

**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)

**ADDITIONAL WRITTEN SUBMISSIONS OF THE APPELLANTS,
ICHRAK NOUREL HAK, et al.**

(Pursuant to the Registrar's direction letter of February 16, 2026)

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(Style of cause continued)

AND BETWEEN:

**ENGLISH MONTREAL SCHOOL BOARD,
MUBEENAH MUGHAL and PIETRO MERCURI**

APPELLANTS
(Respondents on Cross-Appeal)

– and –

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(Appellants on Cross-Appeal)

– and –

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

RESPONDENTS

AND BETWEEN:

**WORLD SIKH ORGANIZATION OF CANADA
AMRIT KAUR**

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(Respondents on Cross-Appeal)

– and –

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RESPONDENT
(Appellant on Cross-Appeal)

AND BETWEEN:

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APPELLANT
(Respondent on Cross-Appeal)

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(Appellants on Cross-Appeal)

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LEGAL COMMITTEE OF THE COALITION INCLUSION QUÉBEC**

**APPELLANTS
(Respondents on Cross-Appeal)**

– and –

ATTORNEY GENERAL OF QUÉBEC

**RESPONDENT
(Appellant on Cross-Appeal)**

– and –

MOUVEMENT LAÏQUE QUÉBÉCOIS

RESPONDENTS

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,
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I. OVERVIEW

1. The *Act respecting the Laicity of the State*¹ violates sections 2(a), 2(b) and 15(1) of the *Canadian Charter of Rights and Freedoms*.² The *Act* also violates sections 3 and 10 of Quebec's *Charter of Human Rights and Freedoms*.³ These infringements are not justified under section 1 of the *Canadian Charter* or section 9.1 of the *Quebec Charter*.

2. The sections of the *Canadian Charter* and the sections of the *Quebec Charter* at issue are subject to “notwithstanding clauses” at sections 33 and 52, respectively. Other parties have made submissions on the exercise and effect of the notwithstanding clauses, and how they can influence the outcome of a rights-based analysis. In our principal submissions, the undersigned Appellants / Respondents on cross-appeal Ichrak Nourel Hak *et al.* take a different approach. We argue that sections 6 and 8 of the *Act* are constitutionally invalid based on Canada's constitutional architecture and based on the division of powers at ss. 91 and 92 of the *Constitution Act, 1867*;⁴ these arguments are based not on individual fundamental rights and are not subject to any notwithstanding clause.

3. Though there are some common touchstones in both the analysis of the *Act's Charter* breaches and in the analysis of its inconsistency with Canada's constitutional architecture, these analyses remain independent and distinct. The rights-based conclusion that an enactment breaches the *Charter* involves (a) the demonstration of an infringement of a guaranteed right and (b) the absence of a justification. The structure-based conclusion that an enactment is inconsistent with Canada's constitutional architecture, on the other hand, involves an investigation into the structure of Canada's constitution, and a finding that the enactment constitutes an attempt to modify that structure without following the constitutional amending formula.

4. In the present additional submissions, the Appellants / Respondents on cross-appeal take a rights-based approach to expound the *Act's Charter* violations.⁵

¹ *Act respecting the laicity of the State*, [CQLR c L-0.3](#) (the “*Act*”).

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being [Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#) (the “*Canadian Charter*”).

³ *Charter of Human Rights and Freedoms*, [CQLR c C-12](#) (the “*Quebec Charter*”).

⁴ *Constitution Act, 1867*, [30 & 31 Vict, c 3 \(UK\)](#).

⁵ These submissions are limited to those sections identified by the Court, and are not meant to suggest that the *Act* does not violate other provisions, such as section 7 of the *Canadian Charter*.

II. QUESTIONS AT ISSUE

5. Does the *Act* violate freedom of religion, freedom of expression, and the right to equality, as guaranteed by ss. 2(a) and 15(1) of the *Canadian Charter* or s. 3 and 10 of the *Quebec Charter*?

6. If the answer to any of the above questions is affirmative, are these violations justified under s. 1 of the *Canadian Charter* or s. 9.1 of the *Quebec Charter*?

III. ARGUMENT

A. The *Act* violates s. 2(a) of the *Canadian Charter* and s. 3 of the *Quebec Charter*

7. The trial judge’s (“**Judge**”) findings of fact – as well as the uncontradicted evidence that was presented at trial –inevitably lead to the legal conclusion that s. 6 of the *Act* violates freedom of religion as protected by s. 2(a) of the *Canadian Charter* and s. 3 of the *Quebec Charter*.

