

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-17-

S U P E R I O R C O U R T

NATIONAL COUNCIL OF CANADIAN MUSLIMS (NCCM), having a place of business at 200 – 440 Laurier Avenue West, in the city of Ottawa, province of Ontario, K1R 7X6

- and -

MARIE-MICHELLE LACOSTE, an individual domiciled and residing at [...]

- and -

CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION, having a place of business at 90 Eglinton Avenue East no. 900, in the city of Toronto, Province of Ontario, M4P 2Y3

Plaintiffs

v.

THE ATTORNEY GENERAL OF QUÉBEC, having a place of business at 1 Notre-Dame Street East, Suite 8.01, in the city and district of Montréal, Province of Québec, H2Y 1B6

Defendant

**APPLICATION FOR JUDICIAL REVIEW (DECLARATION OF INVALIDITY)
AND APPLICATION FOR AN INTERIM STAY**
(Articles 49 and 529(1) C.C.P.)

IN SUPPORT OF THIS APPLICATION, THE PLAINTIFFS STATE AS FOLLOWS:

I. OVERVIEW

1. In Québec, freedom of religion and the right to equality are protected in the strongest terms by both Québec's *Charter of Human Rights and Freedoms*,

CQLR c C-12 (the “**Québec Charter**”), and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the “**Canadian Charter**”).

2. Freedom of religion in Québec and Canada entails the recognition that individuals are free to maintain the religious beliefs of their choosing, and to manifest these beliefs in their daily lives.
3. A corollary of this individual freedom is the principle of state neutrality, or the notion that the state must neither encourage nor discourage any form of religious conviction or practice. This principle is already recognized in Québec and Canadian law.
4. The right to equality, then, protects individuals against unequal treatment or an unequal ability to exercise their fundamental freedoms on the basis of their personal characteristics, including their sex and their religion.
5. On October 18, 2017, the National Assembly adopted *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, SQ 2017, c. 19 (the “**Act**”), a copy of which is produced as **Exhibit P-1**.
6. The Act gravely infringes the religious and equality rights of certain Muslim women in Québec.
7. While purporting to promote the goals of advancing the religious neutrality of the state and facilitating communication between public employees and private citizens, the Act actually does the opposite. It imposes a significant burden on the exercise of religious freedom, and it does so in a discriminatory manner that will isolate some Québec residents, making it much more difficult for them to participate in Québec society.
8. In so doing, the Act contravenes the principle of state neutrality that it claims to endorse.
9. Specifically, Section 10 of the Act provides that public sector employees must exercise their functions, and private citizens must receive services from public bodies, with their faces uncovered in all cases.
10. This requirement directly infringes the freedom of religion of individuals, such as Muslim women, who cover their faces as a religious practice. The Act thus precludes certain Muslim women, including Affiants in these proceedings, from receiving various public services unless they act contrary to their sincerely held religious beliefs.
11. The requirements of Section 10 also discriminate against this group of Muslim women on the grounds of both religion and gender. Non-Muslims, Muslim women

who do not cover their faces, and Muslim men need not choose between their religious observances and their right to work for or receive service from public bodies.

12. Such blatant and unjustified violations of freedom of religion, as well as of the equality guarantees of the Québec and Canadian Charters, have no place in Québec or Canada. These violations cannot be justified in Québec's free and democratic society.
13. Section 10 of the Act must therefore be declared invalid and unconstitutional. Moreover, until this Honourable Court is able to render such declarations on the merits of this case, it should stay the operation of Section 10 to prevent its application from causing significant and irreparable harm in the interim.

II. THE AFFIANTS

14. Not all Muslim women cover their faces for religious reasons. Some do not wear any religious clothing at all. Others wear the hijab, a traditional veil that covers the head and chest, in the presence of adult males outside their immediate family.
15. A small minority of Muslim women in Canada chooses to wear the niqab, a full veil that covers both the head and face but not the eyes, on the basis of their sincerely held religious beliefs.
16. The decision to wear a niqab or other face covering for religious reasons is a deeply personal choice that different individuals arrive at in different ways, and at different points in their lives. The experiences of Affiants in these proceedings are but two examples of how some Canadian Muslim women make and live with this decision.

A) *Fatima Ahmad*

17. The Affiant Fatima Ahmad was born and raised in Montréal. She is currently a second-year student at McGill University, studying elementary education. Upon graduation, Ms. Ahmad hopes to work as a teacher.
18. Ms. Ahmad grew up in a Muslim family, and her faith has always been a deeply important part of her daily life.
19. Ms. Ahmad began wearing the hijab at age 12 or 13. A little over a year ago, she was given a niqab as a gift for Ramadan. Ms. Ahmad had always admired women who wore one as a symbol of their religious devotion, and was excited to wear the niqab herself.
20. From the moment Ms. Ahmad put on her niqab, she felt as though she was more connected to God. To her, wearing the niqab is a sign of modesty and an act of

worship, and ensures that she is respected for her inner character rather than her physical appearance.

