Court File No. 41231

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

B E T W E E N:

ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM),
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

– and –

FRANÇOIS PARADIS, in his official capacity
MOUVEMENT LAÏQUE QUÉBÉCOIS
POUR LES DROITS DES FEMMES DU QUÉBEC

RESPONDENTS

(*Style of cause continued on next page*)

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(ICHRAK NOUREL HAK, et al., APPELLANTS)
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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APPELLANTS
(Respondents on Cross-Appeal)

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AND BETWEEN:

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(Respondents on Cross-Appeal)

– and –

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AND BETWEEN:

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RESPONDENT
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AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
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– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
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– and –

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I. OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Sections 6 and 8 of the *Loi sur la laïcité de l'État* (the "***Act***")[1] effectively exclude religious persons from Québec public institutions by prohibiting and punishing their religious practices—specifically, the wearing of religious symbols. As the trial judge in this case recognized,[2] these prohibitions constitute a violation of religious freedom and other fundamental liberties.

2. Perhaps anticipating contestation of the *Act* on that basis, the Québec National Assembly invoked the notwithstanding clause—that is, s. 33 of the *Canadian Charter of Rights and Freedoms* ("***Charter***")—to shield the *Act* from legal challenges based on ss. 2 and 7-15 of the *Charter*.

3. But even when relying on the notwithstanding clause, the legislator does not have the last word. The courts must still exercise their supervisory role to ensure that all legislation, even that which invokes s. 33, respects our constitutional order—which imposes constraints on the exercise of legislative power that go beyond the specific restrictions created by the *Charter*, and that cannot be ousted by recourse to s. 33. All legislation must be consistent with our constitutional architecture, which elucidates the structure of Canadian government that the Constitution seeks to implement; and it must be consistent with the constitutional division of powers.

4. In the present case, the *Act* is neither. In excluding religious persons from participation in public institutions in order to "protect" a certain vision of fundamental values, ss. 6 and 8 of the *Act* violate the architecture of the Constitution of Canada and represent an improper attempt by the province to legislate in an area of exclusive federal jurisdiction.

5. This Court should consequently grant the present appeal and declare ss. 6 and 8 of the *Act* invalid and inoperative by virtue of s. 52 of the *Constitution Act, 1982* ("***CA 1982***").

B. Statement of Facts

6. The Appellants generally refer this Court to paragraphs 5 to 73 of the trial judgment, which set out the facts relevant to this appeal. For the purposes of the Appellants' grounds of appeal, the following facts bear emphasizing.

7. The Québec National Assembly adopted the *Act* on June 16, 2019, under closure. On June

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[1] CQLR c L-0.3.

[2] *Hak v Procureur général du Québec*, 2021 QCCS 1466 [**QCCS Judgment**], paras 275, 382, 807, **Joint Appellants' Record** [**AR**]**, vol I, tab A.**

17, 2019, the Appellants filed an application seeking, among other things, a declaration that ss. 6 and 8 of the *Act* are unconstitutional and *ultra vires*.

8. Section 6 prohibits certain persons from wearing "religious symbols"—a broadly-defined term—in the exercise of their functions:

6. The persons listed in Schedule II are prohibited from wearing religious symbols in the exercise of their functions.	**6**. Le port d'un signe religieux est interdit dans l'exercice de leurs fonctions aux personnes énumérées à l'annexe II.
A religious symbol, within the meaning of this section, is any object, including clothing, a symbol, jewellery, an adornment, an accessory or headwear that:	Au sens du présent article, est un signe religieux tout objet, notamment un vêtement, un symbole, un bijou, une parure, un accessoire ou un couvre-chef qui est :
1° is worn in connection with a religious conviction or belief; or	1° soit porté en lien avec une conviction ou une croyance religieuse;
2° is reasonably considered as referring to a religious affiliation.	2° soit raisonnablement considéré comme référant à une appartenance religieuse.

9. Schedule II provides a long list of individuals targeted by the prohibition, including the President and Vice-Presidents of the National Assembly, government lawyers and lawyers acting pursuant to government contracts, peace officers, and schoolteachers.

10. Section 8 of the *Act*, in turn, obliges personnel members of a body listed under Schedule I and persons listed in Schedule III to exercise their functions with their face uncovered. Schedule I lists a range of public bodies to which the *Act* applies, including any government department, any body whose personnel is appointed under the *Public Service Act* (chapter F-3.1.1), municipalities, public transport authorities, school service centers, childcare centers and public institutions governed by the *Act respecting health services and social services* (chapter S-4.2).

11. The prohibitions set out in ss. 6 and 8 are enforced through s. 12 of the *Act*, which grants relevant ministers the power to verify compliance with the *Act* and to impose corrective measures. In the same vein, s. 13 of the *Act* provides that the person exercising the highest administrative authority over the persons referred to in ss. 6 and 8 is responsible for taking "the necessary measures to ensure compliance" with the *Act*, and that in the event of failure to comply with such measures, these persons are subject to "disciplinary measures or, if applicable, to any other measure resulting from the enforcement of the rules governing the exercise of their functions."

C. Judgments Below

1) Superior Court of Québec (Blanchard J., 2021 QCCS 1466)

12. The trial judge held that the *Act* excludes certain individuals, including the Appellant Ichrak Nourel Hak, from their desired careers in the public institutions (paras. 64-65). He considered the dilemma underlying that exclusion—foregoing one's beliefs or foregoing one's career—to be "*une conséquence cruelle qui déshumanise les personnes visées*" (para. 69). He further held that:

> *Cette exclusion de la simple possibilité d'exercer la carrière envisagée, pour laquelle on possède toutes les qualifications, représente plus qu'un simple déni d'une chance, car elle transmet le message que les personnes qui exercent leur foi ne méritent pas de participer à part entière dans la société québécoise*. (para. 69, emphasis added)

13. On the architecture argument formulated by the Appellants, Blanchard J. held that he was bound by *stare decisis* to reject it. He determined that the applicable precedents establish that the written word of the Constitution is primary, and therefore that the constitutional architecture can only be used to scrutinize laws where the written Constitution provides for it (paras. 633-634).

14. On the Appellants' federalism argument, Blanchard J. held that ss. 6 and 8 *Act* have a religious purpose ("*objet religieux*") (para. 367) and have direct effects on religious persons (paras. 320-326, 381, 392). He concluded that in pith and substance, the *Act*'s prohibition of religious symbols fundamentally concerns public values and morality (paras. 382, 393, 397).

15. At the classification stage, Blanchard J. reasoned that, because ss. 6 and 8 seek to foster social peace and provide answers to long-standing public morality debates in Québec (paras. 396-397), the purpose motivating their adoption is ultimately a criminal law purpose within the meaning of this Court's jurisprudence on s. 91(27) of the *Constitution Act, 1867* ("***CA 1867***").

16. Nonetheless, Blanchard J. refused to find that ss. 6 and 8 fall within Parliament's jurisdiction over criminal law, for the sole reason that the sanctions attached to these prohibitions were not "penal" (paras. 419 *ff*). While noting that this Court's jurisprudence provides no direct guidance as to what constitutes a "sanction" in the context of the analysis under s. 91(27) (para. 429), Blanchard J. concluded that the jurisprudence appears to require "penal" sanctions, which he held are limited to fines or imprisonment (paras. 419, 424, 432). Consequently, despite not finding any provincial purpose underlying ss. 6 and 8, Blanchard J. held that the impugned provisions fall within provincial jurisdiction over local matters, pursuant to s. 92(16) of the *CA 1867* (para. 435).

2) Québec Court of Appeal (Savard, Morissette and Bich J.J.A., 2024 QCCA 254)[3]

17. The Court of Appeal dismissed the Appellants' architecture argument, holding that the textual sources they cited did not have "supralegislative effect", while the unwritten principles they invoked could not be relied upon to invalidate legislation (paras. 193-194).

18. With respect to federalism, the Court of Appeal examined the pith and substance of the *Act* as a whole rather than concentrating on ss. 6 and 8. It stated that the purpose of the *Act* "*est d'affirmer la laïcité de l'État en tant que principe fondamental du droit public québécois, de fixer les exigences qui en découlent, de garantir le droit à des institutions parlementaires, gouvernementales et judiciaires laïques et d'encadrer les conditions d'exercice de certaines fonctions au sein de ces institutions et des organismes de l'État*" (para. 101).

19. At the classification stage, the Court of Appeal opined that Blanchard J. should have asked whether the *Act* could be grounded in one of the heads of power set out in s. 92 of the *CA 1867* before proceeding to the analysis under s. 91(27) (para. 105). The Court of Appeal then stated, in passing and without engaging with this Court's jurisprudence, that "*il n'existe pas de lien général ou inhérent entre le droit criminel et la religion*" (para. 104). Finally, the Court of Appeal affirmed, again without elaborating its reasoning, that the *Act* as a whole is "*à divers titres*" connected to ss. 92(4), 92(13) and 92(16) of the *CA 1867* (para. 105).

II. QUESTIONS AT ISSUE

20. The Appellants raise the following constitutional questions before this Court:

1. Are sections 6 and 8 of the *Act* invalid and inoperative because they violate the architecture of the Constitution of Canada?

2. Are sections 6 and 8 of the *Act ultra vires* section 92 of the *Constitution Act, 1867*, because they fall within the exclusive jurisdiction of Parliament under section 91(27) of the *Constitution Act, 1867*?

21. The Appellants submit that the answer to both these questions is yes.

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[3] *Organisation mondiale sikhe du Canada v Procureur général du Québec*, 2024 QCCA 254 [**QCCA Judgment**], **AR, vol II, tab C**.

III. ARGUMENT

A. The notwithstanding clause cannot save the validity of sections 6 and 8 of the *Act*, which are inconsistent with our constitutional architecture

22. Canada is a constitutional democracy[4] that adheres to the principle of constitutional supremacy.[5]

23. But there is a line of thinking—adopted by the Attorney General of Québec ("**AGQ**") — that interprets s. 33 of the *Charter*[6] as a trump card for the legislature. Under this view, invocation of the notwithstanding clause transforms the paradigm of constitutional supremacy into one based on the supremacy of the legislature. For each *Charter* right to which the notwithstanding clause can apply, this paradigm would give the legislator the final word with no room for court scrutiny, no matter how inconsistent that word may be with the rest of the structure of our Constitution.

24. The *Charter* rights to which the notwithstanding clause can apply include the right to life, the right to security of person, the right to free expression, and the right to equal treatment under the law. The centrality of these rights to Canadian democracy is incontestable. Put simply, Canada is a different country without these rights.

25. Certainly, these rights may be nuanced, balanced, and even curtailed by legislatures in different ways without affecting the nature of Canada's constitutional democracy. The jurisprudence is replete with examples. But this exercise is always subject to the supervision of the courts, acting as guardians of the Constitution.[7]

26. The AGQ's theory, however, posits that Canada is one majority vote away from eliminating fundamental rights altogether, without the courts having any place to engage in substantive scrutiny of such an act. On this theory, a legislature could completely oust the right to liberty or the right to

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[4] *Reference re Secession of Québec*, [1998] 2 SCR 217 [***Secession Reference***], para 62.
[5] *Ontario (Attorney General) v G*, 2020 SCC 38 [***Ontario (AG) v G***], para 88.
[6] *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [***Charter***].
[7] See *Canada (Attorney General) v Power*, 2024 SCC 26 [***Power***], para 55; *R v Albashir*, 2021 SCC 48, para 47; *Ontario (AG) v G*, para 88; *York Region District School Board v Elementary Teachers' Federation of Ontario*, 2024 SCC 22, paras 63-64. See also *Canada (Prime Minister) v Khadr*, 2010 SCC 3, para 37; H Brun, G Tremblay and E Brouillet, *Droit constitutionnel* (6th ed), 2014, Cowansville, Yvon Blais, para IV.11. [**Brun, Tremblay, Brouillet**], **Book of Authorities** [**BOA**]**, tab 4**.

engage in political speech. But a country that arbitrarily arrests individuals is not one that respects the rule of law. A country that does not allow citizens to express dissent is not a true democracy.

