



Bill 21 and the Notwithstanding Clause: What Consensus?

The Supreme Court will soon be considering the ban on religious symbols for government employees. While many Quebecers agree with the Legault government on Bill 21 and the use of the notwithstanding clause, the population remains largely divided and far from a consensus.

Following the Quebec Court of Appeal's decision on Feb. 29, 2024 to uphold the validity of Bill 21, the *Act Respecting the Laicity of the State*, it will now be the Supreme Court's turn to decide. The country's highest court will no doubt also have to consider the Quebec government's use of the notwithstanding clause to protect the provisions of Bill 21 that might contravene the Canadian *Charter*.

Premier Legault welcomed the Court of Appeal's decision in his government's favour, raising two points he thought important. First, he deemed that the judgment "confirmed Quebec's right to make its own decisions" by using the notwithstanding clause;¹ and second, that there was a consensus since "a majority of Quebecers agree with Bill 21."²

Given that the CAQ government seems to rely heavily on public opinion to justify its positions, this bulletin provides an overview of public opinion in Quebec, based on large-scale surveys by Confederation of Tomorrow and Vox Pop Labs.³ Such an exercise is essential to identify whether there is consensus on the issues surrounding Bill 21.

BILL 21 IN PRINCIPLE AND IN PRACTICE

The annual Confederation of Tomorrow Survey of Canadians asks respondents to choose between two approaches to state neutrality with regards to the place of religion in the public sphere: prohibiting visible displays of religious affiliation or not interfering. The approach that is most aligned with the principle behind Bill 21, namely that neutrality is exercised by banning religious symbols, is supported by a majority of Quebecers (51 per cent). This proportion has remained fairly stable over the three years for which we have data.



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¹ H. Ouellette-Vézina. 2024. « [Une belle victoire pour la nation québécoise](#) », dit Legault. » *La Presse*.

² V. Larin, 2024. « [Un "manque de respect" du gouvernement Trudeau](#), réitère François Legault », *La Presse*.

³ See methodological descriptions below.

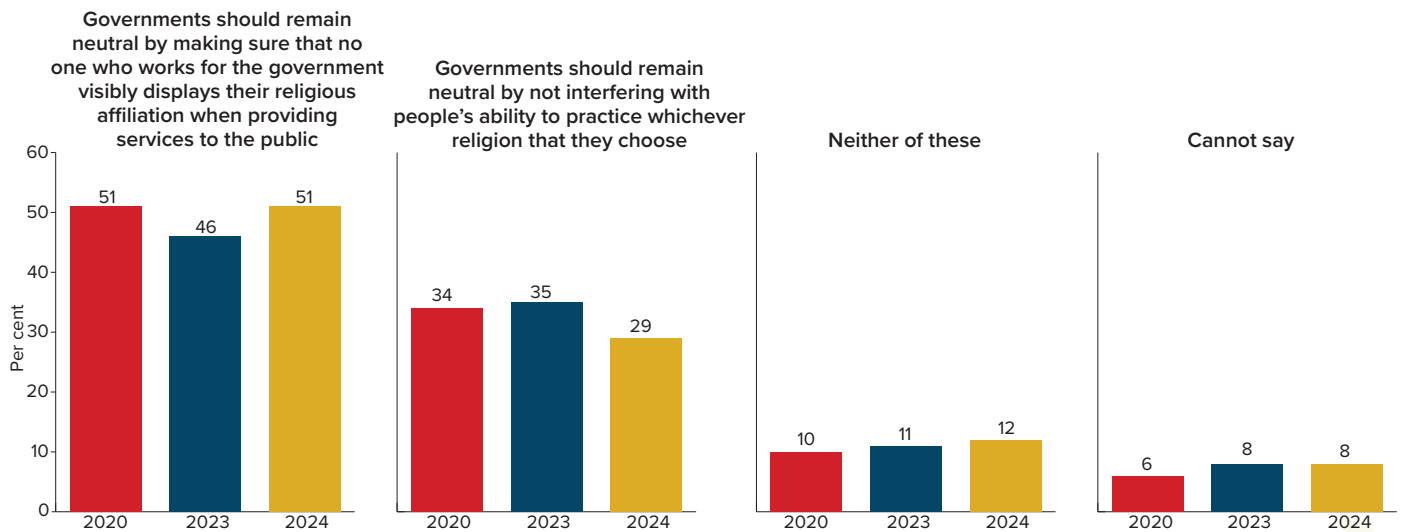


Figure 1. Two approaches to state neutrality

Source: Confederation of Tomorrow Survey of Canadians 2020, 2023 and 2024.

