



Task Force Legislative Brief on Bill 96, An Act respecting French, the official and common language of Qu(e)ébec

Submitted by the Task Force on Linguistic Policy
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WHO WE ARE:

Organization: Task Force on Linguistic Policy

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To: Committee on Culture and Education

About our organization:

The Task Force on Linguistic Policy (Task Force) was formed by concerned citizens to advocate against the Government of Canada's "White Paper" and Bill C-32 and the Government of Quebec's Bill 96 and the proposed Constitutional amendment.

The "White Paper" and Bill C-32, Bill 96 and the proposed Constitutional amendment, taken as a whole, are a fundamental restructuring of the Canadian constitution, language policy and our basic human rights and freedoms.

The Task Force was formed in late May 2021 and became public on June 21, 2021. The Task Force has a website, www.protectourrights.ca, a social media presence with thousand(s) of engagements, a logo and branding, has raised over ten thousand dollars in funds from over one hundred individual donors, has over 1000 formal members, an Executive Committee and a Steering Committee. There are regional Chapters of the Task Force being founded throughout Quebec.

The Task Force is advocating against the federal and provincial policies by raising awareness in the traditional media, social media, advertisements, and stakeholder lobbying.

Quebecers from all walks of life have joined forces to defend individual and language rights and cease attacks on the freedoms of all Quebecers and their institutions. The Task Force brings together English-speakers from across Quebec, including visible minorities, Indigenous peoples, rural residents as well as elderly citizens.

The Task Force would like to thank Ben Huot (Policy Chair), Colin Standish (Chair), Derek Heatherington, Rahul Majumdar, Patrick Quinn, Brent Tyler, Keith Henderson, Moira Regan Bell, and David Christiani for their contributions to this brief. Their hard work was critical in this analysis.

Introduction

Bill 96 redefines and restructures language in Quebec and Canada in fundamental and illegitimate ways. This re-engineering is incompatible with individual rights, natural justice, human and civil rights, national unity and a bilingual country.

The Task Force will fervently oppose Bill 96's excesses.

The bill contains over 200 amendments, including vast search and seizure measures, restrictions on who is entitled to receive government services in the language of their choice, a cap on English CEGEP enrolment, and a false definition of who qualifies as a member of Quebec's English-speaking community. It also seeks to eliminate the bilingualism of more than 50 of the 89 bilingual-status municipalities across Quebec.

In effect, Bill 96 deinstitutionalizes the English language and its speakers in Quebec

The Task Force's primary reservations are:

1. Bill 96 does not promote, "protect" or increase the French-language in usage, home language, mother-tongue or first official language spoken (FOLS).
2. Bill 96 effectively erases the English-language, its institutions and individual speakers from civil society and public administration in Quebec.
3. The proposed unilateral Constitutional amendment is, in itself, unconstitutional and ill-advised public policy that will affect other aspects of the Canadian Constitution. (s. 159)
4. Changes to the interpretive framework for Bill 101 and the Quebec Charter and other laws will distort fundamental freedoms and human rights. (ss. 63, 65, 66, 120, 138, 133- 136)
5. Freedom of expression, commercial expression and practice, work and employment, contractual liberty and freedom of education are constrained for all Quebecers, of all linguistic groups.
6. The use of provincial and national notwithstanding clauses will suppress basic human rights for all Quebecers in extreme and illegitimate ways at home, at school, the workplace and in their commercial transactions.

The Task Force will discuss these issues and do a holistic analysis of the detrimental, illegal and unconstitutional aspects of Bill 96.

EXECUTIVE SUMMARY

Bill 96, take as a whole, is a fundamental and illegitimate restructuring of our county, province, Constitution, the relationship between citizens and the state, and between each other.

The Bill serves to erode, erase and extinguish the fundamental freedoms of all Quebecers, be they French-speakers, English-speakers, newcomers or Aboriginals.

The Bill surgically excises the English language and its speakers and institutions from Quebec.

The Bill contains over 200 amendments, including vast search and seizure measures, restrictions on who is entitled to receive government services in the language of their choice, a cap on English CEGEP enrolment, and a false definition of who qualifies as a member of Quebec's English-speaking community. It also seeks to eliminate the bilingualism of more than 50 of the 89 bilingual-status municipalities across Quebec.

