Opinion

Quebec's religious symbols ban is striking not for its novelty, but for its unfortunate familiarity

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Workplace discrimination, authorized or enabled by law, has been disturbingly prevalent in Canadian history

Eric Adams & Robert Leckey · for CBC News · Posted: Apr 05, 2019 4:00 AM ET | Last Updated: 5 hours ago

It may be tempting to cast Quebec's law as an aberration, but in reality, governments in Canada have a long history of obstructing equality in the places we work. (Ryan Remiorz/Canadian Press)

Outside of Quebec, the reaction to the Legault government's tabling of Bill 21, which prohibits certain public employees "from wearing religious symbols in the exercise of their functions," has been a combination of censure and bewilderment. While we agree with critics that the law is unjust and misguided, we see this law as part of a longer legacy of inequality within Canadian legal history. Indeed, rather than paving a new course, Bill 21 revives a disreputable Canadian tradition of using law to impose or tolerate workplace discrimination.

In its effort to make the state appear religiously neutral, the ban will apply to workers in positions of authority such as teachers, government lawyers, police officers, and members of tribunals such as the alcohol board. The law's burden will not fall randomly, and based on numbers alone, it appears the law will disproportionately affect female Muslim teachers who wear a hijab.

In an attempt to ease the transition — or perhaps just to soften the blow — the bill includes a grandfather clause providing some protection to existing public employees, so long as they remain in their current positions. In other words, a teacher who already wears a hijab may continue to do so, but she cannot seek promotion or relocation.

Thus, even if the government's aim is not to fire anyone, its law limits the career opportunities for visibly religious minorities already on the job – and closes whole sectors of public employment to others.

Canada's history of inequality

It may be tempting to cast Quebec's law as an aberration, but in reality, governments in Canada have a long history of obstructing equality in the places we work. Not long after British Columbia joined Confederation, it passed legislation restricting the employment of Indigenous peoples and Asian-Canadians, or simply required that only whites could be hired.

From the 1880s to the 1930s, British Columbia enacted dozens of such laws, barring access to public and private employment, professions, and government work by race. Legislation regulated diverse sectors such as mines, forestry, railways, utilities, law and pharmacy, and all manner of public works barred Asian Canadians from work. Those legislators also thought they had a compelling objective and were acting in the public interest.

Most such laws evaded orsurvived judicial scrutiny. In 1914, the Supreme Court of Canada found no constitutional flaw in Saskatchewan's law prohibiting white women from working in establishments run by Asian Canadians. The legislature had made a valid policy choice about employment, the Court held, as a matter of exclusive provincial jurisdiction.

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While most explicitly discriminatory laws disappeared from provincial statute books by the Second World War, workplace discrimination continued unabated. There was little reason for the law to require what many employers readily practiced without compulsion.

Women were routinely fired from jobs when they married or became pregnant, or they were not hired or promoted in the first place. Unwritten quotas limited opportunities for Jews in a range of professions. Across Canada, whether in the public or private sectors, individuals faced commonplace discrimination on the basis of race, religion, ethnicity, accent, disability, and sexual orientation and expression.

In 1939, the Supreme Court held that such discrimination was legal. Just as "complete freedom of commerce" meant that a Montreal bar could refuse to serve a black man because of his race, by extension, workplaces could discriminate however they pleased.

Beginning in the late 1940s, provincial laws on human rights began prohibiting onlysome forms of employment discrimination. Legislation focused first on racial discrimination, slowlyexpanding protections in the decades to follow. Prohibiting employment discrimination based on sex and disability did not gain traction until the 1970s.

Continued workplace discrimination

Quebec was actually the province to break ground on banning discrimination based on sexual orientation by adding it to its Charter of Human Rights and Freedoms in 1977. The struggle to assure full protections for sexual and gender minorities, especially trans people, continues today. Despite legal codes, systemic discrimination persists in many Canadian workplaces. It limits career opportunities, lowers salaries, and impairs minority groups' dignity and full participation in society.

Quebec's law banning religious symbols is thus striking not for its novelty, but for its unfortunate familiarity. Workplace discrimination, authorized or enabled by law, has been a disturbingly prevalent feature of Canadian history. At the same time, equality and dignity for employees in the places we work has been a value worth fighting for, perhaps especially when discrimination is backed by the power of law.

The equality within our workplaces matters in maintaining a society committed to the inherent dignity of all. Quebec is using all tools at its disposal to shield its law from the judgments of courts. There is no tool, though, for avoiding the judgment of history.

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