21. Ms. Ahmad now wears the niqab at all times in the presence of men. She accepts to remove the niqab very briefly for identification purposes, or if asked to do so for medical reasons. However, she otherwise feels that she would be acting contrary to her religious beliefs if she removed her niqab in public.
22. Ms. Ahmad is categorical that the decision to wear the niqab was hers alone. No women in her immediate family wear a niqab, and her parents were actually initially opposed to her decision to do so, out of a concern that it would draw negative reactions from other people and would affect her safety.
23. Indeed, although Ms. Ahmad had not experienced intolerance during the years she wore a hijab, within a year of beginning to wear the niqab she has been the target of Islamophobic harassment and insults.
24. However, until the adoption of the Act, wearing the niqab had not otherwise affected Ms. Ahmad's everyday life. She attended class at McGill University, went shopping, visited friends, and went to mosque. She was generally socially active. She did not experience any difficulty communicating with others while wearing the niqab.
25. Since the passage of the Act, Ms. Ahmad's daily life has become significantly more difficult. She is concerned that the Act will impact her ability to continue going to university, visiting the library, going to the doctor, and taking public transportation. In fact, Ms. Ahmad now avoids taking public transportation for fear of being turned away or asked to remove her niqab, instead relying on her father to drive her around.
26. Ms. Ahmad has also experienced an increase in the number of Islamophobic and aggressive remarks she hears on the street. She has become uncomfortable being outside of her home alone, so she now often avoids leaving her house except to go to class. She also recently obtained a cell phone for the first time in her life, so that she is able to contact her family in case of emergencies.
27. Although Ms. Ahmad still continues to attend her classes at McGill while wearing the niqab, she feels she is able to do so only because the university has stated it will not apply the Act. If the university had not issued such a statement, or if it were to change its position, Ms. Ahmad would have had to reconsider her decision to continue going to class.
28. Ms. Ahmad is also concerned that even if she can continue her education, she will be forced to leave Québec after graduation since the application of the Act now bars her from working in her chosen profession within the province.

B) Marie-Michelle Lacoste

29. The Affiant and Plaintiff Marie-Michelle Lacoste was born and raised in Montréal. She converted to Islam in 2003.
30. Acting in accordance with her sincerely held religious beliefs, Ms. Lacoste has worn a hijab since 2005. In 2011, she began to wear the niqab, out of a sincerely held belief that this was an appropriate and authentic expression of her religious convictions.
31. Ms. Lacoste believes that wearing the niqab brings her closer to God, protects her modesty, and safeguards her dignity. She wears the niqab at all times outside of her home, or in the presence of men other than her husband.
32. Ms. Lacoste maintains that she alone made the decision to wear the niqab as a declaration of her religious belief. She made this decision despite protestations from her husband and other members of her family who are concerned that her decision to do so puts her safety at risk from individuals who are intolerant of Islam.
33. Ms. Lacoste does not have any issue communicating with others while wearing her niqab, whether that is with public service personnel or with any other person she encounters in her daily life.
34. Ms. Lacoste is willing to remove her niqab briefly to identify herself where identification is required, and would remove the niqab briefly for security purposes if the need arose.
35. However, she feels that having to unveil for longer than is absolutely necessary undermines her ability to act in accordance with her religious beliefs, particularly if she is in the presence of men other than her husband. If she were forced to remove the niqab for longer than absolutely necessary for identification or security purposes, she would be humiliated and would feel as though her dignity as a religious individual was being attacked.
36. Since the adoption of the Act, Ms. Lacoste has been very concerned about what will happen if she needs to seek out any sort of public service – for instance, if she needs to visit a doctor. Ms. Lacoste has also experienced an increase in harassment and insults when she leaves her home.

III. THE PUBLIC INTEREST PLAINTIFFS

A) National Council of Canadian Muslims

37. The Plaintiff National Council of Canadian Muslims (“**NCCM**”) is a federally incorporated independent, non-partisan, non-profit organization dedicated to protecting the human rights and civil liberties of Canadian Muslims, and by extension, all Canadians.

