

*The author of this brief is Jose Correa, submitting on behalf of The Canadian Muslim Forum (FMC-CMF).*

*FMC-CMF is a Quebec-based group seeking to represent the collective interests of the Muslim community in the areas of public policy, civil liberties and human rights. The FMC-CMF uses a number of tools to fulfill its mandate, including media relations, popular education, grassroots outreach and coalition building. The Canadian Muslim Forum is a coalition of community organizations and was established in 1993. The FMC-CMF has taken interest in and given media interviews regarding the tabling of Bill 94.*

## **Introduction**

Selon des sondages récents, le projet de loi 94 a suscité une bonne mesure de soutien populaire. Tout le crédit revient au gouvernement Charest, pour sa manière très habile à encadrer le projet de loi 94 en utilisant des termes neutres, tout en invoquant des mots tels que la sécurité, l'identification et la communication, pour exprimer la nécessité de l'ordre public.

Cependant, dans notre mémoire, nous vous proposerons une analyse plus approfondie de la formulation employée dans le projet de loi 94 (mettre en évidence les faiblesses du projet de loi, souligner le caractère trop général et vague des mots, et démontrer comment le projet de loi 94 peut vraisemblablement conduire à des abus une fois en application).

Nous allons plus précisément demander au gouvernement Charest d'abandonner l'utilisation du terme «sécurité» dans le projet de loi 94, en démontrant sa redondance dans la formulation du projet de loi.

Nous allons aussi demander au gouvernement de clairement indiquer que le projet de loi 94 ne devrait en aucun cas contribuer à perpétuer la peur des musulmans ou à enflammer l'islamophobie (Racisme qui se manifeste par une haine, des préjugés et une discrimination délibérés à l'endroit de l'islam, des membres de la communauté musulmane, pratiquants ou non, ou des objets et lieux du culte islamique).

Nous allons plaider en faveur de la construction d'un Québec ouvert et inclusif en présentant des histoires telles que le restaurant O'Noir, un endroit qui sert des repas dans l'obscurité absolue, et l'histoire du docteur Audrey Lessard, la première femme sourde à devenir médecin dans le pays. Nous allons essayer de convaincre le gouvernement à reconnaître les faiblesses inhérentes à l'identification des personnes en utilisant des photos. Nous allons attirer l'attention de milliers de Québécois qui sont dispensés de l'obligation de se prendre en photo sur leur carte de soins de santé. Nous allons aussi inviter le gouvernement à reconsidérer le double standard lorsque celui-ci n'offre pas une même accommodation aux femmes qui portent le voile facial. Nous implorons le gouvernement à rester honnête et équitable dans l'évaluation de la nécessité réelle de ce projet de loi, et surtout, nous demandons au gouvernement d'interpréter le voile facial d'une façon claire et convenable, comme il l'a fait avec le crucifix de l'Assemblée nationale.

### **“Mon pays, ce n'est pas un pays, c'est l'hiver”**

These famous lyrics by Gilles Vigneault resonate deeply in the soul of Quebec. During the long winter months that fall upon us every year, our *Belle Province* sees its people take to the cold streets, faces shrouded with protective winter gear to shield against winter's chilling bite; pedestrians, sport their long, thick winter scarves; skiers, their ski masks; snowmobilers, their respective face gear; etc. Though their identities circulate unknown to the public through the open streets, there's an unspoken and pervasive sense of confidence within us all, that none of these individuals represents a real threat, even if their faces veiled could hypothetically spell danger. We simply trust. We trust because of our familiarity with what lies underneath, because of our experience with winter cold, since “mon pays, ce n'est pas un pays, c'est l'hiver” - for winter is indelibly our culture.

Yet, scale back the winter backdrop and a face-veil suddenly becomes an unfamiliar fashion item, inviting scorn, suspicion and even contempt, particularly if donning a Muslim, female face. Regrettably, this sort of suspicion is motivated by nothing less than xenophobia, nothing else can explain this fear away or excuse the inability to relate or analogize the face-veil to our own winter gear; xenophobia is simply an unflattering reality of the human psyche, one that we all need to work hard to purge from our hearts, not legislate and institutionalize.

