CANADA
PROVINCE OF QUEBEC

MEMORANDUM OF THE LORD READING LAW SOCIETY OPPOSING BILL N°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

MÉMOIRE DE L'ASSOCIATION DE DROIT LORD READING EN OPPOSITION AU 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

Montreal, December 18, 2013

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PREFACE AND INTRODUCTION

The Lord Reading Law Society was born at a time when within Canada and within our Province, Jews, like other minorities, because of open or tacit discrimination did not enjoy full equality which would have allowed them to flourish to the full measure of their potential within Quebec society. Indeed, it was the fact that Jews were barred from the hotel where the *Congrès du Barreau du Québec* of 1948 was to be held that became the catalyst for its creation.

It was only three years after its founding that the first Jew was named a Judge of a Superior Court anywhere in Canada in the person of The Honourable Harry Batshaw. His accession dramatically changed the parameters of nomination to the Bench permitting henceforth the magistrature to better reflect the pluralistic composition of Canadian and Quebec populations.

That the name of the Society perpetuates the name of Rufus Daniel Isaacs, first Marquess of Reading of the United Kingdom is not simply happenstance. It reflects the hope or rather the certitude of the founders of the Society that the day would come when the "Jewish Bar" like Lord Reading would take its just place within the Quebec and Canadian legal world. Lord Reading counted among his other accomplishments the fact that he was the first practicing Jew to act as a Cabinet Officer in any government in what was then the British Empire, the first Attorney-General of Great Britain, second Lord Chief Justice of England, first Ambassador of the United Kingdom to Washington and the only Viceroy of India of Jewish origin. The Society's name does not arise from a particular attachment to England or to the United Kingdom, save perhaps with, the principles of "natural justice" which result from English administrative law, but rather from the conviction that ethnic or religious origin should never be a barrier to the flourishing advancement of qualified personnel.

For more than 65 years, the Lord Reading Law Society, representing the collective voice of Jewish jurists of Quebec, have sought to advance the freedoms and liberties of all Quebecers and the diversity both of the Bench and public service, in general, in order to reflect the racial, cultural and religious diversity of Quebecers. The Society takes pride in the fact that five of its former Presidents were elected *Bâtonnier* of the *Barreau de Montréal*. Its work earned it the *Médaille du Barreau de Montréal* in 2008.

On that occasion, the *Bâtonnier* of the day, Me Stephen Schenke wrote:

> *"The Lord Reading Law Society's passion for social justice, its tradition of legal excellence, its contribution to the judiciary and to the Montreal Bar, are just a few of the significant contributions that we wish to recognize. We also believe that by honouring the Lord Reading Law Society, we are recognizing the diversity of the Montreal Bar. By highlighting your 60 years of success, we are sending a message of welcome to all ethnic groups in Montreal and cherishing values of pluralism that are so important for the future of Montreal and Quebec."*

The life experience of the Lord Reading Law Society and its members give it a unique perspective entitling its views to the receptive ear of the Honourable Members of the National Assembly. It is in that spirit that the present Memorandum is filed with the hope and indeed conviction that it will be granted the right to be heard *viva voce* before the National Assembly sitting in Parliamentary Commission as "*la Commission des institutions*".

BILL 60 – A LAW FLAWED BEYOND REPAIR

A. A Reversal of History

1. In 1832 Quebec became the first jurisdiction within the British Empire to grant Jews full emancipation, including the rights to have and hold any office or trust and to be elected to serve in the Legislative Assembly of Lower Canada[1]. It resulted from public oprobium regarding the expulsion, twice over, of Ezekiel Hart from a predecessor of the present National Assembly, who although elected as the representative of Trois-Rivières (1807 and 1809), was expelled because he could not and/or would not take the oath of office "on my true faith as a Christian". Ezekiel Hart was expelled from the legislature in 1808 because he took his oath of office upon the Tanach, the Hebrew Bible[2], with his head covered, clearly identifying his religious confession.

2. The legislation provided that:

> "…it is hereby declared and enacted….that all persons professing the Jewish Religion being natural born British subjects inhabiting and residing in this Province, are entitled and shall be deemed adjudged and taken to be entitled to the full rights and privileges of the other subjects of His Majesty, His Heir or Successors, to all intents, constructions and purposes whatsoever, and capable of taking having and enjoying any office or place of trust whatsoever, within this Province
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> *…Qu'il soit donc declaré et statué … Et il est par le présent déclaré et statué par la dite autorité que toutes personnes professant le Judaïsme, et qui sont nées sujets Britanniques, et qui habitent et résident en cette Province, ont droit, et seront censées, considérées et regardées comme ayant droit à tous les droits et privilèges des autres sujets de Sa Majesté, Ses Héritiers et Successeurs, à toutes intentions, interprétations et fins quelconques, et sont habiles à pouvoir posséder, avoir ou jouir d'aucun office ou charge de confiance quelconque en cette Province*." (Underlines, our own).

3. The description of "all persons professing the Jewish Religion"[3] is deliberate and recognizes that the rights acquired of "taking holding and enjoying any office or place of trust" inhere notwithstanding open and demonstrative affirmation of the subject's religious confession and convictions.

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[1] An Act for the making more effectual provision for the Government of the Province of Quebec in North America, 1831 C.A.P. LVII, proclaimed in force on June 5, 1832. Religious emancipation was enacted in the United Kingdom, and on behalf of the Empire only 27 years later.

[2] Sometimes referred to as the Old Testament, as opposed to the New Testament or "Saints Évangiles".

[3] The commonly accepted definition of the verb "profess" is to "openly declare", "affirm". In French, "*Professer*" denotes "*Déclarer, reconnaître publiquement*", the very antithesis of the obligations created by Arts. 3-7 and the whole thrust of Bill 60.

4. In enacting such legislation, Quebec affirmed Pluralism as a fundamental value. Henceforth the open profession in the public domain of one's religious convictions should not be an impediment to public service. It is to the credit of Louis-Joseph Papineau, then President of the Legislative Assembly of Lower Canada that he supported and actively encouraged such legislation.

5. With such legislation professing openly and publicly religious principles and beliefs by persons demonstrative affirmation of religious principles other than Jews could, thereafter, no longer allow their exclusion from or impede their advancement in the public service, in law if not in fact. The advent of the Quebec Charter seven (7) years before the Canadian Charter enshrined these principles to the benefit of all persons of all creeds and confessions equally and individually, through the quasi-constitutional protection of the freedoms of expression, conscience and religion, and the right to "every person who works" to …fair and reasonable conditions of employment….[4].

6. Bill 60 would wipe away the rights of Jews professing their religion openly, to "take, have and enjoy" "any office or place of trust", and to be entitled to the full rights and privileges of other citizens, i.e. those not professing openly any religion whatsoever or those who religious tenets do not require open and demonstrative affirmation such as through the wearing of the items prohibited by its Art. 5 hard won 181 years ago. Adding insult to injury, the Bill does so not only with respect to Jews but all other citizens demonstratively professing a faith. The limitations, restrictions and abrogations of Charter protected values that result from Bill 60 are different in form, no different in effect, and hardly different in spirit to what led to Ezekiel Hart's expulsion, i.e. demonstrative "profession" of his religious principles in a public context, the new paradigm of ascetic secularism being substituted by Bill 60 in place of active faith Christianity, as the price for admission to public service. Simply put, Bill 60 rolls the clock back pre-1832, and abrogates rights acquired on behalf of all minorities some 181 years ago.

7. Pluralism is based on i) recognition and respect of religious differences; ii) the active seeking of understanding across lines of difference; iii) energetic engagement with diversity; iv) recognition of and respect of each person's fundamental worth in accordance with basic dignity and fair play, as opposed to the forced abandonment or violation of one's religious precepts in the public sphere; v) affirmation that each person's different life experience and perspective, including their religious convictions and their "profession" thereof, is part of their intrinsic identity with which they benefit the collectivity.

8. Pluralism is dismissed and discarded by Bill 60 allegedly pursuant to the requirement of the "religious neutrality" of the State, substituting an ascetic and skewed secularism that leaves intact, as if immune from such requirements, symbols that identify and reflect the State such as names of municipalities, public buildings and/or public institutions, provincial and/or municipal flags, crests, coats of arms, and public statutory holidays, that are purely Christian and religious in origin[5] as being "*des éléments emblématiques*

[4] Charter of Human Rights and Freedoms, R.S.Q. c. C-12, Art. 46.

[5] Art. 60 2° of La Loi sur les normes du travail provides that "le vendredi saint" or "le lundi de Pâques" are "jours fériés et chômés", the names of such statutory holidays commemorating by State fiat, the crucifixion and resurrection of the Christian Saviour.

ou toponymes du patrimoine culturel du Québec qui témoignent de son parcours historique".

B. An Assault on Political Rights

9. Bill 60 at Article 38, by henceforth permitting the National Assembly to control "*le port d'un signe religieux par ses membres*", in addition to adopting "rules of procedure", would empower the legislature to violate Article 3 of the Canadian Charter providing, as part of every citizen's democratic rights, the right "…to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein". Conceivably the right to control – "*régir*" the wearing of religious signs by MNA's would allow the House to chastise, suspend and/or expel a Member for violation thereof, just as it did Ezekiel Hart.[6]

C. A Deeply Flawed Process Repugnant to a Free and Democratic Society

10. Articles 10, 36 and 37 of Bill 60, constitute nothing less than the abdication of the legislative function and responsibilities of this Parliament, not only to unknown civil servants, (Arts. 36, 37) but to unknown third parties who constitute "*des membres du personnel d'un organisme public*" (Arts. 2 and 10) none of whom are or would be directly accountable to the legislature.

11. Such wholesale abdication is not done with respect to items which would merely facilitate the putting into effect of the law, but include defining the terms and expressions used in the statute which will burden organisations, establishments or functions, as yet unnamed but ostensibly "*à caractère public*", with obligations also not defined relating to the applicability or application of one or more provisions of the Bill.