Note: The full question is, “Our society is made up of people from many different religions, as well as many people who do not practice any religion at all. Thinking about governments and religions, which of the following approaches do you prefer?”

That said, this question about approaches to state neutrality (also often defined as laicity or secularism) is complex and many respondents can get a little lost or confused: for instance, in 2023 and 2024, around 20 per cent of respondents did not choose one of the two options available to them.

What’s more, between a theoretical principle and its application in the real world, people’s views can vary.

Religious symbols in practice

This is where Vox Pop Labs surveys are useful. Rather than simply naming religious symbols or asking a question about support for Bill 21, they show images depicting specific symbols. Respondents are then asked to choose under what circumstances these symbols should be banned. The proposed scenarios are rooted in discussions surrounding the prohibition of religious symbols in different public and professional contexts.

To simplify the analysis, we focus here on the hijab, the symbol around which most of the debate has centred, and on two scenarios of its use that involve Quebec law: state representatives in positions of authority (e.g., judges, police officers and prison guards) and public school teachers.

The results presented in figure 3 show the value of measuring support for the prohibition of specific religious symbols, and not just support for the principle behind this prohibition.

First, there is a clear consensus in Quebec on the proposal known as the Boucharde-Taylor recommendation, which suggested prohibiting religious symbols for state employees who are in positions of authority and who represent the coercive force of the state. Support for the hijab ban for these employees has varied over time, but at 57 per cent in 2022 it remains greater than the 51 per cent support for the more general principle of secularism underlying Bill 21. Nonetheless, while it still represents a majority, the proportion is down from its peak of 72 per cent when the law was passed.

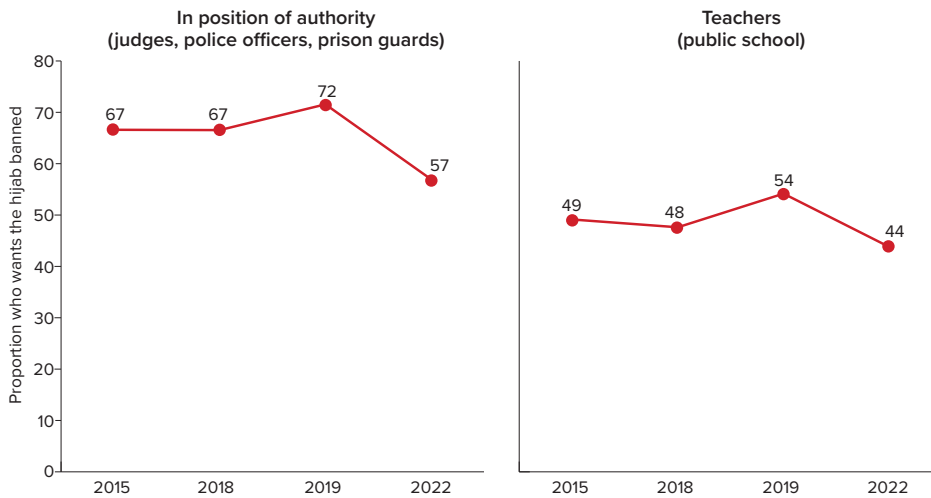


Figure 2. Example of a religious symbol shown to respondents

Source: Vox Pop Labs, Post-election Survey, 2015, 2018, 2019, 2022.

Figure 3. Support for banning the hijab in two scenarios

Source: Vox Pop Labs, Post-election Surveys, 2015, 2018, 2019 and 2022.



However, Bill 21 goes further than the Bouchard-Taylor recommendation, extending the ban on religious symbols to public school teachers.