27. These examples may seem hyperbolic, but they illustrate the structural dilemma that the AGQ's argument reveals. If a legislature has *carte blanche* to adopt laws that conflict with the structure of our Constitution and can immunize them from any judicial scrutiny simply by invoking s. 33, then Canada ceases to be a nation governed by constitutional supremacy, and our constitutional protections against pure majority rule[8] become more illusory than real.

28. The Appellants propose something different, rooted in the premises already established by this Court. They propose a paradigm that reflects both the written text and the core principles of the Constitution. The concept of constitutional architecture is its cornerstone.

1) Constitutional architecture

29. The Constitution of Canada has an internal architecture that protects the coherence of our constitutional democracy.[9]

30. The metaphor of "architecture" speaks to the order and structure that inheres in both the written text and unwritten principles of the constitution.[10] Canada's constitutional architecture links these two concepts.[11] This Court has explained:[12]

> [T]he Constitution must be interpreted with a view to discerning the structure of government that it seeks to implement. The assumptions that underlie the text and the manner in which the constitutional provisions are intended to interact with one another must inform our interpretation, understanding, and application of the text.

31. Architecture plays a vital role in maintaining the "coherence" of the Constitution.[13] It represents all that is necessary for the proper functioning of our system of government. If there is a gap in the written text of the Constitution, in order to maintain coherence, our constitutional

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[8] *Secession Reference*, paras 74-76.
[9] See *ibid*, para 50; *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 [***Toronto***], para 56; *Ontario (Attorney General) v OPSEU*, [1987] 2 SCR 2 [***OPSEU***], p 57; *Reference re Senate Reform*, 2014 SCC 32 [***Senate Reference***], para 26.
[10] *Senate Reference*, paras 25-26.
[11] *Secession Reference*, para 50.
[12] *Senate Reference*, para 26.
[13] *Toronto*, para 56.

architecture will fill it.[14] And if a law is inconsistent with our constitutional architecture, then it can only be enacted by way of constitutional amendment.[15]

32. In other words, a law that attempts to alter the constitutional architecture is invalid pursuant to s. 52(1) of the *CA 1982*, just like any law that attempts to alter the Constitution[16]—unless the applicable amending formula provided in Part V (s. 52(3) of the *CA 1982*) is respected.[17] This conclusion follows from the very nature of our system of constitutional supremacy.[18] The content of every law enacted by a legislature in this country is subject to judicial scrutiny, to ensure—at the very least—coherence with the Constitution.[19]

2) Distinction between constitutional architecture and unwritten constitutional principles

33. The Court of Appeal criticized the Appellants' position on the basis that it is not grounded in the written text of the Constitution.[20] As a matter of law, the Appellants do not contest that their argument must be grounded in the constitutional text. This Court has held that unwritten constitutional principles alone are not sufficient to invalidate legislation,[21] and the Appellants do not ask this Court to overturn that holding.

34. However, it is crucial to distinguish Canada's constitutional architecture from the unwritten principles that form part of that architecture.

35. The Appellants do not suggest that a law will be incoherent with our constitutional architecture solely because it has a negative effect on an unwritten constitutional principle. For instance, the principle of "democracy" accords a foundational role to political speech in the functioning of our system of government and its institutions.[22] This does not mean that laws can never impinge on political speech. It does mean, however, that laws that affect political speech must be scrutinized to ensure they are not attempts to amend the structure of our Constitution, as

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[14] *Ibid*
[15] See *Senate Reference*, paras 27 and 53.
[16] *Ibid*, paras 23 and 27.
[17] *Ibid*, paras 27, 53, 60, 70, 97.
[18] See *Power*, para 55.
[19] *R v Sullivan*, 2022 SCC 19, para 48; *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, 2003 SCC 54, para 28.
[20] QCCA Judgment, **AR, vol II, tab C**, paras 184 and 193.
[21] *Toronto*, para 57.
[22] *Secession Reference*, para 62, citing *OPSEU*, p 57.

discerned from its written word and its unwritten principles.

36. In more concrete terms, one can conceive of legislative enactments that affect political speech in escalating order of severity:

(a) At the lowest level may be a law that does not provide a particular speaker with a particular podium to communicate their viewpoint. This Court has held that such enactments might not infringe s. 2(b) of the *Charter* at all.[23]

(b) A law may place a reasonable limit on political speech, such that it is constitutional through the operation of s. 1.

(c) Finally, a law may target political speech, is not a reasonable limit in a free and democratic society, but for which the legislature uses the notwithstanding clause.

Even though political speech is negatively impacted in all these scenarios, Canada's constitutional architecture is not necessarily violated.

37. Another scenario remains possible, however. A legislative enactment can limit speech so severely that it becomes inconsistent with Canada's existing constitutional order.

38. Take, for instance, a law that permits only the governing party to engage in political speech. Such a law would surely violate s. 2(b) of the *Charter*, but it would also be so fundamentally at odds with the society envisioned by our constitutional order that it would cause incoherence in our constitutional architecture.

39. This is because, as this Court has held, freedom of speech is not simply a creation of the *Charter*. It is "one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society" and on which the very notion of representative democracy is premised.[24] In *OPSEU*, Beetz J. traced the history of Canada's protection of political speech through the pre-*Charter* jurisprudence and concluded:[25]

> [I]ssues like the last [on free public discussion and debate] will in the future

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[23] See, e.g., *Native Women's Assn of Canada v Canada*, [1994] 3 SCR 627.
[24] *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573, para 12 (McIntyre J); affirmed in *UFCW v Kmart Canada*, [1999] 2 SCR 1083, para 23; see also Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms* (7th ed), 2021, Irwin Law [**Sharpe & Roach**], **BOA, tab 6**, p 7.
[25] *OPSEU*, p 57 (emphasis added). See also *Reference re Remuneration of Judges of the Provincial Court (PEI)*, [1997] 3 SCR 3 [***Provincial Judges Reference***], paras 102-103.

> ordinarily arise for consideration in relation to the political rights guaranteed under the *Canadian Charter of Rights and Freedoms*, which, of course, gives broader protection to these rights and freedoms than is called for by the structural demands of the Constitution. However, it remains true that, quite apart from *Charter* considerations, the legislative bodies in this country must conform to these basic structural imperatives and can in no way override them.

40. In other words, the "broad" protection of political rights in the *Charter* does not represent the exclusive basis of protection for such rights in the Constitution.[26] Beyond the *Charter*, if a legislative enactment conflicts with the "basic structural imperatives" of the Constitution—e.g., if political speech is eradicated to the extent that our institutions cannot function as our constitutional architecture intends—it will fall upon the courts to declare the law invalid.

41. This Court has given further examples of situations, beyond political speech, where inconsistency with constitutional architecture is sufficient grounds to invalidate legislation.

42. In the *Senate Reference*, this Court held that legislation contemplating consultative elections for the Senate would "fundamentally alter the architecture of the Constitution", such that amendment to the Constitution itself was the only valid means of achieving this objective.[27]

43. In the *Provincial Judges Reference*, this Court held that the constitutional guarantee of judicial independence is not limited to its written instantiations in s. 100 of the *CA 1867* or s. 11(d) of the *Charter*. It is a far broader guarantee that arises from the "organizing principles" of our Constitution, such that its protections extend beyond the superior courts and beyond the criminal context.[28] It is this broad concept of judicial independence—rather than the more limited one found in s. 11(d) of the *Charter*—that delimits the boundaries of constitutionally valid legislative action.

44. In *OPSEU*, the *Senate Reference*, and the *Provincial Judges Reference*, this Court used both the text and the unwritten principles of the Constitution to discern the requirements of our constitutional architecture. It did not hold that unwritten principles alone could invalidate legislation, fully consistent with the later holding by a majority of this Court in *Toronto*.[29] *OPSEU*, the *Senate Reference*, and the *Provincial Judges Reference* stand for the principle that Canada has a fundamental constitutional structure that is based on both written text and unwritten principles,

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[26] Sharpe & Roach, **BOA, tab 6**, pp 7-8.
[27] *Senate Reference*, para 53.
[28] *Provincial Judges Reference*, paras 105-109.
[29] *Toronto*, para 57.

and that legislative enactments cannot alter this structure without amending the Constitution.

45. That principle simply did not find application in *Toronto*, where the majority held that the case before them neither infringed any right enshrined in the written Constitution,[30] nor revealed any "open question" in its text.[31] The situation in *Toronto* thus differed from *OPSEU*, the *Senate Reference*, and the *Provincial Judges Reference* (and, it will be argued, from the present appeal). In each those cases, the Court found a source in the written Constitution which, together with unwritten principles, allowed the Court to discern the applicable constitutional architecture.

46. For instance, in the *Provincial Judges Reference*, this Court noted that judicial independence finds its source in the *Act of Settlement* of 1701. Other written expressions of judicial independence are found at ss. 96-100 of the *CA 1867* and in s. 11(d) of the *Charter*. Even with all these written sources, however, the majority still held that judicial independence is "at root an unwritten constitutional principle"[32] that cannot be reduced to its written manifestations.[33]

47. It is impossible to contemplate our constitutional architecture without relying on the written word of the Constitution—but the analysis cannot end with the text. Were it otherwise, our Constitution would not have the flexibility to permit courts to suspend the effect of a declaration of invalidity,[34] to declare federal law paramount in the case of a conflict,[35] or to protect judicial independence in this country's civil statutory courts.[36]

48. Ultimately, as part of our constitutional architecture, the written text and unwritten principles of the Constitution point to an underlying structure of government that must be respected. Lamer C.J.C. illustrated this dynamic in the *Provincial Judges Reference* when, referring to *OPSEU*, he pointed to the written text of the Constitution—its preamble—and affirmed that the (unwritten) "implied bill of rights" arising therefrom speaks to our constitutional structure:[37]

> [T]he preamble's recognition of the democratic nature of Parliamentary governance has been used by some members of the Court to fashion an implied bill of rights, in

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[30] *Ibid*, para 42.
[31] *Ibid*, para 84.
[32] *Provincial Judges Reference*, para 83 (underlining in original).
[33] *Ibid*, paras 107 and 109.
[34] *Ontario (AG) v G*, paras 120-121; *Toronto*, para 56.
[35] See *Toronto*, para 56.
[36] *Provincial Judges Reference*, paras 105-106.
[37] *Ibid*, para 103 (emphasis added, citations omitted).

> the absence of any express indication to this effect in the constitutional text. This has been done, in my opinion, out of a recognition that political institutions are fundamental to the "basic structure of our Constitution" and for that reason governments cannot undermine the mechanisms of political accountability which give those institutions definition, direction and legitimacy.

49. Because arguments based on constitutional architecture must necessarily be rooted in the written word of the Constitution, they do not raise the *Toronto* majority's concerns about courts using unwritten principles in a "manner that is wholly untethered from the text,"[38] or relying on "abstract" and "nebulous" principles.[39] At the same time, only by looking at *both* the text and the unwritten principles of the Constitution is a court able to discern what minimal requirements are necessary for our constitutional order to be maintained.

3) Constitutional architecture and the notwithstanding clause

50. The notwithstanding clause is undoubtedly part of the Constitution. But its reach is far from unlimited. Section 33 only allows Parliament or a provincial legislature to declare that all or part of a law operates notwithstanding ss. 2 or 7-15 of the *Charter*.

51. Section 33 has no impact or influence on constitutional requirements that find their source outside these *Charter* provisions. Consequently, where a legislative enactment conflicts with the architecture of the Constitution—even if the legislator has invoked the notwithstanding clause to shield that enactment from scrutiny under ss. 2 or 7-15 of the *Charter*—the only solution that allows for the valid, constitutional adoption of that enactment is constitutional amendment.[40]

52. In other words, the use of the notwithstanding clause does not guarantee automatic coherence with the constitutional architecture.

53. This conclusion follows directly from this Court's holding in the *Provincial Judges Reference*. As noted above, in that case, this Court confirmed that the guarantee of judicial independence forms part of Canada's constitutional architecture. The Court reached that conclusion even though one aspect of judicial independence—the right to be heard before an independent and impartial tribunal in a criminal setting—is enshrined in s. 11(d) of the *Charter*.

