

Will Quebec's Charter of Values Withstand Constitutional Scrutiny?

Introduction

Following up on a campaign promise, the Parti Québécois (“PQ”) will be tabling a Bill (commonly referred to as the “Charter of Values”) in the National Assembly this fall. The Charter of Values has attracted significant media attention, prompted public outcry, and gathered ardent supporters. Critics have suggested that the Charter of Values violates constitutionally protected freedoms, and is a last ditch attempt by the PQ Government to reignite the separatist debate. Proponents of the Charter of Values applaud the PQ for its unwavering commitment to secularism, gender equality, and the protection of Québécois identity. The PQ Government has Quebecers’ and, more generally, Canadians’ undivided attention as it prepares to introduce the unprecedented piece of legislation.

To contextualize the controversial Charter of Values, this article is divided into three sections. First, an overview of the proposed Charter of Values is provided. Second, the PQ’s motivation for introducing the Charter of Values is explored with particular reference to the principle of reasonable accommodation, the Bouchard-Taylor Report, and secularism. Finally, the article concludes with a brief examination of the main criticisms levelled against the Charter of Values, and the PQ’s response to these criticisms.

Charter of Values

On September 10, 2013, Bernard Drainville, Quebec’s Minister of Democratic Institutions and Active Citizenship, held a news conference in Quebec City to unveil the details of the PQ’s proposed Charter of Values.^[1] While the Charter of Values has attracted significant media attention, it still has a long way to go before becoming law. Minister Drainville will be tabling the Bill in the National Assembly in the fall of 2013.^[2] Below is a breakdown of what the proposed Charter of Values bans and allows, and, also, a list of the people who will be bound by it provided it becomes law.

What does the Charter of Values ban?

The most controversial aspect of the Charter of Values bans Government employees from wearing “overt and conspicuous” religious symbols.^[3] Examples of overt and conspicuous religious symbols include burqas,^[4] hijabs,^[5] niqabs,^[6] kippas,^[7] turbans, and large crosses.^[8] Less ostentatious religious symbols, such as jewellery featuring the Star of David and small crosses, will be allowed.^[9] Aside from the most obvious examples listed above, what constitutes a prohibited religious symbol is left largely undefined. Minister Drainville

has insisted that there will not be a “religion police” patrolling and deciding whether, for example, a cross is too big or a scarf is a religious symbol as opposed to a fashion accessory. Minister Drainville has stated that common sense will resolve future disagreements.[\[10\]](#)

What does the Charter of Values allow?

The crucifix hanging above the Speaker’s Chair in the National Assembly will not be removed, nor will the large cross on top of Montreal’s Mount Royal. The many buildings and streets with religious names will not be changed. Christmas trees in public and semi-public institutions will still be permitted, and the opening prayers at municipal council meetings will continue.[\[11\]](#) During the news conference, Minister Drainville was asked whether elected officials and courtroom witnesses would still be required to swear an oath on the Bible. Reports suggest that the Minister was caught off-guard, and he stated that he would have to “get back” to the reporter on that point.[\[12\]](#) Minister Drainville defended the PQ’s position by stating that certain religious symbols and activities will be permitted because they represent Quebec’s history and heritage.[\[13\]](#)

Who is bound by the Charter of Values?

The Charter of Values applies to Government employees. Broadly, this includes all people working in a public or semi-public institution. For instance, judges, prosecutors, police officers, public healthcare workers, social services employees, daycare workers, elementary and high school staff, and CEGEPs[\[14\]](#) and university school board personnel are all directly implicated by the Charter of Values.[\[15\]](#) The Charter of Values would not apply to elected officials because, as Minister Drainville stated, people have the right to choose who they elect.[\[16\]](#) This gives rise to a potentially awkward situation where an elected official could wear, for example, a turban, but demand that his employees remove their religious symbols.[\[17\]](#)

The Charter of Values does, however, have an opt-out provision for some institutions, such as municipalities, CEGEPs, and universities.[\[18\]](#) For these institutions, the board of directors, in the case of CEGEPs and universities, and the municipal council, in the case of municipalities, have the option to pass a resolution allowing their employees to wear religious symbols.[\[19\]](#) Other institutions, such as daycare facilities, will not be permitted to opt-out.[\[20\]](#) Certain provisions, such as the one stating that anyone providing or receiving state assistance must have their face uncovered, are absolute, which means that people cannot opt-out of them.[\[21\]](#)

Why Did the Parti Quebecois Introduce the Charter of Values?