12. The term "*à caractère public*" used in Article 37 is neither defined in this legislation nor in almost in any other provincial statute. Furthermore it appears nowhere in the English version of the Bill. The English version would hence allow unlimited subjection of any "body, institution or public office" to all and any of the Bill's provisions by simple notice in the *Gazette officielle*. The words "body" and "institution" are not otherwise qualified, making even private bodies and institutions and their personnel subject to restrictions

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[6] Harvey v. New Brunswick (Proc. Genl.), [1996] 2 S.C.R. 876 at pars. 28 and 30:

"[28] *Bien que ces arguments puissent paraître convaincants au départ, je conviens avec l'appelant que les dispositions de l'al. 119c) sont inconstitutionnelles à première vue car elles violent les droits que lui garantit l'art. 3 de la Charte. Mes raisons sont de deux ordres. La première concerne le libellé de l'art. 3… Le mot «éligible», qui se traduit par* «eligible» *en anglais, est défini ainsi dans Le Nouveau Petit Robert (1994), à la p. 733: qui remplit les conditions requises pour pouvoir être élu. Cela laisse supposer que le texte anglais de l'art. 3 devrait être interprété comme signifiant* «[e]very citizen . . . is qualified for membership therein». *Bref, bien que le texte anglais manque quelque peu de clarté, le texte français est simple et indique que le droit d'être candidat et de siéger en tant que député fédéral ou provincial devrait être interprété de manière large*.

[…]

[30] *Pour interpréter le droit de vote prévu à l'art. 3, notre Cour et les tribunaux canadiens en général ont adopté le point de vue selon lequel la justification des limites imposées à ce droit doit être examinée en vertu de l'article premier de la Charte*.". (Underlines our own)

and limitations, the full extent of which are as yet unknown and undefined,[7] although they clearly compromise personal and fundamental liberties of conscience, expression and religion.

13. The Bill's Art. 10 is even further in its reach in that it purports to allow "*un organisme public*" or "public body" and hence, its personnel, to require of "any person (including legal persons) or partnership", with whom it may have contracted, even in the private sector, although not otherwise subject thereto, to assume and subscribe to the duties of Chapters II and III, even in respect of persons in no way involved in such contracts. As a result, a law firm, representing an "*organisme public*", in a discreet legal proceeding, may by virtue of Arts. 10 and 13, be obliged peremptorily to alter the employment conditions for all its personnel, to conform to Arts. 3-7 of Bill 60 in the exercise of all their functions and with respect to all their clients whether connected to such contract or not, when and if the personnel of such "*organisme public*" considers that the circumstances justify same.

14. Extension of a law's application is a legislative function. Who are or will be these unknown "*membres du personnel d'un organisme public*" that they should be endowed with such limitless legislative and coercitive prerogatives? Wholesale abandonment or abdication of the legislative function to persons unknown is repugnant to a free and democratic society and is the antithesis of responsible government.

15. The Bill trivializes the personal and fundamental rights and liberties of expression, conscience and religion, and institutionalizes their breach by making them subject to restrictions whose full extent and purport is unknown, whose applicability is unknown and cannot even be gauged by the Members of the National Assembly, same being left not only to unelected civil servants, but to unknown third parties. What results thereby is the abdication of the rights and responsibilities of those elected to ponder, debate, consider and eventually adopt only laws consistent with demonstrated necessity, utility, reasonability and provided all constitutional and quasi-constitutional imperatives are met. There is no demonstrated necessity, utility or responsibility present herein.

D. Abdication of Responsibilities of National Assembly

16. The power of the National Assembly to delegate its lawmaking authority, however broad, has limits, as recognized by the Courts, that when surpassed are neither consonant with nor acceptable to the concept of responsible and democratic government.

17. The limits to the abdication of the rights and obligations of a legislature in these respects were dealt Re: Gray, 57 S.C.R. 150, and commented upon Regina v. J.P. 2003 O.R. (3d) 321 (Ont. C.A.) at pars. 20-23, in respect of the delegation of powers to the Governor in Counsel pursuant to the War Measures Act:

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[7] Art. 36 allows for the definitions by regulation of « …*les termes et expressions qui y sont utilisés ou en préciser la portée, notamment en déterminant les cas, conditions et circonstances suivant lesquels un objet marque ostensiblement, par son caractère démonstratif, une appartenance religieuse*. » Art. 37 allows the Government to subject « *un organisme, un établissement ou une fonction à caractère public* », although itself not an « *organisme public* » within the meaning of Art. 2, to the Act and its regulations, even if it is private, by simple notice. The Y.M.C.A., Federation CJA, The Canadian Cancer Society, indeed, the Lord Reading Law Society itself, might all be considered organizations "…*à caractère public*".

"[20]…The majority of the Supreme Court upheld the delegation of those sweeping powers to the Governor in Council. Chief Justice Fitzpatrick said, at p. 157 S.C.R.:

> Parliament cannot, indeed, abdicate its functions, but within reasonable limits at any rate it can delegate its powers to the executive government. Such powers must necessarily be subject to determination at any time by Parliament, and needless to say the acts of the executive, under its delegated authority, must fall within the ambit of the legislative pronouncement by which its authority is measured.

[21] Anglin J. described the scope of Parliament's power to delegate in these terms, at p. 176 S.C.R.:

> A complete abdication by Parliament of its legislative functions is something so inconceivable that the constitutionality of an attempt to do anything of the kind need not be considered. …

[…]

[23] Duff J. provided an excellent explanation of subordinate legislation, at p. 170 S.C.R.:

> There is no attempt to substitute the executive for parliament in the sense of disturbing the existing balance of constitutional authority by aggrandizing the prerogative at the expense of the legislature. The powers granted could at any time be revoked and anything done under them nullified by parliament, which parliament did not, and for that matter could not, abandon any of its own legislative jurisdiction. The true view of the effect of this type of legislation is that the subordinate body in which the law-making authority is vested by it is intended to act as the agent or organ of the legislature and that the acts of the agent take effect by virtue of the antecedent legislative declaration (express or implied) that they shall have the force of law." (Underlines, our own)

18. Delegation of law making authority to unknown third parties – "membres du personnel d'un organisme public" – so as to subject "*toute personne ou société avec laquelle il conclut un contrat de service*", whenever they consider "*les circonstances le justifient*", as is done at Art. 10 of the Bill is the antithesis of limited delegation to an agent or organ of the legislature so that "the acts of the agent take effect by virtue of the antecedent legislative declaration…that they shall have the force of law". Such purported delegation constitutes the wholesale abdication of the legislative function of defining both applicability and application of coercitive obligations.

19. There is a serious doubt as to whether such wholesale abdication of this legislative function is constitutional and consonant with a free and democratic society. In any case, if such wholesale abdication is not offensive in law, it most certainly is offensive in fact.

E. Bill 60 Offends and Impairs Judicial Independence

20. Pursuant to Article 8, the obligations set out at Articles 3 to 6 are made incumbent "*dans l'exercice de leurs fonctions*" upon members of the judiciary (Art. 8(1)), statutory arbitrators named pursuant to the Labour Code as well as those exercising quasi-judicial authority pursuant to statutory, governmental or ministerial appointment (Art. 8 (2)) as well as to those appointed pursuant to la *Loi sur les Commissions d'enquête* Art. 8 (3))[8]. Most respectfully, not only does the application of Arts. 3 and 4 become redundant and offensive given the nature of the oath of office taken by both members of the judiciary and those taken by most quasi-judicial officers, sometimes styled *juges administratifs*, but it goes much further and offends, undermines and impairs judicial independence.

21. The objectivity, impartiality, neutrality as between the litigants before them and adherence to the law is assumed of judicial and quasi-judicial officers and already assured by, *inter alia*:

i) A well-articulated selection process;

ii) The Oath of Office that binds each judge personally and individually;

iii) The availability, pursuant to the Code of Civil Procedure and/or other statutes, of recusation in the event of well-founded reasonable fears of the perception of bias;

iv) The scrutiny of the *Conseil de la Magistrature*;[9] and

v) Art. 23 of the *Charter of Human Rights and Freedoms* guaranteeing the independence and impartiality of "tribunals";

vi) The rights of appeal, *de plano* or by leave where provided;

vii) the superintending and reforming power of the Superior Court inherent to its very existence;[10]

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[8] All of these are considered "tribunals" for purposes, *inter alia* of Art. 23 of the *Quebec Charter*, guaranteeing the right to "…an independent and impartial tribunal".

[9] The Conseil de la Magistrature du Québec was created in 1978 pursuant to the *Loi sur les tribunaux judiciaires*, independent of both the Chief Judge of the *Cour du Québec*, the Minister of Justice, and the Government of Québec. By law, it is composed of members of the judiciary, the Bar and of the public.

[10] Three Rivers Boatman Limited v. Conseil canadien des relations ouvrières et al., [1969] R.C.S. 607; Dunsmuir v. Nouveau Brunswick, [2008] 1 S.C.R. 190; pars. 27 et seq. [27] "*Sur le plan constitutionnel, le contrôle judiciaire est intimement lié au maintien de la primauté du droit. C'est essentiellement cette assise constitutionnelle qui explique sa raison d'être et oriente sa fonction et son application*."

viii) The principles of the *Civil Code* providing that good faith is assumed of all citizens in the absence of proof to the contrary.

22. The same is true for most administrative judges, particularly those whose enabling statutes provide for an Oath of Office and/or an existing as well as a well-articulated *Code de déontologie*.[11]

23. Directives to the judiciary to the effect that "in the exercise of their functions" of which deliberation, adjudication, drafting and rendering of judgments form integral parts, that they must "maintain religious neutrality" (Art. 3) and "…exercise reserve with regard to expressing their religious beliefs" (Art. 4) at least with respect to "religious neutrality" is to suggest that hitherto they have not done so, the whole without any reasonable basis for doing so.

24. Such suggestion is gratuitously insulting to a provincial judiciary justly proud of its history – whose traditions of independence, impartiality and reserve, do not allow it to respond.

25. To seek to apply Arts. 3 and/or 4 of Bill 60 to those exercising judicial and/or quasi-judicial authority opens the door to interrogating a judge – "*décideur*" – as to the decision-making process and the influences affecting his (her) mind during his deliberations, something anathema to judicial and quasi-judicial "independence".

