



Women's Legal
Education and
Action Fund

Fonds d'action et
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pour les femmes

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Women's Legal Education and Action Fund (LEAF) Submission to the Quebec National Assembly on Bill 94

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Summary

Bill 94, "An Act to Establish Guidelines Governing Accommodation Requests within the Administration and Certain Institutions" excludes Muslim women who wear the niqab or burqa¹ from public services and institutions. The Bill is being promoted in the name of women's equality and, in the words of Premier Charest, preserving Quebec's secular culture.

Rather than respecting "the right to gender equality"², Bill 94 is an act of inequality. The Bill will further marginalize and isolate an already stigmatized minority group of women on the basis of their sex, race and religion. More generally, women's equality can never be achieved by legislating how women dress; whether requiring women to cover up or requiring women to undress.

A foundational principle of Quebec's open secularism is equality. Bill 94 cannot be reconciled with this important principle, nor with the rights enshrined under the *Quebec Charter of Human Rights and Freedoms* or s.15 of the *Charter of Rights and Freedoms*.

Background and Expertise of Women's Legal Education and Action Fund (LEAF)

LEAF is a national organization dedicated to promoting substantive equality for women through legal action, research and public education. LEAF has intervened in over 150 cases on substantive equality since it was founded in 1985 and is a leading expert in the inequality and discrimination experienced by women in Canada. LEAF regularly makes submissions to federal and provincial legislative committees on the impact of proposed legislation on women's equality. Central to LEAF's commitment to substantive equality is addressing the inequalities suffered by women who experience discrimination on multiple and intersecting grounds, such as on the basis of poverty, disability, race, sexual orientation and religion.

LEAF was recently granted intervener standing in a case before the Ontario Court of Appeal in which a sexual assault complainant who wears a niqab is seeking an Order confirming her entitlement to wear the niqab while testifying at the preliminary inquiry

¹ Hereafter this brief will refer only to the niqab since the incidents which gave rise to Bill 94 all involved this form of head covering.

² Bill 94, s.4

and trial of the men charged with sexually abusing her as a child. LEAF's factum in the case can be found at <http://leaf.ca/legal/active.html#target>.

The Impact of Bill 94 on Muslim Women

Bill 94 excludes women who wear the niqab from any form of government employment and will prevent them from accessing basic government services, such as health care, daycare and education, unless exceptions to the exclusionary norm or "general practice" of "uncovered faces" is made in the form of an "accommodation".

Exceptions to this rule of "uncovered faces" will be refused in all circumstances where "reasons of security, communication or identification warrant it". The language of the proposed legislation is broad and vague. In particular, reasons of "communication" could easily justify exclusion in almost every interaction between niqab-wearing women and the government services and institutions listed in the Bill.

Accordingly, the Bill effectively bars these women from civic participation and access to the most fundamental of democratic institutions. It creates a two-tier system of citizenship. And since the only people affected by the Bill are Muslim women, the determining categories for this demoted citizenship are sex and race/religion, contrary to any meaningful conception of interculturalism and to these women's statutory and constitutionally enshrined human rights.

Bill 94 signals to niqab-wearing women, and to the rest of Quebec society, that veiled women are unwelcome and unworthy of state services and protection. It restricts these women from accessing the language, education, health and legal services necessary to women's empowerment. It creates a climate where niqab-wearing women will not be or feel accepted outside of their homes or communities. Whether or not the Bill applies to other government services, such as the police and justice system, it creates the perception that niqab-wearing women are excluded. Police and other services in the justice system may deliberately or unconsciously be less receptive to the concerns and needs of niqab-wearing women. Similarly, niqab-wearing women may assume that police protection and justice services, like other government services, are unavailable to them. Even if available, these women may not be comfortable seeking assistance as a result of the stigmatizing effect of Bill 94. Bill 94 thus increases niqab-wearing women's exposure to abuse, exploitation and violence.

Bill 94 relegates women who wear the niqab to the extreme margins of Quebec society. The proposed legislation does nothing to respect or promote their equality or to advance an "intercultural" society committed to "interaction", the recognition of "multiple identities" and "overcoming stereotypes and defusing fear or rejection" of those from

minority groups.³ Understanding of and respect for difference, so essential to substantive equality, can be fostered by Quebec's concept of "intercommunity action".⁴ Bill 94 shuts down such interaction, at the expense of the women affected and Quebec society as a whole.

The Starting Point is Equality Not Accommodation

Bill 94 creates an unprecedented legal structure. The proposed legislation suggests that, for the small group of women who wear the niqab, the starting point for their relationship with the state is not an equal right to access services, but exclusion. They are cast as asserting "special rights" or "privileges" when they seek to access basic government services dressed in the veil, with access only being granted as a matter of exception. This constitutes a worrying and fundamental reversal of Quebec human rights law. The relationship between the state and these women must commence with an acknowledgment of their right to equality.

It has been suggested that Bill 94 does nothing more than restate existing Quebec human rights law with respect to the duty to accommodate. If this were the case, then why is Bill 94 necessary?

LEAF submits that Bill 94 represents a significant departure from this existing law by legislating exclusion, as opposed to inclusion, as the norm.

