http://www.museedesreligions.qc.ca/nos-expositions/passees/et-voila-le-voile-musulman-devoile>>

¹³ The Canadian Council for Muslim Women (CCMW) received funding from the Ontario Trillium foundation to conduct the first-ever qualitative study of women in Ontario and Montreal who wear niqab. See Clarke, L. (2013). *Women in Niqab Speak: A study of the niqab in Canada*. Gananoque: Canadian Council of Muslim Women. Such empirical data is severely lacking in Québec and more funding is crucial.

groups as well as by many first- and second-generation immigrants in Québec.¹⁴ Members of racialized minority groups have faced significant systemic barriers to achieving meaningful employment in Québec, especially when compared to members of non-racialized groups. In addition, the failure to adequately recognize the credentials and qualifications of new immigrants has resulted in a significant disadvantage to them gaining meaningful employment despite having a higher level of educational attainment, on average, when compared with members of the francophone majority population. This situation of systemic discrimination is compounded by gender, race and religion, leading to multiple or intersecting discriminations.

According to a 2008 Statistics Canada report, the unemployment rate in the Maghrebi community (those originating primarily from countries in North Africa, including Morocco, Tunisia and Algeria) was found to be 28%, which was higher than the 20% unemployment rate of those originating from other French-speaking African countries, and more than four times higher than the 7% unemployment rate among the French Québécois.¹⁵ This figure was elevated to 33% when considering the unemployment rate of Maghrebi women, many of whom are Muslim. Many of these women also reported a lower annual income when compared with their male counterparts, as well as being overrepresented in low-wage State-subsidized employment, such as daycare workers.¹⁶ In addition, there is a significantly low representation of visible minorities in the civil service, with only 5.3% of the Québec civil service consisting of non-French Canadian communities, even though racialized minorities, Anglophones and Indigenous Communities make up more than 20% of the Québec population.¹⁷ This data demonstrates the precarious employment position of members of these communities and women in particular, especially when compounded by gender, race and religion, among other factors.

¹⁴ Eid, P. (2012). *Mésurer la discrimination à l'embauche subie par les minorités racisées : résultats d'un « testing » mené dans le grand Montréal*. Commission des Droits de la Personne et des droits de la Jeunesse.

¹⁵ Bourque, O. (28 March 2008). "Chomage des Maghrébins: "Une honte pour le Québec". La Presse Affaires. <<http://affaires.lapresse.ca/economie/200901/06/01-6861111-chomage-des-maghebins-une-honte-pour-le-Quebec.php>>. (Accessed 4 Oct 2014).

¹⁶ *Fédération des femmes du Québec*. (2009) « Débat sur la laïcité et le port des signes religieux ostentatoires dans la fonction et les services publics Québécois ». Retrieved from <http://laicitefeministe.com/content/debat_laicite_mai2009.pdf>.

¹⁷ Center for Research-Action on Race Relations (CRARR). (2008) "Minority Representation in the Québec Civil Service: Disappointingly Slow". <<http://www.crarr.org/?q=node/71>> (Accessed 4 Oct 2014).

RECOMMENDATION 2:

The government should take immediate action to remedy the extreme underrepresentation of non-French Francophone communities within the civil service. It should invest funding into research that addresses the causes of the higher unemployment rates for members of certain immigrant or racialized groups over others, as well as the particular barriers facing women from these groups. It should also develop and implement an action plan for how to address the intersectional nature of the barriers to employment, which may include considering gender, race and religion, in addition to other relevant factors, as part of the matrix that determines different outcomes for differently positioned members within these groups. In addition, extending employment equity legislation to remedy historical discrimination towards such groups should be considered for the parapublic and private sectors in addition to the public sector.

(iii) “Discreet” versus “Ostentatious” Religious Signs/Symbols

The current terminology used to describe the sartorial practices of many members of religious minority groups is highly subjective and deeply problematic for several reasons. First, many members of religious minority groups do not consider wearing headwear (such as the kippa or turban) or headcovering (such as the hijab), as either a “removable religious sign” or “symbol”. As several studies have suggested¹⁸, those who undertake such sartorial practices may do so for a variety of reasons, including but not limited to tradition, ethics, culture, fashion, comfort, and/or religion among others, and the primacy accorded to each reason may change over time. Among those with ethical or religious motives for their sartorial practices, they do not necessarily consider these practices as “removable signs” or “symbols” that can be taken on or off without consequence, much like an accessory. More often, these practices are reflective of deep and sincere conviction and consideration, and require significant fortitude and resolve to maintain.