26. In Hickman, Poitras and Evans vs. MacKeigan C.J.N.S. et al., [1989], 2 S.C.R. 796, McLachlin C.J.C. wrote: at paragraphs 81-85 and 90:

> "81. *Il faut remarquer que l'indépendance du pouvoir judiciaire ne doit pas être confondue avec l'impartialité du pouvoir judiciaire. Comme le souligne le juge Le Dain dans l'arrêt Valente c. La Reine, l'impartialité a trait à l'état d'esprit d'un juge; l'indépendance judiciaire, par contre, se rapporte à la relation sous-jacente qu'il y a entre le pouvoir judiciaire et les autres organes du gouvernement, qui assure que la cour fonctionnera de façon impartiale et sera perçue comme tel.[…]*
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> *82. Dans l'arrêt Beauregard c. Canada, précité, le juge en chef Dickson (les juges Estey et Lamer souscrivant à son opinion; les juges Beetz et McIntyre étant dissidents en partie) cite l'opinion précitée du juge Le Dain dans l'arrêt Valente c. La Reine, et explique, à la p. 70, pourquoi le principe de l'indépendance judiciaire est si important dans la société démocratique libérale qu'est le Canada:*
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> > *La raison d'être de cette conception moderne à deux volets de l'indépendance judiciaire est la reconnaissance que les tribunaux ne sont pas chargés uniquement de statuer sur des affaires individuelles. Il s'agit là*

[11] See for instance Art. 137.32, *Code du travail*, R.S.Q. C-27 requiring that Commissioners, also styled *juges administratifs*, of the Commission des relations du travail du Québec, upon taking office "…prête serment d'accomplir impartialement et honnêtement, au meilleur de [sa] capacité et de [ses] assurances, les pouvoirs et les devoirs de [sa] charge" They are as well subject to the *Code de déontologie des commissaires de la Commission des relations du travail,* R.L.R.Q. c. C-27, r.2 providing at Art. 6 "*le commissaire doit de façon manifeste, être impartial et objectif*."

> *évidemment d'un rôle. C'est également le contexte pour un second rôle différent et également important, celui de protecteur de la constitution et des valeurs fondamentales qui y sont enchâssées -- la primauté du droit, la justice fondamentale, l'égalité, la préservation du processus démocratique, pour n'en nommer peut-être que les plus importantes. En d'autres termes, l'indépendance judiciaire est essentielle au règlement juste et équitable des litiges dans les affaires individuelles. Il constitue également l'élément vital du caractère constitutionnel des sociétés démocratiques.*
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> *83. Dans l'arrêt Beauregard c. Canada, l'analyse du concept de la fonction judiciaire est élargie de manière à englober non seulement l'idée de la prise de décisions impartiales, mais également la notion de la cour en tant que protectrice de la Constitution. Il ne faut pas oublier ces deux fonctions quand on détermine la "portée raisonnable de l'indépendance judiciaire". Selon le juge en chef Dickson, le critère est strict; la fonction des tribunaux "en tant qu'arbitres des litiges, interprètes du droit et défenseurs de la Constitution" exige qu'ils soient complètement séparés "sur le plan des pouvoirs et des fonctions" de tous les autres organes du gouvernement.*
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> *[…]*
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> *90. Le droit du juge de refuser de répondre aux organes exécutif ou législatif du gouvernement ou à leurs représentants quant à savoir comment et pourquoi il est arrivé à une conclusion judiciaire donnée, est essentiel à l'indépendance personnelle de ce juge, qui constitue l'un des deux aspects principaux de l'indépendance judiciaire: Valente c. La Reine et Beauregard c. Canada, précités. Le juge ne doit pas craindre qu'après avoir rendu sa décision, il puisse être appelé à la justifier devant un autre organe du gouvernement. L'analyse faite dans l'arrêt Beauregard c. Canada appuie la conclusion que l'immunité judiciaire est au coeur du concept de l'indépendance judiciaire. Comme l'a affirmé le juge en chef Dickson dans l'arrêt Beauregard c. Canada, pour jouer le bon rôle constitutionnel, le pouvoir judiciaire doit être complètement séparé, sur le plan des pouvoirs et des fonctions, des autres organes du gouvernement. Cette séparation signifie implicitement que les organes exécutif ou législatif du gouvernement ne peuvent pas exiger d'un juge qu'il explique son jugement et en rende compte. Donner suite à l'exigence qu'un juge témoigne devant un organisme civil, émanant du pouvoir législatif ou du pouvoir exécutif, quant à savoir comment et pourquoi il a rendu sa décision, serait attaquer l'élément le plus sacro-saint de l'indépendance judiciaire*. (Underlines, our own)

27. More recently in British Columbia v. Imperial Tobacco Canada Ltd., 2005, 2 S.C.R. 473, a unanimous Supreme Court wrote:

> "44. *L'indépendance judiciaire est reconnue comme un « principe fondamental » de la Constitution qui se reflète à l'al. 11d) de la Charte*

> *canadienne des droits et libertés, ainsi qu'aux art. 96 à 100 et dans le préambule de la Loi constitutionnelle de 1867 : Renvoi relatif à la rémunération des juges de la Cour provinciale de l'Île-du-Prince-Édouard, 1997 CanLII 317 (CSC), [1997] 3 R.C.S. 3, par. 109. Elle est un moyen de « préserver notre ordre constitutionnel et de maintenir la confiance du public dans l'administration de la justice » : Ell c. Alberta, 2003 CSC 35 (CanLII), [2003] 1 R.C.S. 857, 2003 CSC 35, par. 29. Voir aussi Demande fondée sur l'art. 83.28 du Code criminel (Re), 2004 CSC 42 (CanLII), [2004] 2 R.C.S. 248, 2004 CSC 42, par. 80-81*.
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> 45. *L'indépendance judiciaire consiste essentiellement en la liberté « de rendre des décisions que seules les exigences du droit et de la justice inspirent » : Mackin c. Nouveau-Brunswick (Ministre des Finances), 2002 CSC 13 (CanLII), [2002] 1 R.C.S. 405, 2002 CSC 13, par. 37. Elle requiert que les juges soient libres d'agir sans « ingérence [indue] de la part de quelque autre entité » (Ell, par. 18) — c.-à-d. que les pouvoirs exécutif et législatif du gouvernement ne doivent pas « empiéter sur les "pouvoirs et fonctions" essentiels du tribunal"*

28. In MacKeigan, supra, McLaughlin C.J.C. held at par. 95 that, "Il serait impensable que le ministre de la Justice ou le procureur général donne au Juge en chef des directives quant à savoir qui doit ou ne doit pas siéger dans une affaire donnée; cette prérogative appartient exclusivement au Juge en chef en tant que directeur de la cour." (Underlines, our own)

29. For the legislative branch to create, through Arts. 5-10 of Bill 60, conditions precedent to the exercise of judicial authority that, in effect, exclude those whose religious tenets require them to wear demonstrative signs of their faith, who as such "profess" their faith, is a gross violation of administrative independence of the judiciary, that is *per se* far more unacceptable in that they violate the personal freedoms of conscience, expression and religion that belong to all of us individually, including those very same persons.

30. Courts and doctrine have recognized that the life experiences of professionals who are to serve in judicial, quasi-judicial and administrative roles, may be the very reasons for their admission to service.[12] Why then peremptorily exclude via Arts. 5-10 of Bill 60 from service upon the *Commission des droits de la personne et des droits de la jeunesse*, and the *Tribunal des droits de la personne*, those who may have the greatest experience with respect to the discrimination prohibited by Arts. 10 et seq. of the Charter of Human Rights and Freedoms, on the basis of their deeply held religious tenets that require them to affirm and demonstrate their adherence to religion in general, or to religious tenets specific to one or another of many the religions present in Quebec today through the wearing of demonstrative symbols. Art. 10 of the *Quebec* Charter prohibits, *inter alia*,

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[12] Patrice Garant, Droit administratif, 6e édition, Les Éditions Yvon Blais Inc., 2010, p. 795. Denis Lemieux, Le Contrôle Judiciaire *de l'action gouvernementale,* Publications CCH Ltée 2013, p. 3, 129-3, R. v. Picard et al., (1968) 65 D.L.R. (2d) 658, at p. 661 (Quebec C.A.); Re Schabas et al. and Caput of the University of Toronto et al., (1975), 52 D.L.R. (3d) 495 at 506; United States v. Morgan, (1940) 313 U.S. 409, all referred to by DeGrandpré J. in Committee for Justice and Liberty v. Office national de l'énergie, [1987], 1 R.C.S. 369 at pp. 396-398;

discrimination based on sex, sexual orientation, colour, race, ethnic origin, nationality, political persuasion, age and religion, yet it is only with respect to the latter "religion" that such exclusionary rules would apply.

F. An Imposed Endorsement of Points of View - Illegal and Foreign to Canadian Democratic Values

31. That Arts. 3 and 4 of Bill 60 limit and abridge fundamental *Charter* protected freedoms of conscience and expression is beyond question. Whether intended or otherwise their effects may, regrettably, be far greater and pernicious. Do they require mere passivity, or do they contain active requirements? In view of the following, together they may oblige those affected to subscribe to, against their will, and propagate positions with which they are not in agreement!

32. Whether the obligation to "maintain religious neutrality" is as between one or more religions or as between religion or faith, on the one hand, and asceticism, agnosticism and/or atheism on the other, or any and all of these, is patently unclear and ambiguous. What is clear from jurisprudence is that mere passivity may result in the antithesis of neutrality.[13]

If from the combination of Arts. 3 and 4, "personnel members of public bodies" must, in order to "maintain religious neutrality", do or say things that are contrary to what they believe, what results may well equate to what Beetz J. described as "totalitarian and as such alien to the tradition of free nations like Canada" in National Bank of Canada v. Retail Clerks' International Union et al., [1984] 1 S.C.R. 269 at 295-296[14] when in

[13] United Steelworkers of America v. Wal-Mart, [1997] OLRB Rep. 141 at par. 47 "…By not reassuring people that the store would not close the managers knew what conclusions the associates would come to. Manipulating the circumstances in this fashion, allowed the seed to be planted and grow in the minds of the associates that if they suggested the union they might lose their jobs." As a result of inaction, Wal-Mart was found to have committed an unfair labour practice and was automatically certified pursuant to Ontario Labour Law of the time; In Gauthier v. Sobeys Inc., T.T. 200-63-000342-93, Quebec's own Tribunal du travail wrote: "*Le poursuivant a raison de prétendre que l'invitation de Sobeys aux employés de ne pas rester neutres est une ingérence dans les affaires syndicales. Dans une entreprise, comme dans la société en général, il y a toujours des gens qui sont pour un projet, d'autres qui sont contre et d'autres qui sont indifférents. Ces derniers ne veulent pas s'impliquer personnellement, ne sont pas prêts à prendre d'initiative, mais préfèrent tout simplement suivre et accepter ce que les autres, une majorité à leurs yeux, vont décider. Sobeys, en s'adressant à son personnel comme elle l'a fait, lui indique clairement qu'elle souhaite que les indifférents se joignent au camp des gens qui sont contre la venue du syndicat. Cela fait penser à une parole de l'Évangile : « Qui n'est pas pour moi est contre moi*. » *Quaere* whether this reference to Christian scripture by Judge Auclair would itself violate Art. 4 of Bill 60. Would same be any less a violation of Art. 4 if the citation were made of a Jewish, Hindu, Sikh or Muslim Judge?

