



The English Speaking Catholic Council

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Le conseil catholique d'expression anglaise

## **BRIEF**

### **General Consultation and Public Hearings on Bill 60**

Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests

Committee on Institutions

Submitted by

**The English Speaking Catholic Council**

December 19, 2013

## Summary

The English Speaking Catholic Council (ESCC) objects to the proposed “Charter,” Bill 60, on the following grounds:

- It threatens to erode the historically and legislatively foundational freedoms of conscience, religion, opinion and expression. These are considered to be “first” freedoms in our society and any trend to dilute or undermine these freedoms must be resisted.
- It proposes a secularized society in which religious expression and practice are marginalized. It seeks to reframe the public discussion so that the exercising of Charter-protected rights is to be understood as an imposition upon society which requires the permission of the State.
- It muddies the separation of Church and State as it proposes the State has the power to define the nature of religious belief, practice and expression.
- In all of the aforementioned points the role of the State is elevated above the proper parameters of a democratically elected and responsible government.

The ESCC calls upon the Government of Quebec to withdraw Bill 60.

*The English Speaking Catholic Council (ESCC) was formed in 1981 as a focal point for coordinating community activities among English-speaking Catholics in Montreal and later across all Quebec. Inspired by the contemporary Catholic understanding of the role of the laity in the modern world, the ESCC identifies, analyses and assists in the promotion of the English-speaking Catholic community's values in education, health and social services, social justice and cultural domains. English-speaking Catholics are more than 397,000 strong in Quebec<sup>1</sup> and are an active presence in this society. The ESCC regularly represents their interests with local, provincial and federal government leaders.*

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The English Speaking Catholic Council (ESCC) contends that the proposed Charter<sup>2</sup> (hereinafter Bill 60) is an unnecessary and destructive piece of legislation which threatens to erode the freedoms enshrined in both the Quebec and Canadian Charters of Rights and Freedoms.

By way of introduction we must underline that freedom of conscience and religion is foundational to Western, democratic societies. In the post-war period, the Universal Declaration of Human Rights has proved a cornerstone in the establishment, growth and development of modern human rights legislation. Religious freedom, and the attendant freedoms of thought, conscience and expression, forms a sturdy pillar of the document:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief; and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>3</sup>

As evidenced by the inclusion of the freedoms of conscience, religion, opinion and expression in sections 3 and 10 of the Quebec Charter of Human Rights and Freedoms (1975) and in section 2 of the Canadian Charter of Rights and Freedoms (Constitution Act, 1982), these freedoms are likewise recognized as fundamental rights of our Canadian society.

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<sup>1</sup> This represents approximately 38% of all Quebecers with English as their first official language across all 17 administrative regions of Quebec, according to 2011 Canadian census data.

<sup>2</sup> Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests.

<sup>3</sup> Article 18, Universal Declaration of Human Rights, 1948.

It is important to recognize that this concern for religious freedom pre-dates the modern push to crystallize the notion of human rights. Religious freedom was a central preoccupation for citizens and legislators in the pre-Confederation period, as Chief Justice Beverley McLachlin notes:

The uniquely Canadian experience of the legal protection of religious conscience is that from the outset – even before the creation of Canada as an autonomous nation – the law has been charged with the responsibility for creating this space. For Canada, religious liberty under the law is not an issue that emerged as the state matured; rather, it is an issue that has been at play since the country’s inception, has been a topic for judicial consideration, and has since been entrenched in our fundamental laws. Canadian law has always been concerned in some manner with freedom of religion...<sup>4</sup>

Given the centrality of these particular rights and freedoms to our history, identity, and jurisprudence it behooves those responsible for governance to act with caution and reserve in taking actions, legislative or otherwise, which would alter the fine balance which our Constitution, quasi-constitutional documents, and laws demonstrate in this regard.

The aforementioned caution serves as a general orientation for our brief. However there are three worrying confluences of concepts that are demonstrated in the text of Bill 60 which are of particular concern to the ESCC. Confluences of the concepts of

- a secular state and a secularized society
- the civil service and civil society
- religious expression and religious proselytization.