8. This Court’s jurisprudence has consistently held that freedom of religion has two related components: the freedom to *hold* religious beliefs and the freedom to *manifest* those beliefs through worship and practice.⁶ In order to establish that their religious freedom has been infringed, a claimant must demonstrate (1) that they sincerely believe in a practice or belief that has a nexus with religion, and (2) that the impugned state conduct interferes, in a manner that is non-trivial or insubstantial, with the claimant’s ability to act in accordance with that practice or belief.⁷ The analysis of the existence of such a violation is identical under both *Charters*.⁸

9. At the first, factual, stage of the test, the Court must not judge the validity or legitimacy of a given belief or practice.⁹ In particular, “[t]he fact that different people practise the same religion in different ways does not affect the validity of the case of a person alleging that his or her freedom of religion has been infringed” provided that person demonstrates a sincere belief that a given practice is required by their religion.¹⁰

10. In the present appeal, the evidence demonstrates that for many religious individuals,

⁶ *Syndicat Northcrest v Amselem*, [2004 SCC 47](#), para [40](#) (“*Amselem*”), citing *R v Big M Drug Mart*, [\[1985\] 1 SCR 295](#), p [336-337](#) (“*Big M*”); *Multani v Commission scolaire Marguerite-Bourgeoys*, [2006 SCC 6](#), para [32](#) (“*Multani*”).

⁷ *Amselem*, para [34](#); *Multani*, para [34](#).

⁸ *Mouvement laïque québécois v Saguenay (City)*, [2015 SCC 16](#), para [68](#) (“*Saguenay*”); *Amselem*, para [37](#).

⁹ *Amselem*, para [49](#).

¹⁰ *Multani*, para [35](#).

wearing symbols of their faith is an integral part of their religious practice and identity. Indeed, adhering to these beliefs is deeply meaningful to religious individuals:

Maintenant, je ne sais pas quoi faire. J'ai des dettes et deux enfants, j'ai 41 ans, je dois terminer mes études parce que je n'ai pas d'autres options : je ne peux pas toute simplement réorienter ma carrière à ce stade-ci. Cependant, si la Loi m'empêche de compléter mes stages obligatoires, je ne pourrais pas terminer mon programme.

*Une chose qui est certaine, c'est que je ne vais pas enlever mon voile. Il fait partie de mon identité religieuse.*¹¹

* * *

*[Ç]a fait partie de ma pratique, ça fait partie de moi en tant que femme musulmane, ça fait partie de ma religion.*¹²

* * *

If I had to choose between my employment or complying with the tenets of my faith I would choose to comply with the requirements of my faith. Visible observance of the Jewish faith has been under attack for millennia and keeping to the requirements of our faith is how the Jewish people and the Jewish faith have survived.¹³

* * *

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.*¹⁴

* * *

*[L]e voile, c'est moi. Si je l'enlève, c'est plus moi et je n'oserais même pas me regarder dans une glace.*¹⁵

* * *

[Removing my articles of faith] would be rejecting my identity, it would mean abandoning who I am as a person, it would be asking me to walk into a classroom

¹¹ Affidavit of W.B.G.H., paras 11-12, **Record before the Court of Appeal [RCA], vol 3 at 494.173**. Our underlining.

¹² Trial testimony of Ichrak Nourel Hak, at page 26, lines 14-17, **RCA, vol 25 at 7837**. Our underlining.

¹³ Affidavit of Carolyn Gehr, para 7, **RCA, vol 2 at 494.15**. Our underlining.

¹⁴ Affidavit of F.B., para 22-23, **RCA, vol 3 at 494.160**. See also: Affidavit of L.S., para 29, **RCA, vol 2 at 494.153**; Affidavit of M.G., para 15 and 18, **RCA, vol 3 at 494.197**; Affidavit of Hakima Dadouche, para 13, **RCA, vol 2 at 494.57**; Affidavit of Gregory Bordan, para 16, **RCA, vol 2 at 494.21**; Affidavit of Rana El-Mousawi, para 12-13, **RCA, vol 3 at 672.15**.

¹⁵ Trial Testimony of Messaouda Dridj, lines 16-17, **RCA, vol 25 at 7856**. Our underlining.

naked and not be myself. I would be teaching in the most uncomfortable conditions even... I wouldn't even be able to do my job properly because I'm not complete.¹⁶

11. The Judge accepted the testimony of these witnesses without hesitation. He determined that the individual plaintiffs who testified at trial all wear various religious symbols as an expression of their faith.¹⁷ For the Appellant / Cross-respondent Ms. Nourel Hak specifically, the Trial Judge noted that she wears the hijab based on her religious convictions, such that it is a part of her identity and her spirituality.¹⁸

12. The factual findings of a trial judge are owed significant deference and may not be departed from lightly.¹⁹ In the present case, not only have these factual findings never been contested at any level of appeal, they were also uncontradicted at trial.

13. Put simply, there is no basis in the evidence to doubt the sincerity of the religious beliefs of the trial witnesses. Wearing religious clothing and symbols is an active part of the individual plaintiffs' religious practices which manifests their sincerely held religious beliefs.

14. At the second step of the test, s. 6 of the *Act* interferes with plaintiffs' ability to act in accordance with that practice in a manner that is far from trivial nor insubstantial.