Second, what qualifies as a “discreet” versus “ostentatious” sign/symbol or practice is highly

¹⁸ Alvi, S. S., Hoodfar, H., and McDonough, S. (2003). *The Muslim Veil in North America: Issues and Debates*. Toronto: Women's Press; Farhad Khosrokhavar, F. and Gaspard, F. (1995). *Le Foulard et La République*. Paris: La Découverte; Ruby, T. F. (2004). *Immigrant Muslim Women and the Hijab: Sites of Struggle in Crafting and Negotiating Identities in Canada*. Saskatchewan: Community University Institute for Social Research, University of Saskatchewan.

subjective, and in many ways, deeply problematic. As demonstrated in the document prepared by the PQ government to introduce its propositions for a “Charter of Québec Values”, the standard used for comparing which “religious signs” are considered “discreet” and which are “ostentatious” is the Christian Crucifix.¹⁹ For example, in an infographic (p. 5) illustrating which “signs” were deemed too “ostentatious” for public servants to wear, among these included outlines of persons wearing a large crucifix, a headscarf, a turban, a face-veil, and a skullcap. However, when illustrating which “signs” were “discreet” enough to be worn, the illustrations included a person wearing a small crucifix, another wearing a small pair of crescent moon and star earrings, and a third wearing a ring with a Star of David symbol. In comparing what is considered “ostentatious” versus “discreet”, the only “sign” that remains the same is the Crucifix: the larger Crucifix simply becomes smaller. The other “signs” are transformed completely; instead, they are replaced by accessories such as earrings or rings that have nothing to do with the original “sign” or practice. This demonstrates the utter incoherence of attempting to render practices from different religious traditions equivalent to one another, by arbitrarily reducing each to a practice found in one dominant religious tradition: Christianity. This reflects a deeply Christian-centric view of the world that renders non-Christian religious practices both unintelligible and uninterpretable on their own terms or within their own individual historical, traditional or cultural contexts. Such erasure is neither conducive to intercultural understanding nor reflective of the pluralistic reality of Québec society. Is it also incompatible with a secular framework.

RECOMMENDATION 3:

The government should refrain from formulating laws or policies based on arbitrary or subjective pronouncements on what religious practices are considered to be either too “ostentatious” or sufficiently “discreet”, as these are categories based on Christian-centric notions of religion, and do not reflect the lived realities of non-Christian religious traditions that do not subscribe to these distinctions. Any laws or policies that seek to regulate religious practices should instead be based on concrete empirical data and research that demonstrate why it is imperative for the government to circumscribe individuals’ rights to Freedom of Conscience and Freedom of Religion, both of which are protected under the Québec Charter of

¹⁹ Drainville, B. (September 2013). Parce que nos valeurs, on y croit: Propositions gouvernementales. Gouvernement du Québec. Website <www.nosvaleurs.gouv.qc.ca> (Accessed 13 Sept 2013).

For Québécois who support or supported implementing a Charter of Values (or any similar legislation):

(i) Gender Equality

Despite the fact that gender equality is already enshrined as a protected right in both the Québec Charter of Human Rights and Freedoms and Canadian Charter of Rights and Freedoms, many supporters of Bill 60 and other such legislation frequently cite gender equality as one of the reasons why civil servants and other members of the public and parapublic workforce should be prohibited from wearing “religious symbols”. While this argument might appear legitimate at first glance, its weaknesses are apparent once one stops to consider several concrete questions. First, what evidence is there to support the argument that having different sartorial practices between genders implies inequality? Second, what evidence is there to support that prohibiting individuals from wearing garments of their choice during working hours will promote gender equality?