54. If use of the notwithstanding clause guaranteed coherence with Canada's constitutional

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[38] *Toronto*, para 58.
[39] *Ibid*, para 59.
[40] *Senate Reference*, paras 52-53, 70.

architecture, then Parliament could pass a law eliminating the protections of s. 11(d) and invoke the notwithstanding clause to shield that law from constitutional scrutiny. If that were permissible, it would mean that judicial independence is more precarious in the criminal context (where it can be overridden by the legislature) than in the civil context (where it cannot).

55. This absurd vision of judicial independence conflicts directly with s. 31 of the *Charter*, which provides that the *Charter* does not expand the powers of legislatures. Yet interpreting s. 33 of the *Charter* so as to give legislatures the authority to eliminate judicial independence in criminal cases would clearly be an expansion of legislative power.

56. A similar dynamic exists with political speech. As noted above, while s. 2(b) of the *Charter* protects freedom of expression broadly, freedom of political speech also forms part of Canada's constitutional architecture. Accordingly, freedom of political speech has historically enjoyed constitutional protection independent of its place in the *Charter*.[41] The enactment of s. 2(b) did not give legislatures a newfound power to take away those protections.

57. Section 31 of the *Charter* therefore represents another indication that our Constitution does not contemplate the notwithstanding clause shielding legislation from scrutiny based on our constitutional architecture. The invocation of the notwithstanding clause does not allow legislatures to alter elements of our constitutional structure simply because these elements are also enshrined in the *Charter*. Indeed, the Constitution is clear in announcing that the presence of certain rights in the *Charter* does not negate the existence of rights and freedoms elsewhere.[42]

58. Thus, while the notwithstanding clause provides the option, in certain circumstances, for a legislature to derogate from certain *Charter* protections, it does not allow legislatures to unilaterally reinvent the constitutional order.

59. Judicial scrutiny of a legislative enactment based on constitutional architecture follows a different analytical framework than judicial scrutiny based on an alleged violation of the *Charter*. But such scrutiny can never be entirely absent. In our constitutional democracy, the simple majority adoption of a law that invokes the notwithstanding clause cannot displace judicial oversight to ensure, at a bare minimum, that the law is consistent with the structure of our Constitution.

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[41] Sharpe & Roach, **BOA, tab 6**, pp 7-8, 176, 185; *Reference Re Alberta Statutes*, [1938] SCR 100.
[42] *Charter*, s 26; see also Sharpe & Roach, **BOA, tab 6**, pp 7-8.

4) Methodology for dealing with constitutional architecture

60. Determining whether a legislative provision is inconsistent with the constitutional architecture is an exercise of constitutional interpretation. Constitutional documents are meant to receive a broad and purposive interpretation that considers their linguistic, philosophic, and historic contexts.[43] Constitutional interpretation is also informed by the "the foundational principles of the Constitution, which include principles such as federalism, democracy, the protection of minorities, as well as constitutionalism and the rule of law."[44]

61. In the *Senate Reference*, when analyzing draft legislation for consistency with the constitutional architecture, this Court began with the text of the Constitution but then went beyond the text to explain "why the framers did not deem it necessary to textually specify how the powers of the Senate relate to those of the House of Commons."[45] More recently, in *Motard*, the Québec Court of Appeal analyzed the constitutional status, in Canada, of British rules of royal succession. It began by looking at the constitutional text,[46] then analyzed unwritten constitutional principles to determine whether British rules of succession form part of Canada's constitutional structure.[47]

62. Following these examples, and consistent with *Toronto*, when a question of inconsistency with the constitutional architecture is raised, the Court should first turn to the text of the Constitution. Only once a textual source is located can unwritten principes be used to fill any gaps.

63. By looking at both constitutional text and unwritten principles, a court may discern what is necessary for the structure of our constitutional order to be maintained. The standard is high. Unlike in a section 1 analysis, the Court does not require the "minimal impairment" of a right. It asks only whether the legislative enactment at issue can be reconciled with the structural vision of government established by the Constitution, or whether it represents a modification to the existing order that requires constitutional amendment. In this regard, it is worth noting that the analysis based on constitutional architecture is *institutional*, not *individual*.

64. For instance, when analyzing freedom of expression under s. 2(b), a court will look at the

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[43] *Senate Reference*, para 25.
[44] *Ibid*.
[45] *Ibid*, paras 55 and 59.
[46] *Motard v Procureur général du Canada*, 2019 QCCA 1826, para 57.
[47] *Ibid*, para 62.

meaning that an individual speaker seeks to convey and how a legislative enactment affects the speaker's ability to convey that meaning.[48] In *OPSEU*, on the other hand, Beetz J. did not look at the infringement of freedom of expression for the individual, but rather at the effect that the legislative enactment would have on our democratic institutions as a whole. He concluded that the basic structure of our Constitution contemplates the existence of certain political institutions whose efficacy depends on the presence of free expression and debate.[49] It is from this institutional perspective that Beetz J. concluded that "neither Parliament nor the provincial legislatures may enact legislation the effect of which would be to substantially interfere with the operation of this basic constitutional structure."[50]

65. When looking at constitutional architecture, the relevant question is thus not whether the legislative enactment deprives individuals of the rights that the *Charter* grants them, but whether it prevents our public institutions from operating in the manner envisioned by the Constitution.

5) Application of the constitutional architecture analysis to the *Act*

66. Canada's constitutional architecture ensures that employment in the public service cannot be limited only to the subset of individuals who engage in the religious practices that the government of the day endorses. By restricting access such employment to individuals who wear visible religious symbols, ss. 6 and 8 of the *Act* contravene the constitutional architecture.

67. To be clear, the Appellants' position is not based on a political disagreement with the present government on what religious (or non-religious) practices should be endorsed. The Appellant's argument applies today to Christians, Muslims, Jews, Sikhs, and other religious individuals who wear symbols as a demonstration of their faith. But the AGQ's theory would equally allow a religious government in the future to exclude atheists from the public service. In the Appellants' view, the constitutional architecture would equally prevent that type of exclusion.

68. In other words, the debate before this Court does not turn on which particular religious (or non-religious) group is being excluded, or on which way the political winds of the day are blowing. It turns on the place that the public service, and access to it, occupies in our Confederation.

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[48] See eg *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927; *R v Keegstra*, [1990] 3 SCR 697.
[49] *OPSEU*, p 57. See also the *Provincial Judges Reference*, para 103.
[50] *OPSEU*, p 57.

(a) Written text of the Constitution

69. The written text of the Constitution is not limited to those texts mentioned in s. 52 of the *CA 1982*.[51] Many other texts fundamental to the history of our Confederation have constitutional status,[52] including the *Québec Act.*[53]

70. The Court of Appeal disagreed with the argument, advanced by another party, that legislative enactments like the *Québec Act* had an "*effet supralégislatif*" such that, on their own, they could invalidate the *Act.* On this basis, the Court of Appeal held that these legislative enactments could not provide the textual foundation necessary to advance the Appellants' argument on constitutional architecture.[54]

71. With respect, the Court of Appeal's limited reasoning on this issue does not recognize the distinction between relying on constitutional text alone to directly invalidate legislation, and relying on constitutional text (alongside unwritten principles) to clarify the nature of our constitutional architecture. It is the constitutional architecture that has the invalidating force that the Appellants rely upon in this appeal.[55]

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[51] *Senate Reference*, para 24; Benoît Pelletier, "La valse-hésitation des cours de justice en ce qui touche à l'interprétation des modalités de modifications constitutionnelles au Canada" (2017) 47 R.D.U.S. 57, pp 77-78; François Chevrette & Herbert Marx (ed. Han-Ru Zhou), *Droit constitutionnel* (2nd ed.), 2021, Les Éditions Thémis, **BOA, tab 2**, pp 19-23; Patrick J Monahan, Byron Shaw & Padraic Ryan, *Constitutional Law* (5th ed.), 2017, Irwin Law [**Monahan & al.**], **BOA, tab 5**, pp 6-7, 189-190; Brun, Tremblay, Brouillet, **BOA, tab 4**, paras I.15-I.18, I.23.

[52] The judge at first instance listed various laws that have constitutional status, including the *Québec Act* (QCCS Decision, paras. 486 and 531). The Court of Appeal held that the *Québec Act* does not have supralegislative effect (QCCA Decision, para 147), while implying that it nonetheless forms part of Canada's constitutional history (paras 125, 139, 144, 146 and 148).

[53] (UK), 14 Geo 3, c 83, s VIII; Brun, Tremblay, Brouillet, **BOA, tab 4**, para I.33; Jérémy Boulanger-Bonnelly, "L'Acte de Québec de 1774: relique du passé ou charte contemporaine?" (2022) 63 C de D 785, pp 794-795, 798, 811-815.

[54] QCCA Judgment, **AR, vol II, tab C**, para 193.

[55] For instance, s 11(d) of the *Charter* does not have invalidating force, on its own, where legislation violates judicial independence in civil matters. But together with the unwritten principles of the Constitution, it reveals a structure that would require constitutional amendment before any legislature could impinge on judicial independence in the civil sphere.

72. Thus, holding that the *Québec Act* does not have supralegislative effect does not respond to the right question. The issue is not whether the *Québec Act* on its own can invalidate the *Act*, just as the issue is not whether unwritten principles on their own can invalidate the *Act*. The issue is whether the *Québec Act*, together with the other textual sources canvassed below and with the unwritten constitutional principles, reveal an underlying structure of governance that ss. 6 and 8 of the *Act* alter.

73. To answer the real issue before this Court, understanding the context of the *Québec Act* is necessary. 18th century Québec was a majority francophone, Roman Catholic society, being ruled by a government from Britain with a Protestant state religion.[56] The British government required civil servants to take the *serment du test* before taking office; this requirement had the effect of excluding Catholics from official functions. The majority of Québecers thus found themselves alienated not only from their government, but from their own institutions.[57]

74. The *Québec Act* of 1774 guaranteed to Québecers that they could freely practice "the Religion of the Church of Rome".[58] But beyond that, it held that Québecers would no longer be subject to the *serment du test*,[59] thus opening the door to the Catholic population to participate in public institutions.[60] In other words, the *Québec Act* was not merely a source of individual rights. It was a calculated political decision to make public institutions accessible to Québecers.[61]

75. In 1832, the *Hart Act* [62] followed in the same spirit as the *Québec Act*. This enactment sought to remove any doubt about the eligibility of a Jew to participate in the legislative council and affirmed that Jewish people are "capable of taking, having or enjoying any office or place of trust whatsoever, within this Province." [63]

76. The policies to remove the *serment du test* and to allow Jews to run for public office are

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[56] See the expert report of David Gilles, **Record before the Court of Appeal [RCA], vol 32, pp 10439-10440**.
[57] Michel Morin, "Les débats concernant le droit français et le droit anglais antérieurement à l'adoption de l'Acte de Québec de 1774" (2024) 44 RDUS 259, pp 271-274, 295.
[58] Article V.
[59] Article VII.
[60] See the expert report of David Gilles, **RCA, vol 32, pp 10425-10426**.
[61] QCCS Decision, **AR, vol I, tab A**, paras 508-509.
[62] *An Act to declare persons professing the Jewish Religion intitled to all the rights and privileges of the other subjects of His Majesty in this Province* (L-Can.), 1832, 1 Will IV, c 56-57.
[63] Cited at the QCCA Judgment, **AR, vol II, tab C**, para 179 (emphasis added).

inherently institutional in their orientation. The government interacts with individuals through the public service. When the *Québec Act* and the *Hart Act* announce that this public service includes Catholics and Jews, they define its character and send a public message about the inclusivity and representativeness of government. In the centuries that have followed, the philosophy behind these acts have helped shape the structure of our government.

77. Later enactments confirmed the importance of religious inclusivity to the Canadian political order. For instance, the *Act of 1852* notes that religious equality before the law is a "fundamental principle of our civil polity".[64] The same act also reveals that, by this time, the constitutional status of religious freedom had already been established ("*permis par la constitution et les lois de cette province*"). A hundred years later, in *Saumur*, Rand J. would indeed emphasize that:[65]

> From 1760, therefore, to the present moment religious freedom has, in our legal system, been recognized as a principle of fundamental character; and […] that the untrammelled affirmations of religious belief and its propagation, personal or institutional, remain as of the greatest constitutional significance throughout the Dominion is unquestionable.