[14] Applied, in part, by Lamer J. in Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038. Beetz J. in dissent wrote: *J'estime en toute déférence qu'en acceptant ainsi cet argument, le juge Mahoney n'a rien compris et a éludé la question essentielle: quelle est la vérité? Les faits que l'arbitre a jugés exacts s'imposent aux fins d'établir s'il y a eu congédiement injuste. Mais on ne saurait forcer l'ancien employeur à les reconnaître et à les exposer comme si c'était de la vérité, sans tenir compte de sa croyance à leur exactitude. S'il expose ces faits dans la lettre, comme il lui a été ordonné de le faire, mais qu'il ne croit pas à leur exactitude, il ne dit pas la vérité, il ment. Il n'a peut-être pas contesté ces faits au moment de l'audition, mais il se pourrait, par exemple, que les éléments de preuve découverts après que la décision de l'arbitre eut été rendue le fasse changer d'avis. Il peut y avoir une distinction, qu'il est quelque peu difficile d'appliquer, entre le fait d'être forcé à exprimer des opinions ou des points de vue qu'on ne*

commenting upon a letter that the Canada Labour Relations Board obliged the President of that Bank to distribute, he wrote:

> "*Or rien n'indique que tels sont effectivement leurs opinions et leurs sentiments. Si louables que puissent paraître les objectifs et les dispositions du Code, nul n'est obligé de les approuver; chacun est libre de les critiquer, comme toutes les lois, et d'en demander la modification ou l'abrogation, tout en s'y conformant dans l'intervalle.*
>
> *Les remèdes n° 5 et n° 6 forcent donc la Banque et son président à poser un geste et à écrire une lettre peut-être trompeurs ou mensongers.*
>
> *Ce type de sanctions est totalitaire et par conséquent étranger à la tradition de pays libres comme le Canada, même pour la répression des actes criminels les plus graves. Je ne puis me convaincre que le Parlement du Canada ait voulu conférer au Conseil canadien des relations du travail le pouvoir d'imposer des mesures aussi extrêmes, si tant est qu'il soit habile à le faire, vu la Charte canadienne des droits et libertés qui garantit la liberté de pensée, de croyance, d'opinion et d'expression. Ces libertés garantissent à chacun le droit d'exprimer les opinions qu'il peut avoir: à plus forte raison interdisent-elles que l'on*

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partage pas nécessairement, et le fait d'être contraint à exposer des faits, dont on ne croit pas nécessairement à l'exactitude; mais j'estime que ces deux types de coercition constituent des violations flagrantes des libertés d'opinion et d'expression ou, à tout le moins, de la liberté d'expression. C'est la raison pour laquelle je ne saurais, en toute déférence, partager l'idée que la restriction de la liberté d'expression qui découle de la première ordonnance n'est ni très sérieuse ni très grave. L'innocuité superficielle de la première ordonnance ne devrait pas nous empêcher de constater sa nature et la manière positive dont elle viole la liberté d'expression. C'est une chose que d'interdire la divulgation de certains faits. C'est une toute autre chose que d'ordonner la confirmation de faits sans tenir compte de la croyance à leur exactitude par la personne qui reçoit l'ordre de les confirmer. L'interdiction viole à première vue les libertés d'opinion et d'expression, mais une telle interdiction peut, dans certaines circonstances, être justifiée en vertu de l'article premier de la Charte. D'autre part, ordonner la confirmation de faits, sans tenir compte de la croyance à leur exactitude par la personne qui reçoit l'ordre de les confirmer, constitue une violation beaucoup plus grave des libertés d'opinion et d'expression, ainsi qu'il a été statué dans l'arrêt Banque Nationale du Canada, précité. À mon avis, une telle violation revêt un caractère totalitaire et ne peut jamais être justifiée en vertu de l'article premier de la Charte. Essentiellement, elle équivaut à l'ordre donné à Galilée par l'Inquisition d'abjurer la cosmologie de Copernic. Tel que précisé dans les motifs unanimes de cette Cour dans l'arrêt Procureur général du Québec c. Quebec Association of Protestant School Boards, 1984 CanLII 32 (CSC), [1984] 2 R.C.S. 66, à la p. 88, on ne saurait recourir à l'article premier de la Charte pour justifier la négation complète d'un droit ou d'une liberté que protège la Constitution:

Les dispositions de l'art. 73 de la Loi 101 heurtent de front celles de l'art. 23 de la Charte et ne sont pas des restrictions qui peuvent être légitimées par l'art. 1 de la Charte. Ces restrictions ne peuvent être des dérogations aux droits et libertés garanties par la Charte ni équivaloir à des modifications de la Charte. Une loi du Parlement ou d'une législature qui par exemple prétendrait imposer les croyances d'une religion d'État entrerait en conflit direct avec l'al. 2a) de la Charte qui garantit la liberté de conscience et de religion, et devrait être déclarée inopérante sans qu'il y ait même lieu de se demander si une telle loi est susceptible d'être légitimée par l'art. 1. [Je souligne.]

> *contraigne quiconque à professer des opinions peut-être différentes des siennes*. (Underlines, our own)

33. The offensive character of such a result is compounded exponentially when applied pursuant to Art. 8 of the Bill to those exercising judicial or quasi-judicial authority. What results from Arts. 3, 4 and 8 is the legislature directing judges as to what positions to put forward or not to put forward "in the exercise of their duties", i.e. in the exercise of their deliberative and adjudicative functions irreparably compromising judicial independence, one of the corner-stones of Western democracy.

34. Unless retracted in its entirety, the Bill 60 will allow those far less charitable to claim that it imposes a New Testament upon all Quebecers, of "Skewed State Secularism" in place of religion. In seeking to impose "religious neutrality", it contravenes the constitution no less than the adoption of any other state ideology. "A rose by any other name smells as sweet".

G. Fundamental Freedoms

35. The history of European and Quebec Jewry, recognized by the National Assembly of Québec in the Act to Proclaim Holocaust-Yom Hashoah Memorial Day in Québec L.R.Q. c.J-0.1, and the Lord Reading Law Society's ("the Society") own legacy, explain its abiding interest in protecting, preserving and advancing human rights, and particularly the freedoms of conscience, expression and religion recognized as fundamental by the Universal Declaration of Human Rights. The Society is justly concerned whenever such rights and freedoms are under threat, as they are by Bill 60.

36. The proposed Charter Affirming the Values of State Secularism and Religious Neutrality and Equality Between Men and Women, and Providing for a Framework for Accommodation Requests, hollows-out the fundamental freedoms of conscience, expression and religion recognized in both the Canadian Charter of Rights and Freedoms (the "Canadian Charter") and in the Charter of Human Rights and Freedoms (Québec)[15] (the "Québec Charter") that are our birthright. Section 2(a) of the Canadian Charter and Art. 3 of the Québec Charter expressly recognize the freedoms of conscience, expression and religion[16] as fundamental. Their preambles recognize these freedoms as essential to the "rule of law" and "inseparable from…the common good".

H. Bill 60 Creates a Hierarchy of Rights and Emasculates Fundamental Freedoms

37. While, in enumerating these fundamental rights, one freedom may precede the other, neither Charter nor the Universal Declaration creates a hierarchy amongst such freedoms, or between them and other freedoms that are also deemed "fundamental".

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[15] C.Q.L.R. c. C-12

[16] These rights are also recognized at Section 18 of the **Universal** Declaration of Human Rights and Freedoms. The late Prof. J.P. Humphrey, O.C., Officier de l'Ordre National du Québec, of McGill University's Faculty of Law, was a principal drafter of the Universal Declaration referred to by Eleanor Roosevelt as the "Magna Carta of Mankind".

The drafters of both Charters[17], and of the Universal Declaration, understood very well the danger to democracy in allowing one freedom to trump another. Bill 60 does precisely that by making the individual freedoms of conscience and expression subservient, *inter alia*, to the "value" of a state secularism.

38. Pursuant to existing Art. 9.1 of the Quebec Charter, both the scope and exercise of fundamental freedoms, and their limitations, are anchored within the solid benchmarks of "a proper regard for democratic values, public order and the general wellbeing of the citizens of Québec." This mirrors the limits on permissible State interference with such freedoms under the Canadian Charter, interference restricted to "such reasonable limits…as can be demonstratively justified in a free and democratic society". Through materially altering the Québec Charter's preamble and by substituting the new benchmarks "specified at Art. 41, which amend Art. 9.1 of the Québec Charter, Bill 60 would allow infringement of "fundamental freedoms", not as a result of proven security issues or pressing considerations of general wellbeing but due to simple "inclination" of the government of the day, thereby emasculating such fundamental democratic liberties on the altar of state secularism.

39. Freedoms and liberties that can so easily be altered or abrogated lose their "fundamental" character and the protections that such character provides. This is the very reason why the framers of our Constitution enshrined these freedoms in the Canadian Charter, the content of which cannot be bent or manipulated according to the mere preferences or desires of those who happen to be in the majority at a given time. In fact, the National Assembly is to amend Art. 9 of the Quebec Charter on simple majority, is to reduce a quasi-constitutional instrument recognizing "fundamental freedoms and rights" to mere privileges that the State may rescind at will.