15. Here, too, both the Judge's factual findings and the evidence demonstrate that s. 6 of the *Act* interferes with the plaintiffs' ability to practice their religion by creating an impossible dilemma: "*ou bien elles agissent en fonction de leur âme et conscience, en l'occurrence leurs croyances, ou bien elles travaillent dans le métier de leur choix.*"²⁰ The consequences of this "choice" on individuals who publicly wear religious symbols are, the Judge confirmed, serious and negative: those who do not give up their religious practice find themselves either frozen in their existing positions with no possibility of advancement in their chosen field, or are simply barred altogether from accessing a wide variety of jobs in Quebec.²¹

¹⁶ Trial testimony of Amrit Kaur, at page 52, lines 15-21, **RCA, vol 25 at p 7843**.

¹⁷ *Hak c Procureur général du Québec*, [2021 QCCS 1466](#) ("Trial Judgment"), **Joint Appellants' Record [AR], vol I, tab A**, para [5-6](#) (Ichrak Nourel Hak), para [10-11](#) (Amrit Kaur), para [16](#) (Andréa Lauzon), para [19](#) and [22](#) (Hakima Dadouche). See also paras [64-65](#).

¹⁸ Trial Judgment, **AR, vol I, tab A**, para [6](#).

¹⁹ *Housen v Nikolaisen*, [2002 SCC 33](#), para [10](#).

²⁰ Trial Judgment, **AR, vol I, tab A**, para [69](#).

²¹ Trial Judgment, **AR, vol I, tab A**, para [68-69](#). See also, e.g., Affidavit of Ichrak Nourel Hak,

16. Forcing an individual to choose between their religious belief or practice and their participation in various elements of society (including employment) is an interference with religious freedom that is neither trivial nor insubstantial.²² The *Act* subjects religious individuals to a form of coercion by the state by subjecting them to deleterious consequences if they do not refrain from acting in accordance with their sincerely held beliefs:

Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. [...].²³

17. Moreover and in any event, the prohibition on wearing religious symbols is in effect a total ban on this religious practice during work hours for persons employed in the professions listed in Schedule II. This Court has previously had no difficulty in concluding that an absolute prohibition on a given religious practice for the totality of a working day is more than a trivial or insubstantial interference with that practice,²⁴ sending the message that the targeted religious practice does not

para 10-11 and 17-18, **RCA, vol 2 at 494.10-494.11**; Affidavit of Basir Naqvi, para 11, **RCA, vol 2 at 494.7**; Affidavit of Imane Melab, para 18-20, **RCA, vol 2 at 494.25**; Affidavit of Carolyn Gehr, para 14-16, **RCA, vol 2 at 494.15**; Affidavit of Fatima Ahmad, para 16-17, **RCA, vol 2 at 494.28**; Affidavit of Gregory Bordan, para 9-11, **RCA, vol 2 at 494.20**; Affidavit of Hakima Dadouche, para 10, **RCA, vol 2 at 494.57**; Affidavit of Amrit Kaur, para 20 and 27, **RCA, vol 2 at 494.54-494.55**; Affidavit of E.E., para 12, **RCA, vol 2 at 494.76**; Affidavit of Ghadir Hariri, para 12, **RCA, vol 2 at 494.79**; Affidavit of L.S., para 29, **RCA, vol 2 at 494.153**; Affidavit of M.G., para 18, **RCA, vol 3 at 494.197**; Affidavit of Mariam Najdi, para 7, **RCA, vol 3 at 494.203**.

²² Trial testimony of Ichrak Nourel Hak, page 28, line 11 to page 33, line 15, **RCA, vol 25 at 7837-7838**. See also Affidavit of M.G., para 19, **RCA, vol 3 at 494.197**; Affidavit of Nafeesa Salar, para 28, **RCA, vol 3 at 494.219**; Affidavit of Mariam Najdi, para 14, **RCA, vol 3 at 494.204**; Affidavit of S.B., para 13, **RCA, vol 3 at 494.233**; Affidavit of S.B.R., paras 17-22, **RCA, vol 3 at 494.190**; Affidavit of S.E-M., para 17, **RCA, vol 3 at 494.184**; Affidavit of R.M., para 26, **RCA, vol 3 at 494.167**. See also Trial Judgment, **AR, vol I, tab A**, para [65](#). See also *infra*, note 43.

²³ *Big M*, p [336-37](#) (emphasis added). See also *Big M*, p [350](#); *Saguenay*, para [121-122](#); *Multani*, para [40](#); *Loyola High School v Quebec (Attorney General)*, [2015 SCC 12](#), paras [58-59](#).

²⁴ *Multani*, para [40](#).

merit the same protection as other practices.²⁵

18. In the present appeal, considering the evidence, the Judge’s findings of fact and the uncontroversial jurisprudence of this Court, the inescapable conclusion is that s. 6 of the *Act* violates the freedom of religion guaranteed by s. 2(a) of the *Canadian Charter* and s. 3 of the *Quebec Charter*. Indeed, though his analysis did not lead him to pronounce formally on the existence of a violation, the Judge noted that “[i]l ne fait aucun doute que la Loi 21 comporte des effets inhibiteurs importants et qu’elle empiète lourdement sur les droits à la liberté de conscience et de religion”.²⁶

B. The *Act* violates s. 2(b) of the *Canadian Charter* and s. 3 of the *Quebec Charter*

19. In the present appeal, the religious activity that implicates s. 2(a) of the *Canadian Charter* and s. 3 (freedom of religion) of the *Quebec Charter* is also expressive activity that implicates s. 2(b) of the *Canadian Charter* and s. 3 (freedom of expression) of the *Quebec Charter*.