But beyond this easy analysis, there is something more intriguing to which we can attribute the scorn and contempt the face-veil attracts. That something can be described as “dysfunctional empathy”. Dysfunctional empathy, in this case, is the well intended, but crudely erroneous, judgment people make about the face-veil as strictly representing an object of oppression and misogyny. Accordingly, logic would have it that tolerating such an object could make bystanders feel complicit in the oppression, inciting our conservative and moral instinct to reject the object and protect the subject. However, empathy, in spite of its great nobility, does not always execute perfectly in our complex, intercultural world. For example, it has proven much easier for Quebec to understand that the cross in the National Assembly can be selectively interpreted as bearing positively on our nation’s heritage, than it has been to make an equally selective judgment about the face-veil, as being an object of spiritual emancipation, worn voluntarily and independently, as an act of modesty and piety. Of course, under the rules of dysfunctional empathy, the cross in the National Assembly should be banned for it could be only found to symbolize all the sins, crimes, and illiberal attitudes of the Church, past and present; its public endorsement would make accomplices of us all. But the government instinctively knows better, and that’s why the government recently and overwhelmingly rejected Bouchard-Taylor’s recommendation to move the cross in the National Assembly.

Our contention is that the government should be as wise and generous with their interpretation of the face-veil. Sure, we can choose to project all the Talibanic horrors imaginable on the face-veil, but we can also be selective and respect what its sincere bearers claim to be its merits. In fact, this is necessary to honor our liberal principles and shared values of secularism and tolerance, and is also in line with precedent established at the National Assembly, to construe religious artifacts that may hold ambivalent connotations, in the best of light.

Construing the face-veil in the worst light and deciding what women should wear because of our well intended but erroneous empathy ultimately amounts to a serious violation of women's autonomy and privacy, and a betrayal of our own avowed commitment to women's rights.

## **Security**

In the current light, the government's tentative choice to use the value of public "security" as a legitimate motive for which the face-veil may be suppressed by the State, only acts to embolden negative stereotypes and justify xenophobic attitudes toward Muslims, and more specifically bearers of the face-veil. Bill 94's use of the term security surreptitiously implies that the face-veil represents an object that can be legitimately feared if the context is right.

Moreover, the term "security" in the wording of the bill clearly proves redundant by virtue of the bill's simultaneous use of the broader and more encompassing category of identification. Consider that every scenario wherein public security presents an issue for the government, such as in the case of identifying passengers at an airport or ensuring public order on the streets, the feature that is always in question is actually establishing a person's identity. By establishing a person's identity, we can address the subordinate issue of security outright. As such, Bill 94 need not refer to security as a conditional excuse to suppress the face-veil for its objective is already encompasses within the definition and scope of

identification. The point is subtle but the ramifications evident. We suggest that the term “security” be dropped from the wording of the bill. Such wise discretion by the government is warranted here to control for xenophobic tendencies against Muslims, especially considering that there have not been any incidences reported in the media where the face-veil was used for any subversive purpose.

## **Identification**

Let us be honest; the face as a mode of identification is overrated - one reason why our American counterparts use finger prints at airports. In this area, though Bill 94 may sound like common sense, under the tighter scrutiny of our logical critique, the justification of facial identification loses some of its luster. Consider just a few of its short comings: the prevalence and ubiquity of plastic surgery, the biological fact of twin hood, the similarity of categorical facial features across humanity and within races, the social discomfort and inadequacy of staring at a person’s face to establish identity, the diminutive size of id pictures, even the incredible strides made in makeup technology for which we can credit Hollywood. To see where this can lead, we need only think of the television show “Peut contenir des Rachid”, a show produced here in Quebec, in which every week the comedian host convincingly disguises his identity with the aid of professional makeup and artistry in order to play pranks while unbeknown to friends and family. This critique alone does not entirely discredit society’s use of facial identification, we know better. But it does poke holes in our common sense approach and gives us much greater reason to question our own implicit biases against the face-veil.