38. The NCCM engages in professional activism and develops anti-discrimination, community education and outreach, media relations and public advocacy initiatives with the aim of representing the public interests of a broad and diverse range of Canadian Muslims.
39. The NCCM has a robust track record spanning 17 years of advising and advocating on behalf of Canadian Muslims and others who have experienced human rights and civil liberties violations. In particular, as detailed in the Affidavit of Ihsaan Gardee, the NCCM has provided individual Canadian Muslims across Canada with support before the courts and government institutions.
40. The NCCM has intervened before various levels of court on issues relating to fundamental rights and civil liberties, particularly insofar as they affect the Canadian Muslim community. The NCCM has appeared frequently before the Supreme Court of Canada, most recently in *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, a human rights case concerning the interpretation of the Québec Charter.
41. The NCCM is also active before Parliament and provincial legislatures. In Québec, in 2010 and 2013, the NCCM submitted briefs to the National Assembly pertaining to proposed legislation that would limit individuals from wearing religious clothing or symbols in certain contexts.
42. The NCCM has long been intimately involved in ensuring that state action respects the human rights guarantees enshrined in the constitution and in provincial human rights legislation.
43. Given the immediate and significant impact of the Act on Québec Muslims, and the ricochet effect the Act may have on the broader Canadian Muslim community, the NCCM has a direct interest in ensuring that the Government of Québec respects the human rights and fundamental freedoms of members of this community.
44. As a result of its national reach and extensive experience with human rights matters, the NCCM has the expertise and required resources to move this constitutional claim forward. The NCCM's longstanding involvement with the Québec and Canadian Muslim community will furthermore enable it to bring a broader, national perspective to this litigation.

B) Canadian Civil Liberties Association

45. The Plaintiff Canadian Civil Liberties Association ("**CCLA**") is a national non-profit, nonpartisan, nongovernmental organization dedicated to the furtherance of human rights and civil liberties in Canada. It was constituted both to promote respect for and observance of fundamental rights and freedoms, and to foster their recognition and vindication.

46. The CCLA has extensive experience advising government bodies, both in the legislative and policymaking context, on issues relating to religious freedoms and equality rights.
47. In particular, in 2013 the CCLA appeared before the National Assembly to make submissions on Bill 60, or the *Charter affirming the values of State secularism and religious neutrality and of equality between women and men*. In 2016, the CCLA equally made submissions to the National Assembly on Bill 62, the draft form of the Act.
48. The CCLA is also actively involved in litigation concerning the vindication or protection of fundamental rights and freedoms, including the freedom of religion and the right to equality.
49. As set out in greater detail in the accompanying affidavit of Noa Mendelsohn Aviv, the CCLA has intervened before all levels of court in different provinces to present oral and written argument on a range of issues relating to civil liberties, human rights, and democratic freedoms. Its contribution to the development of the law in relation to these issues has been acknowledged explicitly by the courts.
50. The CCLA has frequently intervened before the Supreme Court of Canada to make submissions on the question of how to reconcile religious freedoms with other state imperatives. Most recently, it intervened on these questions in *Loyola High School v. Québec (Attorney General)*, 2015 SCC 12 and *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, both cases involving an assessment of religious freedoms under both the Québec and Canadian Charters.
51. The CCLA also intervened in *R. v. N.S.*, 2012 SCC 72, the case in which the Supreme Court evaluated how to appropriately reconcile a religious woman's right to wear a niqab while testifying in court with the fundamental rights of an accused individual.
52. The CCLA has been involved in human rights and civil liberties litigation as a party on multiple occasions. It was granted party standing to litigate questions relating to freedom of religion in *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA).
53. The CCLA's mandate as a public interest organization devoted to the protection of civil liberties, its resources and institutional capacity, and its past experience acting as a plaintiff in Charter claims all make it well-placed to advance the present litigation both on behalf of the individuals affected by the Act, and in the interest of safeguarding fundamental rights and freedoms more broadly across Canada.

IV. THE FACTS

A) Legislative background

54. On June 10, 2015, the Government of Québec (the “**Government**”) introduced Bill 62, *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies* (“**Bill 62**” or the “**Bill**”), as appears from a copy of the Bill, **Exhibit P-2**.
55. Bill 62 required that people who work for provincial public bodies exercise their functions with their faces uncovered (unless a covering was necessary because of working conditions or occupational or task-related requirements). The Bill also obliged persons receiving services from public institutions to have their faces uncovered.
56. At the time Bill 62 was introduced, the Minister of Justice, Stéphanie Vallée (the “**Minister**”), stated publicly that the Bill was *not* about clothing or legislating the way people dress, as appears from a news story published by the Montreal Gazette in June 2015 and produced as **Exhibit P-3**.
57. Consultations on the Bill took place in October and November of 2016. A variety of civil society groups and public organizations expressed concern that Bill 62 could infringe civil liberties, particularly for those Muslim women who cover their faces with a niqab.
58. On or about August 15, 2017, the Government tabled a series of amendments to Bill 62 (the “**Amendments**”). A copy of these Amendments is produced as **Exhibit P-4**.
59. The Amendments included the addition of provisions stipulating that the Bill would apply to municipalities, metropolitan communities, and public transit authorities, among other public bodies. The Amendments broadened the application of the Bill, which had initially been restricted to provincial public sector services.

