

11-29-2017

## Lawyers Fear Quebec's Bill 62 Sets Path to Niqab Criminalization

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### Recommended Citation

Davidson, Terry and Bhabha, Faisal. "Lawyers Fear Quebec's Bill 62 Sets Path to Niqab Criminalization." *The Lawyer's Daily* (29 November 2017):  
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## Constitutional

## Lawyers fear Quebec's Bill 62 sets path to niqab criminalization

By Terry Davidson

(November 29, 2017, 2:13 PM EST) -- Quebec's controversial Bill 62 could create a "slippery slope" to criminalizing Muslim women who cover their faces, said one legal mind during a panel discussion in Toronto Monday night.



Faisal Bhabha, Osgoode Hall Law School

Faisal Bhabha, an associate professor at Osgoode Hall Law School, was one of five panellists gathered for *The Niqab in Canada: Now What?*, an event hosted by The Mosaic Institute and Raja Khouri Conversations and attended by around 100 people.

Monday evening's talk, held inside the University of Toronto's Innis Town Hall in the city's downtown, comes in the wake of Quebec passing legislation requiring people to uncover their faces when providing or receiving public services in that province. Critics of the legislation, which came into effect in October and is now facing a Charter challenge, say it unfairly targets Quebec's small number of devout Muslim women who cover their faces with a niqab or burka.

During the discussion, Bhabha compared the wearing of facial coverings to various ways people express themselves through physical appearance, then talked of the criminalization of public nudity and wondered if Bill 62 would pave the way for niqab-wearing women to be placed on the same path.

"We do permit a variety of bodily expressive conduct, not just the way people dress, but what people do to their bodies — tattoos and piercings," said Bhabha. "These are visible signs of personal choices people make about their bodies, like the niqab. We may think tattoos are ugly, we may cringe at the sight of certain types of piercings, but we don't ever ... force their removal. ... We do actually criminalize the lifestyle of those who wish to express themselves publicly in the nude. The niqab is not yet criminal, but it certainly feels like we are moving in the direction."

While Bhabha later said he was being "rhetorical" in his remark, he again expressed the same concern.

"I'm not ringing the alarm bells ... but it is a slippery slope from forced removal to criminalization if you look at the laws around public nudity," he said. "There is a precedent for compelling people to wear or not to wear items."

Prominent Montreal human rights lawyer Julius Grey agreed, saying criminalization comes in the form of the impact felt by those who are refused services because they cover their faces.

"I certainly think that there is a link," said Grey in an e-mail Tuesday. "After all, refusal of access to health services or courts can have a greater impact than a minor penal conviction. ... It is possible that a penal offence would be harder to justify ... but ... both types of law tend to stigmatize a fragile and defenceless group of citizens."

Bhabha later compared what is happening in Quebec to France, which in April 2011 banned the full-face Islamic covering in public places and became the first European country to impose such restrictions.

"My personal view is Bill 62 is an anomaly, in a sense, because of Quebec's specific cultural context," he said. "Quebec operates, essentially, in a mid-Atlantic place in terms of cultural values, [but] Bill 62 is not an anomaly if you line it up next to European approaches to this question. In fact, it is mild compared to some of the measures we've seen in Europe, with France being at the leading edge of that. ... France is further down that slippery slope towards criminalization in the sense that women can be ticketed for wearing the niqab in public."

The other panellists were Pamela Divinsky, of the Mosaic Institute; Huda Bukhari, of the Arab Community Centre of Toronto; Alia Hogben, of the Canadian Council of Muslim Women; and university student Aima Warriach, who wears a niqab.