THE BAN ON THE WEARING OF RELIGIOUS SYMBOLS:
AN UNJUSTIFIED MEASURE
THAT CONTRADICTS THE IMAGE OF QUEBEC AS
AN OPEN AND WELCOMING SOCIETY

Brief from McGill University on Bill 60

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1. Introduction

Bill 60 was introduced just a few months after the Sea Turtle Index from China ranked Montreal as the best city in the world for students who wish to study abroad, ahead of other major university cities like London, Toronto and Boston. Montreal is presented in the index as an attractive city that combines world-class education options with a culturally vibrant and socially diverse landscape. The index, alongside other rankings that compare cities and universities around the world, reflects a reality experienced by most of the universities in the western world: the mobility of talent, the fierce competition to attract both professors and students, and the growing diversity of their communities.

McGill University shares the general objectives underlying Bill 60. There is unanimous agreement in Quebec society about the values of state religious neutrality and equality between women and men. The government’s desire to facilitate the handling of requests for accommodation for religious reasons, in particular by public agencies, is also welcomed by many citizens and organizations. On these aspects, there is a consensus.

However, the proposal to introduce a broad and uniform ban on the wearing of conspicuous religious symbols by employees of public agencies appears to us to be unjustified and would contradict Quebec’s image as a welcoming and open society. Moreover, it would simply be impossible to apply such a ban in the university milieu.

McGill recommends that this proposal be withdrawn from the bill. Our comments are based primarily on three elements:

- the effect the ban would have on Quebec’s reputation in terms of recruiting talent;
- McGill University’s principles and context;
- the institutional autonomy of universities, which is a cornerstone of academic freedom.

We also doubt the validity of some of the provisions of Bill 60 with regard to the Quebec and Canadian charters of rights and freedoms, as well as international conventions that are binding upon Quebec and Canada, notably the Universal Declaration of Human Rights. We will leave it to jurists to comment on this aspect with greater authority, but we note that many credible individuals and agencies, including the Quebec Human Rights Commission, have expressed strong reservations in that regard. It is up to the government to demonstrate that the bill “passes the test” of the charters so as not to lead Quebec society into a never-ending series of legal disputes. The government must demonstrate that any restriction of individual freedoms is required by a situation of serious social order that is clearly documented and recognized.
To date, the most thorough and comprehensive study of this matter was conducted by two eminent researchers, Gérard Bouchard and Charles Taylor, as part of the consultation in 2008 on reasonable accommodation for cultural practices. Their conclusions (and their recent public statements) should encourage legislators to take a more measured approach. It is worth noting that with respect to the university milieu, the Commission found that a balanced approach to accommodation prevails. At McGill, we are well placed to assess that reality and are in agreement with the Commission’s observation.

The Bouchard-Taylor Commission’s consultations lasted more than a year and generated a good deal of scientific documentation. The Commission consulted thousands of Quebecers from every region, received more than 900 briefs, commissioned a dozen studies by experts from different universities, conducted surveys, revisited all the cases of accommodation that had received wide media coverage, and set up an advisory committee of 15 recognized experts from various disciplines. The Bouchard-Taylor recommendations, which are based on detailed and objective research, invite us to go beyond the anecdotal.

2. Quebec’s reputation as a welcoming society

To the best of our knowledge, no OECD countries impose restrictions on the wearing of religious symbols by university staff and students. In France, where state secularism has deep legal roots, the autonomy of universities is respected and the state does not impose any specific constraints on the wearing of religious symbols, although such symbols are banned in public schools, colleges and lycées (high schools). Quebec would therefore be the only jurisdiction in the OECD to apply such restrictions to its universities.

We do not believe the restrictions on the wearing of conspicuous religious symbols, that exist to different degrees in some European countries, are examples to be followed in a North American context. We believe, rather, that this singular position taken by Quebec, if it is maintained, would sully its reputation and harm its ability to attract and retain foreign talent. Various groups have also expressed the same opinion, notably other universities, the City of Montreal, the Conseil du patronat and the Montreal Metropolitan Board of Trade.