B) Passage of the Act and ensuing public confusion

60. Final debate on Bill 62 was held in mid-October 2017, and it received assent on October 18, 2017.
61. The requirement of having one’s face uncovered when providing or receiving public services is found at Section 10 of the Act:

<p>10. Personnel members of a body must exercise their functions with their face uncovered.</p>	<p>10. <i>Un membre du personnel d’un organisme doit exercer ses fonctions à visage découvert.</i></p>
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Similarly, persons who request a service from a personnel member of a body referred to in this chapter must have their face uncovered when the service is provided.

De même, une personne qui se présente pour recevoir un service par un membre du personnel d'un organisme visé au présent chapitre doit avoir le visage découvert lors de la prestation du service.

62. The requirements of Section 10 apply to the entities listed in ss. 2, 8, and 9 of the Act, including (but not limited to):
- Government departments;
 - Municipalities, metropolitan communities, intermunicipal boards and municipal housing bureaus;
 - Public transit authorities;
 - Most health services institutions, which would cover health services employees such as doctors, nurses and midwives;
 - Childcare centres and subsidized day cares;
 - Public schools and school board commissioners;
 - Private and international schools which receive public funding;
 - Universities; and
 - Elected officials.
63. At s. 11, the Act envisions the possibility of individuals seeking accommodation from its application in accordance with s. 10 of the Québec Charter. However, this provision regarding accommodation is not yet in effect, because s. 22 of the Act permits s. 11 to come into force at a later date.
64. Moreover, no guidelines for dealing with requests for accommodation on religious grounds have as yet been adopted, despite the Minister's obligation to do so under s. 12 of the Act.
65. Thus, for the time being, there is no framework in place for dealing with requests for accommodation under s. 10 of the Québec Charter from the obligations imposed by Section 10 of the Act.
66. The adoption of the Act spurred an immediate public outcry. As appears from media reports and opinion pieces produced *en liasse* as **Exhibit P-5**, the requirement in Section 10 that public services be provided and received with an uncovered face was criticized as discriminating against those Muslim women who wear the niqab.
67. The adoption of the Act has also caused significant confusion within public bodies, particularly municipalities, over how the Act is to be interpreted and applied, as appears from the articles that form part of Exhibit P-5.

68. In light of this confusion, the Minister stated that she would release guidelines for how the Act should be applied, the whole as appears from an article published by the CBC and produced as **Exhibit P-6**. On October 24, 2017, the Minister released these "*Principes d'application*", or Guidelines for Application (the "**Guidelines**"), a copy of which is produced as **Exhibit P-7**.
69. These Guidelines were not adopted by the National Assembly and were not passed pursuant to s. 12 of the Act, nor are they available in English, so they have no binding legal force.
70. Since publishing the Guidelines, the Minister has made public statements that have further exacerbated the existing confusion as to the interpretation and application of the Act.
71. For instance, the Act requires individuals accessing public transport to uncover their faces. However, the Act does not offer precision as to what consequences follow from a failure to conform to this obligation. The Minister took it upon herself to go beyond the Act and suggest that transit workers would be empowered to refuse transportation to veiled women, as appears from news articles produced *en liasse* as **Exhibit P-8**.
72. The Minister's comments rang out as a dire warning to Muslim women who cover their faces for religious reasons to not even attempt to ride public transportation, as she stated, "If you don't get on, you won't get kicked off" (see Exhibit P-8, above).

III. SECTION 10 OF THE ACT IS INVALID

73. Section 10 of the Act violates the guarantees of freedom of religion and the right to equality enshrined in both the Québec Charter and the Canadian Charter. The infringements of these rights and freedoms cannot be justified in a free and democratic society.
74. In consequence, this Honourable Court must declare Section 10 of the Act inoperative and invalid.

A) Freedom of religion under the Québec Charter and the Canadian Charter

75. Section 3 of the Québec Charter and s. 2(a) of the Canadian Charter both protect individuals' freedom of religion, which includes their right to behave according to their sincerely held religious beliefs. However an individual comes to hold such beliefs, respect for the deeply personal decision to act in accordance with them is a hallmark of the tolerant, open, multicultural society promoted by both Charters.
76. Pursuant to the Act, Muslim women who wear a face-covering veil such as the niqab for religious reasons will be required to remove that covering if they wish to

work for a public organization subject to Section 10 or if they seek services from any such organization.

77. Given the widespread nature of the public service in Québec, it is difficult to imagine a situation where a Muslim woman who wears a face covering for religious reasons would *not* be required to remove it on a regular basis. Such women would even be precluded from running for office, as the Act applies to elected officials.
78. By compelling these religious women to conform to the practices of the majority at the risk of being denied access to a wide range of employment opportunities and public services, including health services, the Act imposes a substantial burden on their ability to behave in accordance with their religious beliefs. In essence, it forces them to make a false and improper “choice” between adhering to their beliefs and having the basic freedom to work, participate meaningfully in society, and make any number of decisions or take any number of normal actions in the course of their everyday lives.
79. In so doing, the Act infringes these individuals’ freedom of religion under both s. 3 of the Québec Charter and s. 2(a) of the Canadian Charter, which both protect not only the right of individuals to hold certain religious convictions, but equally their right to manifest these beliefs by, for instance, covering their faces.