As a preliminary answer, there is insufficient evidence to support either argument. In fact, gender equality as articulated above is dependent on an extremely limited definition of equality – one that assumes that sameness of appearance will somehow eliminate systemic barriers to employment that are based in entrenched historical, institutional and cultural factors. It is difficult to imagine how preventing someone from practicing an aspect of their religion or tradition – that they themselves have chosen to undertake – will somehow increase their ability to exercise greater economic independence, autonomy, or freedom of choice. Even if one considers the argument that some women, particularly Muslim women who cover their hair and/or face, are coerced by patriarchal male authority figures to wear such clothing – limiting their ability to wear such clothing during work hours will likely result in them being further coerced into leaving their jobs and thus becoming economically dependent on said patriarchal males. This would ironically undermine, rather than facilitate, gender equality.

Despite the fact that gender equality is increasingly identified as one of the essential values of Québec society, it should be noted that there are still significant challenges to the achievement of full equality between women and men, as indicated by the significantly lower salaries of women compared to men, and their lower levels of political representation.²⁰

²⁰ Fédération des femmes du Québec. (2009). « Débat sur la laïcité et le port des signes religieux ostentatoires dans la fonction et les services publics Québécois »

There are no shortages of groups within Québec itself, including feminist as well as other social justice groups, who continue to struggle for gender equality for all women. As with other forms of discrimination, gender also intersects with race, religion, sexuality and disability, such that racialized women who are also disabled, for example, tend to suffer more acutely from multiple forms of inequalities when compared with white able-bodied women.

RECOMMENDATION 4:

It is not advisable for the government to enact laws or policies that might further marginalize vulnerable members of religious or racialized minority groups or immigrant communities, including enacting legislation prohibiting the wearing of attire such as a head cover (kippa, turban, hijab or chador), face cover (niqab or burqa) or other traditional, religious or cultural forms of dress. Rather, the government should focus on measures that would increase the participation of women in the labour force and in political engagement, particularly marginalized women who suffer from multiple intersecting forms of discrimination. For example, funding could be increased for job skills training for women from new or recent immigrant groups, and incentives could be given to employers in the private and parapublic sectors to hire women who suffer from multiple inequalities. Beyond incentives, legislation that advocates employment equity to remedy historical discrimination towards vulnerable members of historical discriminated against groups could also be extended to the private and parapublic sectors.

(ii) Secularism and Neutrality

In recent years the concept of secularism (or *laïcité* in French) has become a hot topic in Québec society. However as explained by a number of specialists in Québec, such as sociologist Micheline Milot, the word secularism (or *laïcité*) only occurs three times in Québec government documents between 1990-2005.²¹

²¹ Milot, Micheline (2009). “L’Émergence de la notion de *laïcité* au Québec – Résistances, Polysémie et instrumentalisation » dans, *Appartenances Religieuses, Appartenances Citoyenne : Un équilibre en tension*. Paul Eid, Pierre Bosset, Micheline Milot, and Sébastien Lebel-Grenier (eds.) Québec : Les Presses de l’Université Laval, pp. 29-73.

Before then, the term itself was non-existent. This does not mean that the idea of separation between Church and State did not exist in Québec society before then. It does, however, reflect the growing international influence of the French-Republican interpretation of laïcité as a normative ideal, an interpretation that a number of scholars and human rights groups have rightly criticized as being unreasonably restrictive and threatening to the rights and freedoms of vulnerable citizens from minority religious groups. As Milot argues, historically the separation of Church and State developed very differently in Québec than in France. In Québec, secularism is defined as a political arrangement under which the freedoms of conscience and religion are guaranteed in accordance with the will of equal justice for all, through neutrality (of the State) with respect to different conceptions of the good life that coexist in society. As such, there exists a clear tension between a French-style model of laïcité, which seeks to restrict visible manifestation of religious expression, and an open or inclusive model, as advocated in the Bouchard-Taylor Report, which reflects a more pluralistic vision of society. According to the inclusive model of secularism, secularism is not a value in itself, but rather a form of political arrangement or regulative ideal that aims to ensure the protection of fundamental values, central of which are equality and freedom of conscience and religion.²²

Likewise, the concept of neutrality should also not be interpreted as a value in itself, but rather as an institutional arrangement that assures the professional impartiality of individuals who execute their duties as civil servants. As practiced in other jurisdictions in Canada and in the United States, all that is required of professional civil servants is for them to recite an oath of impartiality upon taking office or becoming employed, one that is enforced through their professional code of conduct rather than through state legislation. This applies equally to those professions such as judges, police officers, crown prosecutors, prison guards and the president and vice-president of the National Assembly of Québec, who are said to exercise coercive State power. Indeed, there are also many examples in other countries where individuals in charge of exercising similar functions have had no problem separating their personal individual convictions with their professional duties. Therefore, the burden of proof for arguing that individuals who undertake such professions while wearing clothing that displays their religious affiliation are somehow professionally compromised in their neutrality – such as a Sikh police officer who wears a turban – should lie with the policymaker.