Quebec’s economic situation, its uniqueness in North America in terms of language, and its demographic reality impose constraints that other jurisdictions do not share. In the worldwide struggle to attract brainpower, Quebec must, without renouncing its values, project a welcoming and open image. Unfortunately, the proposal to ban the wearing of religious symbols by government employees sends the opposite signal. Based on our experience at McGill University and the testimonials we are receiving, that signal is perceived in an extremely
negative way, notably by individuals from outside Quebec, whether they practice a faith or not and whether they have already settled in Quebec or would like to do so.

3. McGill University: Our distinctive features and our principles

The Quebec government also needs to be aware of the difficulties of implementing the bill within an institution like McGill.

Founded in 1821, McGill University today welcomes more than 39,000 students. Although the majority of our students are Quebecers, about 20 per cent come from 150 different countries, making McGill the most international and diverse academic institution in its category.

McGill, which is considered among the best universities in the world, owes its reputation in large part to the excellence of its 1,700 professors, recruited from the four corners of the world, and its network of 250,000 graduates who live and work in more than 180 countries. That reputation greatly contributes to Quebec’s international outreach.

Over the years, McGill has put in place many different policies and services designed not only to respect but also promote cultural diversity, both in the recruitment of students and the hiring of professors and staff. All these measures add to the experience they have on our campuses and contribute to the enrichment of Quebec society as a whole. We are committed to promoting a climate of tolerance, respect and openness on our campuses to help all those in our community realize their potential.

The Senate and the Board of Governors of McGill University passed resolutions on Bill 60 in November 2013. The McGill Association of University Teachers and the McGill Alumni Association followed suit a few weeks later. The resolutions state that the University supports the principle of secularism and the religious neutrality of the state, but firmly opposes restrictions on the wearing of religious symbols. On September 19 and October 10, 2013, respectively, the Post-Graduate Students’ Society and the Students’ Society of McGill University also passed resolutions opposing the draft charter in its current form. Collectively, these resolutions demonstrate that the McGill community is united in its opposition to certain aspects of the bill (see Appendix).

McGill University is secular and strictly neutral in the political and religious spheres. The university unconditionally condemns proselytising and religious extremism. It practices tolerance and promotes diversity and the exercise of fundamental liberties. It is a space for free exchanges of ideas. Our professors, even those who practice a religion and wear religious symbols...
symbols, do not preach their religion, whether they teach religious studies or any other discipline. Bill 60 does not change this situation in any way.

For decades, McGill has made every effort to promote the integration of all cultures into our community. The university believes that this is what makes it especially interesting to the students and professors it attracts and retains in Quebec. Our students are our raison d’être. They are adults. They expect their university to give them access not only to courses and subject matter, but also to an environment that brings them face to face with a reality that goes beyond the experience they have had until now, and helps them to develop their judgment and critical thinking. University is the first real experience many students have of openness to the world.

The diversity McGill seeks is experienced in harmony every day. Like many large employers, including the Quebec government, the University has entrenched the right to protection from any discrimination based on religion in collective agreements for its unionized staff and in policies that apply to those who are not unionized. Policies that apply to students include the same assurance.

We have recently verified and can therefore confirm that requests for accommodation based on religious reasons are a rare occurrence at McGill, and when they do occur, they are managed appropriately. To our knowledge, there have never been any complaints from a member of our community about the wearing of a conspicuous religious symbol by a professor or employee of the University. Bill 60, in its current form, would call into question the balance we have achieved at McGill, for no valid reason.

Moreover, the bill would create an additional problem, since a large proportion of the student population would be subject to its diktat. As a major international research-intensive university, McGill hires nearly 3,500 of its students on teaching contracts in their disciplines (as lecturers or teaching assistants), to supervise examinations, work in the University libraries or bookstore, do office work that is partly subsidized by the central budget, fill research assistant positions or serve as floor monitors in the student residences. We do everything in our power to provide the most complete training possible and offer living wages so they can concentrate on their studies. Many are graduate students, and many are foreign students whose visas do not allow them to work except for at the institution they attend.