B) Equality under the Québec Charter

80. According to s. 10 of the Québec Charter, every person has a right to full and equal recognition and exercise of his or her rights and freedoms, without distinction or exclusion based on the individual’s sex or religious beliefs.
81. Yet Section 10 of the Act singles out individuals who cover their faces in accordance with their religious convictions. Once again, in practice, the victims of this discrimination will principally be a small group of Muslim women.
82. Targeting these Muslim women in this manner creates public spaces that are hostile to them as a group. Section 10 impedes these Muslim women’s participation in public life, and blatantly restricts their ability to exercise their freedom of religion. It furthermore impacts their ability to exercise their other protected rights, including freedom of expression and their liberty to make everyday life choices.
83. As a result, these Muslim women are the object of differential treatment under the Act, as compared to men or women who do not cover their faces for religious reasons. Section 10 of the Act thus unequally infringes these women’s rights as a result of their sex and their religious beliefs. In so doing, it infringes s. 10 of the Québec Charter.

84. Moreover, to the extent the application of Section 10 of the Act will preclude these Muslim women from accessing public transportation, this discriminatory effect is also contrary to s. 15 of the Québec Charter.

C) Equality under the Canadian Charter

85. Section 15(1) of the Canadian Charter guarantees a freestanding right to equality before and under the law and to equal protection and benefit of the law without discrimination. By subjecting women who wear a face covering for religious reasons to a disproportionate burden for accessing social services relative to the rest of the Québec population, Section 10 of the Act contravenes this guarantee.
86. The violation of s. 15(1) of the Canadian Charter is twofold, insofar as in practice Section 10 of the Act creates discriminatory distinctions on the basis of both religion and sex.
87. Women have historically faced significant disadvantages as compared to men when it comes to obtaining education, employment, and a variety of social services including health services. Section 10 perpetuates and exacerbates these disadvantages by erecting barriers to access to all of these services and opportunities, in the form of the requirement that certain Muslim women choose between their freedom to act according to their sincerely held religious beliefs, or being fully participating members of Québec society. Muslim men face no such choice.
88. Specifically, Section 10 imposes significant costs on these Muslim women's autonomy and social participation, including their ability to make use of public health services, obtain an education, and even access public transit.
89. Moreover, it significantly limits employment opportunities for these Muslim women. Women who cover their faces for religious reasons are essentially barred from working for any public body in Québec, despite the fact that public sector employment makes up a considerable proportion of the jobs available within the province.
90. Finally, Muslim women who wear a veil for religious reasons, and particularly women who wear the niqab, are already the subject of harassment, xenophobic remarks and violent acts that are directed at their religious conduct.
91. The effective singling out of certain Muslim women by the Act exacerbates existing negative sentiment toward this group (as well as to Muslims generally), socially isolates them, and augments the risk of harassment and violence that they already face.
92. In short, Section 10 of the Act perpetuates and exacerbates historical disadvantages and harms the dignity and security of Muslim women who choose

to cover their faces for religious reasons, contrary to the equality guarantee of s. 15(1) of the Canadian Charter.

D) The infringements of the Québec and Canadian Charters cannot be justified

93. Under both the Québec and Canadian Charters, the government may limit the exercise of fundamental rights and freedoms, but must justify any such limit as being necessary and proportionate to a valid purpose that the limit seeks to achieve.
94. The purpose of the Act, as stated in its preamble, is to promote the religious neutrality of the state. While this in and of itself might be considered a pressing and substantial purpose, Section 10 of the Act actually undermines that purpose by creating a state preference for some religious practices over others, contrary to the Supreme Court's explanation of the meaning of state neutrality in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16. It consequently lacks a rational connection to this stated objective of the Act.
95. In any event, there is no evidence, and no indication in the Act, that any problem with the religious neutrality of the state currently exists in Québec, i.e. that government officials or employees are acting in a way that favours one religion over another. It is in fact Section 10 that *creates* the problem by obliging public institutions to behave in a non-neutral way toward certain followers of one particular faith.
96. Meanwhile, to the extent that a secondary purpose of the Act is to promote communication, identification, and security, the manner in which the Government is seeking to achieve these aims is still not compliant with the Québec or Canadian Charters.
97. First, the vague and ill-defined objective of "promoting communication" is not in itself a pressing and substantial purpose, and certainly not one that may justify infringements of religious freedom and equality rights of the magnitude caused by Section 10 of the Act.
98. Additionally, as appears from the affidavits filed in support of this motion, no rational connection exists between this objective and the obligations imposed by Section 10. Even if this Court recognizes that promoting communication is a valid objective in the abstract, there is no evidence that it is difficult for women who cover their faces for religious reasons to communicate with others.
99. Similarly, while the goals of security and identification are valid objectives in the abstract, many interactions an individual has with a government employee will not engage these concerns. The requirement of having one's face uncovered when receiving *any* public service thus impairs religious and equality rights far more than minimally in attempting to realize these aims.