I. Freedoms of Conscience, Expression, Religion – Lifeblood of Democracy

40. The touchstone of what freedom of conscience, expression and religion requires is found in the judgment of the majority of the Supreme Court of Canada in R. vs. Big M Drug Mart Ltd.[18]:

> "*Une société vraiment libre peut accepter une grande diversité de croyances, de goûts, de visées, de coutumes et de normes de conduite. Une société libre vise à assurer à tous l'égalité quant à la jouissance des libertés fondamentales et j'affirme cela sans m'appuyer sur l'art. 15 de la Charte. La liberté doit sûrement reposer sur le respect de la dignité et des droits inviolables de l'être humain. Le concept de la liberté de religion se définit essentiellement comme le droit de croire ce que l'on veut en matière religieuse, le droit de professer ouvertement des croyances religieuses sans crainte d'empêchement ou de représailles et le droit de manifester ses croyances religieuses par leur mise en pratique et par le culte ou par*

[17] See for example Dagenais v. Radio-Canada, at p. 829, per Lamer C.J.C.: *"Il faut se garder d'adopter une conception hiérarchique des droits tant dans l'interprétation de la Charte que l'élaboration du common law ". He noted in particular "…l'égalité du rang qu'accorde la Charte aux al. 2 (b) et 11 (d)*"

[18] [1975] 1 R.C.S. 295, at p. 366

> *leur enseignement et leur propagation. Toutefois, ce concept signifie beaucoup plus que cela.*
>
> *La liberté peut se caractériser essentiellement par l'absence de coercition ou de contrainte. Si une personne est astreinte par l'état ou par la volonté d'autrui à une conduite que, sans cela, elle n'aurait pas choisi d'adopter, cette personne n'agit pas de son propre gré et on ne peut pas dire qu'elle est vraiment libre. L'un des objectifs importants de la Charte est de protéger, dans des limites raisonnables, contre la coercition et la contrainte. La coercition comprend non seulement la contrainte flagrante exercée, par exemple, sous forme d'ordres directs d'agir ou de s'abstenir d'agir sous peine de sanction, mais également les formes indirectes de contrôle qui permettent de déterminer ou de restreindre les possibilités d'action d'autrui. La liberté au sens large comporte l'absence de coercition et de contrainte et le droit de manifester ses croyances et pratiques. La liberté signifie que, sous réserve des restrictions qui sont nécessaires pour préserver la sécurité, l'ordre, la santé ou les moeurs publics ou les libertés et droits fondamentaux d'autrui, nul ne peut être forcé d'agir contrairement à ses croyances ou à sa conscience*." (Underlines, our own)

41. Bill 60 would impose upno many Quebecers an impossible and illegal election – My job or My conscience. The result of an attempt to force proscribed conduct, forbidden by an individual's conscience will provoke for same sullen obedience, others angry defiance. In both cases, "freedom of conscience" is abrogated. In democratic and liberal societies, one does not – nor should one be made to – shed profound and personal beliefs that are not demonstratively shown to cause harm to others, at the dictate of the State. The text of liberal democracy is and must be broad enough to shelter and protect minorities. The Bill 60 does precisely the opposite.

J. Religious Neutrality and the Secular Character of the State (Art. 1):

42. Art. 1 of the Bill essentially affirms the religious neutrality of the State and its secular character..

Professors Henri Brun, Guy Tremblay and Eugénie Brouillet recognize that separation of the State and religion are one of three rights protected by freedom of religion under the Canadian and Québec charters[19].

43. Given that the separation of Church and State is already clearly constitutionally recognized, to reiterate the principle can serve no purpose other than to change its meaning and have it impact, wrongly and detrimentally, on other rights and freedoms.

44. The Government's intention to discourage, limit and/or totally eliminate any form of public "profession" of religious conscience and expression which do not adhere, to the official State paradigm of "Québecois culture" is demonstrated by the Bills reiteration of the principle of separation of Church and State in general, while leaving a gaping an

[19] Droit constitutionnel, 5e édition [2008] Éditions Yvon Blais, at pp. 1076 to 1080

undefined exception with respect to the "emblematic and toponymic elements of Québec's cultural heritage."

45. In discussing the freedoms of conscience, expression and religion, the Supreme Court circumscribed the role in law of the State in these regards:

> "*Vu sous cet angle, l'objet de la liberté de conscience et de religion devient évident. Les valeurs qui sous-tendent nos traditions politiques et philosophiques exigent que chacun soit libre d'avoir et de manifester les croyances et les opinions que lui dicte sa conscience, à la condition notamment que ces manifestations ne lèsent pas ses semblables ou leur propre droit d'avoir et de manifester leurs croyances et opinions personnelles. Historiquement, la foi et la pratique religieuses sont, à bien des égards, des archétypes des croyances et manifestations dictées par la conscience et elles sont donc protégées par la Charte. La même protection s'applique, pour les mêmes motifs, aux expressions et manifestations d'incroyance et au refus d'observer les pratiques religieuses. Il se peut que la liberté de conscience et de religion outrepasse ces principes et qu'elle ait pour effet d'interdire d'autres sortes d'ingérences gouvernementales dans les affaires religieuses*."[20] (Underlines, our own)

46. As the Bill applies broadly to all government and para-government organizations such as hospitals and schools, these organizations would, by government fiat, apparently be prohibited from permitting activities or performing services which relate to religious practice, even for the benefit of those they serve. Examples of these activities and services include:

1. Setting up of a Christmas tree or Channukiah (menorah);

2. Discussions and explanation of religious traditions either of the students themselves or in general;

3. Providing halal, kosher, vegetarian or meatless meals to hospital patients or residents of long-term residences of CHSLDs to conform to the Muslim, Jewish, Sikh, Hindu, Jain, Bhuddist, Animist or other faiths and traditions.

47. The only exception to the principle of “maintaining religious neutrality” and to the secular nature of the State is with respect to "emblematic and toponymic elements of Québec's cultural heritage that testify to its history." There is no definition or description in the Bill as to what these terms are intended to mean. What is meant by "Québec's cultural heritage" and what period of time is covered by “Québec's history"? Is Québec's cultural heritage limited to the culture of the majority? Does it apply to minorities, some of whom have lived in Québec for hundreds of years, including those of first nations whose cultures flourished here long before the first Europeans arrived? For how long and in what numbers, if at all, must more recently arrived cultural communities be present to be considered “emblematic” of Québec’s cultural history. What period of time is to be

[20] R. vs. Big M. Drug Mart, at pp. 346-347

considered “Québec's history"? Is it the time before 1534, 1604, 1763, 1867, 1960, or 1976? Will the result of this exception be that Hôpital Saint-Luc might retain its name even though it refers to the apostle Luc, but l'Hôpital Saint-Mary's will not? Will the result of this exception be that institutions which clearly refer to their Jewish heritage, such as the Sir Mortimer B. Davis Jewish General Hospital or the Herzl Clinic be required to change their names to eliminate the reference, direct or indirect, to that faith? Will l'Hôpital Mont-Sinai have to change its name because its name refers to the mountain where the Jewish, Christian and Islamic religions believe Moses received the Ten Commandments (therefore having a religious connotation) or will it be allowed to keep its name because it simply refers to a mountain in the desert?

48. Separation of Church and State being already constitutionally recognized and protected both under the Canadian Charter and the Québec Charter, Art. 1 of the Bill serves no juridical purpose and can only lead uncertainty and acrimony in the future.

K. <u>Duties of neutrality and reserve in religious matters</u> (Arts. 3 and 4):

49. Arts. 3 and 4 require that “personnel members of public bodies,” in exercising their functions, “maintain religious neutrality" and "exercise reserve with regard to expressing their religious beliefs".

50. As to the manner of the exercise of their functions, the second paragraph of Art. 5 of the *Loi sur la fonction publique* codifies completely not only the obligations of civil servants with respect to their duties of religious impartiality, but their obligations towards the public in general. It requires each civil servant to

> "...*exercer ses fonctions dans l'intérêt public, au mieux de sa compétence, avec honnêteté et impartialité et il est tenu de traiter le public avec égard et diligence*."[21].

51. Moreover, what precisely is meant by “maintain religious neutrality”? Do the expressions “knock on wood” or “*on va se croiser les doigts*” become impermissible use of language because they directly or indirectly originate from or make reference to the wooden cross upon which the Christian Saviour was crucified? Does the expression “bless you” become exempt because, although religious in origin, it does not refer to any specific religion?

L. <u>Restrictions on wearing of religious symbols and prohibitions against the wearing of veils</u> (Arts. 5, 6 and 7):

52. Art. 5 prohibits civil servants from wearing anything that "*ostensiblement, par son caractère démonstratif*" indicates religious affiliation. Art. 6 prohibits civil servants from wearing veils or other facial coverings unless necessitated by their duties and Art. 7 requires citizens to have their faces uncovered when being served by civil servants. These Arts. and prohibitions also apply to various governmental organizations listed in Schedule I and to individuals listed in Schedule II.

[21] Section 5, para. 2, Loi sur la fonction publique, C.Q.L.R., c. F-3.1.1

53. The terms "*ostensiblement*" and "*caractère démonstratif*" are subjective terms whose meaning is unclear and ambiguous permitting if not guaranteeing inconsistent application. For example, if two religiously observant Jewish doctors, one with a full head of black hair and one completely bald, while working in a hospital, were each wearing a small black kippah of 4 inches in diameter, will they both be infringing Art. 5? Will the bald doctor be held to be infringing that Art. because in his case, the kippah is very evident on his bald head while the kippah is invisible or barely visible on the head of his full haired colleague? If a hat is substituted for the "kippah," is the situation any less confused? Does an object that *per se* has no religious significance change its "destination" on the basis of the wearer's religion? Would it not allow for the State, its agents, public bodies or "personnel members" thereof to investigate or interrogate public servants as to their religion, in order to determine whether the statutory obligations of Art. 5 have been respected? One would have thought the right of any employer to engage in precisely this kind of conduct has already been clearly prohibited by Arts. 10 et seq. of the Quebec Charter due to the discriminatory nature inherent in such conduct. One would have thought as well that the Civil Code already prohibits such conduct as a violation of an individual's right to privacy with respect to such personal information. If such State sanctioned "discriminatory" conduct[22] is not the intended consequence of Bill 60, does it nevertheless become legitimized as "unintended collateral damage"?

54. Furthermore, much more than uncertainty results from Arts. 5, 6 and 7 of the Bill. These Arts. clearly infringe upon the rights to freedom of conscience, expression and religion of citizens serving the State in contravention of both the Canadian and Québec Charters. As held in the Big M Drug Mart case:

> "*Le concept de la liberté de religion se définit essentiellement comme le droit de croire ce que l'on veut en matière religieuse, le droit de professer ouvertement des croyances religieuses sans crainte d'empêchement ou de représailles et le droit de manifester ses croyances religieuses*..."[23] (Underlines, our own).

55. In *Renvoi relatif aux mariages entre personnes du même sexe*, the Supreme Court of Canada reiterated this position as a reason for exempting religious officials from performing same sex marriages contrary to their beliefs.[24]

56. In S.L. vs. Commission scolaire des Chênes[25] the Supreme Court held that:

> "... *la neutralité de l'État est assurée lorsque celui-ci ne favorise ni ne défavorise aucune conviction religieuse; en d'autres termes, lorsqu'il respecte toutes les positions à l'égard de la religion, y compris celle de n'en avoir aucune*,.."[26]

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[22] This conduct is likely contrary to, *inter alia,* Arts. 13, 15, 18.1 and 20 of the Quebec Charter

[23] At p. 337.