20. The activity targeted by s. 6 of the *Act* necessarily conveys meaning.²⁷ Indeed, in the words of the *Act* itself, in order to come within the scope of s. 6, a religious symbol must either (a) be “worn in connection with a religious conviction or belief” (*i.e.*, it conveys meaning to the wearer), or (b) be “reasonably considered as referring to a religious affiliation” (*i.e.*, it conveys meaning to the ordinary person).

21. Legislation that, in purpose or effect, interferes with protected expressive activity violates s. 2(b) of the *Canadian Charter*²⁸ or s. 3 of the *Quebec Charter*.²⁹ The bar is deliberately set low in a free and democratic society that values expression, so that the burden will fall on the government to justify its interference.³⁰

22. The prohibition on religious symbols in s. 6 of the *Act* easily meets this test. As the Judge held, because the behaviour targeted by the *Act* is “*expression pure et simple*” in addition to the manifestation of religious belief, the restriction on wearing religious symbols violates freedom of

²⁵ *Multani*, para 79.

²⁶ Trial Judgment, **AR, vol I, tab A**, para 1096.

²⁷ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, p 970 (“*Irwin Toy*”); *Libman v Quebec (Attorney General)*, [1997] 3 SCR 569, para 31 (“*Libman*”).

²⁸ *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2, para 38.

²⁹ See *Irwin Toy*, p 979.

³⁰ *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34, para 14.

expression in both purpose and effect, just like it violates freedom of religion.³¹

C. Equality Rights

23. Section 6 of the *Act* also discriminates against individuals on the basis of religion and sex. Due to space restrictions, the present submissions focus on the religious ground of discrimination.³²

1) Violation of section 15(1) of the *Canadian Charter*

24. At the first step of the s. 15(1) analysis, the claimant bears the burden of demonstrating that the impugned law, on its face or in its impact, creates a distinction based on an enumerated or analogous ground.³³ Here, the *Act* creates a distinction based on religion.

25. On its face, the government’s purpose in adopting the *Act* was to target religious activity – *i.e.*, activity that is disproportionately (if not exclusively) practiced by religious individuals.³⁴ Indeed, the Judge recognized that the *Act* “*ne vise qu’à enlever des droits aux personnes qui portent des signes religieux*”.³⁵ The preamble of the *Act* acknowledges that it aims to impose “a stricter duty of restraint regarding religious matters... for persons exercising certain functions.”³⁶ The evidence adduced at trial confirmed “*sans l’ombre d’un doute*” that the government’s focus was

³¹ Trial Judgment, **AR, vol I, tab A**, para [807](#).

³² On discrimination on the basis of sex, see the factual findings made in the Trial Judgment at paras [802-807](#) and [811](#). Reference is also made to the arguments on s 28 of the *Canadian Charter* by the Appellants English Montreal School Board *et al.* We further note on this point that the hijab in particular, worn by certain Muslim women, can be used as a symbol of *gender* empowerment: see the Trial Judgment, **AR, vol I, tab A**, at para [6](#); Trial testimony of Ichrak Nourel Hak, page 18, line 4 to page 19, line 5, **RCA, vol 25 at p 7835**; Affidavit of Ichrak Nourel Hak, para 15, **RCA, vol 2 at 494.10**; Trial testimony of Bouchera Chelbi p 7910, line 13 to p 7911, line 4; and p 7945, lines 5-10, **RCA, vol 25**. See also Affidavit of E.E., para 17, **RCA, vol 2 at 494.77**.

³³ *R v Sharma*, [2022 SCC 39](#), para [28](#) (“*Sharma*”); *Fraser v Canada (Attorney General)*, [2020 SCC 28](#) para [27](#) (“*Fraser*”); *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018 SCC 17](#), para [25](#) (“*Alliance*”); *Centrale des syndicats du Québec v Quebec (Attorney General)*, [2018 SCC 18](#), para [22](#).

³⁴ Compare *Alliance*, para [29](#).

³⁵ Trial Judgment, **AR, vol I, tab A**, para [379](#) (emphasis added)

³⁶ *Act*, [preamble](#) (emphasis added)

on establishing its vision of laicity as a fundamental value.³⁷ The government intended to target religion, the *Act* does target religion, and the distinction on the basis of religion in the *Act* is clear.

26. In *Alliance*, a majority of this Court recognized that the *Pay Equity Act*, whose stated purpose was to remedy pay discrimination suffered by women, accordingly targeted women through its impugned remedial measures.³⁸ Consequently, the majority held that the impugned provisions – which did not explicitly mention women – nevertheless on their face drew distinctions based on sex.³⁹ The *Act* is similar in that its differential treatment of religious individuals is evident, even if all individuals are notionally subject to the same prohibitions.