78. The constitutional significance of religious inclusivity in public institutions has, of course, continued with the *Charter* and its protections of freedom of religion and religious equality.[66] But the enactment of ss. 2(a) and 15 has not exhaustively circumscribed the scope of such rights, just like the enactment of ss. 2(b) or 11(d) has not circumscribed the scope of the right to political speech or the guarantee of judicial independence.

79. Moreover, while the notwithstanding clause may allow a law to "operate notwithstanding" certain *Charter* rights, it does not erase these rights from the Constitution. [67] The rights still form

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[64] *An Act to repeal so much of the Act of the Parliament of Great Britain passed in the Thirty-first year of the Reign of King George the Third, and Chaptered Thirty-one, as relates to Rectories, and the presentation of Incumbents to the same, and for other purposes connected with such Rectories*, 14-15 Vict, c 175, preamble.
[65] *Saumur v City of Québec*, [1953] 2 SCR 299 [***Saumur***], p 327 (emphasis added).
[66] Sharpe & Roach, **BOA, tab 6**, pp 7-8.
[67] See subs 33(2) (the use of the notwithstanding clause targets the operation of a given law and not the existence of rights in the *Charter*) and subs 33(3) (the operational effect of the clause is for only five years, after which time the *Charter* right at issue will again have effect).

part of the written text of the Constitution, and consequently, they still contribute to the architecture of the Constitution by helping to clarify what the basic structure of Canadian government requires.

80. Beyond ss. 2(a) and 15 of the *Charter*, s. 27 (which is not subject to the notwithstanding clause) is another relevant textual source: it affirms that the *Charter* is to be "interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." Just as s. 31 prevents the notwithstanding clause from being interpreted in a manner that would expand legislative power over institutional structures that form part of the constitutional architecture, s. 27 prevents the notwithstanding clause from being interpreted in a manner that is inconsistent with Canadians' multicultural heritage. Such heritage surely includes, at minimum, the inclusive history of our public institutions through the *Québec Act* and the *Hart Act*.

81. In short, at the heart of our Constitution, for some 250 years, lies a vision of public institutions that refuses to exclude individuals based on their religious beliefs and practices.

(b) Unwritten constitutional principles

82. Though it is first rooted in the written text of the Constitution, the religious inclusivity of the public service resonates strongly with the unwritten principles of the Constitution as well.

83. In the *Secession Reference*, this Court explained the direct connection between the principle of democracy and the concept of participation in public institutions, explaining that:[68]

> To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution. Equally, however, a system of government cannot survive through adherence to the law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic principle. The system must be capable of reflecting the aspirations of the people. But there is more. Our law's claim to legitimacy also rests on an appeal to moral values, many of which are imbedded in our constitutional structure. It would be a grave mistake to equate legitimacy with the "sovereign will" or majority rule alone, to the exclusion of other constitutional values.

See also Robert Leckey, "Legislative Choices in Using Section 33 and Judicial Scrutiny" (2024), The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference 115, p 69; Geoffrey Sigalet, "Legislated Rights as Trumps: Why the Notwithstanding Clause Overrides Judicial Review" (2024) 1 OHLJ 61, p 80.

[68] *Secession Reference*, para 67 (emphasis added).

84. The dynamic expressed above is precisely the dynamic that led to the adoption of the *Québec Act* and the *Hart Act*. Canadian democracy is not, and has never been, centred on majority rule alone. It rests on a recognition that all members of our society deserve to participate in the "public institutions created under the Constitution".

85. Again, the paradigm here is institutional, not individual. In the *Secession Reference*, this Court was not referring to individual rights or the *Charter* when it commented on our democratic institutions. Rather, it referred to our "institutions", our "system of government" and our "constitutional structure".

86. In *Saguenay*, this Court went a step further and tied the concept of a religiously neutral government to the democracy principle:[69]

> I would add that, in addition to its role in promoting diversity and multiculturalism, the state's duty of religious neutrality is based on a democratic imperative. The rights and freedoms set out in the *Québec Charter* and the *Canadian Charter* reflect the pursuit of an ideal: a free and democratic society. This pursuit requires the state to encourage everyone to participate freely in public life regardless of their beliefs.

87. As explained in the quote above, these individual rights in the *Charter* can themselves be traced back to the democracy principle. This same ideal is behind the "requirement" that the state not just permit but encourage "all" to participate in "public life"—a requirement with an institutional dimension, whose resonance with the *Québec Act* and the *Hart Act* cannot be ignored.

88. As reflected in both the *Secession Reference* and *Saguenay*, the democracy principle includes, as a necessary corollary, a public service that does not exclude individuals based on their religious beliefs and practices.[70] This conclusion should not be surprising; legal scholars make the same link between democratic legitimacy and the inclusivity of the public service.[71]

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[69] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 [***Saguenay***], para 75 (emphasis added; citations omitted).
[70] See also *R v Oakes*, [1986] 1 SCR 103, para 64.
[71] Gregg G Van Ryzin & Norma M. Riccucci, "Representative Bureaucracy: A Lever to Enhance Social Equity, Coproduction, and Democracy" (2017) 77 Pub Admin Rev 21, **BOA, tab 3**, p 24; Geoffrey Trotter, "The Right to decline performance of same-sex civil marriages" (2007) 70 Saskatchewan Law Review 365, p 390; Derek B M Ross "The meaning of the Right of Equal Access to Public Service" (2024) 2 SCLR 81, **BOA, tab 1**, paras 9, 13, 24, 29-32, 35-36, 38; *Universal Declaration of Human Rights*, art 21(2); *International Covenant of Civil and Political Rights*, art 25(c).

89. In addition to the democracy principle, the unwritten principle of the protection of minorities is also crucial to our Constitution.[72] The concern that religious minorities would be "submerged and assimilated" was a "central consideration in the negotiations leading to Confederation."[73] A century later, similar concerns led to the adoption of the *Charter*.[74] This Court has also concluded that the concept of state neutrality implies that the state cannot favour majority religious views over others.[75] The exclusion of minority religious individuals is just as inconsistent with constitutional architecture as the exclusion of minority non-religious individuals.

90. The proof at trial established unequivocally that ss. 6 and 8 of the *Act* disproportionately exclude individuals practicing minority religions from participating in the public institutions that they target. Indeed, every person who lost her job or was denied a job at a Centre de service scolaire was a Muslim woman[76] and the trial judge held that the *Act* has "*des conséquences disproportionnées*" on this group.[77] The expert evidence likewise established that the prohibition on wearing religious symbols primarily affects individuals from minority religions.[78]

91. The Appellant Ichrak Nourel Hak summarized the feelings of numerous witnesses when she declared:[79]

> *… la Loi me fait sentir exclue de la société québécoise. Elle m'envoie le message que je dois avoir l'apparence de la majorité pour me conformer aux valeurs québécoises.*

92. Public service employees are human beings. They cannot turn off their minority identities

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[72] Where the rights of minorities are at issue, section 27 of the *Charter* also comes into play.
[73] *Secession Reference*, para 79.
[74] *Ibid*, para 81.
[75] See *Saguenay*, paras 87-88.
[76] See the testimony of M[e] Louis Bellerose (August 25, 2020), p 37, line 13 to p 38, line 12, and at p 39, lines 7-9, **RCA, vol 24, pp 7743-7745**; see also Exhibits P-53-M-05, P-53-S-07, P-53-K-03, P-53-K-04, P-53-KK-01, P-53-KK-02, **RCA (see AR, vol IV, tab P on CD-ROM)**, EMSB-28-12.1, **RCA, vol 18, pp 5827-5839**, and EMSB-28-11, **RCA, vol 18, pp 5814-5816**.
[77] QCCS Judgment, **AR, vol I, tab A**, para 67.
[78] See the testimony of Prof Jacques Beauchemin (November 18, 2020), p 23, line 16 to p 25, line 8, and at p 73, lines 3-14, **RCA, vol 29, pp 9264-9276**; See also the testimony of Prof Jocelyn Maclure (November 5, 2020), p 61, line 11 to p 62, line 21, and from p 181, line 2 to p 187, line 9, **RCA, vol 26, pp 8250-8376**; The testimony of Prof Richard Bourhis (November 6, 2020), p 29, line 2 to p 31, line 18, **RCA, vol 26, p 8406**; The testimony of Prof Eric Hehman (November 4, 2020), p 39, line 3 to p 41, line 9, **RCA, vol 25, p 8176**, and the expert report of Prof Eric Hehman, para 36, **RCA, vol 32, p 10557**.
[79] Solemn declaration of Ichrak Nourel Hak, para 32, **RCA, vol 2, p 494.12**.

when they work at public institutions. Just as racialized minorities do not lose their race and gendered minorities do not lose their gender when they start their workday, religious minorities do not lose their religion either.[80] The evidence leaves no doubt: the exclusion of religious symbols means nothing less than the exclusion of religious minorities from targeted public institutions.

(c) Sections 6 and 8 of the *Act* are invalid

93. Sections 6 and 8 of the *Act* exclude individuals from certain positions in public institutions if they engage in a religious practice—specifically, the wearing of religious symbols—that fall outside the scope of religious practices the Québec government deems acceptable.

94. Wearing religious symbols is undoubtedly a religious practice that forms part of an individual's core identity.[81] Indeed, for many religious adherents, it is a religious requirement:[82]

> *[E]nlever le hijab pendant un certain nombre d'heures pour enseigner, ce n'est... c'est inconcevable, Monsieur le Juge. C'est... ça fait partie de ma pratique, ce... ça fait partie de ma... de moi en tant que femme musulmane, ça fait partie de... de ma religion, donc, pour moi, c'était... c'était même pas imaginable.*

95. Witness after witness testified that the Act confronted them with an impossible choice, leading inexorably to their exclusion from the public institutions at which they sought employment:

> *Si quelqu'un me demande d'enlever mon voile, je ne le ferai pas. Ce n'est pas un choix que je peux faire. C'est pourquoi je n'ai pas soumis ma candidature pour des postes qui ont été affichés en septembre.*[83]
>
> *En effet, personnellement, retirer mon voile n'est tout simplement pas une option. Me demander d'enlever mon voile pour enseigner, pour moi, c'est comme demander à quelqu'un de se déshabiller devant tout le monde. Il n'y avait donc aucun autre choix qui s'offrait à moi. J'ai dû me résoudre à trouver un nouvel emploi.*[84]

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[80] See footnotes 82-85, *infra*.
[81] See *Saguenay*, para 73; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, para 13.
[82] See the testimony of Ichrak Nourel Hak (November 2, 2020), p 26, lines 12-18, **RCA, vol 25, p 7837**; See also: the Solemn Declaration of F.B., para 22, **RCA, vol 3, p 494.160**; Solemn Declaration of L.S., para 29, **RCA, vol 2, p 494.153**.; Solemn Declaration of M.G., paras 15 and 18, **RCA, vol 3, p 494.197**; Solemn Declaration of W.B.G.H., para 12, **RCA, vol 3, p 494.173**; the testimony of Messaouda Dridj (November 2, 2020), p 8, lines 6-17, **RCA, vol 25, p 7856**; the testimony of Bouchera Chelbi (November 3, 2020), p 38, lines 6-16, **RCA, vol 25, p 7924**; expert report of Prof Solange Lefebvre, paras 6-8, **RCA, vol 31, pp 10086-10087**.
[83] Solemn Declaration of L.S., para 29, **RCA, vol 2, p 494.153**.
[84] Solemn Declaration of F.B., paras 22-23, **RCA, vol 3, p 494.160**.

> *Or, je ne peux tout simplement pas retirer mon hijab. Ce n'est pas une option.* […]
> *Je dois me résoudre à abandonner ce poste, qui pourtant m'enthousiasmait.* […]
> *Je dois me trouver un emploi, mais je ne peux pas retirer mon hijab.*[85]

96. The trial judge made express findings of fact on this point:[86]

> *Pour plusieurs, le législateur envoie le message explicite que leur foi et la façon qu'ils la pratiquent n'importent pas et qu'elle n'emporte pas la même dignité ni ne requiert la même protection de la part de l'État. Pour eux, la Loi 21 postule qu'il existe quelque chose de fondamentalement mal ou nocif avec les pratiques religieuses, particulièrement certaines d'entre elles, et que l'on doit prémunir le public. Ainsi, elle transmet un message explicitement exclusif à l'égard des personnes qui se font dire qu'elles ne peuvent participer pleinement dans les institutions publiques de l'État seulement à cause de leurs convictions intimes.*

97. Québec's premier himself recognized the exclusion at the heart of the *Act* when he declared simply to those affected by the law that "*[il] y a d'autres emplois de disponibles*".[87]

98. With respect, dating back to the *Québec Act*, it has not been the policy of this country to direct minorities to alternate institutions away from the public service, as if they are "separate but equal".[88] Our Constitution has for centuries espoused the conviction that public institutions cannot be closed to certain religions. This conviction supports Canadians' individual rights, but more than that, it establishes the elemental structure and characteristics of public institutions in this country.