²² Ibid, pp. 32-33.

RECOMMENDATION 5:

The government should support an inclusive model of secularism, which states that secularism is not a value in itself, but rather a political arrangement or regulative ideal that aims to ensure the protection of fundamental values, the central of which are the equality and freedom of conscience and religion for all individuals. Likewise, it should remain sufficient that the principle of neutrality for public servants be upheld by reciting an oath of impartiality that conforms to the professional requirements of the position under question, including that of judges, police officers, crown prosecutors, prison guards and members of the National Assembly of Québec.

(iii) Reasonable Accommodation and Living Together (le vivre ensemble)

Although the “crisis” over reasonable accommodation was thoroughly refuted in the Bouchard-Taylor report, concerns still remain that the number accommodation requests will override the limits of what is “reasonable” to accommodate. In actuality, the number of accommodation requests that end up before the courts remain extremely low.²³ Nonetheless, reasonable accommodation is limited as a model for community relations, as it is only effective in addressing exceptions, that is, where existing laws or policies are not sufficient to address the legitimate needs of certain individuals or groups. By itself, reasonable accommodation is not sufficient as a model to transform community relations for the better. It remains locked in a hierarchical binary relationship between a dominant Francophone Québécois majority that has the right to determine what is tolerable for Québécois minority groups.

In contrast, a more inclusive understanding of ‘living together’ (*le vivre ensemble*, a concept that is frequently referenced in public discussions) should not only apply to the relationship between majority-minority Québécois communities, but also to the First Nations and Indigenous communities of Québec. The fact that they were not consulted explicitly, neither during the Bouchard-Taylor Commission nor during the formulation of the Charter of Québec

²³ Eid, P. and Bosset, P. (2008). Document de réflexion: La charte et la prise en compte de la religion dans l'espace public. Québec: Commission des droits de la personne et droits de la jeunesse. <http://www.cdpcj.qc.ca/publications/Charte_religion_espace_public.pdf> (Accessed 10 Oct 2014)

Values, does not bode well for interculturalism as a model of transformative community engagement.

Transformative community engagement includes acknowledging the settler colonial context of the relationships of both the majority group and the minority groups in Québec, vis-à-vis First Nations and Indigenous communities. In this relationship, both majority and minority groups are settlers that have settled on land originally belonging to Indigenous and First Nations communities and all have a duty as treaty peoples to form healthy, mutually beneficial and non-harmful relationships with one another. Acknowledging this reality and valuing the history of not only Francophone Québécois but rather all communities that have historically inhabited Québec, is crucial in moving forward as a society.

RECOMMENDATION 6:

The government should acknowledge the important history of First Nations and Indigenous communities of Québec, whose “ceremonies, sweat lodges, potlaches, dances, songs, religious and spiritual symbols, cultural identities and languages”²⁴ were also prohibited in the past, and should consult with them explicitly on any further proposal or legislation that may affect them in addition to other religious minority groups in the province of Québec.

²⁴ Kelly, A. (12 Sept 2013) “Idle No More weighs in on Québec’s proposed Charter of Values.” Global News. Website < <http://globalnews.ca/news/836617/idle-no-more-weighs-in-on-Quebecs-proposed-charter-of-values/> > (Accessed 3 Oct 2014).