27. In *Mouvement laïque québécois*, this Court acknowledged that the favouring of one religion by the state at the expense of others “imports a disparate impact that is destructive of the religious freedom of the collectivity” and excludes the members of the non-favoured group on a listed ground, namely religion.⁴⁰ The same is true when the state prioritizes a notion of “laicity” that involves the *erasure* of religion from portions of the public sphere. As the Judge noted, “*on peut utiliser le mot laïcité à satiété à la place du mot religion, cela n’exclue pas le fait que cette notion sous-entend l’absence de religion.*”⁴¹

28. The *Act* also creates a distinction based on religion in its impact.⁴² In the present case, the effect of the *Act* on religious individuals is inescapable. Witness after witness testified to the grave sense of exclusion and inferiority they experienced through the application of the *Act* because of their religious identity.⁴³ The Judge confirmed:

³⁷ Trial Judgment, **AR, vol I, tab A**, para [316](#); Hak Exhibits P-12 (p 2, 4, 10, 12 and 21) and P-17 (p 31, 33, 34 and 47), **RCA, vol 7 at 1772 and 1819**.

³⁸ *Alliance*, para [29](#).

³⁹ *Ibid.*

⁴⁰ *Saguenay*, para [64](#).

⁴¹ Trial Judgment, **AR, vol I, tab A**, para [379](#).

⁴² See *Fraser*, para [58](#); *Sharma*, para [28](#).

⁴³ Trial testimony of Ichrak Nourel Hak, page 25, lines 6-8; page 32, line 12 to page 33, line 15, **RCA, vol 25 at 7836 and 7838**; Trial testimony of Amrit Kaur, page 53, lines 4-13, **RCA, vol 25 at 7843**; Trial testimony of Messaounda Dridj, lines 9-15, **RCA, vol 25 at 7861**; Affidavit of Imane Melab, para 14, **RCA, vol 2 at 494.24**; Affidavit of Ichrak Nourel Hak, para 32, **RCA, vol 2 at 494.12**; Affidavit of Gregory Bordan, para 23, **RCA, vol 2 at 494.22**; Affidavit of Ghadir Hariri, para 28, **RCA, vol 2 at 494.81**; Affidavit of Nafeesa Salar, para 28, **RCA, vol 3 at 494.219**; Affidavit of G.M., para 5, **RCA, vol 3 at 494.187**. See also Trial Judgment, **AR, vol I, tab A**, paras [8](#), [12](#), [17](#), [20](#) and [65](#).

*[L]es interdictions de porter de signes religieux et les conséquences qui s'y attachent s'avèrent des plus graves pour les personnes qui en portent en raison de leur foi. On peut même affirmer qu'il s'agit là pour elles d'une certaine forme de négation de leur être dans ce qu'il recèle de plus intime et de plus fondamental.*⁴⁴

29. Moreover, the impact of the *Act* is disproportionately felt by members of minority religions.⁴⁵ Indeed, minority religions like Islam, Judaism and Sikhism emphasize visible manifestations of faith and practices more than Christianity.⁴⁶ Statistically, Islam has 2.5 as many followers as Judaism and Sikhism combined,⁴⁷ and teachers in Quebec are disproportionately female.⁴⁸ It is not surprising, then, that after the adoption of the *Act*, every single person who lost a job from a *Centre de service scolaire* had been a Muslim woman.⁴⁹ The Judge concluded: “*la preuve révèle indubitablement que les effets de la Loi 21 se répercuteront de façon négative sur les femmes musulmanes d’abord et avant tout*”.⁵⁰

30. As such, the first step of the s. 15(1) test is satisfied: s. 6 of the *Act* creates a distinction based on religion, both on its face and through its disproportionate impact on religious persons.

31. At the second step of the s. 15(1) test, a claimant must demonstrate that the distinction “imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.”⁵¹ Here, again, both the Judge’s findings of fact – which are owed deference – and the evidence lead to the conclusion that s. 6 of the *Act* legislatively concretizes a treatment of religious persons as second-class citizens within Quebec society.

⁴⁴ Trial Judgment, **AR, vol I, tab A**, para [1069](#) (emphasis added). See also para [8](#).

⁴⁵ See Trial Judgment, **AR, vol I, tab A**, para [1102](#); See Trial testimony of Richard Bourhis, page 67, line 12 to page 69, line 20; and page 72, line 12 to page 74, line 17, **RCA, vol 26 at 8415-8417**; Expert report of Eric Hehman [Exhibit EMSB-28-18], para 36 (p 13/31) **RCA, vol 32 at 10557**.

⁴⁶ Trial testimony of Solange Lefebvre, page 26, line 6 to page 27, line 11, **RCA, vol 26 at 8461-8462**; Trial testimony of Jacques Beauchemin, page 73, lines 3-14, **RCA, vol 29 at 9276**; Expert report of Solange Lefebvre [Exhibit EMSB-28-16], para 22 (p 9/112) to para 31 (p 12/112), **RCA, vol 31 at 10091-10094**.