99. The exclusion inherent in the *Act* creates a second class of citizens deemed unfit to fully participate and be represented in public bodies.[89] That policy of exclusion cannot be reconciled with a Constitution premised on the inclusivity of our public institutions. It certainly cannot be

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[85] Solemn Declaration of M.G., paras 15 and 18, **RCA, vol 3, p 494.197**; See also: Solemn Declaration of Hakima Dadouche, para 13, **RCA, vol 2, p 494.57**; Solemn Declaration of W.B.G.H., paras 11-12, **RCA, vol 3, p 494.173**; Solemn Declaration of Gregory Bordan, para 16, **RCA, vol 2, p 494.21**; testimony of Ichrak Nourel Hak (November 2, 2020), p 30, line 14 to p 31, line 19, **RCA, vol 25, p 7838**; testimony of Amrit Kaur (November 2, 2020), p 52, lines 11-21, **RCA, vol 25, p 7843**; testimony of Messaouda Dridj (November 2, 2020), p 8, lines 16-17, **RCA, vol 25, p 7856**.
[86] QCCS Judgment, **AR, vol I, tab A**, para 70.
[87] Exhibit P-11, **RCA, vol 7, p 1770**.
[88] Compare *Moore v British Columbia (Education)*, 2012 SCC 61, para 30. See also *Syndicat Northcrest v Amselem*, 2004 SCC 47, para 98.
[89] See QCCS Judgment, **AR, vol I, tab A**, para 65. See also the testimony of Ichrak Nourel Hak (November 2, 2020), p 33, lines 7-15, **RCA, vol 25, p 7838**; Solemn Declaration of Imane Melab, para 14, **RCA, vol 2, p 494.24**; Solemn Declaration of Gregory Bordan, para 23, **RCA, vol 2, p 494.22**; Solemn Declaration of Ghadir Hariri, para 28, **RCA, vol 2, p 494.81**.

minimized by simply directing minority groups to work at other institutions. This is not because public institutions are the only option for employment, but because public institutions are the embodiment of the state. And when individuals are told that they are not fit to represent the state, they know they are being excluded from society in a manner that is more fundamental than what entity signs their pay cheque.

100. This is the insight that led to the *Québec Act* and the *Hart Act*: that a public service open only to a limited class of people cannot instill a sense of belonging in everyone. This is the insight from the *Secession Reference* and *Saguenay*: that a true democracy is not merely a reflection of the will of the majority in the legislature, but also a reflection of the entire population in its institutions.

101. This insight inheres in our constitutional architecture.

102. By excluding individuals from positions in public institutions based on their religious identity, ss. 6 and 8 of the *Act* fundamentally alter this constitutional architecture. It is incoherent with the structure of our Constitution to limit participation in public institutions to a segment of the population based on their faith.

103. For this reason, to be validly enacted, ss. 6 and 8 of the *Act* would require a constitutional amendment that alters the structure of our public institutions. Absent such amendment, these provisions are invalid. Whatever effect the notwithstanding clause may have on *Charter* rights, it does not allow the Québec legislature to unilaterally modify our constitutional order.

B. Sections 6 and 8 of the *Act* fall within Parliament's exclusive jurisdiction over criminal law under s. 91(27) of the *Constitution Act, 1867*

104. Were this Court to accept the Appellants' argument about constitutional architecture, this would mean that no order of government (federal or provincial) could adopt ss. 6 and 8 of the *Act* absent constitutional amendment. But even if the Court concludes that constitutional amendment is not required to enact prohibitions on religious practice that ultimately exclude religious persons from targeted public institutions, this does not end the enquiry. The Court must still determine *which* order of government could adopt such legislation.

105. Here, considering the purpose for which ss. 6 and 8 of the *Act* were enacted—namely, to protect *laïcité* as a fundamental value of Québec society and a principle of public morality—these measures could only have been adopted by Parliament through an exercise of its criminal law power under s. 91(27) of the *CA 1867*.

1) The Court of Appeal conducted the wrong analysis

106. The Court of Appeal committed a legal error that tainted its entire federalism analysis: it characterized and classified the *Act* **as a whole**,[90] rather than focusing on the validity of ss. 6 and 8. This is directly contrary to this Court's longstanding jurisprudence, which requires the division of powers analysis to focus on the impugned provisions, not the legislation in its entirety.[91] It is possible for a law to be largely *intra vires* Parliament or a provincial legislator, but for certain provisions of that law to nonetheless fall outside the jurisdiction of the given order of government.[92] That is the case of ss. 6 and 8 of the *Act*.

107. Of course, the pith and substance of specific provisions should be assessed with reference to the legislative context, which includes the legislation within which the provisions are situated.[93] Legislative context forms part of the intrinsic evidence considered by the courts at the characterization stage.[94] But *Murray-Hall* is clear: where only certain provisions of a law are challenged, a court's analysis must focus on the impugned provisions.[95]

108. In the present case, the Court of Appeal did not even attempt to characterize or classify ss. 6 and 8 of the *Act*. Instead, it focused only on characterizing the *Act* as a whole, ultimately classifying it under multiple provincial heads of power;[96] and it did so improperly, without any deference to Blanchard J.'s factual findings[97] which were based on his minute assessment of the record.[98] It consequently falls upon this Court to undertake its own characterization and

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[90] QCCA Judgment, **AR, vol II, tab C**, paras 71, 81.
[91] *Sanis Health Inc v British Columbia*, 2024 SCC 40 [***Sanis***], paras 34, 40, 43, 46-81; *Reference re: An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 [***Re: First Nations***], para 38; *Murray-Hall v Québec (Attorney General)*, 2023 SCC 10 [***Murray-Hall***], paras 21-22, 28, 19; *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 [***Re: GGPPA***], para 51; *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 [***Re: GNDA***], para 28.
[92] See eg *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 [***Re: AHRA***]; *Québec (Attorney General) v Lacombe*, 2010 SCC 38; *Merck Canada inc c Procureur général du Canada*, 2022 QCCA 240.
[93] *Murray-Hall*, paras 28-34; *Sanis*, paras 57-58.
[94] *Sanis*, paras 57-58; *Re: GGPPA*, paras 58-61; *Re: First Nations*, 2024 SCC 5, para 39.
[95] *Murray-Hall*, paras 30, 34. See also: *Sanis*, paras 34, 40, 43, 46-81.
[96] QCCA Judgment, **AR, vol II, tab C**, paras 105-106.
[97] *Consolidated Fastfrate Inc v Western Canada Council of Teamsters*, 2009 SCC 53, para 26.
[98] QCCA Judgment, **AR, vol II, tab C**, paras 82-100.

classification analysis of ss. 6 and 8 of the *Act*.

2) In pith and substance, sections 6 and 8 of the *Act* seek to protect *laïcité* as a fundamental value of Québec society

(a) Purpose

109. The purpose of ss. 6 and 8 of the *Act* is to protect the legislator's conception of *laïcité* as a fundamental social value and as a principle of public morality in Québec, through the elimination of certain religious practices from targeted public institutions.

110. This characterization of the impugned provisions' purpose finds ample support in the intrinsic evidence. From the outset, the preamble of the *Act*—which refers to the "*valeurs sociales distinctes*" of Québec society—characterizes *laïcité* as one such fundamental social value, and discloses a clear intent to protect this value by imposing "*un devoir de réserve plus stricte en matière religieuse à l'égard des personnes exerçant certaines fonctions*" in the public sphere.[99]

111. This purpose—consistent with that found by Blanchard J. in first instance[100]—aligns with other parts of the *Act*, which affirm the legislature's emphasis on eliminating religious expression to protect its conception of *laïcité*. Section 10 of the *Act*, for instance, extends the prohibition contained in s. 8 to the private sphere, by affirming that individuals or corporations who conclude a contract or receive financial aid from a body listed under Schedule I can be subject to the prohibition on face coverings (and consequently, to ss. 12 and 13's sanctions). Likewise, s. 14 of the *Act* generally forbids "accommodation or other derogation" "in connection with the provisions concerning the prohibition[s]" set out in ss. 6 and 8, while ss. 15 and 16 broaden the scope of ss. 6 and 8's prohibitions so that they apply to certain contracts and collective agreements.

112. This legislative context confirms the legislator's intent to remove religious symbols from most public institutions and even to limit their prevalence in the private sector, because in the legislator's view, religious symbols constitute a threat to the fundamental value of *laïcité*. In this sense, it bears emphasizing that in adopting the prohibitions found at ss. 6 and 8, the legislator favours a conception of *laïcité* which actively rejects religion (what Gascon J. termed "complete secularity" in *Saguenay*), rather than an alternative conception that would require the State not to

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[99] *Act*, preamble.
[100] QCCS Judgment, **AR, vol I, tab A**, para 316.

"encourage nor discourage any form of religious conviction whatsoever."[101] This was significant for the trial judge, who noted that "*en voulant imposer la laïcité telle qu'il le fait, le législateur québécois se trouve nécessairement à vouloir retirer la religion, ici sous la forme de signes religieux, de l'espace institutionnel public.*"[102]

113. This characterization of ss. 6 and 8 is bolstered by the extrinsic evidence adduced at trial and relied upon by Blanchard J.[103] As the trial judge observed,[104] the minister responsible for the *Act*, Simon Jolin-Barette, made numerous statements—both in the National Assembly and in press conferences—that are key to ascertaining the purpose of ss. 6 and 8. Specifically, Mr. Jolin-Barette repeatedly declared that the *Act*'s objective was to affirm that *laïcité* is a fundamental value of Québec society,[105] and that the prohibitions found under ss. 6 and 8 would serve the protection and affirmation of this fundamental value.[106] As such, there is no reason to disturb the trial judge's finding that ss. 6 and 8 of the *Act* were enacted to eliminate religious practices with a view of

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[101] *Saguenay*, para 78; see also paras 133-134.
[102] QCCS Judgment, **AR, vol I, tab A**, para 336.
[103] QCCS Judgment, **AR, vol I, tab A**, paras 316-319.
[104] QCCS Judgment, **AR, vol I, tab A**, para 316.
[105] Extracts of transcripts of hearings on Bill 21 in the National Assembly, Exhibit P-17, **RCA, vol 7, p 1849** : "*Le projet de loi est un geste d'affirmation de la laïcité de l'État, qui s'articule autour de quatre principes : la séparation de l'État et des religions, la neutralité religieuse de l'État, l'égalité de tous les citoyennes et citoyens et la liberté de conscience et de religion*"; p 1865 : "*la laïcité de l'État est fondamentale au Québec*"; p 1865 : "*Le projet de loi fera en sorte d'inscrire la laïcité de l'État comme principe formel, comme valeur fondamentale et comme outil d'interprétation des lois du Québec dans la Charte des droits et libertés de la personne* […]"; Official transcript of press conference held by Simon Jolin-Barrette on March 28, 2019, Exhibit P-12, RCA, vol 7, p 1773 : "*Ce projet de loi propose d'inscrire la laïcité de l'État comme principe formel, comme valeur fondamentale et comme outil d'interprétation des lois du Québec*"; p 1781 : "*Le gouvernement, aujourd'hui, répond à son engagement électoral, et le matérialise dans un projet de loi, et inscrit également la laïcité dans nos lois, parce qu'il s'agit d'une valeur fondamentale de la société québécoise*" (emphasis added throughout).
[106] Official transcript of press conference held by Simon Jolin-Barrette on March 28, 2019, Exhibit P-12, **RCA, vol 7, p 1773**; Extracts of transcripts of hearings on Bill 21 in the National Assembly, Exhibit P-17, **RCA, vol 7, p 1849**.

affirming, furthering, and protecting the fundamental value of *laïcité*, thus preserving peace and maintaining social order.[107]

114. In sum, both the intrinsic and extrinsic evidence make clear that the goal of ss. 6 and 8 is to prohibit religious practice for the purpose of protecting what the legislator has characterized as a fundamental value of Québec society: a conception of *laïcité* that actively rejects religious practice.