Bill 60 would directly affect these students, since as employees they would be banned from wearing of conspicuous religious symbols. This would place us in the incongruous situation where a student teaching assistant would be required to shed any conspicuous religious
symbol, while a fellow doctoral student in the same lab or seminar would be allowed to wear such symbols.

In addition, restrictions on the wearing of religious symbols would specifically affect students in the health sciences (medicine, nursing, social work, physiotherapy or occupational therapy) and in education, who are required to intern in public agencies, hospitals, CLSCs or schools.

4. The institutional autonomy of universities

We believe that the proposed application of Bill 60 to institutions of higher education stems from a poor understanding of the mission of universities and the state's role in their regard.

Universities are not – any more than their professors or employees – agents of the state. To treat them as such would be tantamount to denying the institutional autonomy universities must enjoy, itself the cornerstone of academic freedom. In the case of universities with a strong international character, like McGill, this would further harm their ability to attract and retain talent.

The institutional autonomy of a university is defined as the ability to manage its mission according to its own rules of governance, in complete freedom and without interference from any third party, including the government. Of course, the university must be accountable at the administrative level, in particular for the use it makes of public funding, but it remains free to set its own objectives and determine the resources it will mobilize to achieve those objectives. It is clear that the management of personnel and rules that apply to professors and support staff are primarily, up to the university.

The institutional autonomy of universities is also clearly recognized under international conventions and is seen as the guarantor of academic freedom. The rules are clear and well understood: governments do not dictate to universities what they should think, say, believe, defend or fight. Governments do not impose standards in this regard, as witness a number of international documents.

- The Bologna Charter, which was the subject of much discussion during the recent Summit on Higher Education, gives an eloquent description of the attributes that are needed for the university to function: “...its research and teaching must be morally and intellectually independent of all political authority and economic power.”
- The International Convention on Economic, Social and Cultural Rights, to which Quebec and Canada subscribe, stipulates that: “The States... undertake to respect the freedom indispensable for scientific research and creative activity.”

- The Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council stated in 1999 that: “...the right to education can only be enjoyed if accompanied by the academic freedom of staff and students.”

- In 1997, UNESCO adopted a series of recommendations on the status of teaching staff at institutions of higher education: “... the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education,” adding that “Access to the higher education academic profession should be based solely on appropriate academic qualifications, competence and experience and be equal for all members of society without any discrimination.”

- The Council of Ministers of Education, Canada, echoed these principles in a 2001 report signed by the Quebec government (formed at the time by the Parti québécois).

The concept of institutional autonomy was frequently evoked and documented in preparations and interventions around the Summit on Higher Education in February 2012. The Quebec government, quite rightly, set out the principle of the autonomy of the universities in the work of the Summit. This principle was again echoed in the Bissonette-Porter report on university governance and the Corbo report on the National Council of Universities.

The concept was also mentioned in the government document, “Parce que nos valeurs, on y croit,” which was released in September 2013, during the consultation on what was then called the Charter of Quebec Values. Discussing the right to opt out in certain sectors, the minister responsible for democratic institutions stated that: [Translation] “This approach would also be applicable in CEGEPs and universities. This would make it possible to respect the autonomy of these post-secondary institutions as well as to reflect the fact that some of them have departments or faculties of theology or religious studies.” The scope of Bill 60 and its application to universities flies in the face of this principle.

Bill 60 would encroach on institutional autonomy at its most fundamental level: members’ freedom of expression. If it were passed in its current form, the bill would prohibit the wearing of conspicuous religious symbols by university employees and oblige the university administration to impose sanctions if they refused to comply. The university itself would thus be forced to take action against its professors and certain students who believe, quite
correctly, that they are exercising their right to religious freedom and freedom of expression. This would be an untenable situation.