[24] [2004] 3 R.C.S. 698, at p. 722, paras. 57 & 58

[25] 2012 CSC 7

[26] 2012 CSC 7, at para. 32

57. By prohibiting the personnel of public bodies from wearing "...objects such as head gear, clothing, jewellery or other adornments which, by their conspicuous nature, overtly indicate a religion affiliation." (Art. 5 of the Bill) or from covering their faces (Art. 6 of the Bill) and by requiring that members of the public receive service by persons whose faces are uncovered (Art. 7 of the Bill) the Bill infringes on the rights of those citizens who, as a matter of conscience and/or religious conviction, believe that they are required to wear such objects and/or to cover their face. This is indisputably in violation of both the Canadian Charter and the Québec Charter.

58. In addition, the provision may well lead to absurdities. A male Sikh hospital pharmacist would be prohibited from dispensing medication while wearing a turban as his religious obligations require him to. However, his wife, also a hospital pharmacist, would not be prohibited from wearing a sari demonstrating "ostensiblement" her national or ethnic origins as being from the Indian sub-continent. The husband would be prohibited from wearing the turban because it identifies his "religious affiliation". The sari would be exempt, however, because it instead identifies national origin. How can open discrimination on one ground be permitted while it is prohibited on the other, considering that discrimination on the basis of religion, as well as national or ethnic origin, are both prohibited pursuant to Art. 10 of the Québec Charter.

59. While it may be possible, based on the exceptions that fall under Section 1 of the Canadian Charter, to limit the right of an individual to cover their face as a result of true, pressing and urgent considerations based on security, identification or effective communications, no such fact based arguments have been advanced in support thereof. The issue is not one that can be resolved simply on "principle." Moreover, even if such arguments were to be made, it is unlikely that they would satisfy the requirements of necessity, urgency, proportionality and minimum impairment that fall within the exceptions under Section 1 as laid out in R. vs.Oakes[27].

60. As determined by the Supreme Court in Alberta (Information and Privacy Commissioner) v. Travailleurs(euses) Uni(e)s de l'alimentation et du commerce, Section locale 401, 2013 CSC 62, pars. 17-18, which was unanimously decided mere days after the Bill was tabled:

> "17…*Nous n'avons aucune difficulté à conclure que la Loi…(PIPA)…restreint la liberté d'expression du syndicat.*
>
> *18. Cela vous amène à l'analyse fondée sur l'Art. premier…Il nous faut déterminer si la PIPA vise un objectif urgent et réel, et dans l'affirmative, si ses dispositions sont rationnellement liées à cet objectif porte atteinte au-delà de ce qui est nécessaire et si ces effets sont proportionnels à l'objectif du gouvernement*." (Underlines, our own)

This Bill fails or at least is not demonstrably defensible on not any of these accounts

[27] [1986] 1 R.C.S. 103

M. Application of Chapters 2 and 3 of the Bill to the Private Sector (Art, 10)

61. Art. 10 of the Bill expands its application expressly to those enterprises in the private sector which have contracts or receive subsidies from the public sector, and tacitly to those enterprises in the private sector which hope one day to have contracts or to receive subsidies from the public sector. Everything said above with respect to Arts. 3 to 7 applies equally to Art. 10, with the addition that the imposing of "maintaining religious neutrality" on enterprises in the private sector otherwise exempt would create effects, intended or not, that are extreme. For example, a private Muslim daycare center which serves only halal food would be denied government subsidies unless it agreed not to do so. Similarly, private institutions established for the purpose of housing seniors who are Orthodox/Observant Jews may be refused government subsidies available to all other similar institutions simply because the establishment serves Matza (unleavened bread) at Passover in accordance with the religious tenets of its residents.

62. However, Art. 10 is even more insidious. Just as Arts. 5, 6 and 7 of the Bill could well cause persons who are required to wear certain clothing adornments or objects, or to cover their faces, for reasons of conscience or religion and who are forced to leave their jobs or who fear to apply for employment with public bodies, in view of such religious tenets, to turn to the private sector in the hope of finding alternate employment therein, these same persons might find such employment opportunities blocked by enterprises who expect, anticipate or hope to secure contracts and/or subsidies with or from the government or from public bodies. Do the requirements of Arts. 3, 4 and 5 via Art. 10, become "*Bona Fide* Occupational Requirements" with respect to employers intending to solicit business from "public bodies"? How would such conduct be less discriminatory than refusing to hire potential employees solely because of the colour of their skin, their race, sex, sexual orientation, national origin, social condition, or any other ground prohibited by Art. 10 of the Charter? There can surely be no better way to isolate individuals who, by reason of conscience and/or conviction, wear specific clothing associated with the profession of their faith or cover their faces. Arts. 5, 6 and 7 effectively bar them from seeking employment in the public sector while Art. 10 may well close the doors to employment in the private sector.

N. Through Bill 60, the State is Decidedly Not Religiously Neutral

63. How can discriminatory conduct by one private sector employer that is a consequence of contracting with a "public body" be any more defensible, or indeed, any less unacceptable, than the same conduct carried out in preparation for, or with the intention of obtaining such contract?

64. In proposing Bill 60 the State is decidedly not acting with neutrality towards its own citizens and electors. Rather, the State is ignoring and violating the fundamental liberties of conscience and expression that are the birthright of all its citizens. Its provisions have further pernicious effects in that they discriminate through disparate impact upon discreet segments of Québec's citizenry. The impact of forbidding a male Sikh doctor from wearing a turban, as his faith requires him to, is not equivalent and is for him far greater than limiting a Christian colleague from wearing a crucifix. For the former it is a violation of his faith. For the latter it is a limitation of choice. While the freedom of both to express themselves and profess their faith is compromised, the stigma for the former of violating deeply held religious principles makes State interference considerably that much more unacceptable.

O. Bill 60's Effects on Education - Historical Overview Of Québec's Education System

65. Section 93 of the Constitution Act (Canada), formerly the British North American Act,[28] preserved the rights and privileges relating to denominational schools as well as the "dissentient schools of the Queen's Protestant and Roman Catholic subjects in Québec". These provisions preserved the rights to denominational school boards in Québec, whereby all Roman Catholic students attended schools in the French system, and all Protestant students (and those of all other non-Catholic faiths, including those of the Jewish and Muslim faiths) attended schools in the English system.

66. In 1988, the Education Act (R.S.Q., c. I-13.3) replaced confessional school boards by linguistic school boards. In 1997, following a unanimous vote by the National Assembly of Québec, and at its request, the Government of Canada exempted the province from Section 93 of the Constitution Act by the granting of Royal Assent to the Constitutional Amendment, 1997, (Québec).

67. When public schools were de-confessionalized, Catholic and Protestant religious education classes as well as non-religious moral education classes were retained in the curriculum. In 1997, Art. 5 of the Education Act was amended to permit minority religious groups to teach religious education of their faith where their numbers were large enough. This permission was revoked in 2000, and the notwithstanding clause was invoked to avoid court challenges.

68. Upon its expiry in 2005, the Québec government opted not to renew the not-withstanding clause, and instead abrogated Art, 5 of the Education Act and amended Art, 41 of the Quebec Charter, thereby eliminating the previous choice in moral and religious instruction, and instead imposed a new Ethics and Religious Culture curriculum in all schools, both public and private.

69. It is ironic that these compulsory Ethics and Religious Culture courses oblige teachers to preach religious tolerance to their students whereas Bill 60 prohibits its practice in the educational setting.

70. Adoption of Bill 60 represents the introduction of a new faith of skewed secularism into the Québec education system, in place of the previous confessional system, obliging all educational institutions at every level, from day care to post-secondary, to adopt this new "non-religion".

P. Rules Applicable to the Educational Childcare Services Sector

71. Chapter VII of Bill 60 applies to childcare centres, home childcare coordinating offices and subsidized day care centres governed by the *Educational Childcare Act* (R.S.Q., c. S-4.1.1, the "Childcare Act"), the stated purpose of which is to provide "quality personalized educational childcare services" (Art. 4; emphasis added). This includes an educational program, the purpose of which is to "foster children's overall development, particularly their emotional, social, moral, cognitive, language, physical and motor development" and to help them "gradually adapt to life in society and integrate a group

[28] B.N.A. 1867, 30 Victoria, c. 3

harmoniously" (Art. 5, emphasis added). The latter section is amended by Art. 43 of Bill 60 to add, at the end, "in keeping with the values of Québec society, which include equality between women and men and the religious neutrality and secular nature of the State". This addition must, however, be read in light of the opening language, complementary to it, rather than as a limitation or contradiction of it.

72. Art. 107(2) of the Childcare Act empowers the Minister, by regulation, for part or all of Québec, to "determine elements and services to be included in the educational program of a childcare provider", but the Educational Childcare Regulation (R.R.Q., c. S-4.1.1, r. 2) is silent in this regard. By default, therefore, the parents committee required to be formed for each day care centre must be consulted upon, and is therefore charged with determining, the application of the educational program as well as the acquisition and use of educational materials and equipment (Arts. 32(1) and (2) of the Childcare Act).

73. Art. 30 of Bill 60 prohibits (1) the admission of a child to a day care centre being predicated upon their learning a specific religious belief, dogma or practice; (2) the objective of educational services and communications being to teach such a belief, dogma or practice; and (3) any repeated activity stemming from a religious precept, in particular with regard to dietary matters, if its aim, through words or actions, is to teach that precept to children.

74. The daycare system is intended to assist children in transitioning from the home environment to the classroom. This cannot be done by insisting that the daycare environment be a neutral (if not neutered) homogenous experience, without any regard to, and divorced from, the child's religious and cultural practices at home. Children require consistency and structure. Forbidding faith-based dietary practices in the daycare centre which are an integral part of the family's fundamental belief system at home will create confusion and conflict between a child's home life and his/her daycare experience.

75. Indeed, the Québec government's own pamphlet « *Accueillir la petite enfance – Le programme éducatif des services de garde du Québec* », emphasizes a presumably integrative approach, involving recognizing immigrants and minorities cultural attitudes and values. The social and moral components are stated to encourage respect for differences in people.

76. Chapter VII of Bill 60 encourages the opposite – it teaches children intolerance and creates confusion in their experience. Rather than reinforcing their families' values, it prohibits their public expression and suggests that they are to be practiced covertly and only in private, as if they were to be suppressed rather than embraced as part of the child's individuality and life experience. Furthermore, it strips the parents' committees of the authority and responsibility with respect to the educational program conferred upon them by the Act.