(b) Effects

115. Characterization also requires this Court to consider the legal and practical effects of the impugned provisions.[108] The legal effects of ss. 6 and 8 are straightforward: they forbid individuals working in the bodies and institutions listed under Schedules I to III from wearing religious symbols (s.6) or face-coverings (s. 8; as the evidence demonstrates, these are notably worn by observant Muslim women as a form of religious practice[109]). The wide-reaching definition of "religious symbols" in s. 6,[110] coupled with the vast range of positions covered by the Schedules, give the prohibitions extremely broad scope. They apply not just to individuals who are in a position of authority, not just to state employees, not just to individuals who wear visible religious symbols, and not just in public spaces. For instance, evidence accepted by the trial judge shows that s. 6 has been interpreted as forbidding individuals from wearing religious symbols when exercising their functions remotely, such as when teachers grade students' work from home.[111]

116. As for the practical effects of ss. 6 and 8, the evidence adduced at trial demonstrates that individuals who refuse to comply with the prohibitions listed therein can be (and have been) denied employment within the institutions listed in the *Act*.[112] This presents individuals wearing religious

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[107] QCCS Judgment, **AR, vol I, tab A**, paras 336, 396, 400, 401, 414.
[108] *Re: GNDA*, para 30.
[109] Solemn declaration of Fatima Ahmad, paras 6-8, **RCA, vol 2, pp 494.26-494.29**.
[110] Section 6, para 2 of the *Act*.
[111] QCCS Judgment, **AR, vol I, tab A**, paras 324-326.
[112] QCCS Judgment, **AR, vol I, tab A**, paras 68, 69, 326. Solemn Declaration of Nafeesa Salar, 19 September 2019, paras 11 & 21-22, **RCA, vol 3, pp 494.217-494.218**; Solemn Declaration of F.B., 18 September 2019, paras 12 & 18-21**, RCA, vol 3, pp 494.159-494.160**; Solemn Declaration of Mariam Najdi, 19 September 2019, paras 6-7 & 15, **RCA, vol 3, pp 494.203-494.204**; Solemn Declaration of M.G., 19 September 2019, paras 8-13, **RCA, vol 3, p 494.196**; Solemn Declaration of R.M., 18 September 2019, paras 2, 11 & 21-22, **RCA, vol 3, pp 494.165-494.166**; Solemn Declaration of S.B.R., 18 September 2019, paras 14-16, **RCA, vol 3, pp 494.189-494.190**.

symbols with the impossible dilemma of either forgoing employment opportunities, or abandoning deeply held beliefs – a conundrum that the trial judge described as "*une conséquence cruelle qui déshumanise les personnes visées.*"[113]

117. Worse still are the effects on individuals for whom wearing a religious symbol forms an integral part of their religious or personal identity.[114] As explained above, for these persons, removing their religious symbols is simply not an option. This effectively means that ss. 6 and 8 leave no real choice between faith and employment, such that these individuals are simply denied access to a wide range of opportunities in both the public and private sectors.[115]

118. As for individuals whose employment rights are technically covered by the *Act*'s "grandfather clause" (s. 23), they are not unaffected by ss. 6 and 8: they cannot change occupation even if they stay within the same institution, which means that their careers and professional progression were effectively frozen in 2019.[116]

119. Taken together, the legal and practical effects of ss. 6 and 8 of the *Act* confirm that their purpose is to restrict religious expression with the aim of protecting *laïcité* (defined by an *absence* of religion) as a fundamental social value and principle of public morality in Québec. As the trial judge aptly explained: "*En voulant imposer la laïcité telle qu'il le fait, le législateur québécois se trouve nécessairement à vouloir retirer la religion, ici sous la forme de signes religieux, de l'espace institutionnel public. Il s'agit donc d'une législation qui traite de manière ontologique de religion, car son essence repose sur cette finalité.*"[117]

120. The adoption of ss. 6 and 8 confirms that the legislator viewed religious expression as a threat to its conception of *laïcité*. By prohibiting religious expression in a wide range of institutions and, as a result, excluding religious individuals from employment in them, the legislator sought to mitigate this perceived threat.

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[113] QCCS Judgment, **AR, vol I, tab A**, para 69.
[114] QCCS Judgment, **AR, vol I, tab A**, para 323; *Saguenay*, para 73; see also the evidence cited in footnotes 82, 83, 84, 85 *supra*.
[115] QCCS Judgment, **AR, vol I, tab A**, para 69; see also the evidence cited in footnotes 83, 84, 85, *supra*.
[116] QCCS Judgment, **AR, vol I, tab A**, para 68; Solemn Declaration of Bouchera Chelbi, Exhibit P-33, **RCA, vol 15, pp 4601-4605**; testimony of Messaouda Dridj, 13 mars 2020, **RCA, vol 25, pp 7861-7862**; testimony of Bouchera Chelbi, 3 November 2020, **RCA, vol 25, p 7900**.
[117] QCCS Judgment, **AR, vol I, tab A**, para 336.

121. This is the dominant, if not the only purpose that can be discerned from ss. 6 and 8 of the *Act*. There is no evidence in the record that would suggest that the purpose of these provisions is anything else; neither the trial judge nor the Court of Appeal referred to any such evidence. In particular, the record is devoid of evidence that would establish that the impugned provisions aim to solve an efficacy problem with the provision of services in the institutions listed in Schedules II and III; that they seek to address any sort of local problem caused by individuals wearing religious symbols; or that they are motivated by *anything other than* the state's perception that religious symbols threaten its conception of *laïcité*.

122. As such, the pith and substance of ss. 6 and 8 of the *Act* is the protection of a principle of public morality and a fundamental social value—*laïcité*—that is defined by the absence of religion in much of the public sphere.

3) Classification of sections 6 and 8 of the *Act*

123. In addition to its error in classifying the *Act* as a whole, the Court of Appeal was mistaken in stating that the trial judge erred when asking whether the provisions could be classified under s. 91(27) of the *CA 1867* before considering whether they fell within a provincial head of power.[118] In *Murray-Hall* and *Morgentaler*—two cases that challenged the validity of provincial legislation on the ground that it constituted criminal law—this Court adopted the same analytical framework as Blanchard J. in the present case, first asking whether the impugned provisions should be classified under s. 91(27) before addressing potential grounds of provincial jurisdiction.[119]

124. In any event, as explained below, the result of the classification exercise here will be identical regardless of the starting point: ss. 6 and 8 can *only* be classified under s. 91(27). They have the "three essential elements of valid criminal law,"[120] namely (1) prohibitions (2) accompanied by sanctions and (3) backed by a valid criminal law purpose.[121] In the absence of any legitimate provincial purpose underpinning the impugned provisions, classifying them under a provincial head of power is simply impossible.

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[118] QCCA Judgment, **AR, vol II, tab C**, para 105.
[119] *Murray-Hall*, paras 65-78; *R v Morgentaler*, [1993] 3 SCR 463 [***Morgentaler***], pp 488-489.
[120] *Murray-Hall*, para 66.
[121] *Re : GNDA*, para 67.

(a) Prohibition

125. It is uncontestable that the impugned provisions prohibit individuals from wearing religious symbols (s. 6) or face-coverings (s. 8) in the circumstances enunciated in the *Act*. This was never challenged by the AGQ[122] and was readily accepted by the trial judge.[123]

(b) Sanction

126. The trial judge recognized that the abovementioned prohibitions were accompanied by sanctions, set out in ss. 12, 13, and 16 of the *Act*.[124] These notably include, at s. 12, the possibility of being subjected to "any measure" deemed appropriate by the minister concerned with the enforcement of the prohibition to wear religious symbols—a discretionary decision not limited by any other language in the *Act,* which in principle gives that minister authority to fine individuals who breach the restrictions in ss. 6 and 8, impose additional restrictions on their behaviour, or subject them to disciplinary proceedings. As the record shows, the sanctions provided for in the *Act* have been enforced when individuals who refused to comply with the prohibition set out in s. 6 were denied access to employment for which they had already been hired.[125]

127. However, citing to this Court's decisions in *Siemens* and the *Assisted Human Reproduction Reference* ("***AHRA***"), [126] the trial judge held that *stare decisis* forced him to conclude that these sanctions were not "penal" in nature and consequently could not qualify as "appropriate" sanctions within the meaning of s. 91(27).[127] The Court of Appeal did not explicitly opine on this issue.[128]

128. With respect, Blanchard J.'s reasoning on the absence of a sanction is wrong. As the trial

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[122] QCCS Judgment, **AR, vol I, tab A**, para 289.
[123] QCCS Judgment, **AR, vol I, tab A**, paras 326/327, 367, 393.
[124] QCCS Judgment, **AR, vol I, tab A**, paras 420-422.
[125] Solemn Declaration of Nafeesa Salar, 19 September 2019, paras 11 & 21-22, **RCA, vol 3, pp 494.217-494.218**; Solemn Declaration of F.B., 18 September 2019, paras 12 & 18-21, **RCA, vol 3, pp 494.159-494.160**; Solemn Declaration of Mariam Najdi, 19 September 2019, paras 6- 7 & 15, **RCA, vol 3, pp 494.203-494.204**; Solemn Declaration of M.G., 19 September 2019, paras 8-13, **RCA, vol 3, p 494.196**; Solemn Declaration of R.M., 18 September 2019, paras 2, 11 & 21-22, **RCA, vol 3, pp 494.165-494.166**; Solemn Declaration of S.B.R., 18 September 2019, paras 14-16, **RCA, vol 3, pp 494.189-494.190**.
[126] QCCS Judgment, **AR, vol I, tab A**, para 430.
[127] QCCS Judgment, **AR, vol I, tab A**, para 434.
[128] QCCA Judgment, **AR, vol II, tab C**, para 105.

judge himself noted,[129] this Court's jurisprudence has never limited the type of penalties that qualify as "sanctions" within the meaning of s. 91(27).[130] Neither *Siemens*[131] nor *AHRA* stands for the proposition that s. 91(27) requires a prohibition to be accompanied by a particular *form* of sanction, i.e. a fine or imprisonment, that renders it "penal" in nature.[132]As such, the trial judge was not bound by *stare decisis* on the meaning of a "penal" sanction: none exists on this issue.

129. It is true that in *Siemens*, this Court concluded that the contested law did not contain a "penal sanction", but nowhere in that judgment was this term defined. Accordingly, this Court's conclusion must be analyzed in its entire context. The appellants in that case had argued that the loss of a right to operate video lottery terminals (VLTs) constituted a "sanction" for the purpose of classifying the impugned law under s. 91(27).[133] This Court held instead that the appellants had simply lost an opportunity to receive a percentage of the revenue generated by the VLTs.[134] This lost opportunity was not the consequence of a failure to comply with any prohibition;[135] it was simply the result of a municipal decision made by referendum to prohibit the operation of VLTs.

130. Thus, nothing in *Siemens* turned on the types of sanctions admissible under s. 91(27); that case offers no guidance on this question. This Court did not distinguish "penal" and "non-penal" sanctions in that case, as Blanchard J. did; the impugned law in *Siemens* simply contained no sanction (i.e., no consequence flowing from a failure to comply with a prohibition) at all.[136]

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[129] QCCS Judgment **AR, vol I, tab A**, para 429.
[130] Where the Court has wanted to create a narrower category of "true penal consequences" in a *Charter*, not a division of powers, context, it did not hesitate to do so: compare *John Howard Society of Saskatchewan v Saskatchewan (Attorney General)*, 2025 SCC 6; *R v Wigglesworth*, [1987] 2 SCR 541.
[131] *Siemens v Manitoba (Procureur général)*, 2003 SCC 3 [***Siemens***].
[132] QCCS Judgment, **AR, vol I, tab A**, paras 419 and 429.
[133] *Siemens*, para 26.
[134] *Siemens*, para 26.
[135] Cambridge Dictionnary *sub verbo* "sanction": "A strong action taken in order to make people obey a law or rule or a punishment given when they do not obey"; Dictionnaire de français Larousse, *sub verbo* "sanction": "Mesure répressive infligée par une autorité pour l'inexécution d'un ordre, l'inobservation d'un règlement, d'une loi".
[136] *Siemens*, para 26.