Quebec’s universities are committed to fully respecting fundamental liberties and the highest standards of freedom, diversity and inclusion. There is no justification for obliging universities to restrict the religious freedom and freedom of expression of their community members. Such an obligation would clash with the fulfillment of their mission and the essential role society has entrusted to them.
5. Conclusion

With Bill 60, the Quebec government would impose, without valid justification, measures that would deprive certain people who practice a faith of the ability to teach or work at McGill or anywhere else in the university network. Some of them, notably Muslim women and Jewish or Sikh men, would face a heart-breaking choice: to surrender their freedom of conscience and religion or give up employment at a Quebec university or public-sector organization.

The autonomy of universities ensures the quality and relevance of higher education and strengthens Quebec’s position in the ranks of free societies. Universities do not represent the state, and their employees are not members of the civil service.

McGill believes that the provisions on the wearing of religious symbols would not help the government achieve its objectives of promoting the neutrality of the state, promoting equality between women and men, and providing a clearer framework for managing requests for religious accommodation. On the contrary, the current debate demonstrates that Bill 60 in its current form, by restricting individual liberties, by harming Quebec’s reputation and by needlessly intervening in a matter than is well managed by organizations whose autonomy is recognized, would run the real risk of creating new problems.
Appendix: Resolutions on Bill 60

McGill Senate, approved November 20, 2013:
Be it resolved that while the McGill Senate supports the secular spirit of Bill 60, it strongly objects to the restrictions on the right to wear religious symbols, as described in the draft legislation, which run contrary to the University’s mission and values.

McGill Board of Governors, approved November 28, 2013:
Be it resolved that while the McGill Board of Governors supports the secular spirit of Bill 60, it strongly objects to the restrictions on the right to wear religious symbols, as described in the draft legislation, which run contrary to the University’s mission and values.

McGill Association of University Teachers, approved December 22, 2013:
Be it resolved that while the McGill Association of University Teachers supports the secular spirit of Bill 60, it strongly objects to the restrictions on the right to wear religious symbols, as described in the draft legislation, which run contrary to the University’s mission and values.

McGill Alumni Association, approved January 2, 2014
Be it resolved that while the McGill Alumni Association supports the secular spirit of Bill 60, it strongly objects to the restrictions on the right to wear religious symbols, as described in the draft legislation, which run contrary to the University’s mission and values.

Post-Graduate Students’ Society (PGSS) of McGill University, approved September 19, 2013:
Be it resolved that the PGSS oppose the Quebec government proposal to limit the wearing of conspicuous religious symbols by state personnel.

Student Society of McGill University (SSMU), approved October 10, 2013:
Whereas, the SSMU strives to “strengthen the educational, cultural, environment, political and social conditions of our membership” and is committed to “demonstrating leadership in matters of human rights, [and] social justice,”

Whereas, the proposed Quebec Charter of Values stands to compromise the educational, cultural, political, and social conditions of SSMU members,

Whereas, the proposed Quebec Charter of Values stands to compromise the “fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, [and] freedom of expression” protected by the Quebec Charter of Human Rights and Freedoms,
Whereas, as the “official voice of the undergraduate and professional students of McGill” and an organization bound to “act in the best interests of its membership as a whole,” it is appropriate that the SSMU adopt stances regarding legislation that stand to directly affect its membership, such as the Quebec Charter of Values,

Be it resolved, that the SSMU adopt a stance of opposition to the proposed Quebec Charter of Values.

Be it resolved, that the SSMU draft a letter in opposition to the proposed Quebec Charter of Values to be sent to: Premier Pauline Marois; Principal Suzanne Fortier; Media outlets including, but not limited to, La Presse, The Gazette, Le Devoir, and CBC Montreal; The SSMU membership via the SSMU listserv

Be it resolved, that an Ad-hoc Campaigns Committee of SSMU Legislative Council in opposition to the proposed Quebec Charter of Values be struck.