⁴⁷ Trial Judgment, **AR, vol I, tab A**, para [806](#).

⁴⁸ Trial Judgment, **AR, vol I, tab A**, para [802](#).

⁴⁹ Transcript of the examination of Me Louis Bellerose, August 25, 2020, from p 37, at line 13, to p 38, line 12, and p 39, at lines 7-9, **RCA, vol 24 at 7743-7745**.

⁵⁰ Trial Judgment, **AR, vol I, tab A**, para [807](#).

⁵¹ *Sharma*, para [31](#); *Fraser*, para [27](#).

32. In *Saguenay*, the majority of this Court noted:

When the state adheres to a belief, it is not merely expressing an opinion on the subject. It is creating a hierarchy of beliefs and casting doubt on the value of those it does not share. It is also ranking the individuals who hold such belief.⁵²

33. The facts of the present case plainly embody this insight. As the Judge noted, the exclusion of religious persons from certain career paths “*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.*”⁵³ Indeed, multiple witnesses testified that the *Act* conveyed to them the message that their faith and the manner in which they practice it are incompatible with Quebec society, thus inviting them to conceal a fundamental part of their existence in order to be considered on equal footing with their fellow citizens.⁵⁴ In signalling that religious persons are not eligible to participate in public institutions because of their deeply held convictions, the message of the *Act* toward religious persons is explicitly exclusionary.⁵⁵

34. Moreover, because the exclusion in the *Act* is based on recognized ground of discrimination, this exclusion is not just a matter of practical inconvenience for religious individuals. It is deeply dehumanizing:

Il ne fait aucun doute que la Loi 21 entraîne des conséquences sérieuses et négatives pour toutes les personnes qui arborent les signes religieux en public. De façon générale, d’une part, toutes celles qui occupent un emploi visé par la Loi 21 se retrouvent coincées dans leur position actuelle puisqu’elles ne peuvent en changer sous peine de perdre le bénéfice de la clause d’antériorité, à moins de décider de ne plus porter de signes religieux en public.

D’autre part, toutes ces personnes qui aspirent à occuper l’un de ces emplois se trouvent placées devant le dilemme suivant : ou bien elles agissent en fonction de leur âme et conscience, en l’occurrence leurs croyances, ou bien elles travaillent dans le métier de leur choix. On peut aisément comprendre qu’il s’agit là d’une conséquence cruelle qui déshumanise les personnes visées.

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

⁵² *Saguenay*, para [73](#) (our underlining).

⁵³ Trial Judgment, **AR, vol I, tab A**, para [65](#).

⁵⁴ See *supra* note 43.

⁵⁵ Trial Judgment, **AR, vol I, tab A**, para [70](#).

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.⁵⁶

35. Section 15 aims to protect against violations of essential human dignity.⁵⁷ Yet by publicly excluding practicing religious individuals from many aspects of public service, and by further emphasizing that this exclusion is mandated by Quebec's fundamental values,⁵⁸ the *Act* diminishes the human dignity of religious individuals. The *Act* further imposes a disproportionate burden on those whose gender identity and expression are intertwined with religious practice, denying them equal access to public employment and full participation in civic life. This “*conséquence cruelle*” of the *Act* is not lost on the individual plaintiffs and it was not lost on the Judge. Accordingly, section 6 of the *Act* violates s. 15(1) of the *Canadian Charter*.

2) Violation of section 10 of the *Quebec Charter*

36. The similar but distinct analysis under s. 10 of the *Quebec Charter* also leads to the conclusion that s. 6 of the *Act* discriminates against religious persons.

37. A claimant under s. 10 of the *Quebec Charter* must prove three elements: (1) that the impugned law creates “a distinction, exclusion, or preference” (2) based on a ground listed in the first paragraph of s. 10, and (3) which has the effect of nullifying or impairing the right to full and equal exercise of a human right or freedom.⁵⁹

38. The foregoing analysis under s. 15 of the *Canadian Charter* responds to the first two elements of the test under s. 10 of the *Quebec Charter*. Section 6 of the *Act* clearly creates a distinction based on religion.

39. As to the third prong of the s. 10 test, the distinction in question must relate to the exercise of a human right or freedom. The impact of the *Act* on freedom of religion and freedom of

⁵⁶ Trial Judgment, **AR, vol I, tab A**, paras [68-70](#).

⁵⁷ *Law v Canada (Minister of Employment and Immigration)*, [\[1999\] 1 SCR 497](#), para [51](#).

⁵⁸ See supra note 37 and Hak Exhibit P-11, p 2, **RCA vol 7 at 1770** (“*Il y a d'autres emplois de disponibles*”).

⁵⁹ *Saguenay*, para [63](#); (*Commission des droits de la personne et des droits de la jeunesse*) v *Montréal (City)*, [2000 SCC 27](#), para [84](#); *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, [2015 SCC 39](#), para [35](#).

expression, protected by s. 3 of the *Quebec Charter*, have already been addressed. Additionally, the distinction based on religion in the *Act* also impairs religious persons' right to the safeguard of their dignity, protected by s. 4 of the *Quebec Charter*.

