

Quebec Court of Appeal validates CAQ's discriminatory "state secularism" law

Hugo Maltais
29 March 2024

On February 29, the Quebec Court of Appeal handed down its ruling on the *Loi sur la laïcité de l'État* (Law on State Secularism), which the province's right-wing "Quebec First" Coalition Avenir Québec (CAQ) government adopted in June 2019 shortly after it was first elected to office.

Commonly known as Bill 21, the state secularism law was the outcome of more than a decade of xenophobic and Islamophobic agitation by the ruling class. It victimizes religious minorities, especially Muslim women, under the fraudulent pretext of upholding the secular nature of the state, which it defines as a fundamental principle of the "Quebec nation."

Under Bill 21, state employees in "positions of authority," including public school teachers, are prohibited from wearing religious symbols like the hijab, Sikh turban or Jewish kippah. It also denies Muslim women wearing the niqab or burqa access to employment in the public, parapublic and municipal sectors, and prevents them from receiving essential public services, including healthcare.

Meanwhile, Bill 21 preserves the ubiquitous Roman Catholic signs on government buildings and Quebec's highly religious toponymy on the grounds they form part of its cultural "heritage."

To prevent its discriminatory legislation from being struck down by the courts because it manifestly violates multiple provisions of the Canadian constitution's Charter of Rights and Freedoms, the CAQ preemptively placed Bill 21 and all its clauses under the protection of the "notwithstanding clause." The "notwithstanding clause" is an anti-democratic mechanism in the Canadian constitution that allows the federal, provincial and territorial parliaments to pass laws that violate basic rights supposedly guaranteed in the Charter of Rights and Freedoms. The law in

question is then shielded from being challenged in the courts due to its violation of these rights.

Despite this, individuals and organizations have challenged Bill 21 by raising other arguments or attacking the use of the notwithstanding clause.

In April 2021, Quebec Superior Court Judge Marc-André Blanchard concluded that, because of the notwithstanding clause, he could not strike down Bill 21, even though he pointed to its "cruel" and "dehumanizing" consequences. He created two exemptions to the ban on religious symbols: for Members of the National Assembly (MNAs), on the grounds that Bill 21 violated their parliamentary privileges; and for employees of English language school boards, whose existence in Quebec is guaranteed as part of the constitutional "bargain" that created Canada as a federal state in 1867.

Fundamental rights, such as freedom of religion and freedom of speech (or expression), should, however, be universal and applicable to the entire population, not based on a divisive worldview where each ethnolinguistic community has its own set of "rights."

In their February 29 ruling, Court of Appeal Chief Justice Manon Savard and Justices Yves-Marie Morissette and Marie-France Bich upheld the Superior Court's main conclusion that the law cannot be invalidated because of the notwithstanding clause. The Court of Appeal also upheld the exception for MNAs, while striking down the exception created by Judge Blanchard for English-language school boards.

The Court of Appeal's judgment is characterized by its enthusiastic, politically motivated support for Bill 21, and goes far beyond what was necessary from a strictly legal standpoint to decide its validity. Having piously declared in the opening paragraphs of its judgment that it was "obviously only interested in the

legal aspect of the debate,” the Court went on to indulge in a political exercise aimed at justifying Bill 21.

At the outset, it declares that Bill 21 “raises a genuine and legitimate debate.” This echoes the preferred formula of Québec Solidaire (QS), the party of the Quebec pseudo-left. QS has adapted to the chauvinist turn of the establishment on the pretext that its purported concerns about the impact of immigration on “Quebec’s values” constitutes “legitimate debate.” QS is currently assisting the nationalist right by supporting the requisite 5-year renewal of the notwithstanding clause’s legal shielding of Bill 21.

In its ruling, the Court of Appeal endorsed the fraudulent argument, promoted by both reactionary *Journal de Montréal* columnists and petty-bourgeois feminist groups, that Quebec’s “state secularism” law aims to promote gender equality by protecting Muslim women from being “forced” to wear the veil.

The hypocrisy of such an argument is remarkable at a time when the entire political class in Quebec and Canada unreservedly supports Israel’s barbaric onslaught on the Palestinians, which has killed more than 32,000 people, the vast majority of them women and children. And how can anyone claim that Bill 21 “liberates” women from oppressive religious practices by making them lose their jobs and depriving them of essential public services?

Denying reality, the Court declares that in adopting Bill 21 the CAQ government of ex-Air Transat CEO Francois Legault was not seeking to “punish, penalize or stigmatize” people belonging to religious minorities. With regard to women wearing the niqab and burqa, the Court of Appeal treats the discrimination they suffer and their beliefs with contempt, writing that they can receive public services simply by accepting “a brief unveiling” for identity verification.

In the end, the Court of Appeal’s judgment propagates, in legal language, the same nationalist hysteria that has gripped the entire Quebec establishment. Presenting Bill 21 as a measured response to Quebec’s “distinct context,” the Court of Appeal’s ruling doesn’t breathe a word about the real context out of which the law arose. Decades of austerity, privatization, deregulation and massive tax cuts for the benefit of the rich and ultra-rich, have produced a deep and escalating social crisis. Fearing

mounting social opposition, the capitalist ruling elite is whipping up chauvinism and xenophobia so as to divide workers along ethno-linguistic and religious lines.

The Court’s open defense of unbridled chauvinism underlines the extent to which the ruling class is prepared to trample on basic democratic rights and adopt authoritarian methods to quell growing working class opposition—all under the pretext of promoting “national cohesion.”

Since Bill 21’s passage in 2019, the situation in Quebec, like everywhere else in Canada, has deteriorated as a result of the ruling elite’s policies of austerity and war, and its ruinous “profits before life” response to the COVID-19 pandemic. Public services have been brought to the brink of collapse, while social inequality and inflation have soared.

In response, the ruling class has stepped up its national-chauvinist incitement, openly blaming immigrants for the social problems caused by bankrupt capitalism.

By enthusiastically embracing Bill 21, one of the flagship measures of the ruling elite’s current anti-immigrant campaign, the Court of Appeal lends a veneer of legality to the xenophobic and Islamophobic chauvinist campaign being whipped up by all factions of the political establishment, but which is being spearheaded by the Quebec nationalists of the CAQ and pro-independence Parti Québécois.

That’s why the Legault government and much of Quebec’s elite hailed the Court of Appeal decision as a “victory for the Quebec nation.” At the same time, they are preparing new attacks on minorities, immigrants and, ultimately, the working class as a whole.



To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact