SUMMARY OF THE POINTS DISCUSSED IN THE BRIEF SUBMITTED TO THE NATIONAL ASSEMBLY OF QUEBEC CONCERNING BILL 21 ENTITLED "LAW ON SECULARISM OF THE STATE" BY THE LORD READING LAW SOCIETY

The Lord Reading Law Society (the "Society"), founded in 1948, has its head office in Montreal. Its membership consists principally, but not exclusively, of Jewish jurists, including lawyers, notaries and judges. Nevertheless, no member of the Society who is a sitting or supernumerary member of a court or administrative tribunal has participated in any manner in the preparation, adoption or the submission of the Brief.

The Brief is respectfully submitted in virtue of our principal mandate as contained in its mission declaration: "Advise on and promote the advancement of fundamental rights and liberties".

For more information concerning the Society, we invite you to visit our website at www.lordreading.org.

Overview of the Brief:

1. The Society believes that there is no need for the present Bill. It does not provide any added benefit and does not address any pressing need. The neutrality of the State is already enshrined in the constitution, not only in the Charters of Quebec and Canada, but also is protected by the oaths of office of the judges and functionaries.

2. Although Bill 21 aims to promote, among other things, the neutrality of the State, in practice, the contrary can well result.

3. Bill 21 makes of "religious neutrality" and "laicity" a State religion imposed while depriving individuals of their fundamental rights and freedoms.

   Bill 21 creates, moreover, an artificial hierarchy of rights and freedoms which is not only foreign to the Charters, but which was implicitly rejected by its drafters, placing religious neutrality and "secularism" ahead of all other rights. Bill 21 proposes that fundamental individual freedoms of conscience and expression be subordinated to secularism.

4. The teachings of the Supreme Court in *Mouvement laïque québécois v. Saguenay (Ville)*, [2015] 2 SCR 3, 2015 SCC 16 (CanLII), are found at paragraph 74 and says:

   > *a) State religious neutrality requires that the State not favor any particular belief;*
   > *...*
   > *c) A neutral public space does not mean the homogenization of private players in that space;*
   >
   > *(d) Neutrality is required of institutions and the State, not individuals;* "

These teachings are discarded by and are in no way satisfied by this Bill.

5. The Supreme Court, cited in the case of El Alloul by Judge Mainville of the Court of Appeal stated that the secularity (or neutrality) of the State implies not the negation or erasure of religious beliefs, but rather the respect for religious differences, to the extent that such manifestations of beliefs are not contrary to or do not damage overriding public interest.

6. The Bill presupposes that the practice of religion compromises the religious neutrality of the State, which stems from a false premise and infringes the obligation of the State to remain neutral, by discriminating against those professing a faith in favour of secularism.

7. The creation of a positive obligation to show proof of secularism, even in the instructions given to the Conseil de la magistrature in the Bill, risks violating judicial independence, a pillar of the rule of law in all democracies.

8. Canada is bound by the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Civil and Political Rights* (1976), which protects freedom of religion and its public exercise. The *Charter of Human Rights and Freedoms* adopted in 1975 by the National Assembly of Quebec also protects the freedom of conscience, religion and expression.

9. Invoking the “Notwithstanding Clause” constitutes a clear admission that the Bill does not respect fundamental liberties and that the restrictions can not be justified in a free and democratic society.

10. The recourse by the legislature to the Notwithstanding Clause foreseen in Section 33 of the *Canadian Charter* will not have the desired effect. In the light of recent jurisprudential developments, interpretation of the *Canadian Charter* is subject to international instruments which bound Canada in 1982, so that the legislator cannot withdraw the application of Sections 2 and 7 to 15 of the *Canadian Charter* in a manner which would be contrary to the *Universal Declaration of Human Rights* and/or the *International Covenant on Civil and Political Rights*.

11. Section 9.1 of the *Quebec Charter* and Section 1 of the *Canadian Charter* permit the National Assembly to restrict fundamental liberties only to the extent that is reasonable in a free and democratic society. The test established by the Supreme Court in the Oakes case is still applicable. This test is essential in order to protect fundamental rights; otherwise, the affirmation of these rights means nothing.

12. In prohibiting the wearing of religious symbols, Bill 21 contravenes the freedom of expression and religion to the extent that it prohibits the right to wear religious symbols for many persons in the service of the State or other organs thereof which are enumerated, without proof, study or statistics which tend to demonstrate that it is necessary to so restrict these rights.

13. Clause 16 of the Bill compromises the religious neutrality of the State by creating an exemption for "*the emblematic or toponymic elements of Québec's cultural heritage, in particular of its religious cultural heritage, that testify to its history.* "

14. Bill 21 does not precisely define "*the emblematic or toponymic elements of Québec's cultural heritage*". This adds to the confusion and lack of clarity. Does the cultural heritage include only Christian cultural heritage or also contributions to this cultural heritage by the minorities and/or aboriginals of Quebec?

15. The ambiguous obligation to demonstrate laicity, in the absence of clear and well-defined terms, and the granting by the Bill of an undefined discretion to unknown administrators, result in the fact that the Bill will be incapable of satisfying the requirements of the "*rule of law*", that is to say, knowing in advance what is required and by whom, and this with reasonable certitude. In fact, it constitutes an abdication in favour of others, of the legislative obligations of the National Assembly.

16. The fact that a majority of Quebecers supposedly support the Bill does not suffice, in itself, to justify its adoption. Freedom of religion is a fundamental right, acquired with great difficulty, which is protected by the Canadian Constitution and the Charters. A fundamental law is beyond the reach of the subjective action of the majority.