**Bill 60 speaks of the secular nature of the State but the proposed legislation threatens to create a secularized society.**

Whether by accident or design, the framers of Bill 60 flirt dangerously with collapsing two related, but philosophically distinct, notions of a secular state and a secularized society. Commonly understood, a secular state is one in which no one religion is established; in which there is a separation between the church and the state. As we

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<sup>4</sup>Beverly McLachlin, “Freedom of Religion and the Rule of Law,” in *Recognizing Religion in a Secular Society*, ed. D. Farrow (McGill-Queens University Press 2004), p. 16.

noted in our Brief presented to the “Reasonable Accommodation and Religious Freedom in Quebec” commission in 2007, the ESCC embraces not only this basic building block of a liberal, democratic state but “welcomes the evolution of modern Quebec society away from a society that was excessively controlled by one religious tradition.”<sup>5</sup> However, Bill 60 in its current form is not about promoting a secular state in this narrow sense. The separation between church and state is, in fact, the reality of contemporary Quebec and certainly does not require further legislation to be enacted.<sup>6</sup> Rather, Bill 60 seeks to act as a steward in eliminating religious expression altogether and marching Quebec towards a secularized society, that is, a society which has been “stripped of the public symbols, voices, and institutional presence of religion.”<sup>7</sup> A secular state does not mean one in which religion has no place, rather it is designed to ensure that there is room for the exercise of the religious freedoms enshrined in our charters. It provides the cultural and civic space which guarantees the freedom **for** religion; it neither promises, nor seeks, a freedom **from** religion and religious expression.

**Bill 60 suggests an idea of the State which encompasses areas of life which should be properly understood as part of the civil society.**

In a pluralistic, constitutional order there are important spheres of social life that lie outside the purview of the State. But the model Bill 60 places in front of us is one in which the State embraces such a broad swath of civic life - encompassing not just governance and the judiciary, but childcare, education, health, social programs, and eldercare - that there is no room or agency outside of this monolithic State structure. It is ironic that this was, in fact, the complaint made against the Catholic Church in Quebec, i.e. that the Church had its hand in every aspect of public life and there was no escaping its reach. And yet here, the current government seems eager to impose a similar model, but with itself as the new master. The provisions of Bill 60 state that it is not only the aforementioned areas of concern, i.e. health, education and so on, to which

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<sup>5</sup> “Accommodements Raisonables et Liberté de Religion au Québec” (available at [www.catholiccentre.ca/escs/Text%20content%20for%20web%20pages/governmentbriefs/FrenchBriefonReasonableAccommodation.pdf](http://www.catholiccentre.ca/escs/Text%20content%20for%20web%20pages/governmentbriefs/FrenchBriefonReasonableAccommodation.pdf))

<sup>6</sup> « Dans notre pays, il n'existe pas de religion d'Etat. Personne n'est tenu d'adhérer à une croyance quelconque. Toutes les religions sont sur un pied d'égalité, et tous les catholiques comme d'ailleurs tous les protestants, les juifs ou les autres adhérents des diverses dénominations religieuses, ont la plus entière liberté de penser comme ils le désirent ». Justice Taschereau, [1955] S.C.R. 840 (“Chaput”)

<sup>7</sup> Jean Bethke Elstain, “A Response to Chief Justice McLachlin,” in *Recognizing Religion in a Secular Society*, p. 38

the obligations of the bill apply, but also to “any person or partnership with whom it has entered into a service contract or subsidy agreement.”<sup>8</sup> The minister responsible for Democratic Institutions and Active Citizenship, Bernard Drainville has been quoted as saying that the government hopes private enterprise will take a leaf from the Charter book and, “be guided in the future by the guidelines we are giving ourselves. There are many employers who are scared to find themselves in the face of requests for reasonable accommodations, and we are responding to those fears.”<sup>9</sup>

Bill 60 puts forward a vision of a society in which the State owns the public square and if one occupies the public square one is, first and foremost, a citizen of the State. Worryingly, the orientation documents seem to refer to employees of the State as, in fact, embodiments of the State.

Ces mesures refléteraient le fait que le personnel de l’État se trouve dans une situation différente de celle des autres citoyennes et citoyens ; il incarne l’État et il est au service des personnes de toutes origines et de toutes croyances. À ce titre, les fonctions du personnel de l’État comportent également des responsabilités et des devoirs à l’égard de la mission de l’institution pour laquelle il œuvre.<sup>10</sup>

This interpretation of the notion of citizenship is fundamentally opposed to the Catholic understanding of the self, personhood and citizenship.