40. Religion is tightly linked to human dignity, since religious belief is more than an opinion. It forms “an integral part of each person’s identity,” “the lens through which people perceive and explain the world in which they live” and which “defines the moral framework that guides their conduct.”⁶⁰ By creating a distinction based their religion, and in particular by sending the message that they are second-class citizens in Quebec society because of that distinction, the *Act* directly impairs religious individuals’ safeguard of their dignity.

D. Section 8 of the *Act*

41. The foregoing analysis regarding s. 6 of the *Act* applies equally to s. 8 of the *Act*.

42. The evidence in the court record confirms that s. 8 affects individuals with certain religious beliefs.⁶¹ For instance, Fatima Ahmad is a practicing Muslim who covers her face with a niqab in the presence of men as a result of her sincerely held religious beliefs.⁶² Just as s. 6 of the *Act* limits her employment opportunities at the institutions referenced through Schedule II of the *Act*, thereby violating the *Charters* as elaborated above, s. 8 of the *Act* limits her activities even more broadly at the institutions referenced at Schedule I of the *Act* (e.g., regarding the receipt of public services). The violation is the same, only transposed into a different context with an even larger scope.

43. Moreover, the evidence further reveals that the effect on religious individuals who wear the niqab was intended, as the government expressly underlined how no religious accommodation would be offered in connection with the prohibition on face-coverings.⁶³

44. Section 8 of the *Act* therefore violates sections 2(a), 2(b) and 15 of the *Canadian Charter* and sections 3 and 10 of the *Quebec Charter*.

⁶⁰ *Saguenay*, para 73. See also *Amselem*, para 42.

⁶¹ See expert report of Solange Lefebvre [Exhibit EMSB-28-16], at para 27 (p 11/112) and para 34 (p 14/112), *RCA*, vol 31 at 10093 and 10096.

⁶² Affidavit of Fatima Ahmad, paras 4-8, *RCA*, vol 2 at 494.27.

⁶³ Extracts of transcripts of hearings on Bill 21 in the National Assembly [Hak Exhibit P-17], p 47, *RCA*, vol 7 at 1865.

E. Justification

45. The analysis for a justification of rights is the same under s. 1 of the *Canadian Charter* and s. 9.1 of the *Quebec Charter*; in both cases, the *Oakes* test applies.⁶⁴ Where multiple rights are violated, certain elements of the analysis – notably regarding the purpose of the impugned law and the articulation of its deleterious and salutary effects – may be common among all violations, notably where the factual matrix underpinning each violation is identical.⁶⁵

46. Here, the AGQ did not present any evidence to justify the violations in question. When the state fails to put forward evidence to justify a breach of *Canadian Charter* rights, it is generally “unnecessary and unwise” for courts to engage in a s. 1 analysis.⁶⁶ The Court should simply conclude that the state has not met its burden – as the Judge and Court of Appeal both did in their analysis of the absence of justification for the breach of s. 3 of the *Canadian Charter*.⁶⁷

47. In any event, the other evidence in the record, complemented with the Judge’s factual findings, confirms that the infringements in question cannot be justified under either *Charter*.

48. For one, s. 6 of the *Act* fails the first step of the *Oakes* test – the requirement that the impugned legislation have a pressing and substantial purpose. A legislative enactment whose purpose is to violate a *Charter* right will necessarily fail this stage of the inquiry. Indeed, in *Big M*, the characterization of the purpose of the *Lord’s Day Act* “as one which compels religious observance” proved fatal to any attempted justification of that law, precisely because a law that bears a religious purpose (in other words, a law that *aims to* violate freedom of religion) could not, by definition, have a pressing and substantive objective.⁶⁸ Similarly, in *Saguenay*, this Court noted that a statutory provision “will be inoperative if its purpose is religious and therefore cannot be reconciled with the state’s duty of neutrality.”⁶⁹

49. The same conclusion must apply here in respect of ss. 6 and 8 of the *Act*. As explained in

⁶⁴ See e.g. *Irwin Toy*, p [980](#).

⁶⁵ See *Law Society of British Columbia v Trinity Western University*, [2018 SCC 32](#), paras [76-78](#) and [122](#).

⁶⁶ *R v Boudreault*, [2018 SCC 58](#), para [97](#).

⁶⁷ Trial Judgment, **AR, vol I, tab A**, para [921](#); *Organisation mondiale sikhe du Canada v Procureur général du Québec*, [2024 QCCA 254](#) (“**QCCA Judgment**”), **AR, vol II, tab C**, para [680](#) and [684-685](#).

⁶⁸ *Big M*, p [352-353](#).