What is reasonable accommodation?

Reasonable accommodation is a legal principle that allows certain rules or norms to be altered for specific individuals or groups whose unique characteristics may limit their full participation in society.[\[22\]](#) Originally, reasonable accommodation only applied to

employment situations.^[23] Reasonable accommodation in the employment context, for example, means that if an employee's religious day of rest requires that the employee take time off, the employer has a duty to accommodate this request, provided it does not cause the employer undue hardship.^[24] However, as the principle of reasonable accommodation gained public attention, combined with several influential Supreme Court of Canada decisions, the concept of reasonable accommodation expanded to include many more situations.

In 2006, for example, the Supreme Court of Canada was asked to consider whether a Quebec school was required to accommodate a student, Gurbaj Singh Multani, who wished to wear a kirpan to school. ^[25] Multani, an Orthodox Sikh, believed his religion required him to wear a kirpan at all times—a kirpan is a religious object made of metal and resembles a dagger.^[26] The school board refused to allow Multani to wear the kirpan because it violated article 5 of the school's code of conduct, which prohibited students from carrying weapons and dangerous objects.^[27] The Supreme Court ruled that the prohibition violated Multani's freedom of religion, which is protected under section 2(a) of the *Canadian Charter of Rights and Freedoms (Canadian Charter)*.^[28] The school board was forced to make an exception, and allow Multani to wear his kirpan. ^[29] The Court determined that accommodating Multani's religious belief was necessary because it "demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities."^[30]

The Supreme Court of Canada's decision was widely debated in the media. Some Quebecers began to view reasonable accommodation practices as giving special privileges to religious and ethnic minorities,^[31] and they believed "that there was simply 'too much' accommodation happening."^[32] It was against this background that Hérouxville, a small town in Quebec, passed a resolution known as the "Code of Conduct" in 2007. The Code of Conduct banned, among other things, female genital cutting, burning women alive, carrying a weapon to school, covering one's face, and stoning women.^[33] The Code of Conduct made international headlines, with critics calling it overtly racist.^[34] Proponents of the Code of Conduct, however, insisted that Hérouxville residents were not racist but simply trying to ensure equality and protect Quebecois identity.^[35]

The *Multani* decision and Hérouxville's Code of Conduct prompted public outcry. As a result, Quebec Premier Jean Charest established the Consultation Commission on Accommodation Practices Related to Cultural Differences ("Bouchard-Taylor Commission") on February 8, 2007.^[36] The Commission was tasked with several duties, including examining the accommodation practices in Quebec, consulting individuals and groups who were affected by accommodation, and making recommendations to the Quebec Government "to ensure that accommodation practices conform to Quebec's values as a pluralistic, democratic, egalitarian society."^[37]

The Bouchard-Taylor Report

Chronology of the "Accommodation Crisis"

After an extensive investigation, funded by a \$5 million budget, the Bouchard-Taylor Commission released a report of its findings in 2008—the Bouchard-Taylor Report.^[38] The Report chronicled the so-called “Accommodation Crisis” in Quebec over a 22 year period.^[39] The starting point for the Commission was 1985; the year which saw the first judgments from Canadian courts on the issue of reasonable accommodation.^[40] From December 1985 to April 2002, the Report listed 13 cases dealing with reasonable accommodation.^[41] The Report noted that the new obligations associated with reasonable accommodation, which arose from legislation (e.g. the *Quebec Charter* and *Canadian Charter*^[42]) and case law, were received without much public controversy.^[43]

From May 2002 to February 2006, the Report claimed that there was a “turning point in debate on accommodation.”^[44] The events of September 11, 2001, operated as a catalyst to increase people’s fears and suspicions concerning immigrants and minorities.^[45] The historical context was coupled with numerous Supreme Court of Canada decisions, such as the *Multani* case, above, and *Syndicat Northcrest v Amselem*.^[46]