77. The impact of Chapter VII of Bill 60 would be to prohibit the teaching or practicing of any cultural or religious rituals, and the celebration of the related festivals, in a daycare setting. Rather than teaching impressionable young children about respect for differences, it seeks to hide or eradicate them, as if their being different is something of which to be ashamed or embarrassed. Instead of the daycare centre being a warm and welcoming personalized environment that is respectful and reflective of the children's own home environment, it is rendered stark and colorless, devoid of any connection with

their life experiences at home and in their own communities, which cannot possibly assist in achieving the stated purpose of fostering their overall development.

78. Furthermore, Chapter VII of Bill 60 not only effectively excludes the existing faith-based *Centres de la petite enfance* from the public system going forward, but also excludes those parents who choose to embrace their faith and its practices, and who wish to see their children educated in a manner which is consistent with that faith and their values, from participating in the much-vaunted Québec public daycare system, to which they are presumably contributing, along with all other Québec taxpayers.

Q. Bill 60's Effects on Elementary Schools and High Schools

79. Bill 60 calls for a ban of all "ostentatious religious symbols" by government employees, including all public school personnel. Pursuant to Art. 6 of Schedule I of the proposed Bill, school boards established under the *Education Act* are considered public bodies. Personnel members of a public body include members of its management personnel as well as any other director or member of a body who receives remuneration.[29] The proposed law would affect 13,000 teachers, professionals, administrators and support staff in the English school board system and many more in the French school board system. Moreover, many of the alleged problems the Bill proposes to address are already resolved by the *Education Act*, which sets out the rights and obligations of Quebec teachers.

80. Consequently, the Quebec English School Board Association has expressed disappointment with Bill 60.[30] It states that teachers' unions and school boards have found ways in the past to strike a democratic and positive balance between religious difference and common values. School boards would prefer that the Quebec legislature work to address real challenges facing the future of students.

R. Religious Indoctrination in Public Schools is Not an Existing Problem and there are Legal Provisions Already in Force to Prevent this Kind of Behaviour

81. There are provisions in the *Education Act* that already address any "alleged" abuse of trust by teachers through proselytizing or indoctrinating students with their religious beliefs. The *Education Act* imposes on teachers the obligation to attain and maintain a high level of professionalism and to act in a just and impartial manner in their dealings with their students.[31] If teachers were to use class time and their position of authority to indoctrinate students as to their religious beliefs, this would be a clear violation of their obligation to act professionally, and would not comply with the educational requirements of the school.

82. It is unnecessary to deny a person the right to religious expression and affirmation by prohibiting the wearing of garments that define their adhesion to specific religious tenets

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[29] Schedule II, Bill 60.

[30] « QESBA expresses initial views on Bill 60 » November 7, 2013 at http://www.qesba.qc.ca/en/home/item/qesba-expresses-initial-views-on-bill-60.

[31] Article 22(6), *Education Act.*

in order to maintain secularism in the classroom. Moreover, individuals have personal beliefs not only with regards to religion, but also with respect to politics and countless other issues. Just as a teacher may have strong political or social views, the pre-existing obligations that they undertake to fulfill as a teacher ensure that using the classroom as a personal stage proselytise one's personal opinions is and has been both a sufficient and efficient deterent to such practice.

83. Premised on flawed logic, the irrational conclusion one is forced to draw from Bill 60 is that a teacher wearing a religious symbol is not capable of being neutral or secular in their dealings with students. Not wearing a religious symbol is no guarantee of a teacher's ability to exercise reserve, neutrality, or secularism. It is false comfort to a non-problem. Not only is the proposed Bill an infringement on the human rights of teachers in public school, the Bill's proposed method to maintain religious neutrality – namely by requiring that teachers "exercise reserve with regard to expressing their religious beliefs", and not wearing religious symbols which, "by their conspicuous nature, overtly indicate a religious affiliation"[32] - is in fact a bad solution to a problem that does not exist.

S. The Legal Obligation of a Teacher to Foster Respect for Human Rights in His Students is Frustrated by Bill 60

84. Bill 60 does not strengthen any of the principles that serve as the bedrock in Quebec's school boards; in fact it does quite the opposite. The *Education Act* requires that teachers foster human rights in their students. Freedom of expression and freedom of religion are fundamental human rights, enumerated as such in legal instruments that are pivotal to our legal tradition, such as the Quebec *Charter of Human Rights and Freedoms*[33], and the Canadian *Charter* [34].

85. The belief that, despite differences of faith, skin colour or sex, all people deserve to be treated equally and with respect, is a cornerstone of human rights legislation. Teachers cannot fulfill their obligation to teach and to foster respect for human rights when they are personally prohibited from exercising their own.

86. Since the only exception to the principle of religious neutrality is with respect to "emblematic and toponymic elements of Québec's cultural heritage that testify to its history," the message this Bill sends to students is that the state is not neutral, and that some parts of Quebec's culture and history are more valid than others. It reinforces dogma long ago rejected for its brutishness - tyranny of the majority.

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[32] See articles 3, 4 and 5 of Bill 60.

[33] Article 3 : **"**Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association."

[34] Section 2, *Constitution Act* (1982) : 2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
(c) freedom of peaceful assembly; and
(d) freedom of association.

T. The Draft Law Promises to Add to the Already Bloated Bureaucratic Responsibilities of School Boards, Redirecting Valuable Human Capital and Tax Dollars Away from Education

87. Chapter VI of the Bill would require each school board to draft its own policies showing how they will comply with the law. Many of the duties and obligations that would have to be included are already part of current school policies and present in the *Education Act*. For example, the Bill's chapter on Implementation Policies require that official policy must provide that personnel "refrain from all forms of proselytism"[35]. Are the instances of proselytizing behaviour so prevalent and pressing so as to require the imposition of additional unnecessary administrative requirements on school boards already burdened with important and time consuming responsibilities? With one of the highest high school drop-out rates in the country, scarce resources ought to be allocated according to the real problems facing the education of our youth, and not to solve imagined and undemonstrated problems.

U. Absences from School for Religious Observances

88. Article 17 establishes a cumbersome procedure for an "accommodation request" made by a student attending school. This needlessly complicates matters, such as for Jewish students whose religious observance requires their absence from school for instance on Rosh Hashanah, Yom Kippur, Sukkot, Passover and/or Shavuot. The effect may be to alienate and isolate communities who are not Christian, and whose holy days do coincide with statutory holidays. Such holidays may reflect the traditions of those who celebrate Easter and Christmas, but they do not reflect the traditions of those who celebrate, among other holidays, Rosh Hashanah or Passover. It will ultimately result in isolating students from non-Christian backgrounds and will force them into the private sector, which is financially prohibitive for many, while culturally impoverishing the public sector by their absence.

V. Effects on General and Vocational Colleges and University-Level Educational Institutions – Absurdities Created

89. Art. 5 of Bill 60 prohibits personnel members of public bodies from wearing conspicuous religious symbols during the exercise of their functions. Banning the personnel of general and vocational colleges and of universities from wearing such symbols would likely result in the exclusion of fully qualified personnel from both current and prospective employment within such institutions, while also infringing their rights to the fundamental freedoms of conscience and religion, and freedom of expression. Professors and teachers in such institutions should be hired and employed based on their skills and knowledge, regardless of whether or not they wear a symbol of their religious beliefs. It is ironic that a province whose Labour Standards legislation is amongst the most progressive and protective of employees should legitimize the restriction of opportunities of fully qualified personnel within the education systems merely because they are persons of faith. International students and professors alike will be deterred from coming to Québec because of limitations that will be imposed on the above-mentioned fundamental freedoms, and the quality of higher education in Québec will suffer because the talent pool of professors will shrink. Faculty appointments, academic exchange

[35] Section 20(2), Bill 60.

programs for visiting professors, and research groups within universities in Québec will likely be unable to attract participants of faith although those candidates might be the most qualified, denying us all the benefit of their knowledge and talents.

90. The application of Art. 5 of Bill 60 will create an untenable academic environment within institutions of higher learning, replete with absurd results. Students in a university or college classroom will be permitted to wear religious symbols or garb, whereas their professors will be denied the right to wear the same items. Doctoral students will be permitted to wear religious symbols if attending a University course as part of their Doctoral program of studies, however the same individual will be required to remove the religious symbols or garb when they performs duties as teaching assistant at the University as part of the same Doctoral program, because teaching assistants are employees of the University.

91. Bill 60 is already causing institutions of higher education to redirect scarce resources away from providing a quality education. McGill University's Senate unanimously rejected the provisions of Bill 60 because they conflict with the University's mission. The resolution provides "…while the McGill Senate supports the secular spirit of Bill 60, it strongly objects to the restrictions on the right to wear religious symbols, as described in the draft legislation, which run contrary to the University's mission and values"[36]. In addition, UQAM Rector, Robert Proulx, described Bill 60 as "inapplicable"[37]. Université de Montréal's spokesperson Mathieu Filion was quoted as saying "…the Charter does not respond to our needs", and the Rector of Université de Sherbrooke, Luce Samoisette, also publicly denounced Bill 60 to Le Devoir[38].

92. Art.11 of Bill 60 provides that the duties of neutrality and reserve and the restriction on wearing religious symbols do not apply to persons in charge of providing instruction of a religious nature in a university-level educational institution or providing spiritual care and guidance services in such an institution or in a general and vocational college. Who will define the meaning of "instruction of a religious nature"? Would this include only courses within a university or college's Department of Religious Studies? Or would it also extend to courses taught by other departments such as Social Studies or Sociology or Humanities, which also focus on religion? It will inevitably lead to inconsistent application and create uncertainty as a result.

W. **Bill 60 Effectively Makes the Government of Quebec the Arbiter of Religious Practices and Observance in the Public Domain**.

93. Not only does the Bill apply to public bodies defined as, "…the bodies and institutions, and persons together with their personnel, listed in Schedule I…" and, "…persons listed

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[36] McGill Reporter, Senate unanimously rejects provisions of the Charter of Values, November 21, 2013 https://publications.mcgill.ca/reporter/2013/11/senate-unanimously-rejects-provisions-of-bill-60

[37] *Le Devoir, Au tour de l'UQAM de rejeter la charte*, December 4, 2013 http://www.ledevoir.com/societe/education/394302/au-tour-de-l-uqam-de-rejeter-la-charte

[38] *Le Devoir, Des universités disent non à la charte,* December 3, 2013 http://www.ledevoir.com/societe/education/394219/des-universites-disent-non-a-la-charte

in Schedule II…" of the Charter (see Article 2), Article 37 delegates to the government of Quebec the power to, "…make a body, institution or public office, or a category of same, subject to one or more provisions…" of the Charter. Article 37 also empowers the government to define the terms and conditions of adherence of these bodies, institutions and public offices to the Charter. This expansion of the scope of the Charter is effected by 60 days prior notice published in the *Gazette officielle du Québec.* On the expiration of the delay the applicability of the Charter to these bodies, institutions and public offices takes effect and is deemed to form part of Schedule III of the Charter, a Schedule which is currently blank.