Clearly, it is hard to see the results presented in the second panel of figure 3 as reflecting a broad consensus. Rather, it is an issue that seems to divide the Quebec population. A narrow majority of 54 per cent wanted to see the hijab banned for public school teachers in 2019, but this is the only year of the four recorded in which this option commanded a majority. For 2022, the most recent year, only 44 per cent of respondents supported such a ban. Note that the passage of Bill 21 in June 2019 does not appear to have increased or even stabilized support among the population. We do not show these results here but when respondents were asked about other religious symbols, such as the turban or pendants featuring the Star of David or a crucifix, the responses were roughly the same.

THE COURT, PARLIAMENT AND THE CHARTER

Consensus or not, the Supreme Court will have to rule on the legality of Bill 21. That said, whatever the decision, the Quebec government will still be able to use the notwithstanding clause to keep the law in place. This raises a question central to our political system: who should have the final say, judges or elected officials?

Who should get to decide?

First, it is important to note that the Confederation of Tomorrow survey question presented here is not specifically about Bill 21, but about a hypothetical law that would contravene the *Charter* (which Bill 21 does). It is not a simple question, so it is not surprising that almost a third of respondents said they did not know what to answer.

That said, a small majority of Quebecers believe that the Supreme Court should have the final say.

After a slight fluctuation in 2023, responses have returned to proportions similar to those observed in 2020 and 2022.

Year in, year out, opinion remains stable: around half of Quebecers believe that the validity of a law should be decided by the courts, while around a quarter agree with Premier Legault that the National Assembly should have the final say.



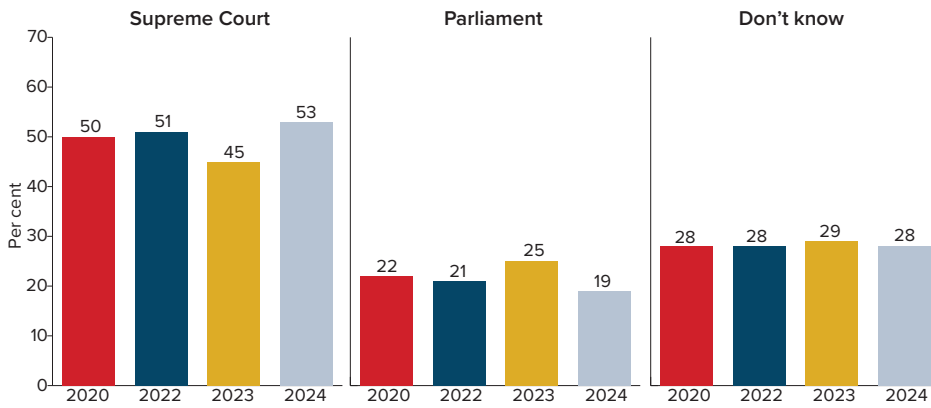


Figure 4. When a government passes a law, but the Supreme Court says it is unconstitutional, who should have the final say?

Source: Confederation of Tomorrow Survey of Canadians 2020, 2022, 2023 and 2024.

Note: The question is “When a government passes a law but the Supreme Court of Canada says it is unconstitutional on the grounds that it conflicts with the *Charter of Rights*, who should have the final say, the government or the Supreme Court?”

Using the notwithstanding clause

As mentioned above, the Quebec government used the notwithstanding clause to protect Bill 21 from the courts. In its judgment, the Quebec Court of Appeal stated that the debate on this subject was closed, since the clause existed and “[it] is not the role of the courts to seal the gaps, if any, in a constitutional (or legislative) choice that some consider ill-advised.”⁴

Still, the Supreme Court may be tempted to look into this aspect, since the Quebec government is not the only one to have recently used the notwithstanding clause as a preventative measure – Saskatchewan did so in October 2023 – and voices have decried this infringement of individual rights.

But for Quebecers, is this a legislative tool that the government should be able to call upon?

Quebecers are divided on the issue, but only 30 per cent of Quebecers currently believe that the government should be able to use the notwithstanding clause to circumvent the *Charter*. On the other hand, 42 per cent of Quebecers believe that the government should not have this power. This proportion is at a four-year high. Over a quarter of Quebecers (28 per cent) are undecided.

In other words, over the past four years, those who support the use of the notwithstanding clause, those who oppose it and those who are undecided have remained distributed into three roughly equal groups. And yet, the proportion of Quebecers who disapprove of the use of the notwithstanding clause has jumped by eight points in one year, while the proportion who support it has dropped by six points.