131. Nor does *AHRA* address the nature of the sanction that would permit classifying a law under s. 91(27). While the two main sets of reasons in this case do use the term "penal" sanction,[137] this phrase seems to have been used in passing; nothing in *AHRA* turns on the nature of the sanction imposed, and there is no discussion of what a "penal" sanction might be.

132. There are good reasons why this Court did not, and now should not, restrict the types of sanctions that could meet the formal requirements of an exercise of the criminal law power under s. 91(27) of the *CA 1867*.

133. First, doing so would be inconsistent with the current state of Canadian criminal law, under which existing sanctions take various forms not limited to fines or terms of imprisonment.[138] To give but one example,[139] s. 161 of the *Criminal Code* allow courts to forbid an offender to attend certain public spaces; to be within a certain distance of specified locations; to have contacts with specific persons; or to use the Internet or any other digital network.[140] Crucially, s. 161(1)(b) also permits courts to prohibit an individual from "seeking, obtaining or continuing" certain types of employment. This is essentially *the same type of consequence* that can be imposed for failure to comply with ss. 6 and 8 of the *Act.* None of these orders are fines or a term of imprisonment; but they are undoubtedly consequences imposed on individuals for failure to comply with prohibitions, which rightly emerge from the federal government's criminal law power.

134. More fundamentally, limiting the type of sanction that can be imposed to ground an exercise of jurisdiction under s. 91(27) would unduly fetter legislative discretion by restricting Parliament's ability to tailor sanctions to the nature of a prohibited act and the circumstances of an offender. Forcing Parliament to *always* subject convicted offenders either to monetary penalties or to imprisonment, at the risk of otherwise stepping outside jurisdictional bounds, would prevent Parliament from adopting alternative approaches to punish and rehabilitate offenders that might be more in line with a given government's approach to criminal law policy. In other words, adopting a restrictive notion of the types of sanctions that "count" in a division of powers analysis would effectively freeze the evolution of the criminal law.

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[137] *Re: AHRA*, paras 56, 155 (per McLachlin C.J.), 175 (per Lebel and Deschamps JJ).
[138] QCCS Judgment, **AR, vol I, tab A**, para 429.
[139] See also s 732.1 of the *Criminal Code*, RSC, 1985, c C-46.
[140] *Criminal Code*, RSC, 1985, c C-46, ss 161 (1)(a); (a.1); (c) and (d).

135. In the circumstances, the trial judge was mistaken in concluding that the second formal requirement of a criminal law has not been met. The prohibitions in ss. 6 and 8 of the *Act* are accompanied by the sanctions set out in ss. 12, 13, and 16. All that remains is to determine whether these prohibitions and sanctions were adopted in furtherance of a legitimate criminal law purpose.

(c) Criminal law purpose

i. The centrality of purpose to the exercise of the criminal law power

136. Sections 6 and 8 of the *Act* pursue a valid criminal law objective—namely, the protection of *laïcité* as a fundamental social value and principle of public morality—and the Court of Appeal erred in concluding otherwise.

137. The Court of Appeal's rejection of the Appellants' argument to this effect hinged on its remark that "*le fait que la moralité publique intéresse parfois le droit criminel ne saurait justifier qu'on assimile toute question de moralité publique à un objet propice à une législation criminelle*."[141] In so stating, the Court of Appeal seemed to consider that because the jurisprudence recognizes that provinces may adopt laws that have *some* moral component, *all* provincial provisions concerned with morality, to whatever degree, will be *intra vires* a provincial legislature.

138. This approach is inconsistent both with the nature of the criminal law power and, more generally, with this Court's approach to the division of powers analysis, particularly in the context of determining whether a provincial law improperly trenches on s. 91(27).

139. It is by now well-established that, contrary to most other heads of power, the criminal law power is not limited to specific subjects and is instead driven by Parliament's purpose. This is confirmed by a long line of jurisprudence in which this Court has maintained that confining the criminal law power to certain subject-matters would unduly fetter Parliament's ability to respond to emerging social problems.[142] Ultimately, "the jurisprudence properly recognizes that confining

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[141] QCCA Judgment, **AR, vol II, tab C**, para 104.

[142] *Re: Reciprocal Insurance Legislation*, [1924] AC 328, pp 799-800. See also *Toronto Electric Commissioners v Snider*, [1925] AC 396 (JCPC), p 409; *Reference re: Validity of the Combines Investigation Act and of s 498 of the Criminal Code*, [1929] SCR 409, pp 422-425; *Re: AHRA*, para 43; *Groupe Maison Candiac Inc v Canada (Attorney General)*, 2020 FCA 88, para 50; *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199 [***RJR MacDonald***], para 28; *Re: GNDA*, para 69 (per Karakatsanis J). See also Monahan & al, **BOA, tab 4**, pp 350, 352.

the criminal law power to precise categories is impossible."[143]

140. This means that no subjects, whether "traditionally" considered federal or provincial, are excluded by their nature from the reach of the criminal law. The analysis must instead focus on the purpose for which a given subject is regulated—asking whether the legislation in question responds to a "threat of harm to public order, safety, health or morality or fundamental social values, or to a similar public interest"[144] —in which case it will be deemed to contain a valid criminal law purpose.

141. This purpose-centered approach is reflected in the fact that Parliament can and has validly legislated in respect of a wide range of matters whose regulation might ordinarily fall within provincial heads of powers under s. 92 of the *CA 1867*, but which become subject to criminal law when Parliament's goal in legislating constitutes a valid criminal law objective.[145]

142. The corollary of the purpose-driven nature of the criminal law power is that where a provincial law is challenged as impinging on Parliament's jurisdiction under s. 91(27), the pith and substance analysis and classification exercise will turn not on the subject-matter being regulated but on the reason for which the province enacted the impugned prohibitions and sanctions.

143. The centrality of purpose is perhaps best illustrated by this Court's 1993 *Morgentaler* decision. There, the Court held that provincial regulations that prohibited medical clinics from providing abortions were *ultra vires* the province because they constituted criminal law. The Court did so *not* based on the subject matter being regulated: *Morgentaler* does not stand for the proposition that "abortion", or any other medical procedure, is inherently a "subject of" criminal law and thus altogether outside the purview of the provinces. Indeed, the Court recognized that provinces *could* regulate the delivery of abortion services if that regulation were "anchored in one of the provincial heads of power."[146]

144. Rather, the Court's conclusion turned on whether Nova Scotia "regulated the place for delivery of a medical service with a view to controlling the quality and nature of its health care delivery system, or […] attempted to prohibit the performance of abortions outside hospitals with

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[143] *Re: GNDA*, para 43 (per Karakatsanis J) (emphasis added).
[144] *Re: GNDA*, para 79 (per Karakatsanis J), para 137 (per Moldaver J) (emphasis added).
[145] See eg *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44, para 45; *RJR-MacDonald*, paras 201-202 (Major J). Compare *Labatt Breweries of Canada Ltd v Attorney General of Canada*, [1980] 1 SCR 914, pp 933-34.
[146] *Morgentaler*, p 493.

a view to suppressing or punishing what it perceives to be the socially undesirable conduct of abortion. The former would place the legislation within provincial competence; the latter would make it criminal law."[147] Ultimately, the Court held that the provincial prohibition was adopted out of a moral opposition to abortion; because the province had regulated abortion "not from the viewpoint of health care policy, but from the viewpoint of public wrongs or crimes,"[148] the prohibition was *ultra vires*.

145. *Morgentaler* thus confirmed that when a province enacts a prohibition and sanction with the principal objective of addressing a perceived threat to public morality, the impugned provision pursues a criminal law purpose, and the province will have exceeded the scope of its jurisdiction.

146. *Big M Drug Mart*[149] and *Edwards Books*[150]—cases which dealt with the validity of "Sunday closure" legislation—likewise illustrate the centrality of purpose at the classification stage. In *Big M*, the federal *Lord's Day Act* was challenged as being *ultra vires* Parliament's criminal law power. Dickson C.J. found that the principal objective of the law was the maintenance of public order and public morals—that is, recognized criminal law purposes—and that the law could consequently be justified as an exercise of Parliament's jurisdiction under s. 91(27).[151] Importantly, however, he observed that "this conclusion as to the federal Parliament's legislative competence to enact the *Lord's Day Act* depends on the identification of the purpose of the *Act* as compelling observance of Sunday by virtue of its religious significance. Were its purpose not religious but rather the secular goal of enforcing a uniform day of rest from labour, the *Act* would come under s. 92(13)."[152]

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[147] *Morgentaler*, p 488; see also p 493: "The two [prior] *Morgentaler* decisions focus attention on the purpose or concern of abortion legislation to determine if it is truly criminal law."

[148] *Morgentaler*, p 513: "The primary objective of the legislation was to prohibit abortions outside hospitals as socially undesirable conduct, and any concern with the safety and security of pregnant women or with health care policy, hospitals or the regulation of the medical profession was merely ancillary" (emphasis added).

[149] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 [***Big M***].

[150] *R v Edwards Books and Art Ltd*, [1986] 2 SCR 713 [***Edwards Books***].

[151] *Big M*, p 354; see also p 331.

[152] *Big M*, p 355 (emphasis added). This holding cohered with a consistent line of jurisprudence asserting that laws that control religious practice for moral reasons are valid criminal laws: *Saumur*,

147. A focus on purpose likewise drove this Court's reasoning in *Edwards Books*, where it affirmed the validity of provincial legislation prohibiting the sale of goods on Sunday. Unlike in *Big M*, the purpose of the legislation was the enactment of a pause day to benefit workers, not an attempt to enforce any vision of public morality.[153] This objective fell within provincial jurisdiction under s. 92(13) *CA 1867*.[154]

ii. Distinguishing a law's dominant purpose from its incidental considerations

148. Against the backdrop of this jurisprudential focus on purpose, not subject-matter, to determine whether a law constitutes an exercise of the criminal law power, it is crucial to address the Court of Appeal's statement that legislation that touches upon morality does not necessarily qualify as criminal legislation.[155]

149. This is correct only to the extent that not all legislation with *some* moral component will necessarily fall under s. 91(27). Provincial legislation can simultaneously pursue multiple aims, some being more dominant than others. To the extent that a provincial law's principal objective relates to a matter that falls within a provincial head of power, secondary motivations related to public morality or fundamental social values might also be present without the protection of public morality or values becoming the law's dominant motivation. In that case, the law would not ultimately be underpinned by a criminal law purpose.

150. But this does not mean that the provinces have carte blanche to adopt prohibitory legislation that is *principally* values- or morality-based. Accepting such a proposition would create the untenable possibility that Parliament and the provinces could both adopt the same prohibitions and penalties to enforce a given vision of public morality—that is, both orders of government could adopt the same provisions *for the same reason*. Such a result would be inconsistent with even the double aspect doctrine, which recognizes that "the same fact situations can be regulated from

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pp 369, 371, 377, 379; *Henry Birks & Sons (Montreal) Ltd v City of Montreal*, [1955] SCR 799, pp 813-814.

[153] *Edwards Books*, para 54.
[154] *Edwards Books*, para 56.
[155] QCCA Judgment, **AR, vol II, tab C**, para 104.

different perspectives,"[156] that is, *for two different purposes*.[157] It would also be inconsistent with this Court's reasoning in *Morgentaler*, since a province could prohibit abortion solely out of a moral opposition to the act, doing the same thing Parliament could do using its criminal law power.

151. To avoid such an outcome while remaining focused on the centrality of purpose to determining whether impugned legislation falls within s. 91(27), at the classification stage, this Court must take care to distinguish between the dominant purpose of a law from any incidental considerations motivating its adoption. Only the former will be determinative to establishing whether the impugned law pursues a valid criminal law objective, or whether it falls within provincial jurisdiction.