⁶⁹ *Saguenay*, para [81](#).

our Appellants' Factum, the intrinsic and extrinsic evidence demonstrates that the purpose of these provisions is to restrict religious expression with the aim of protecting the government's conception of *laïcité* – defined as an absence of religion in much of the public sphere – as a fundamental social value of Québec.⁷⁰ In other words, as the Judge aptly noted, the purpose underlying the violations of the protected rights in question is itself anti-religious:

Il ne fait aucun doute que l'objet de la Loi 21 vise un objet religieux, en l'occurrence non seulement l'effacement dans un certain espace public de la religion, mais également, entre autres, l'interdiction dans certaines situations pour l'État de contracter avec un juriste qui porte un signe religieux. Le fait que la Loi 21 s'affiche comme une loi portant sur la laïcité et disant vouloir en faire une des bases de la société québécoise n'y change rien, car toutes ses dispositions pertinentes à cet égard requièrent l'exclusion du port d'un signe religieux.

[...]

*En tout respect, on peut utiliser le mot laïcité à satiété à la place du mot religion, cela n'exclue pas le fait que cette notion sous-entend l'absence de religion. Ici, par le biais de la Loi 21, le bannissement de la religion se fait sans aucune promotion de la laïcité de façon formelle puisqu'elle ne vise qu'à enlever des droits aux personnes qui portent des signes religieux.*⁷¹

50. Because the very purpose of the impugned provisions is anti-religious, it cannot be considered pressing and substantial at the first stage of the *Oakes* test.

51. But even assuming the *Act's* purpose was considered pressing and substantial, ss. 6 and 8 fail the proportionality analysis. In particular, the prohibitions in these sections are not minimally impairing because they amount to complete and total bans on defined religious practices within a certain sphere of activity. In *RJR – MacDonald*, this Court insisted that “a full prohibition will only be constitutionally acceptable under the minimal impairment stage of the analysis where the government can show that only a full prohibition will enable it to achieve its objective.”⁷² That logic has also been applied to restrictions on freedom of assembly⁷³ and on freedom of religion.⁷⁴

52. Here, in the absence of *any* evidence of the necessity of a complete ban on religious symbols

⁷⁰ Appellants' factum, para 119.

⁷¹ Trial Judgment, **AR, vol I, tab A**, paras 367, 379 (emphasis added).

⁷² *RJR-MacDonald Inc v Canada (Attorney General)*, [1995] 3 SCR 199, p 343-344. See also *Harper v Canada*, 2004 SCC 33, paras 36-39; *Libman*, para 75.

⁷³ *U.F.C.W., Local 1518, v KMart Canada Ltd*, [1999] 2 SCR 1083, para 77.

⁷⁴ *Multani*, para 79.

for persons holding certain positions, it is impossible to conclude that s. 6 of the *Act* is minimally impairing of any of the rights it violates.

53. Finally, the deleterious effects of s. 6 are significant while its “salutary effects” are, in reality, speculative. On the one hand, the Judge held that the *Act* had severe negative consequences on those affected by its provisions:

Il ne fait aucun doute qu'en l'espèce la négation par la Loi 21 des droits garantis par les Chartes entraîne des conséquences sévères sur les personnes visées. Non seulement ces personnes se sentent ostracisées et partiellement mises à l'écart de la fonction publique québécoise, mais en plus certaines voient leur rêve devenir impossible alors que d'autres se trouvent coincées dans leur poste sans possibilité d'avancement ou de mobilité. De plus, la Loi 21 envoie, en outre, le message aux élèves issus des minorités portant des signes religieux qu'ils doivent occuper une place différente dans la société et qu'à l'évidence la voie de l'enseignement public, au niveau préscolaire, primaire et secondaire n'existe pas pour eux.⁷⁵

54. In contrast, the salutary effects of the *Act* “*apparaissent pour le moins ténus*” because the evidence did not reveal the existence of any problem that banning religious symbols could plausibly solve.⁷⁶ Specifically, the Judge rejected the proposition that a public sector employee who wears a religious symbol is inherently contravening their duty of state neutrality.⁷⁷ He further rejected the suggestion by some parties – not supported by any evidence – that by wearing religious symbols, teachers place children in a vulnerable position or are otherwise engaging in improper proselytism.⁷⁸ These findings of fact stand uncontradicted and uncontested, and are therefore owed deference by this Court.

55. In the circumstances, the necessary conclusion is that the violations of freedom of religion, freedom of expression, and equality rights by s. 6 of the *Act* cannot be justified in a free and democratic society.

ALL OF WHICH IS RESPECTFULLY SUBMITTED March 2, 2026.

 for

David Grossman, Olga Redko, Marie-Hélène Lyonnais

⁷⁵ Trial Judgment, AR, vol I, tab A, para [1102](#). See also paras [1069](#), [1076](#).

⁷⁶ Trial Judgment, AR, vol I, tab A, para [1104](#). See also paras [1081-1091](#). See also Hak Exhibit P-4, p 2, RCA, vol 7 at 1688, and Hak Exhibit P-5, RCA, vol 7 at 1691.

⁷⁷ Trial Judgment, AR, vol I, tab A, para [1079](#).

⁷⁸ Trial Judgment, AR, vol I, tab A, paras [1088](#), [1090-91](#).

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