In *Amselem*, the Supreme Court of Canada was asked to consider whether Orthodox Jewish people were permitted to build succahs on their balconies, even though the building’s bylaws clearly prohibited decorations, alterations, and constructions on the balcony. A succah is a temporary hut made of wood and canvas. To commemorate the period during which the Children of Israel wandered in the desert, Orthodox Jewish people reside in succahs during the festival of Succot. The Supreme Court ruled that the building’s bylaws violated the appellants’ freedom of religion under the *Quebec Charter*,^[47] which is Quebec’s human rights legislation. As a result, the Orthodox Jewish residents were permitted to build succahs on their balconies provided that they were removed after Succot, and adequate room was left for a passageway in case of emergency.^[48]

The Bouchard-Taylor Report labelled the period from March 2006 to June 2007 as a time of turmoil, as demonstrated by the fact that approximately 40 cases on accommodation were reported in the media.^[49] The reasonable accommodation debate, which previously had a narrow focus (i.e. whether religious practices should take place in the public sphere), broadened in scope to include a general critique of immigrants’ and minorities’ integration into Quebec society.^[50] Some Quebecers argued that individuals who request an exemption in order to practice their religions in public are demonstrating a refusal to integrate into Quebec culture.^[51] As discussed in the Report, part of the Quebec population felt that the accommodation requests were tantamount to immigrants and minorities receiving special treatment, and these alleged privileges were perceived as an attack on Quebec’s core values, such as democracy, gender equality, and secularism.^[52]

Quebec Secularism

Secularism, defined broadly, refers to the notion that Church and State should be separate, and the State should be neutral—that is, it should not favour one religion over another. The beginnings of implied Quebec secularism can be traced back to the fall of the French Empire in Quebec in 1763.^[53] Legislation, such as the *Treaty of Paris* of 1763 and the *Quebec Act* of 1774, introduced religious tolerance as a method of ensuring the peaceful co-

existence of English Protestants and French Catholics.[54] The notion of Quebec secularism, however, gained momentum during the Quiet Revolution in the 1960s.[55] During this period, education, healthcare, and social services, which had previously been under the control of the Church, were gradually taken over by the State.[56] The introduction of human rights legislation (the *Quebec Charter*)[57] and the inclusion of the *Canadian Charter*[58] in Canada's Constitution in 1982 further enshrined freedom of conscience and religion, and supported the law's equal treatment of all individuals.[59]

Part of the Quebec population believed that accommodating practices conflicted with secularism.[60] Proponents of this view argued that in order for Church and State to be separate, and to ensure that the latter is neutral, religious practices should be confined to the private sphere.[61]

Open Secularism

The Bouchard-Taylor Report, in addressing the public's fear that accommodating practices might violate Quebec secularism, recommended "open secularism"—a more expansive and tolerant form of secularism. Open secularism aims to balance individuals' freedom of religion and the necessity for state neutrality.[62]

Applying the principle of open secularism, the Bouchard-Taylor Report contemplated whether Government employees should be prohibited from wearing religious symbols in the performance of their duties.[63] A segment of the Quebec population argued that since Government employees represent the State, and secularism demands State neutrality, it is necessary to insist that Government employees refrain from public displays of their religious affiliations.[64] The Bouchard-Taylor Report, however, provided a more nuanced exploration of the issue. The Report stated that Government employees must be neutral while performing their duties, but it added that displaying religious symbols does not compromise impartiality in the decision-making process.[65] It is inconsistent, according to the Report, to assume that people who publicly display religious symbols are less impartial than individuals who, although they have religious affiliations, do not display them publicly.[66]

Criticisms of the Charter of Values

The provisions in the PQ's Charter of Values seem to ignore many of the recommendations made in the Bouchard-Taylor Report. Specifically, the blanket prohibition which prevents Government employees from wearing overt and conspicuous religious symbols disregards the Report's insistence that true impartiality is not a result of employees wearing religious symbols. It is not clear why the PQ Government opted to disregard the Bouchard-Taylor recommendations. However, it may have been politically motivated, as discussed below.

Critics of the Charter of Values have argued that the blanket prohibition on religious symbols in Government sector jobs is problematic for three reasons: (1) it is unconstitutional, (2) it promotes intolerance and hostility towards immigrants and minorities, and (3) it is a political tactic to further the PQ's separatist agenda. Each criticism is briefly canvassed below, as well as the PQ's defence against these criticisms.