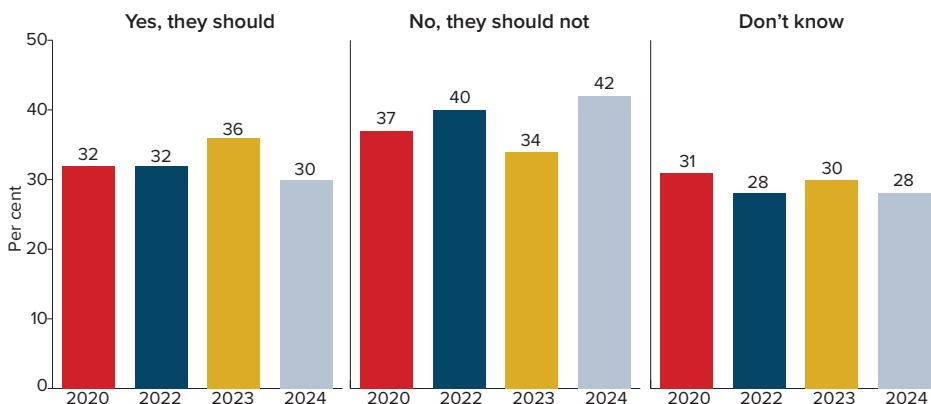


Figure 5. Should governments be able to use the notwithstanding clause to override the *Charter*?

Source: Confederation of Tomorrow Survey of Canadians 2020, 2022, 2023 and 2024.

Note: The question is “As you may know, in certain cases the Canadian constitution gives governments the power to overrule the courts by passing a law, even though the courts have declared it to be unconstitutional because it violates the *Charter of Rights and Freedoms*. Do you think that governments should, or should not, have this power?”



Who has the final say? The courts or Parliament? We saw earlier that the Quebec population is divided on the issue. And now we see that it is also divided on the use of the notwithstanding clause. Once again, we are a long way from consensus.

A DISCUSSION FAR FROM OVER

Beyond the current judicial process and the progression of Bill 21 through the various courts, this law remains, in a way, the legislative culmination of over a decade of discussion on religious symbols, accommodation based on freedom of religion and, more generally, the secularism of the Quebec state and the role of religion in public space. Some might therefore conclude that the issue has been settled, that the debates have taken place and are over.

But as the data above shows, legislative success does not automatically mean that there is overwhelming agreement, consensus or even fixed opinions on these fundamental issues.

Premier Legault might be eager to present Bill 21 as the result of a consensus, but in reality the Quebec population is rather widely divided on various issues like the principles of secularism and who has final say on the constitutionality of laws. But it is especially divided on banning religious symbols for public school teachers and the use of the notwithstanding clause.

On issues of such fundamental importance to democracy and community life, it is essential that the discussion continues and that we do not put an end to it on the pretext that the debate has already taken place.



METHODOLOGICAL DETAILS

CONFEDERATION OF TOMORROW

The Confederation of Tomorrow surveys are annual studies conducted by the Environics Institute for Survey Research, the Centre of Excellence on the Canadian Federation, the Canada West Foundation, the Centre d'Analyse Politique – Constitution et Fédéralisme, the Brian Mulroney Institute of Government and the First Nations Financial Management Board.

The 2024 study consists of a survey of 6036 adults conducted between Jan. 13 and March 4, 2024. 80 per cent of responses were collected between Jan. 18 and 26; 95 per cent of responses were collected online; and the remaining responses were collected by telephone from respondents living in the North or in Indigenous communities.

The results presented here concern 1621 Quebecers, including 1297 French speakers.

Survey responses are weighted by age, gender, region, level of education, Indigenous identity and language spoken at home, in order to be representative of the population.

VOX POP LABS

Vox Pop Labs is a Canadian public opinion research firm. The data used in this bulletin comes from post-election surveys conducted online in the week following federal elections (2015, 2019) and Quebec elections (2018, 2022).

The results presented here are based on the following Quebec samples: 5626 in 2015, 6110 in 2018, 1537 in 2017 and 11,154 in 2022. The data is weighted by age, gender, language and vote in the election preceding the survey.



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