94. Effectively the National Assembly is delegating to the government the ability to amend the Charter's applicability and enabling the government to capture within its provisions virtually every type of entity. The Charter does not define what the words "body" or "institution" may be. These terms almost certainly include private not for profit entities, charitable foundations and like entities. These words may include commercial entities as well. In any event using its authority under Article 36, the government can broaden the definition of "body" (*organisme*) and "institution" to cover and include anything. Furthermore Article 36 of the Charter empowers the government to adopt regulations which define, "…the terms and expressions…" used in the Charter. Consequently the government is effectively empowered to rewrite large swaths of the Charter for the purposes of expanding its applicability and scope.

X. Bill 60 Empowers The Government and the Applicable Ministers to Regulate Religion in Quebec.

95. Bill 60 fails to explain how it is to be implemented. Rather it requires every public body (meaning every "body" as defined in Schedule I and II of the Charter and any other bodies to which the Charter may apply by declaration of the government under Art. 37 to adopt policies of implementations of the Charter. This means that hundreds of bodies, possibly thousands, will need to adopt implementation policies. The numbers of "bodies" or "personnel members of public bodies" creating these policies include every government Ministry, municipality, school board, hospital, CLSC, daycare, etc. These implementation policies cannot deviate from the Charter. Article 30 requires that policies contain certain definitive provisions to flush any religion, religious observance, religious belief, etc. from the body and its operations.

96. Failure to adopt an implementation policy within the prescribed delay will empower the applicable Minister to develop and impose the implementation policy on that body (Article 24 of the Charter).

97. These implementation policies are not mere administrative guidelines. They are clearly intended to have legal consequences and to be binding on the applicable body and its personnel. They are clearly intended to be enforceable by the appropriate juridical action.

98. In effect the Charter implicates whole sectors of Quebec society in its secularization. The Charter imposes a positive duty on public bodies and other bodies that become, by government fiat, subject to the Charter; the positive duty to eliminate or restrict religion from the public sphere.

Y. Bill 60 effectively transforms the Minister Responsible for Democratic Institutions and Active Citizenship, into the Minister of Religion of Quebec

99. Bill 60 will give rise to endless litigation. In Syndicat Northcrest v. Ancelem, [2004] 2 S.C.R. 551, Iacobucci J., at pars. 49 and 50 recognized that for the State or for the judiciary to become the arbiters of religious practices this would defeat the very pupose of freedoms of conscience, expression and religion. Speaking for the Court he wrote emphatically: "*L'état n'est pas en mesure d'agir comme arbitre des dossiers religieux et ne devrait pas le devenir*." The implementation policies will spawn no end of litigation. The implementation policies are meant to be enforced. The scope of potential litigants who may attempt to enforce these policies would include the government, the Minister, the public bodies, employees and even ordinary citizens. The Charter also opens the door for litigation spawned by malevolent objectives and personal jealousy, vindictiveness and the like. These implementation policies could be used by employees and citizens who wish to discriminate against religious practices and persons of faith.

100. All implementation policies must be publicized by the applicable body on their websites. This multiplicity of publication will create a pervasive atmosphere of fear for those who practice their faith and will render them potential outcasts.

101. All implementation policies must provide provision for the banning of religious clothing and conspicuous symbols. In other words, each implementation policy is a recipe of the mix of proscribed behaviors and/or prohibited outward signs of religion, which include and expand on the provisions of the Charter. The uncertainty and inconsistency that results is the albatross that persons of faith must symbolically wear.

Z. Establishing the Norms for Accommodation is a Meaningless Exercise and Superfluous

102. Accommodation in the industrial/commercial, health as well as the scholastic spheres already exist and function quite well. No government intervention is called for. These areas of activity are highly organized (unionized) in Québec. Most matters subject to accommodation are generally negotiated, dealt with in collective agreements and/or one arrived at with union participation. Accordingly, the accommodations already reached in these important spheres of activity are representative of agreements reached consensually and therefore not requiring government intervention. Why interfere with a successful and traditionally accepted formula?

103. Pursuant to Central Okanogan School District No. 22 v. Renaud[39], the duty to accommodate religious beliefs is shared, with certified unions yet the obligations set out at Art. 19 et seq. of Bill 60 are addressed solely to "*l'organisme public*" who must "*doit adopter une politique de mise en oeuvre des prescriptions de la présente Charte s'harmonisant avec sa mission et ses caractéristiques propres*". In view of Schedule 1 an "*association accréditée*" is not an "*organisme public*". The rights and obligations of union members that flow from collective agreements which results from such "accreditations", and union rights and obligations that arise in their capacity as "*association accréditée*" are seriously impacted and directly but ostensibly without their input. The result of failure to respect the obligations set out at Arts. 3 to 7, may well lead

[39] 1992, 2 R.C.S. 970

to discipline and discharge of their members forcing a certified union to file grievances contesting same on behalf of its members so as to protect itself from any claim of failure to provide "fair representation". In view of Arts. 47.2 and 47.3 of the Labour Code, L.R.Q. c. C-27, the number of grievances in those sectors (health and education) in which a continuous and costly backlogs of unresolved grievances are endemic is likely simply to spin out of control.

AA. Social and Economic Consequences On Québec Society

104. The persons and organizations who have already criticized Bill 60 represent important constituencies. The cost to our society of this proposed law is clearly demonstrated by the reaction of the various Chambers of Commerce and the Federation of Chambers of Commerce. They have outlined in plain and unmistakable language the negative impact both domestically and internationally of its implementation. The economy and employment, they warn, will be severely affected. The President and CEO of the Chamber of Commerce of Metropolitan Montreal, Michel Leblanc, expressed the Chamber's displeasure with and opposition to the Government's proposed Charter of Values in these unequivocal terms: "*elle risque d'entraîner des conséquences néfastes sur la reputation de la métropole et sa performance économique. La proposition gouvernemental….est en contradiction direct avec les demandes de la communauté d'affaires…*" . With reference to the international repercussions of the proposed Charter he had this to say "*Le débat actuel entraîne déjà des repercussions sur la réputation et l'image de la métropole et du Québec face au reste du monde*. *Une société jugée fermé et intolérante envers les libertés individuelles ne réussira pas à attirer les talents et les investissements dont elle a besoin pour croître et prospérer*."

105. The *Fédération des Chambres de Commerce du Québec* in a letter to Premier Marois warned that its proposed Charter of Values would harm the Province's economic development and create social tensions and, further, reminded her that global competition for private investment is fierce and that the Charter would be poorly received worldwide.

106. The 2011 population census reveals that Québec's weight within Canada has shrunk by nearly 1/5 over recent decades and that the trend is continuing. Attraction and retention of immigrants must be a priority if Quebec is to develop and reach its full potential. Yet, the adoption of this proposed Charter will undoubtedly have the very opposite effect of driving the potential and actual immigrants away, with the unfortunate consequences that our deficit, our debt and our tax base which are currently suffering will continue to suffer. The recently revealed 2 ½ billion dollar deficit is a shocking revelation and in stark contrast to the Government's planned balanced budget, and establishes Québec as the most indebted province in the country. In this regard, Yves Thomas Dorval, President of the *Conseil du patronat*, warns that Québec is living beyond its means and declares that its latest spending announcements only serve to further undermine its credibility in the circumstances of its current financial state.

107. In the late 90's, as Education Minister, Premier Marois, led a concerted effort to open the doors of schools to students and teachers of different ethnic and religious backgrounds. The Policy she proposed (A School for the Future) promised ZERO EXCLUSION and the recognition that diversity in terms of family background, religious or cultural identity was "itself one of our shared values". The policy stated that "The credibility of pretensions to openness and ethno-cultural and religious diversity relies heavily on the

visibility of this diversity within the school staff. But, in many school boards and most educational institutions, the staff remains ethno-culturally homogeneous…it seems appropriate to ask school boards and colleges to make sure that their hiring system includes no rules or practices that could have a discriminatory effect…". How, can one reconcile these clear pleas for openness, ethno-cultural and religious diversity and the removal of discrimination, with the tenets and objectives of the proposed Charter?

108. Professor Charles Taylor, who served with Gérard Bouchard on the Bouchard-Taylor Commission on Reasonable Accommodation, called the proposed Charter hypocritical and unfair and accuses the Government of willfully driving a wedge into society. He predicts that it would tear Québec society apart because "it's clear discrimination".

109. These severe but credible and critical observations from our business and other leaders render the very *raison d'être* of the proposed Charter incomprehensible. Why would any credible government forego the obvious benefits of an open and welcoming society, socially, culturally and economically? Why would any credible government risk the dire consequences which would inevitably ensue from the adoption of this totally unnecessary law absent evidence of i) urgent and pressing need ii) that the provisions of the law constituted a proportional and measured response and iii) constituting <u>minimum impairment with fundamental rights</u>.

<u>Conclusion</u>

110. This Chamber would do well to heed the words of the late Nelson Mandela, made an honorary citizen of Canada some years ago:

> "For to be free is not merely to cast off one's chains, <u>but to live in a way that respects and enhances the freedoms of others</u>." (Underlines, our own)

111. The tragedy of Bill 60 is that rather than encouraging the machinery of State and Quebec's citizenry, in general, to do just that, its discriminatory provisions produce the opposite result. It is legislation that impoverishes our society rather than enriching it.

Respectfully Submitted, this December 18, 2013.

THE LORD READING LAW SOCIETY

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Per: Theodore Goloff, Attorney
Chair, *ad hoc* Committee on the *Projet de loi n^{o} 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*

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N.B. : THE PRESENT MEMORANDUM WAS AUTHORIZED AT A MEETING OF THE BOARD OF DIRECTORS OF THE LORD READING LAW SOCIETY ON DECEMBER 12, 2013, WITHOUT THE PARTICIPATION OF ANY MEMBER OF THE JUDICIARY OR OF ANY QUASI JUDICIAL TRIBUNAL.