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# Despite Bill 21 ruling, Quebec English school boards must await appeal before hiring

A spokesman for the EMSB says its lawyers have advised that hiring of teachers who wear hijabs, turbans or other symbols has to wait until the province's appeal of the Quebec Superior Court ruling is heard.



The Canadian Press  
Sidhartha Banerjee

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Westmount High teacher Furheen Ahmed speaks to the media with EMSB chair Joe Ortona April 20, 2021. English school boards and MNAs have been exempted from Bill 21's requirements. PHOTO BY ALLEN MCINNIS /Montreal Gazette

MONTREAL — The English Montreal School Board said Wednesday it can't start hiring teachers who wear religious symbols despite its court victory in a challenge to the province's secularism law, known as Bill 21.

A spokesman for the board said its lawyers have advised that hiring teachers who wear hijabs, turbans or

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Justice Marc-Andre Blanchard upheld most of Bill 21 on Tuesday, but he struck down clauses pertaining to English-language school boards, as well as a ban on members of the provincial legislature wearing face coverings.

The Quebec government announced within hours it would appeal the ruling.

School board officials initially said they planned to begin hiring immediately, but a spokesman later said the province’s appeal has put those plans on hold and that an appeal could be a year or more away.

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The law, adopted in June 2019, prohibits public sector workers who are deemed to be in positions of authority, including teachers, police officers and judges, from wearing religious symbols at work.

It includes a grandfather clause exempting those who were employed before the bill was tabled — as long as they don’t change jobs.

“After further verifications, the judgment will not come into effect until the EMSB wins on appeal,” Cohen said in an email. “To be crystal clear, the EMSB is not free to begin hiring (or promoting) as it sees fit given yesterday’s ruling.”

Blanchard ruled that part of the law violated Section 23 of the charter, which guarantees minority language education rights.

The law makes pre-emptive use of the Charter of Rights and Freedoms’ notwithstanding clause, which shields legislation from court challenges over violations of fundamental rights. But that clause cannot override minority language rights.

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Quebec Justice Minister Simon Jolin-Barrette told reporters the province would appeal, adding that application of the law will not be divided along linguistic lines.

“The laws of the National Assembly apply throughout Quebec,” Jolin-Barrette said Tuesday. “There is no question of dividing Quebec in the application of Quebec legislation.”

Justice Department spokesman Paul-Jean Charest said in an email that parties have 30 days to appeal the ruling. He added that Bill 21 “continues to be in force and to apply in its entirety.”

EMSB chairman Joe Ortona said the board intends to defend Blanchard’s ruling.

“We maintain that Justice Blanchard didn’t establish new law yesterday in his decision, he simply reaffirmed a long-standing jurisprudence by the Supreme Court over the course of the last 30 years that Section 23 guarantees the linguistic minority a right of management and control over our institutions,” Ortona said.

“The exclusive right to hire its own personnel, not a shared right, not a consultative right, but an exclusive right.”

Four separate lawsuits challenging Bill 21 were merged into one trial, which was held over several weeks at the end of 2020. Other plaintiffs are weighing whether to appeal the ruling.

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