1. Constitutional Challenges

Many legal experts^[67] believe the Charter of Values will not withstand constitutional scrutiny. The prohibition on wearing overt and conspicuous religious symbols has the potential to violate people's freedom of religion, which is protected by section 2(a) of the *Canadian Charter* and section 3 of the *Quebec Charter*.^[68] A violation of the *Canadian Charter* (or of the *Quebec Charter*) will be established if: (1) a claimant holds a sincere religious belief, and (2) the law in question interferes with the claimant's ability to act in accordance with that belief.^[69] The Charter of Values may also violate an individual's right to equality, which is protected by section 15(1) of the *Canadian Charter*.^[70] Additionally, the Supreme Court noted, in the *Amselem* decision, that "both obligatory as well as voluntary expressions of faith should be protected under the *Quebec* (and the *Canadian*) *Charter*."^[71]

▪ Canadian Charter Challenge

Assuming that the Charter of Values was found to violate section 2(a) or section 15(1) of the *Canadian Charter*, it could still be saved under section 1 of the *Canadian Charter*.^[72] Rights and freedoms are not absolute, but subject to reasonable limits. Therefore, once a court finds a violation of a right that is protected by the *Canadian Charter*, a government has the opportunity to make arguments about the reasonable and justifiable nature of the legislation in question.

Justifying the potential violation of the *Canadian Charter* would first require the Quebec Government to prove that the Charter of Values has a "pressing and substantial objective."^[73] The PQ Government would likely argue that state neutrality, secularism, gender equality, and the protection of Quebecois identity are pressing and substantial objectives that warrant violating constitutionally protected rights and freedoms. Sylvain Lussier, a Quebec barrister, noted that Canada has a history of religious tolerance, and there does not appear to be a pressing or substantial objective behind the PQ's proposed legislation.^[74] At this time, it is impossible to know whether or not a court would agree with the Quebec Government's potential arguments. Assuming a court ruled that the Charter of Values has a pressing and substantial objective, the Quebec Government would then be obligated to demonstrate that the legislation only minimally impairs Quebecers' rights.

As seen in the *Multani* and *Amselem* cases, when laws conflict with people's ability to practice their religion, the Supreme Court rules the law unconstitutional for being an unjustifiable violation of people's freedom of religion.^[75] Julius Grey, a human rights lawyer, noted that recent Supreme Court of Canada decisions have made it clear that "if accommodation can be made without excessive cost or injustice, it should be."^[76] To demonstrate that the legislation only minimally impairs Quebecers' freedom of religion, the Quebec Government may argue that the Charter of Values still permits people to practice their religions, but they simply cannot wear overt and conspicuous religious symbols while engaged in their duties as a Government employee.

The Quebec Government does have the option to invoke the notwithstanding clause (section 33 of the *Canadian Charter*^[77]). The notwithstanding clause would shield the Charter of Values from legal challenges based on its potential violation of the *Canadian Charter*.^[78] Premier Marois, however, has stated that her Government has no intention of relying on the clause^[79] because she remains adamant that the Charter of Values will be constitutional.^[80]

▪ Quebec Charter Challenge

Part of the proposed Charter of Values will amend the *Quebec Charter* to include State neutrality and secularism.^[81] The inclusion of these two principles would likely change how courts would interpret the section on freedom of religion in the *Quebec Charter*, and might assist the Quebec Government in upholding the Charter of Values if there was a legal challenge based on the *Quebec Charter*.^[82] The inclusion of state neutrality and secularism would likely not, however, shield the Charter of Values from a challenge based on its potential violation of the *Canadian Charter*.

2. Intolerance and Hostility towards Immigrants and Minorities

Critics have called the Charter of Values xenophobic,^[83] and have expressed concern that it will foster an environment of intolerance and hostility towards immigrants and minorities.^[84] The Charter of Values applies to all religions, but it will clearly have a greater impact on certain groups, such as Muslims and Sikhs,^[85] whose religious beliefs require wearing “overt and conspicuous” religious symbols.^[86] The proposed Charter of Values, therefore, singles out minority religious groups and places them in direct opposition to the majority of Quebecers, who, according to polls, support the proposed ban.^[87]

Noa Mendelsohn Aviv, director of the equality program at the Canadian Civil Liberties Association, said the Charter of Values would seriously limit diversity and equality in Quebec.^[88] A diverse society, according to Aviv, requires diverse leaders in positions of authority, such as police officers, teachers, and judges.^[89] Aviv believes the Charter of Values will force people to “hide aspects of their diversity and certain people won’t be able to fill those roles at all.”^[90] The Charter of Values will require Government employees to choose between their religious beliefs and their jobs.