There is another segment of the population, traditionally marginalized by the system, which Bill 94 also injures indirectly, that is, the visually impaired. Do not expect here a lame and pedantic attempt at obfuscating the real issue. Our point here is legitimate and important to illustrate the philosophical orientation steering Bill 94. If Bill 94 holds that depending on the context, the government cannot serve

you if your face is covered or if your face is covered you cannot serve in government, the subtle and eerie implication is that blind individuals too who are unable to visually identify faces are also unwelcome. The logical corollary extending out of Bill 94 is that if you are unable to identify a person's face, you too should be excluded and not accommodated by the government. But this conclusion is far from desirable and obviously inconsistent with the progress our society has made in integrating disabled persons into the mainstream.

For instance, take the case of O'Noir, a restaurant that serves food in absolute darkness, by visually impaired waiters. The web site for the restaurant reads:

"... O.NOIR does more than just fire the imagination and stimulate the senses. After a few hours in complete darkness (that's right, no flashlights, matches, cell phones, cigarette lighters or luminous watches), customers gain a better understanding of what it's like to be blind - just like the restaurants' entire wait staff.

This socially conscious concept sprang from Jorge Spielmann, a blind pastor in Zurich who used to blindfold his dinner guests at his home so they could share his eating experience. In 1999, Spielmann opened Blindekuh (German for Blind Cow), a project aimed at teaching the sighted about the sightless world, and provide jobs for blind people.

"It's not the easiest of undertakings" explains Moe [General Manager], who has elicited the help of Horizon Travail (an organisation affiliated with Emploi Quebec), which helps prepare and train visually impaired people to enter the mainstream job market; a population that experiences roughly a 70% unemployment rate."

Note the mention of Emploi Quebec's involvement. Ironically, it would go against the spirit of Bill 94 for the government to help the blind integrate into their public service functions, since their ability to identify individuals visually would be compromised.

To further make our point, emphatically, let us review the huge discrepancy we find in the picture id regime at La Regie de l'assurance maladie. The Charest government should recognize the fact that hundreds of thousands of people are exempt from having their pictures taken and used for identification purposes. This demonstrates our system's readiness to accommodate huge segments of

our population, and the feasibility and reasonableness to operate outside the conventional, common sense picture id regime.

La Regie de l'assurance maladie, posts on its web site:

Children under age 14 are not required to provide their photo and signature for their Health Insurance Card and are therefore excluded from the authentication process.

Some persons are exempt from the authentication process. These include:

- persons age 75 and over. (They may, however, choose to have their photo and signature appear on their card, in which case they must follow the [authentication process](#));
- persons who, because of their state of health, are unable to provide their photo, their signature, or both (persons exempt for medical reasons);
- [persons temporarily outside Québec](#) who nevertheless remain covered by the Health Insurance Plan.

Persons who are not required to provide their photo and signature must mail their form (and any required documents) to the Régie de l'assurance maladie or take their form to one of the [Régie's offices](#).

#### **Procedure for obtaining a photo or signature exemption for medical reasons**

Persons unable to provide their photo, their signature, or both must include with their form a medical certificate filled out by a doctor. The certificate must contain the following information:

- the insured person's identity: last name, first name, birthdate and, if possible, Health Insurance Number;
- the nature of the disease;
- the duration of the impairment (permanent, or temporary with approximate duration);
- the type of exemption (photo only, signature only, or both);
- the doctor's identity (last name, first name and professional number);
- the doctor's signature and the date.

Our main goal in this section is to challenge the popular but misconceived notion that accommodating bearers of the face-veil is unreasonable. By referring to the numerous exemptions in the la Regie de l'assurance maladie, we maintain that accommodating for the face-veil is in fact reasonable and quite feasible, and actually highly desirable in order to ensure our society's openness to diversity, whether for instance a person is visually impaired or visually impairing. We should work hard to integrate them even though, as the general manager at O'Noir admits, it's not always easy. But then again, building an open, inclusive society does not always come easily. But, as we have demonstrated through our presentation of O'Noir and the health care regime, an open, inclusive society continues to be quietly built in Quebec;

Bill 94 lamentably makes a lot of noise, but takes us way back, not forward. The government may alternatively wish to argue, and more persuasively at that, that accommodating for the face-veil produces undue hardship, but we have shown here that we should know better.

