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# Tom Mulcair: Federal leaders should step up against Bill 21

*The pusillanimity of all federal party leaders in dealing with the issue of discrimination against religious minorities has been shameful.*

Tom Mulcair • Special to Montreal Gazette  
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Demonstrators in Place Émilie-Gamelin in Montreal Sunday, April 7, 2019 protest against Bill 21. On Tuesday, Justice Marc-André Blanchard ruled that Bill 21 does indeed violate religious freedom guarantees, but that the so-called "notwithstanding clause"

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“notwithstanding clause” shields most of it from being struck down.

Bill 21 was declared unconstitutional in two ways, however, for reasons outside the reach of the notwithstanding clause.



First, the Charter right of the English-speaking minority to control and manage its school boards was maintained. This means that the Quebec government cannot stick its nose in the hiring process for teachers, for example. The practical result is that a teacher in an English board who wears a Muslim headscarf will have her rights protected, but her coreligionist who teaches in a French school has to remove her hijab, or lose her job.

Second, the Quebec government cannot impose restrictions that would exclude citizens from sitting in the National Assembly, because that would be illegal interference in fundamental democratic rights that cannot be trampled, even with the notwithstanding clause.

STORY CONTINUES BELOW

The ruling also raises broader questions of political importance concerning religious minorities and concerning the English-speaking community of Quebec.

Not surprisingly, the decision is being appealed.

I worked on the language file for decades, as a lawyer at the Conseil de la langue française, as the head of legal affairs at Alliance Quebec, as a commissioner at the Commission d'appel sur la langue d'enseignement and for the government of Manitoba.

I know that the resources, presence and expertise of the federal government has often been a determining factor in the outcome of these cases.

Without detracting from the superlative work of the outstanding counsel who argued against the bill, it is worth noting that the resources available for experts and Quebec's “all of government” effort to defend its laicity law stand in sharp contrast to the indifference shown by federal politicians.

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Just last month, the Quebec government published as a reference tome the various expert opinions it secured to defend its position (with a foreword by Pauline Marois).

The attorney general of Canada was not even a party to the Bill 21 case before the court.

The pusillanimity of all federal party leaders in dealing with the issue of discrimination against religious minorities has been shameful. When they come knocking for votes in the next few months, those communities should demand an accounting.

Prime Minister Justin Trudeau should order his attorney general to play an active role in defending minority religious rights in Canada. He sure talks about rights enough.

To expedite matters, the prime minister can still refer the matter directly to the Supreme Court. After this thorough review in Quebec Superior Court, that's exactly what he should do.

STORY CONTINUES BELOW

Closer to home, despite her apology, Trudeau's former caucus colleague Marlene Jennings has put herself in a vulnerable position when it comes to defending the rights of the English-speaking community of Quebec.

Much to its credit, prior to Jennings's arrival as president, the Quebec Community Groups Network hired Julius Grey to intervene in the case.

I've known Jennings for years and don't doubt her abilities. At the same time, as president of the QCGN, she has placed herself between a rock and a hard place. When Jennings took sides against the rights of Quebec's English-language boards to control and manage its schools and applauded, instead, François Legault's interference, the writing was on the wall.

STORY CONTINUES BELOW

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Now, she's also boxed-in on the religious-minority file. Jennings should of course be using every ounce of her considerable energy to critique the Trudeau Liberals and demand that they do the right thing in this file. Her tendency to avoid criticism of her former colleagues is understandable, but not helpful.

*Tom Mulcair, a former leader of the federal NDP, served as minister of the environment in the Quebec Liberal government of Jean Charest.*

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