100. In many instances, the obligation to uncover one's face has nothing to do with the above-stated objective of the Act, which applies regardless of the circumstances.
101. For instance, as a result of the Act, women who cover their faces for religious reasons are now barred from holding any public sector jobs, even if they are not required to interact with others in the course of their work, or if that work raises no security issues. Nor can these women attend classes at educational institutions, even if they do not need to identify themselves and there are no security concerns relating to their presence.
102. It is certainly possible to achieve the identification- and security-related objectives of the Act in a host of other ways that would not require this group of Muslim women to choose between conducting themselves in accordance with their religious beliefs, and having the freedom to use a range of government services or access a wide array of public sector employment opportunities.
103. Finally, the deleterious effects of the widespread restriction imposed by Section 10 of the Act will significantly outweigh any salutary impact it may have.
104. Forcing a minority of Muslim women in Québec to choose between manifesting their religious beliefs and accessing employment or basic social services is, of course, inherently harmful. Beyond this intrinsic harm, the singling out of Muslim women that results from an application of Section 10 stigmatizes and demeans these individuals and has a significant negative psychological impact on them.
105. Moreover, given the number of services provided by provincial and municipal actors in Québec, Section 10 also isolates these Muslim women and significantly restricts their ability to participate in Québec society. In some cases – such as when Muslim women who cover their faces for religious reasons seek health-related public services – that restriction can have a serious effect on their other fundamental rights, including their right to security of the person.
106. In contrast, it is not clear what if any salutary effects flow from Section 10, as the Government has not actually pointed to any problems in Québec relating to identification, security, or communication that would be mitigated by this legislation.

IV. STAY OF ENFORCEMENT PENDING A DETERMINATION OF VALIDITY

107. The case at bar presents an exceptional situation where the application of a clearly discriminatory law must be stayed pending a judicial determination on the merits. This is also a case where the question of a stay must be dealt with urgently, as the risk of irreparable harm rises with every day that passes.
108. Per *RJR–MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, a court may stay the application of a law pending review of its validity if (a) there is

a serious issue to be tried; (b) irreparable harm will occur if the stay is not granted; and (c) the balance of (in)convenience favours granting the stay. All three criteria are met in the present case.

109. The broad scope of Section 10 of the Act, the significance of its effects on individuals' fundamental freedoms, the stigma and harm it does to the dignity of many Muslims, the confusion relating to its interpretation, and the complete lack of evidence that Section 10 addresses any real or pressing problem all point to the necessity of staying its operation pending a resolution of this case on the merits.

A) The Application for an Interim Stay must be determined urgently

110. Section 10 of the Act has immediate effect. This means that as of this moment, any Muslim women who cover their faces for religious reasons in Québec will experience violations of their religious freedom and equality rights if they seek a public service.
111. Moreover, these women are now effectively barred from public employment within the province. It is not clear what will happen to any women who wear face coverings for religious reasons who are currently employed by any public organization subject to the obligations set out in Section 10.
112. The magnitude of the further irreparable harm caused by Section 10 is set out in greater detail below. The potential for its immediate manifestation speaks palpably to the need to swiftly resolve the question of Section 10's application for the time it takes for this Court to rule on its validity.

B) There is a serious issue to be tried

113. The present challenge to the validity and constitutionality of legislation raises a serious issue, such that the first requirement for a stay is clearly satisfied by these proceedings.
114. At the very least, the right to cover one's face as a form of religious practice has already been recognized by the Supreme Court as attracting the protection of s. 2(a) of the Canadian Charter. These proceedings further clearly allege significant violations of the equality guarantees of the Québec and Canadian Charters.
115. Additionally, a serious issue exists where a determination of the validity of impugned legislation will turn on whether the state can justify an infringement of fundamental rights. This will necessarily be a highly factual question, and it is precisely where the debate under both Charters will occur in the present case.

C) Irreparable harm will result if Section 10 of the Act is not stayed

116. The application of Section 10 of the Act will cause serious and irreparable harm to those Muslim women who cover their faces for religious reasons.