While critics point to the Charter of Values as being divisive and discriminatory, the PQ claims it will unify Quebec. Premier Marois stated that England’s adherence to a formal policy of multiculturalism has resulted in people “knocking each other over the head and throwing bombs.” The PQ, therefore, believes that Quebec’s adoption of secularism would lessen tensions between people.^[91] Additionally, the Charter of Values would, according to the PQ, promote gender equality by disallowing hijabs in public sector jobs. The PQ argues that hijabs are a symbol of “female oppression and submission.”^[92]

3. Political Agenda

Several commentators have noted that the PQ may be introducing the Charter of Values as a

tactic to further its separatist agenda. Critics of the Charter of Values argue that it promotes a separatist agenda in two ways. First, it seeks to protect Quebecois identity, thus placating the hardline separatist voters that supported the PQ in the last election.^[93] Second, if the Supreme Court of Canada was to declare the Charter of Values unconstitutional, the ruling could be used by the PQ to demonstrate that Quebec and the rest of Canada hold different values.^[94] Liberal Leader Justin Trudeau said the PQ is “playing the crassest kind of divisive politics to try and re-energize a debate around the fading option of sovereignty.”^[95]

Importantly, the PQ currently have a minority government in the National Assembly, which means they will need to gain the support of another party to make the Charter of Values law. Leader of the Quebec Liberals, Philippe Couillard, stated that the proposed Charter of Values would become law “over my dead body.”^[96] The Coalition Avenir Quebec (CAQ), however, supports a watered down version of the Charter of Values that would ban Government officials in positions of authority, such as judges and police officers, from displaying religious symbols.^[97] It is unclear if the PQ will amend the Charter of Values to gain the CAQ’s support.

Conclusion

The introduction of the Charter of Values represents another addition to Quebec’s historical struggle with balancing State neutrality and respect for people’s freedom of religion. The Charter of Values remains the first of its kind in Canada, and it is uncertain whether the emphasis on secularism will assist or hinder immigrants and minorities from fully integrating into Quebec society. Public opinion is clearly divided on this point.

The debate over the constitutionality of the PQ’s controversial Charter of Values will likely increase as the Bill is tabled in the National Assembly. Importantly, the Supreme Court of Canada has consistently reiterated the need to protect people’s freedom of conscience and religion,^[98] and the Charter of Values seems to disregard previous Canadian cases that have protected these freedoms. As a result, it seems unlikely that the Charter of Values would survive constitutional scrutiny. The legal ramifications of the Charter of Values, however, remain highly speculative because the proposed piece of legislation is unprecedented. Benoît Pelletier, a University of Ottawa law professor, stated that “the Supreme Court has never been confronted with the situation that stands to flow from the Charter of Values, so we can’t know what it would decide.”^[99]

^[1] Philip Authier, “Quebec releases controversial ‘values charter,’ proposes that anyone giving, receiving public services would need face uncovered,” *National Post* (11 September 2013) online: National Post.

^[2] *Ibid.*

^[3] *Ibid.*

[4] A burqa, worn by some Islamic women, is a garment that covers one's face and body.

[5] A hijab, worn by some Muslim women, is a garment that covers one's head and chest.

[6] A niqab, worn by some Muslim women, is a garment that covers one's face.

[7] A kippa, worn by Jewish men, is a cap.

[8] Authier, *supra* note 1.

[9] *Ibid.*

[10] Ingrid Peritz & Les Perreux, "Quebec reveals religious symbols to be banned from public sector," *The Globe and Mail* (10 September 2013) online: The Globe and Mail < <http://www.theglobeandmail.com/news/politics/quebec-unveils-plan-for-controversial-charter-of-values/article14214307/>>.

[11] Authier, *supra* note 1.