Feminist Opposition to Bill 94

The niqab has been decried by feminists and others as a practice of sexual inequality which should be eradicated. Some women living in Canada may in fact be forced to wear the niqab by their fathers, husbands, male religious leaders or others. Other women may not experience any such constraints. Some wear the niqab with the support of their families and others wear the niqab despite the objections of their spouses and families.⁵

Whether or not the practice of the niqab is sexist or some women are forced into the practice, excluding women who wear the niqab from civic participation and basic government services hardly promotes their equality. The legislation instead disempowers these women by cutting them off from employment and government

³ Commission De Consultation Sur Les Pratiques D'Accommodement Reliees Aux Differences Culturelles, *Building The Future, A Time for Reconciliation* (Gouvernement du Quebec, 208), Abridged Report (hereafter Bouchard Taylor, Abridged Report) at pp.40-41.

⁴ Bouchard Taylor, Abridged report, pp.40-41.

⁵ See for example the interviews with women who wear the niqab reported in the Montreal Gazette, "The niqab in perspective" (April 12, 2010) at <http://mcgilldaily.com/articles/30399>.

services. It is difficult to see how controlling women who wear the niqab is an appropriate legislative response to any purported concerns for their equality.

In fact, for women who are forced to wear the niqab against their will, the legislation facilitates and perpetuates their oppression. It closes the door to the institutions and services they might reach out to, and it confines them to their homes, away from public life.

For women who choose to wear the niqab, the legislation is inconsistent with respect for their equality right to make decisions about their bodies and their manner of dress.

Many forms of religious dress, the niqab in Islam, the sheitel in Orthodox Judaism, and the covering up of women in religions throughout the world, including Christianity, can be seen as patriarchal and sexist. Yet Bill 94 targets only the practice of a tiny group of minority women, belying any purported broader goal of achieving women's equality. As stated in the introduction to this submission, women's equality cannot be achieved by legislating how women dress. Moreover, the Bill wrongly assumes that it is appropriate for the state to regulate women's bodies in this way.

Women's equality cannot be achieved by forcing women to choose between democratic participation and observance of their faith.

The Cultural and Political Context

The political context in which Bill 94 has been introduced is one in which Muslims are perceived in the West as a racial minority and niqab-wearing Muslim women are the targets of disdain and distrust.

Islamophobia has been widely recognized as “a contemporary and emerging form of racism in Canada” in which Muslims are seen as “a greater security threat on an institutional, systemic and societal level”.⁶ Muslim women who wear the niqab are perceived as having something to hide, as being dishonest or untrustworthy or otherwise as “beyond control”. Veiled women are often equated with extreme cultural adherence and a vehement refusal to assimilate. It is assumed that their values and beliefs are pre-modern and are inimical or even hostile to all Western values. At the same time, these women are also perceived as being in need of “rescue” from their traditions, and more specifically, from Muslim men.⁷

⁶ Ontario Human Rights Commission, *Policy on Racism and Racial Discrimination* (June 2005, updated Dec. 2009).

⁷ See for example, Natasha Bakht, “What’s in a Face? Demeanour Evidence in the Sexual Assault Context” in Elizabeth Sheehy ed., *Sexual Assault Law, Practice and Activism in a post Jane Doe Era* (Ottawa: University of Ottawa Press, 2010); Sherene Razack, *Casting Out, the Eviction of Muslims From Western Law and Politics* (Toronto: University of Toronto Press, 2008); Lori Beaman, “‘It was all slightly unreal’: What’s Wrong with

The Committee's consideration of Bill 94 should be sensitive to the discrimination and stereotypes that overtly or subconsciously inform discussions about the niqab and which are prevalent throughout the West (and by no means unique to Quebec).

Seen through this broader lens, Bill 94 appears to use Muslim women's bodies and dress to assert Christian/Western society's racial/religious/cultural superiority over a Muslim minority: an effort to force niqab-wearing women to unveil and enter secular life or face public banishment.

The negotiation of the intersection of religion, equality and other rights and values cannot be meaningfully achieved in the context of a Bill which serves only to consolidate and reify discrimination and inequality and which precludes inter-community interaction and discussion.

Conclusion: Promoting Equality, Inclusion and Full Participation

To the extent that Bill 94 is motivated by a concern for women's oppression, and more specifically the oppression of women who wear the niqab, there are numerous measures which the government of Quebec could usefully undertake, including:

- Support and generous funding for organizations assisting immigrant women.
- Increasing, as opposed to limiting, access by niqab-wearing women to government and community services, particularly in respect of language, education and training.
- Supporting racialized, immigrant and other disadvantaged women in employment.
- Increased funding and support for programs, policies or services which advance the socio-economic participation of women, including programs or services directed to women's access to safe and adequate housing, pay equity, employment equity, access to reliable and affordable childcare, and receipt of social assistance rates that meet the needs of low income families, particularly female-headed families.

Bill 94 stigmatizes niqab-wearing women. It will hinder rather than assist these women's full inclusion and integration into Quebec society. Social cohesion cannot be achieved by erecting barriers and exacerbating and perpetuating existing inequalities. Nor can it be achieved by legislating women to remove their clothing.

LEAF submits that Bill 94 should be withdrawn.

Tolerance and Accommodation in the Adjudication of Religious Freedom?", Canadian Journal of Women and the Law (2010)(forthcoming).