IV. SUMMARY OF RECOMMENDATIONS

The Québec government should consider the following recommendations when drafting any future version of a Charter that seeks to legislate secularism in Québec:

- 1) The government should acknowledge the verbal, physical, and/or discriminatory acts that vulnerable members of religious minority groups have been subjected to in recent years. In this vein, government funding should be directed towards projects and civil society groups that aim to eliminate racism and discrimination, and that encourage positive portrayals of the contribution of racialized and/or immigrant groups and religious minority groups within Québec currently and historically. In particular, measures should be taken to remedy negative stereotypes regarding women who wear headscarves and/or face covers. Projects that aim to cultivate more positive and diverse image of Muslim women and their contributions to Québec society, as well as disseminating these projects across Québec through province-wide exhibits, should be funded. In addition, groups that have as part of their mandate the empowerment of vulnerable members of these communities to speak for themselves should be given further funding.**

- 2) The government should take immediate action to remedy the extreme underrepresentation of non-white Francophone Québécois communities within the civil service. It should invest funding into research that addresses the causes of the higher unemployment rates for members of certain racialized and/or immigrant groups over others, as well as the particular barriers facing women from these groups. It should also develop and implement an action plan for how to address the intersectional nature of the barriers to employment, which may include considering gender, race and religion, in addition to other relevant factors, as part of the matrix of factors that determines different outcome for differently positioned members within groups. In addition, extending employment equity legislation to remedy historical discrimination towards such groups should be considered for the parapublic and private sectors in addition to the public sector.**

- 3) **The government should refrain from formulating laws or policies based on arbitrary or subjective pronouncements on what religious practices are considered to be either too “ostentatious” or sufficiently “discreet”, as these are categories based on Christian-centric notions of religion, and do not reflect the lived realities of non-Christian religious traditions that do not subscribe to these distinctions. Any laws or policies that seek to regulate religious practices should instead be based on concrete empirical data and research that demonstrate why it is imperative for the government to circumscribe individuals’ rights to freedom of conscience and freedom of religion, both of which are protected under the Québec Charter of Human Rights and Freedoms and Canadian Charter of Rights and Freedoms.**

- 4) **It is not advisable for the government to enact laws or policies that might further marginalize vulnerable members of religious or racialized minority groups or immigrant communities, including enacting legislation prohibiting the wearing of attire such as a head cover (kippa, turban, hijab or chador), face cover (niqab or burqa) or other traditional, religious or cultural forms of dress. Rather, the government should focus on measures that would increase the participation of women in the labour force and in political engagement, particularly marginalized women who suffer from multiple intersecting forms of discrimination. For example, funding could be increased for job skills training for women from new or recent immigrant groups, and incentives could be given to employers in the private and parapublic sectors to hire women who suffer from multiple inequalities. Beyond incentives, legislation that advocates employment equity to remedy historical discrimination towards vulnerable members of historical discriminated against groups could also be extended to the private and parapublic sectors.**

- 5) **The government should support an inclusive model of secularism, which states that secularism is not a value in itself, but rather a political arrangement or regulative ideal that aims to ensure the protection of fundamental values, the central of which are the equality and freedom of conscience and religion for all individuals. Likewise, it should remain sufficient that the principle of neutrality for public servants be upheld by reciting an oath of impartiality that conforms to the professional requirements of the position under question, including that of judges, police officers, crown prosecutors, prison guards and members of the National Assembly of Québec.**

- 6) **The government should acknowledge the important history of First Nations and Indigenous communities of Québec, whose “ceremonies, sweat lodges, potlaches, dances, songs, religious and spiritual symbols, cultural identities and languages”²⁵ were also prohibited in the past, and should consult with them explicitly on any further proposal or legislation that may affect them in addition to other religious minority groups in the province of Québec.**

V. CONCLUSION

The desire of some Québécois to engage in ‘high-principled’ provincial debates regarding the direction of the province should not preclude the rights of minorities to live in a safe environment, free of fear and discrimination. All citizens have the right to live in a society free of fear of discrimination from either their government or their fellow citizens. Any government policy or legislation that threatens that right and leads to social disorder and discord, or that threatens to further marginalize already vulnerable members of racialized, immigrant or religious minority groups, should immediately be reconsidered.

‘Living together’ includes learning to live with one another while understanding the different histories of the groups that inhabit Québec, and how those histories affect their daily lives and practices. In that respect, moving towards a model of transformative community engagement that actively considers the concerns not only of members of a Francophone majority but also the histories and lived experiences of members of religious minority, racialized, immigrant, First Nations and Indigenous communities living in the province of Québec, is not only essential but crucial in moving forward as a society.

The above recommendations have been made in the spirit of better learning how to ‘live together’, by moving towards a less harmful and more inclusive secularism and a more transformative and social justice oriented model of community engagement in Québec.

²⁵ Ibid