[12] *Ibid.*

[13] *Ibid.*

[14] CEGEP is an acronym for *Collège d'enseignement général et professionnel*. CEGEPs are comparable to, though technically different from, community colleges.

[15] Authier, *supra* note 1.

[16] *Ibid.*

[17] Peritz & Perreux, *supra* note 10.

[18] *Ibid.*

[19] *Ibid.*

[20] Graeme Hamilton, "Quebec charter of values divisive, discriminatory and unlikely to withstand legal challenges: experts," *National Post* (6 September 2013) online: National Post < <http://news.nationalpost.com/2013/09/06/quebec-charter-of-values-divisive-discriminatory-and-unlikely-to-withstand-legal-challenges-experts/>>.

[21] Authier, *supra* note 1.

[22] Gérard Bouchard, "What is Interculturalism?" (2011) 56 McGill LJ 435.

[23] Lori G Beaman, ed, *Reasonable Accommodation: Managing Religious Diversity* (Vancouver: UBC Press, 2012) at 2, online: < <http://www.ubcpres.ca/books/pdf/chapters/2012/ReasonableAccommodation.pdf>>.

[24] *Ibid*; See *Hydro-Québec v Syndicat des employées de techniques professionnelles et de bureau d'Hydro Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43 (employers are not obligated to change working conditions in a fundamental way, but the employer does have a duty to arrange the employee's workplace and/or duties to enable the employee to do his or her work).

[25] *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 < <http://www.lexisnexis.ca/documents/2006SCC006.pdf> > .

[26] *Ibid* at para 3.

[27] *Ibid* at para 4.

[28] *Canadian Charter of Rights and Freedoms*, s 2(a), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (“[e]veryone has the following fundamental freedoms: (a) freedom of conscience and religion” s 2).

[29] *Multani*, *supra* note 25.

[30] *Ibid* at para 79.

[31] Gérard Bouchard & Charles Taylor, *Building the Future: A Time for Reconciliation* (Montreal: Bibliothèque et Archives nationales du Québec, 2008) at 53.

[32] Beaman, *supra* note 23 at 3.

[33] See “Canadian charter is a tool of destruction: Quebec councillor,” *CBC News* (24 October 2007) online: CBC News < <http://www.cbc.ca/news/canada/montreal/canadian-charter-is-a-tool-of-destruction-quebec-councillor-1.630995> >.

[34] See “Critics: Quebec town's conduct code ‘xenophobic’,” *CTV News* (29 January 2007) online: CTV News < <http://www.ctvnews.ca/critics-quebec-town-s-conduct-code-xenophobic-1.226768> >.

[35] See “Hérouxville's dangerous notions,” *The Globe and Mail* (14 March 2009) online: The Globe and Mail.

[36] Bouchard & Taylor, *supra* note 31 at 17.

[37] *Ibid*.

[38] *Ibid*.

[39] The 22 year period spanned from 1985 until 2008.

[40] Bouchard & Taylor, *supra* note 31 at 47.

[41] *Ibid* at 48.

- [42] *Charter of Human Rights and Freedoms*, RSQ, c C-12, s3 ; *Canadian Charter*, *supra* note 28.
- [43] Bouchard & Taylor, *supra* note 31 at 48.
- [44] *Ibid* at 50.
- [45] *Ibid*.
- [46] *Multani*, *supra* note 25; *Syndicat Northcrest v Amselem*, 2004 SCC 47 < <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2161/index.do> > .
- [47] *Quebec Charter*, *supra* note 42.
- [48] *Amselem*, *supra* note 46.
- [49] Bouchard & Taylor, *supra* note 31 at 53.
- [50] *Ibid*.
- [51] *Ibid* at 146.
- [52] *Ibid* at 53.
- [53] *Ibid* at 139.
- [54] *Ibid*.
- [55] *Ibid*.
- [56] *Ibid*.
- [57] *Quebec Charter*, *supra* note 42.
- [58] *Canadian Charter*, *supra* note 28.
- [59] Bouchard & Taylor, *supra* note 31 at 140.
- [60] *Ibid* at 133.
- [61] *Ibid*.
- [62] *Ibid* at 148.
- [63] *Ibid* at 149.
- [64] *Ibid*.
- [65] *Ibid*.
- [66] *Ibid*.

