

# Long court battle begins over Quebec's 'secularism' law banning religious symbols

A courtroom battle has started in Quebec with testimony that puts the legality of the province's so-called secularism law Bill 21 on trial.

Quebec has tried to shield the law, which bans the wearing of religious symbols by anyone who works in the public sector, by invoking the notwithstanding clause of the Canadian Charter of Rights and Freedoms. Bill 21 applies to public employees hired after the law came into effect in June 2019.

However, critics say the notwithstanding clause is not valid in this instance because Bill 21 disproportionately impacts women more than men. For example, it does not allow female teachers who wear a head covering to teach in public schools and that the sexual equality guarantees in Section 28 of the Charter are not subject to the notwithstanding clause.

"We will demonstrate that the law is unconstitutional and invalid," said the Canadian Civil Liberties Association (CCLA), which among the organizations challenging Bill 21. Others include the National Council of Canadian Muslims (NCCM) and the English Language School Board of Montreal.

The primary case against Bill 21 began in Quebec Superior Court on Nov. 2.

However, four different lawsuits have been filed to try and upend Bill 21, a controversial law that has been criticized and condemned by most religious organizations in Canada including the Canadian Conference of Catholic Bishops as an affront to religious freedom.

"Our unwavering resolve to keep fighting for marginalized people in Canada, and our commitment to justice and equality, are why we urge everyone to stand together against the religious symbols ban," said Noa Mendelsohn Aviv, director of equity for the Canadian Civil Liberties Association.

The Quebec Court of Appeal ruled in a 2-1 decision on Dec. 12, 2019, that it would not suspend aspects of the law before the primary case against Bill 21, and it appears that the use of the notwithstanding clause by the Quebec government was a critical factor in the judges' decision.

Both of judges in the majority cited the use of the clause as a reason for not being able to act, although all three of the judges indicated that the law has had negative consequences for some Quebecers.

Lawyers for the groups critical of Bill 21 will continue to argue that the

law targets women because since last June the people most directly impacted are women who wear head coverings.

Their legal argument was the law should be struck down because Quebec's secularism law violates the sexual equality guarantees in Section 28 of the Canadian Charter of Rights and Freedoms. They claim that Section 28 can't be shielded from challenge by the notwithstanding clause because it does not apply to that section.

The Quebec government's position has always been that Bill 21 protects the secular nature of Quebec, that the province has the absolute right to make laws as it deems fit and that the pre-emptive use of the notwithstanding clause shields the law from any court interference.

And the Quebec government has repeatedly pointed out that all public opinion polls in the province show that Bill 21 is supported by a large majority of Quebecers.

Outside of Quebec, a number of provincial governments, including Ontario, have passed motions condemning Bill 21 but for the most part Canada's federal political parties have been silent on the issue. Both the NDP and new Conservative Leader Erin O'Toole explicitly say that Bill 21 is purely a provincial matter to be decided in Quebec.

Many human rights and religious groups have been calling on the federal government to get involved in the legal challenges to Bill 21, but the federal government's position has been to stay out of the Quebec court cases while holding out the possibility of getting involved if those cases eventually end up in Canada's Supreme Court.

According to the Canadian Press, three female teachers took the stand on Nov. 2 to testify about how Bill 21 has affected them and their employment prospects in Quebec. A brief on the CCLA's website says the current Quebec case is expected to continue for four to five weeks.

Both the CCLA and National Council of Canadian Muslims have said previously that they know the court fight against Bill 21 could go on for years, and that they were prepared to fight the law as long it takes.

"We know this has the potential to go all the way to the Supreme Court, and we could be looking at a long battle of five-to-seven years," a statement on the CCLA website said, adding "and we will fight this to the very end."