## **Communication**

Few know the story of Audrey Lessard, a doctor like no other in Quebec. She is deaf, has been all her life, but this fact did not - nor did the Quebec government for that matter - deter her from becoming a doctor and practicing medicine in Quebec. To work as a doctor, Audrey needs to work alongside an interpreter who serves as a conduit to help her communicate with her patients. Audrey reads lips but she also needs to speak in hand language directly to her interpreter who is always present in the room with Audrey and her patient, and who in turn relays the message to her patient. Complicated? A little more than usual, but Audrey successfully practices medicine in Quebec even though the system and her patients have to accommodate for her inability to communicate out loud. As citizens, this is the Quebec we are so fond of and proud to call home. But why stop there?

Again, ironically, the logic of Bill 94 would be to exclude people like Audrey from taking part in government run services, due to their seeming impediment to communicate with the public. But we know better.

So why create barriers for others like Audrey who want to integrate into the mainstream? Why pass Bill 94 in its current incarnation and give fodder to the bigoted, overzealous, and the dysfunctionally empathic, and needlessly precipitate discrimination against women wearing the face-veil, potentially deterring them from attending university or serving in public institutions?

We have shown that integrating people like Audrey into the mainstream is feasible and desirable. Moreover, if our concern really is to promote the equality of genders, it is undoubtedly



counterproductive to exclude or deter certain women from serving in public institutions or dissuade them from pursuing higher education because of their committed religious attire.

We live in an increasingly virtual world where face to face communications are every day less relevant. Our collective experience in the virtual realm should convince us that communication with a veiled person is no more challenging than speaking to them over the phone, taking a language class over the internet, or visiting our beloved doctor, Audrey Lessard.

## **Conclusion**

We end by making mention of the example set by Jacques Plante, one of hockey's best and most renowned goaltenders in history. Besides his great play and numerous Stanley Cups wins, he is recognized today for being responsible for introducing the face mask for goaltenders at a time when it was unpopular to do so. Today, Jacques Plante is a Quebec hero and is celebrated for having stood up to the establishment of his time. His mask, like the cross, has become part of our heritage. Likewise, the women who wear the face-veil, despite all the adversity they confront, share that same quality that distinguished Jacques Plante: courage and strength of will to stand up for their rights. Let us recognize those same qualities and honor the Jacqueline's of our day. Let them integrate into the mainstream and serve as examples to oppressed women all around the world that they too can be anything they want to be; their religious attire need not be an impediment.

As the Bill 94 stands now, it is overly broad, vague, and thus unconstitutional. At best, we ask the government drop the bill entirely and respect the status quo. Alternatively, we ask that the government drop mention of the term "security" in Bill 94, as it proves redundant and reinforces xenophobic attitudes in society toward Muslims. We ask the government to clearly state in the wording that in no way should Bill 94 serve to perpetuate fear of Muslims or affirm Islamophobia.

We have argued in favor of building an open, inclusive Quebec by outlining the stories of O'Noir, a restaurant that serves food in absolute darkness, and Doctor Audrey Lessard, the first deaf female to become a doctor in the country. Their inspirational stories should be used as references to inform the extent Quebec should accommodate veiled women. The government should acknowledge the inherent weaknesses in identifying people with the use of pictures. We have brought attention to the thousands of exempted Quebecers who are under no obligation to have their pictures taken on their health care cards and invite the government to reconsider the double standard in not extending a similar accommodation scheme to women who wear face-veils. We implore the government to remain honest and fair in assessing the real need for this bill and in setting its scope, and most importantly, we ask that the government explicitly construe the face-veil in the best of light, state its positive construal in Bill 94, similarly to how it has declared the cross at the National Assembly to be part of our heritage.