

## THE POLITICAL DEBATE ON THE NIQAB: LEAF'S POSITION

### A LEAF BACKGROUNDER

#### Introduction

On April 12, 2010, LEAF filed an intervener factum in a case (*R. v. N.S.*) which is proceeding to the Ontario Court of Appeal. The case involves a sexual assault complainant who was ordered to remove her niqab at the preliminary inquiry of two men charged with abusing her as a child. LEAF's position is that N.S. is entitled to access the Canadian justice system wearing her niqab, including testifying at the preliminary inquiry and trial.

On May 7, 2010, LEAF filed a Brief with the Quebec National Assembly opposing Bill 94. Bill 94 is proposed legislation which effectively bans niqab-wearing women from basic government services such as health, education and childcare. LEAF's position is that the Bill is inconsistent with the equality rights of niqab-wearing women and will in fact exacerbate and perpetuate the stigma, isolation and disadvantage already experienced by this group of women.

This backgrounder sets out the context in which LEAF has developed its approach to these two cases involving women's equality and the niqab.

#### The Context

The wearing of the niqab by Muslim women in Canada has been the subject of public discussion and debate in recent years. Although the small minority of women who wear the niqab in Canada are not a new phenomenon, various national and international events<sup>1</sup> have changed the political climate in which they are viewed. As a result, feminists and others have challenged, questioned and considered the role of the niqab in Canadian society.

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<sup>1</sup> Including the scrutiny and distrust to which all Muslims in the West have been subjected post 9/11, the banning of the niqab in schools and other public spaces in Europe (for example in France), incidents in which niqab-wearing women in Canada have been excluded from voting (until the rule was successfully challenged) and from attending language classes (in Quebec) and where hijab-wearing women or girls have been barred from sports teams.

## The Discussion

The resistance to the niqab in Canada can be reduced to two fundamental elements.<sup>2</sup> The first is the perception that the wearing of the niqab belongs to a culture/religion/value-system which is extremist and inimical to Western culture and values. The niqab is emblematic of an irreconcilable “clash of cultures”. The second, related, concern is that the niqab is a fundamentally sexist practice that is oppressive to women and should not be accommodated in a society committed to tolerance and to women’s equality.

On the other hand, many argue that wearing the niqab is a valid form of expression (whether political, religious or other) which is constitutionally protected. Understood in terms of equality and liberty, the argument is that women have an equal right to make fundamentally personal choices, without interference by the state. Other feminists (including LEAF as will be discussed further below) express concern that any measures which erect barriers to the full socio-economic participation of niqab-wearing women exacerbate the inequalities and disadvantage already suffered by this stigmatized minority of women.

The pervasiveness of Islamophobia (racial prejudice directed at those who are, or are perceived to be, Muslim) has informed the discussion of the role of the niqab in Canada. The Ontario Human Rights Commission has described Islamophobia as a “contemporary and emerging form of racism in Canada” in which Muslims are seen as a “great security threat on an institutional, systemic and societal level”. In this context, women who wear the veil are perceived as being dishonest and untrustworthy, having something to hide, being vehemently opposed to cultural integration and otherwise as beyond control. They are also perceived as being in need of “rescue” from their barbaric, backward and pre-modern traditions, and more specifically, from Muslim men.

Resistance to the niqab is sometimes expressed as a concern for “security” and “identification”. Concerns with respect to “security and identification” are often tied to the racist perception of Muslims as a threat. There are, however, times when security and identification make it necessary for a person’s face to be visible. These circumstances are fairly rare and in the past have been negotiated without difficulty.

## The Experiences of Niqab-Wearing Women

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<sup>2</sup> For a more nuanced discussion of various reasons why people are uncomfortable with the niqab in Canada, see Natasha Bakht, “Veiled Objections: Facing Public Opposition to the Niqab” in Lori Beaman, ed. *Defining Reasonable Accommodation* (Vancouver: UBC Press, 2010).

There is no singular experience of the niqab for women who wear it in Canada or elsewhere in the world. Some women may very well be oppressed and are forced to wear the niqab against their will. For other women, the decision to wear the niqab is a very personal, difficult and fraught decision, sometimes made over the objections of their families or spouses who do not support the practice. Anecdotally, women who have shared their experiences with LEAF describe their decision to wear the niqab as a matter of commitment to their faith, and as being something that was very “hard to do”, particularly due to the stigma and prejudice they experienced.

### **LEAF is Not Taking a Position on the Niqab**

LEAF is not taking a position on the niqab itself. LEAF does not support the wearing of the niqab, nor does it denounce the niqab as oppressive in all cases. LEAF is careful not to be pulled into this (un-win-able) debate. LEAF’s concern in the context of the *R. v. N.S.* case and Bill 94 (and other cases which may arise), is how best to respect and promote the equality rights of women, including those who wear the niqab.

Both *R. v. N.S.* and Bill 94 (and other cases to date in which LEAF has not intervened), involve the exclusion of niqab-wearing women from basic democratic institutions. LEAF’s position is that exclusion and barriers to socio-economic-cultural participation can never enhance women’s equality rights. LEAF is also concerned that exclusion and isolation will almost certainly make niqab-wearing women more vulnerable and thus at greater risk of violence and abuse.

### **The Regulation of Women’s Bodies and Women’s Dress**

The discussion of the niqab has largely involved, in one way or another, state regulation of how women dress. With Bill 94, niqab-wearing women are forced to undress in the name of their own equality. LEAF’s argument is that women’s equality can never be achieved by legislating how women dress, whether by requiring women to cover up or requiring women to undress.