### **Bill 60 demonstrates a profound misunderstanding of the nature of religious expression.**

At numerous points in both the government’s orientation document, and in Bill 60, the wearing of religious symbols is interpreted as the desire to proselytize, « Le port de signes ostentatoires revêt en soi un aspect de prosélytisme passif ou silencieux qui apparaît incompatible avec la neutralité de l’État, le bon fonctionnement de ses institutions et leur caractère laïque. »<sup>11</sup> Minister Drainville has reiterated in numerous public statements that this is the government’s understanding. When speaking to the press about the Quebec universities which have expressed discomfort with Bill 60 he

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<sup>8</sup> Bill 60, Chp. IV, 10.

<sup>9</sup> Bernard Drainville, press conference, September 10, 2013.

<sup>10</sup> <http://www.nosvaleurs.gouv.qc.ca/en/propositions/2>

<sup>11</sup> <http://www.nosvaleurs.gouv.qc.ca/en/propositions/3>

said: “We say, from the moment you are in a public service, you must represent the neutrality of the state and so we think professors must not, in their choice of clothing, proselytize so that's why we think religious neutrality should apply to university professors.”<sup>12</sup>

There is clearly a radical disconnect between the intentions and actions of those who wear such “religious symbols” and the perception of those acts by those responsible for Bill 60. In the absence of any evidence that a religious person, who openly expresses religiosity, cannot do his or her job with professionalism, tact and discretion, the government seems to ascribe to the wearing of “religious symbols” a symbolism all of their own devising. But it is not the job of the government to assume the role of arbiter of religious faith, morals, and practice. Surely, if the notion of the separation of church and state is to have any power at all, it must embody this basic concept: people of faith, of any stripe or creed, should not have to defend themselves against a government’s formulation of their beliefs.

The restrictions on the wearing of religious symbols and observance of religious dietary laws which Bill 60 proposes imply that society is threatened by these religious expressions and that, in order for society to operate freely and “neutrally,” these religious expressions themselves must be neutralized. Surely, if a limitation upon an individual’s Charter protected freedoms is to be imposed, the onus is upon the government to display the harm which is rendered by the exercise of these freedoms. The ESCC respectfully queries, where is the demonstrable harm? We return to the conclusions of the Bouchard-Taylor report, “Having taken stock of everything that we have learned and understood over the past year, we have concluded that the foundations of collective life in Quebec are not in a critical situation.”<sup>13</sup>

### **Observation on the “Amending Provisions,” respecting the Charter of Human Rights and Freedoms**

We must note, as we did during discussions around the proposed Bill 14,<sup>14</sup> that any move to amend the Charter of Human Rights and Freedoms, specifically by

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<sup>12</sup> “PQ’s Drainville stands his ground,” *The Gazette*, December 4, 2013.

<sup>13</sup> Gérard Bouchard & Charles Taylor, *Building the Future: A Time for Reconciliation*, Abridged Report.

<sup>14</sup> An Act to amend the Charter of the French language, the Charter of human rights and freedoms and other legislative provisions.

retroactively ascribing a priority of rights not originally intended, runs contrary to the very nature of such a document. As such, this proposed amendment would surely diminish the authority and legitimacy of the Charter. The recent precedent set by previous Governments of amending the Charter, considered a quasi-constitutional document, by a simple majority vote of the National Assembly is a very disturbing trend. It is contrary to the universally accepted practice of treating charters of rights with special protection to ensure their enshrinement.

Once again, the government is seeking to write “the primacy of the French language” into the Charter. The ESCC would like to note that Quebec is a multi-lingual, multi-cultural society which has benefitted right throughout its history from this rich confluence of languages and cultures. While respectfully acknowledging the primacy of the French language and culture to the province of Quebec, it must be acknowledged that, in particular, the English language and culture have been an essential part of both the historical development of Quebec and of contemporary Quebec society. To make claims for the French language ignoring this obvious truth is harmful to the social fabric of our society.

It cannot be stated too strongly that the ESCC is deeply concerned about the negative repercussions for our province if Bill 60 were to be enacted. As we have outlined, there are worrying implications for the notion of the State and the place and identity of the citizen within the State, a threatened neutering of the Charter-enshrined freedom of conscience and religion to a place of laughable inconsequence, and the blurring of the separations between Church and State so that the State absorbs to itself the power to define religious beliefs and practices – all of this at a time when there seems to be little, if any, compelling reasons for such action. We recommend to the Committee on Institutions that Bill 60 be abandoned in its entirety.