[67] Sean Fine, "Is Quebec's secular charter constitutional? Nine legal experts weigh in," *The Globe and Mail* (14 September 2013) online: The Globe and Mail < <http://www.theglobeandmail.com/news/politics/is-quebecs-secular-charter-constitutional-nine-legal-experts-weigh-in/article14324825/?page=all>>.

[68] *Canadian Charter*, *supra* note 28; *Quebec Charter*, *supra* note 42.

[69] *Alberta (AG) v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 32 < <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/7808/index.do>>.

[70] *Canadian Charter of Rights and Freedoms*, s 15(1), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 ("Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." s 15).

[71] *Amselem*, *supra* note 46 at para 47.

[72] *Canadian Charter*, *supra* note 28, ss 1, 2(a) ("[t]he Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" s 1).

[73] *R v Oakes*, [1986] 1 SCR 103 < <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/117/index.do>> (the test for justifying a violation of a Charter right was first introduced).

[74] Fine, *supra* note 67.

[75] See *Multani*, *supra* note 25; *Amselem*, *supra* note 46.

[76] *Ibid.*

[77] *Canadian Charter*, *supra* note 28, s 33 ("Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter" s 33(1)).

[78] Governments, both provincially and federally, can invoke the notwithstanding clause which prevents people from challenging the constitutional validity of a piece of legislation.

[79] Daniel Leblanc, "PQ plans to shield religious symbols ban from legal fight by adding secularism to the charter," *The Globe and Mail* (10 September 2013) online: The Globe and Mail < <http://www.theglobeandmail.com/news/politics/pq-plans-to-write-secularism-into-quebecs-charter-of-rights/article14212154/>>.

[80] Hamilton, *supra* note 20.

[81] Leblanc, *supra* note 79.

[82] *Ibid.*

[83] Xenophobia is the irrational fear of the unknown. Here, it refers to Quebecers' fear of unknown ethnic and religious minorities.

[84] Hillary Brenhouse, "Quebec's proposed charter of values riles minorities and the rest of Canada," *Time World* (20 September 2013) online: Time World < <http://world.time.com/2013/09/20/quebecs-proposed-charter-of-values-riles-minorities-and-the-rest-of-canada/>>; Kelly McParland, "Quebec charter reflects values of small-minded separatists," *National Post* (12 September 2013) online: National Post.

[85] Brenhouse, *supra* note 84.

[86] *Ibid.*; Hamilton, *supra* note 20.

[87] *Ibid.*

[88] The Canadian Press, "Religious minorities face fight-or-flight choice as Quebec values charter released," *Macleans's* (11 September 2013) online: Maclean's < <http://www2.macleans.ca/2013/09/11/religious-minorities-face-fight-or-flight-choice-as-quebec-values-charter-released/>>.

[89] *Ibid.*

[90] *Ibid.*

[91] Hamilton, *supra* note 20.

[92] Konrad Yakabuski, "The core of Quebec's charter? Republicanism and feminism," *The Globe and Mail* (15 September 2013) online: The Globe and Mail; Hamilton, *supra* note 20.

[93] Canadian Press, *supra* note 88.

[94] Hamilton, *supra* note 20.

[95] Daniel Leblanc & Ian Bailey, "Harper hoping 'common sense' Quebecers will kill proposed charter," *The Globe and Mail* (16 September 2013) online: The Globe and Mail < <http://www.theglobeandmail.com/news/politics/harper-hoping-common-sense-of-quebeckers-will-kill-proposed-charter/article14346480/>>.

[96] Benjamin Shingler & Melanie Marquis, "Values charter will become law 'over my dead body,' says Quebec Liberal Leader," *The Globe and Mail* (15 September 2013) online: The Globe and Mail < <http://www.theglobeandmail.com/news/politics/values-charter-will-become-law-over-my-dead-body-says-quebec-liberal-leader/article14329026/>>.

[97] Leblanc & Bailey, *supra* note 95.

[98] See *Multani*, *supra* note 25; *Amsalem*, *supra* note 46; *R v NS*, 2012 SCC 72 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/12779/1/document.do>> (“[t]he need to accommodate and balance sincerely held religious beliefs against other interests is deeply entrenched in Canadian law” para 54).

[99] *Leblanc*, *supra* note 78.