117. Interference with individuals' freedom of religion is in itself considered an irreparable prejudice, even in the abstract. Yet above and beyond this intrinsic harm, the application of Section 10 to a subset of the Québec population has or will have significantly harmful repercussions for these individuals.
118. First, Section 10 makes Muslim women who cover their faces for religious reasons immediately ineligible for all public sector jobs, including those that do not involve any security considerations or require communicating with members of the public.
119. Unless these women act contrary to their sincerely held religious beliefs, they are currently barred from working anywhere in Québec's public sector. They cannot even run for elected office, since Section 10 applies to elected officials.
120. Furthermore, applied to individuals who receive government services, the effect of Section 10 is widespread. Section 10 forces women who cover their faces for religious reasons to choose between either acting in accordance with their beliefs, or using public transit, obtaining medical services, receiving social assistance, going to libraries, taking children to or picking them up from day cares and nurseries, and seeking services from any provincial or municipal agency, among other public services they might need to access.
121. Section 10 of the Act will also disrupt the education of niqab wearing Muslim women who are currently attending any educational institution in Québec, and will prevent others from beginning their studies.
122. As appears from an article published in the Globe and Mail on October 28, 2017 and produced as **Exhibit P-9**, as well as from the Affidavit of Fatima Ahmad, there is a real risk that Section 10 will force women who cover their faces to choose between staying home, or uncovering their faces for the duration of a class.
123. Affected Muslim women who "choose" to forego public benefits in order to adhere to their religious beliefs will lose those benefits forever. Not being able to take the bus or access medical services for the time it will take to decide this case on the merits (which could realistically take years) is clearly not compensated by regaining those rights after final judgment is rendered.
124. Refusing these Muslim women the right to equally access public benefits now is a prejudice that will not be remedied by anything this Court awards years in the future.
125. Finally, as appears from the affidavits filed in support of this motion, women who cover their faces have experienced an upswing in harassment, derogatory remarks, and threats since the passage of the Act. The continued operation of Section 10 of the Act in particular has emboldened those who may already harbour anti-Muslim feelings to act on this sentiment.

126. As a result, Muslim women who cover their faces for religious reasons are seriously concerned about their ability to function on a day-to-day basis, obtain the most basic services from the province or its municipalities, and live in dignity and security for as long as Section 10 of the Act is in force.
127. Far from facilitating communication and social cohesion, permitting Section 10 to remain operational pending review of its validity under the Québec and Canadian Charters will isolate some Muslim women and prevent them from participating in Québec society in myriad ways.
128. The harm caused to women who cover their faces for religious reasons is serious, not compensable by damages, and therefore irreparable.

D) The balance of convenience favours granting a stay

129. In the present case, the Government has not actually pointed to the existence of any problem related to security, identification, or communication that Section 10 of the Act is intended to address.
130. There is therefore no suggestion that any benefit will flow from an application of Section 10, besides the assumed benefit of operationalizing duly enacted legislation. That assumed benefit is not a trump card preventing a stay of legislation under any circumstances, and particularly not where the irreparable harm that results from the legislation is as unmistakable as in this case.
131. The only way to ensure that Section 10 of the Act does not inflict significant, widespread, and irreparable harm for the lengthy period of time during which its legality will be debated in the courts is to suspend its application. This would simply amount to maintaining a *status quo* that has existed for years, and under which the principle of state neutrality in Québec is already recognized.
132. Moreover, doing so would have the effect of safeguarding affected Muslim women's freedom of religion and right to equality under the Québec and Canadian Charters, an outcome that in itself serves the public interest.
133. In these circumstances, the balance of convenience exceptionally but clearly favours this Court granting the present Application to stay the operation of Section 10 of the Act pending a resolution of this case on the merits.

WHEREFORE, MAY IT PLEASE THE COURT TO:

- I. **GRANT** the present Application;

On the stay motion:

- II. **STAY** the operation of Section 10 of the *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, SQ 2017, c. 19, pending a final determination on the merits of the Application for Judicial Review, and notwithstanding appeal;

On the merits:

- III. **DECLARE** Section 10 of *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, SQ 2017, c. 19, invalid and inoperative pursuant to s. 52 of the *Charter of Human Rights and Freedoms*, CQLR c C-12;
- IV. **DECLARE** Section 10 of *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies*, SQ 2017, c. 19, invalid and inoperative pursuant to s. 52 the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;

THE WHOLE with costs.

MONTREAL, this 3rd of November, 2017

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(NCCM)

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CORPORATION OF THE CANADIAN CIVIL

LIBERTIES ASSOCIATION

Our file: 4755-1

BI0080

SUMMONS

(Articles 145 and following C.C.P.)

Filing of a Judicial Application

Take notice that the Plaintiffs have filed this Application for Judicial Review (Declaration of Invalidity) in the office of the Superior Court of Québec in the judicial district of Montréal.