152. This is consistent with this Court's approach in the few cases (besides *Morgentaler*) in which it assessed challenges to the validity of provincial legislation on the grounds that it fell within s. 91(27) of the *CA 1867*.[158]

153. In *Siemens,* the Court confirmed that "the presence of moral considerations does not per se render a law *ultra vires* the provincial legislature. […] In many instances, it will be impossible for the provincial legislature to disentangle moral considerations from other issues. […] The fact that some of these considerations have a moral aspect does not invalidate an otherwise legitimate provincial law."[159] Thus, *some* consideration of morality in provincial legislation is not fatal; but the law in question must be "otherwise legitimate", that is, *notwithstanding* the presence of some moral component, it must nonetheless be driven by some legitimate provincial purpose. *Siemens* does not and cannot stand for the proposition that a provincial law may be underpinned exclusively by considerations of public morality.

154. To the contrary, ultimately the Court in *Siemens* explained there was no evidence or other

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[156] *Desgagnés Transport Inc v Wärtsilä Canada Inc*, 2019 SCC 58, para 84.
[157] *Reference re: Firearms Act (Can)*, 2000 SCC 31, para 52, citing *Provincial Secretary of Prince Edward Island v Egan*, [1941] SCR 39. *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23, para 50.
[158] *Siemens*; *Murray-Hall*. On the relevance of "dominant purpose", see also *R v Hydro-Québec*, [1997] 3 SCR 213, para 129; *Ontario Adult Entertainment Bar Assn v Metropolitan Toronto (Municipality)*,1995 CanLII 10668 (ON SC), conf in *Re Information Retailers Association of Metropolitan Toronto Inc and Municipality of Metropolitan Toronto Re Canadian Periodical Publishers Association and Municipality of Metropolitan Toronto*, 1985 CanLII 2223 (ON CA) [***Re Information Retailers***]. See also Monahan & al, **BOA, tab 4**, p 372.
[159] *Siemens*, para 30 (emphasis added).

"basis on which to assume that the dominant purpose for prohibiting VLTs in certain location" was to "regulate public morality."[160] Any moral aspects of the impugned legislation fell within the doctrine of incidental effects.[161] The implication is that if moral opposition to gambling had been the dominant reason to prohibit VLTs, this would have taken the law outside provincial jurisdiction because the law would have been predominantly driven by a criminal law purpose.

155. More recently, in *Murray-Hall*, the Court similarly concluded that "the matter of the impugned provisions is not the moral suppression of personal cannabis production,"[162] confirming the Court of Appeal's finding that there was no evidence that the Québec legislature had been guided principally by morality-based considerations in enacting the impugned prohibitions on cultivating cannabis plants in a domicile.[163] To the extent that any moral considerations were involved, they were at most ancillary to the legislator's primary objectives.

156. Accordingly, this Court noted that provincial laws that "touch on purposes that otherwise constitute valid criminal law purposes" are not automatically invalid;[164] the fact that a provincial legislature *considered* certain issues of public security or morality (without those issues being the driving force behind the decision to legislate) did not automatically imbue the law with a criminal law purpose. At the end of the day, the dominant purpose of the prohibition on cultivation in the domicile was "to steer customers to a controlled source of supply"[165] —a valid provincial objective relating to regulation of the local economy.

157. The Court's approach in *Siemens* and *Murray-Hall* is, like its reasoning in the 1993 *Morgentaler* decision, consistent with an application of the incidental effects doctrine to a consideration of legislative purpose, which lies at the heart of any analysis involving s. 91(27).

158. Such an analysis recognizes that provinces can legislate in ways that touch on public morality or fundamental social values,[166] but this ability is not unlimited. Where moral or value-laden considerations are merely incidental to a province's primary objective, an impugned

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[160] *Siemens*, paras 28-29 (emphasis added).
[161] *Siemens*, para 31.
[162] *Murray-Hall*, para 80 (emphasis added).
[163] *Procureur général du Québec c Murray-Hall*, 2021 QCCA 1325, para 72.
[164] *Murray-Hall*, para 69.
[165] *Murray-Hall*, para 74.
[166] Something that the trial judge also recognized: QCCS Judgment, **AR, vol I, tab A**, para 383.

provision *may* pass constitutional muster if that primary objective relates to a valid provincial head of power. This will be the case in many, if not most circumstances where a province enacts prohibitory legislation that is underpinned by some moral or values-driven considerations, but where any moral or values-driven element is not the legislation's central preoccupation.[167]

159. But where the desire to protect a certain vision of morality or fundamental social values is the *dominant* or *only* objective of the impugned provincial legislation—that is, where there is no provincial purpose at all, or any provincial considerations are themselves incidental—then the provincial law will be *ultra vires*. This is what happened in *Morgentaler*. In fact, this is the only logical explanation for the outcome of *Morgentaler* that is consistent both with this Court's subsequent jurisprudence (i.e., *Siemens* and *Murray-Hall*) and with the earlier jurisprudence that addresses the validity of federal or provincial legislation alleged to be criminal law by focusing on the impugned law's dominant purpose (i.e., *Big M* and *Edwards Books*).

160. In the present case, the Court of Appeal erred in law in failing to distinguish between prohibitory legislation driven *principally* by a certain view of public morality or fundamental social values, and legislation where any such considerations are merely incidental. This Court must not endorse the Court of Appeal's approach, which would result in an overturning of the reasoning that led to the result in *Morgentaler*. Instead, this Court must recognize that **a province's ability to legislate to address public morality or fundamental values is not unlimited**.

161. Accordingly, the question that the Court of Appeal should have asked, and which this Court must now answer, is whether or to what degree the morality- or values-based motivations underlying ss. 6 and 8 were the dominant objectives driving the adoption of these provisions.

(d) There is only one possible classification of ss. 6 and 8 of the *Act*

162. As explained above, the purpose of ss. 6 and 8 of the *Act* is to protect *laïcité*, which the legislator considers to be a fundamental social value and principle of public morality in Québec. The evidence demonstrates that the legislator perceived the wearing of religious symbols and face-

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[167] *Siemens*, para 30; *Val d'Or (Ville) c 2550-9613 Québec inc*, 1997 CanLII 10757 (QC CA), p 10; *Ontario Adult Entertainment Bar Assn v Metropolitan Toronto (Municipality)*,1995 CanLII 10668 (ON SC), conf in *Re Information Retailers*; *Buckingham (Ville) c 3011445 Canada inc*, 1997 CanLII 9455 (QC CS), paras 24-27.

coverings as a threat to its conception of *laïcité*, and the prohibitions in ss. 6 and 8 were adopted in response to that perceived threat.

163. This is the dominant purpose of these prohibitions. The legislator's desire to protect a certain vision of fundamental social values is not secondary or "merely incidental" to some legitimate provincial objective. This is not a case where moral or values-based considerations are impossible to disentangle from other issues. There is simply nothing in the record that could support the conclusion that the legislator was predominantly motivated by any broader desire to reorganize the civil service or solve some local problem resulting from individuals wearing religious symbols or covering their faces for religious reasons. The protection of *laïcité* as a fundamental value of Québec society was *the* driving factor for the adoption of the impugned provisions.

164. In other words, ss. 6 and 8 of the *Act* were enacted in furtherance of a legitimate criminal law purpose, not for any valid provincial objective.

165. In the presence of the formal requirements of a criminal law (i.e., prohibition and sanction) and a valid criminal law purpose, the classification of ss. 6 and 8 of the *Act* will be the same whether the Court first asks if these provisions may be classified under a federal head of power or under a provincial head of power. As in *Morgentaler*, the purpose of the impugned provisions becomes determinative, and the absence of any legitimate provincial objective yields only one possible classification: these provisions fall within Parliament's jurisdiction over criminal law under s. 91(27) of the *CA 1867* and are consequently *ultra vires* the province of Québec.

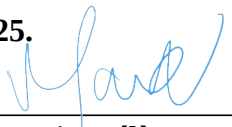
IV. SUBMISSIONS REGARDING COSTS

166. The Appellants seek costs in the cause. However, considering the fundamental public interest inherent in the questions raised in this appeal, the Appellants ask that no costs be ordered against them in the event their appeal is dismissed.

V. ORDER SOUGHT

167. The Appellants ask this Court to grant their appeal and to declare that sections 6 and 8 of the *Loi sur la laïcité de l'État* are unconstitutional.

ALL OF WHICH IS RESPECTFULLY SUBMITTED April 22, 2025.



for:

David Grossman, Olga Redko, Marie-Hélène Lyonnais

PART VII –TABLE OF AUTHORITIES

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Appendix A

SCC File No.: 41231

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

B E T W E E N:

ICHRAK NOUREL HAK,
NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM),
CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

– and –

FRANÇOIS PARADIS, in his official capacity
MOUVEMENT LAÏQUE QUÉBÉCOIS
POUR LES DROITS DES FEMMES DU QUÉBEC

RESPONDENT

AND BETWEEN:

ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

– and –

MOUVEMENT LAÏQUE QUÉBÉCOIS
FRANÇOIS PARADIS, in his official capacity

RESPONDENTS

AND BETWEEN:

WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT

APPELLANT
(Respondent on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC,
JEAN-FRANÇOIS ROBERGE, in his official capacity,
SIMON JOLIN-BARRETTE, in his official capacity

RESPONDENTS
(Appellants on Cross-Appeal)

AND BETWEEN:

ANDRÉA LAUZON, HAKIMA DADOUCHE, BOUCHERA CHELBI
LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC

APPELLANTS
(Respondents on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

THE LORD READING LAW SOCIETY

APPELLANT
(Respondent on Cross-Appeal)

– and –

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT
(Appellant on Cross-Appeal)

– and –

QUEBEC COMMUNITY GROUPS NETWORK, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM), CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, FÉDÉRATION AUTONOME DE L'ENSEIGNEMENT, LAUZON, ANDRÉA, HAKIMA DADOUCHE, BOUCHERA CHELBI, LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC, CANADIAN HUMAN RIGHTS COMMISSION, LORD READING LAW SOCIETY, WORLD SIKH ORGANIZATION OF CANADA, AMRIT KAUR, AMNISTIE INTERNATIONALE, SECTION CANADA FRANCOPHONE, PUBLIC SERVICE ALLIANCE OF CANADA (PSAC), CHRISTIAN LEGAL FELLOWSHIP, QUEBEC ENGLISH SCHOOL BOARDS ASSOCIATION, FÉDÉRATION DES FEMMES DU QUÉBEC, WOMEN'S LEGAL EDUCATION AND ACTION FUND, POUR LES DROITS DES FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS, LIBRES PENSEURS ATHÉES, ENGLISH MONTREAL SCHOOL BOARD, MUBEENAH MUGHAL and PIETRO MERCURI

INTERVENERS

NOTICE OF CONSTITUTIONAL QUESTIONS OF THE APPELLANTS, ICHRAK NOUREL HAK, NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM) and CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION (CCLA)

(Pursuant to Rule 33(2) of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that we, David Grossman, Olga Redko, and Marie-Hélène Lyonnais, counsel for the Appellants Ichrak Nourel Hak, the National Council of Canadian Muslims, and the Canadian Civil Liberties Association, assert that the appeal raises the following constitutional questions:

Are sections 6 and 8 of the *Act respecting the laicity of the State*, CQLR c L-0.3 invalid and inoperative because they violate the architecture of the Constitution of Canada?

Are sections 6 and 8 of the *Act respecting the laicity of the State*, CQLR c L-0.3 *ultra vires* section 92 of the *Constitution Act, 1867*, because they fall within the exclusive jurisdiction of Parliament under section 91(27)?

AND TAKE NOTICE that the Appellants assert that the cross-appeal of the Attorney General of Québec raises the following constitutional question:

Is section 8 of the *Act respecting the laicity of the State*, CQLR c L-0.3, in its application to paragraph 1 of Annex III of this *Act*, invalid and inoperative because it infringes section 3 of the *Canadian Charter of Rights and Freedoms* in a manner that is not justified in a free and democratic society?

AND FURTHER TAKE NOTICE that an attorney general who intends to intervene with respect to these constitutional questions may do so by service of a Notice of Intervention in Form 33C on all other parties and filing the notice with the Registrar of the Supreme Court of Canada within four weeks after the day on which the notice is served.

Dated at the City of Montréal, in the Province of Québec, this 24th day of February 2025.

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