Respondent's Answer

You must answer the application in writing, personally or through a lawyer, at the Montréal Courthouse situated at 1 Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Petitioner's lawyer or, if the Petitioner is not represented, to the Petitioner.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Judicial Review (Declaration of Invalidity) and Application for an Interim Stay, the Plaintiffs intends to use the following exhibits:

Exhibit	Title	Tab
Exhibit P-1:	<i>An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies, SQ 2017, c. 19</i>	A
	<i>Loi favorisant le respect de la neutralité religieuse de l'État et visant notamment à encadrer les demandes d'accommodements pour un motif religieux dans certains organismes, LQ 2017, c 19</i>	B
Exhibit P-2 :	<i>Bill 62, An Act to foster adherence to State religious</i>	A

neutrality and, in particular, to provide a framework for religious accommodation requests in certain bodies

Projet de loi no. 62, *Loi favorisant le respect de la neutralité religieuse de l'État et visant notamment à encadrer les demandes d'accommodements religieux dans certains organismes* B

Exhibit P-3 : "Proposed legislation would ban niqabs, burkas in Québec's public sector", Montreal Gazette, 10 June 2015

Exhibit P-4 : English version of amendments to Bill 62 A

French version of amendments to Bill 62 B

Exhibit P-5 : "Denis Coderre dénonce l'adoption de la Loi sur la neutralité religieuse", La Presse, 18 October 2017 A

"With Bill 62, Quebec attacks religious freedom" - The Globe and Mail, 18 October 2017 B

"La loi sur la neutralité religieuse serait discriminatoire de manière indirecte", Le Devoir, 24 October 2017 C

"Le projet de loi 62 sur la neutralité de l'État est adopté", Le Devoir, 18 October 2017 D

"Les sociétés de transport de Montréal et de Laval n'appliqueront pas", Radio-Canada.ca, 19 October 2017 E

"Loi 62 sur la neutralité religieuse : l'UMQ et Montréal ne l'appliqueront pas", La Presse, 21 October 2017 F

"Loi 62 : Trudeau ouvre la porte à une contestation judiciaire", La Presse, 20 October 2017 G

"L'UMQ et Montréal n'appliqueront pas la loi sur la neutralité religieuse", Radio-Canada, 21 October 2017 H

"Nouvelle manifestation contre la loi 62 sur la neutralité religieuse", Radio-Canada, 22 October 2017 I

- “Quebec bus drivers seek clarity on law that prohibits passengers from covering faces”, CBC News, 18 October 2017 J
- Exhibit P-6 :** “Quebec justice minister defends new face-covering law, to release guidelines this week”, CBC News, 22 October 2017
- Exhibit P-7 :** *Principes d'application - Loi favorisant le respect de la neutralité religieuse de l'État et visant notamment à encadrer les demandes d'accommodements pour un motif religieux dans certains organismes*
- Exhibit P-8 :** “Quebec minister says ‘person’s choice’ to hide face – but you can be refused services”, Global News, 24 October 2017 A
- “You can ride the bus with a face covering, Quebec justice minister insists”, Montreal Gazette, 24 October 2017 B
- Exhibit P-9 :** “Women in Quebec who wear niqab speak out against Bill 62”, The Globe and Mail, 28 October 2017

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

MONTREAL, this 3rd of November, 2017

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CORPORATION OF THE CANADIAN CIVIL

LIBERTIES ASSOCIATION

Our file: 4755-1

BI0080

NOTICE OF PRESENTATION
(Article 101 C.C.P.)

To : **ATTORNEY GENERAL OF QUÉBEC**
Bernard, Roy (Justice Québec)
1 Notre-Dame Street East
Suite 8.00
Montréal, Québec H2Y 1B6

TAKE NOTICE that the Application for an Interim Stay will be presented for adjudication before one of the Honourable Judges of the Superior Court of Québec, sitting in chambers in and for the District of Montréal, on **November 15, 2017, at 9:00 a.m.**, or so soon thereafter as counsel may be heard, in **Room 2.13** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec.

GOVERN YOURSELF ACCORDINGLY.

MONTREAL, this 3rd of November, 2017

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CORPORATION OF THE CANADIAN CIVIL

LIBERTIES ASSOCIATION

Our file: 4755-1

BI0080

NOTICE OF PRESENTATION
(Article 530 C.C.P.)

To : **ATTORNEY GENERAL OF QUÉBEC**
Bernard, Roy (Justice Québec)
1 Notre-Dame Street East
Suite 8.00
Montréal, Québec H2Y 1B6

TAKE NOTICE that the Application for Judicial Review (Declaration of Invalidity) will be presented for adjudication before one of the Honourable Judges of the Superior Court of Québec, sitting in practice division in and for the District of Montréal, on **November 22, 2017, at 9:00 a.m.**, or so soon thereafter as counsel may be heard, in **Room 2.16** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec.

GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, this 3rd of November, 2017

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