The Task Force is calling on the Government of Quebec to:

1. Open up the hearings and consultations to all Quebecers.
2. Produce an independent legal analysis of the Bill, line-by-line of each article.
3. Refer Bill 96 to Quebec's Court of Appeal.
4. Withdraw Bill 96 in its' entirety.

The Task Force is calling on the Government of Canada to:

1. Produce their legal analysis of Bill 96.
2. Speak out against the flagrant unconstitutional aspects of the Bill.
3. Refer key aspects of the Bill as a reference question to the Supreme Court.
4. Instruct the Lieutenant-Governor to Reserve the Bill.
5. Disallow Bill 96.

TOPIC: The proposed Constitutional amendment

REFERENCE

159. The Constitution Act, 1867 (30 & 31 Victoria, c. 3 (U.K.); 1982, c. 11 (U.K.)) is amended by inserting the following after section 90:

“FUNDAMENTAL CHARACTERISTICS OF QUEBEC

“90Q.1. Quebecers form a nation.

“90Q.2. French shall be the only official language of Quebec. It is also the common language of the Quebec nation.”

Analysis

- Unconstitutional proposed Constitutional amendment
- **Form:**
 - The creation of 90Q.1. and 90.Q.2. is suspect, in variety of ways.
 - The proposed amendment does find itself in “V. Provincial Constitutions” of the 1867 Constitution This section which defines technical aspects of provincial government is not open to unilateral amendment by a Province, without regard for the amending formulas adopted in 1982.
- **Substance:**
 - Nation:
 - ◆ “Quebecers form a nation”: sub-provincial, sub-national ethno-linguistic group is recognized in our Constitution. Hitherto unknown concept of recognizing a people as a nation in our Constitutional framework. (There is a partial exception to this for “aboriginal peoples of Canada”, yet indigenous peoples are referred to as “peoples” in the 1982 Constitutional amendments and not a nation)
 - ◆ “Quebec nation”: Quebec is recognized as a Province with a defined territory, defined jurisdictions and legal status in the 1867 Constitution. This territorializes the concept of nationhood. Nation is once again inserted into a Constitution with a binary power structure: the federal government and provincial governments. A “nation” is not contemplated in our Constitution.
 - ◆ “French shall be the only official language of *Quebec*”: Quebec in this sense is clearly of reference to the legally defined province of Quebec
 - ◆ The “nation of Quebec” is proclaimed in two ways: to a distinct Quebec-associated people (might this include ex-patriot Quebecers who have moved to other provinces or abroad?) and to the territory and jurisdictions of the Province of Quebec
 - ◆ These two proclamations of nationhood are seemingly defined solely by the French-language, and are discussed below.
 - Language:
 - ◆ “French shall be the only official language of Quebec”: Comments above in Preamble and S. 2 and S. 62
 - ◆ “It (French) is also the common language of the Quebec nation”: Comments above in Preamble and S. 2 and S. 62 and Preamble, S. 1
- **Process:**
 - Amending formula
 - ◆ The proposed Constitutional amendment is supposedly legitimized by the Government of Quebec under S. 45 of CA 1982, though this is not explicitly mentioned in the Bill.

- S. 45: “Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.”
- As Peter Hogg writes, “... s. 45 makes no reference to the “Constitution of Canada”, a term defined in s. 52(2) of the Constitution Act, 1982. Instead, it refers to the “constitution of a province”, which is not defined anywhere in the Constitution Act, 1982.”
- The Constitution of Canada cannot be modified by S. 45
- ◆ From Peter Hogg’s textbook, “even before 1982 it was held that language rights applicable to a single province are not part of the constitution of a province, because this would render them vulnerable to ordinary legislative change: A.G. Que. V. Blaikie [1979] 2 S.C.R. 1016; A.G. Man. v. Forest [1979] 2 S.C.R. 1032. Now, of course, s. 43(b) makes that explicit.”
- ◆ Additionally, Hogg writes, “... s. 45 as applying to an amendment if the “constitution of the province” only when the provision to be amended is not found in any of the instruments comprising the Constitution of Canada.”
- ◆ S. 43 of the amending formula requires the Parliament of Canada and the legislature to pass resolutions for, “... (b) any amendment to any provision that relates to the use of the English or the French language within a province...”
- ◆ The proposed amendments clearly amend and contradict S. 133 of the 1867 Constitution which accords equality of status to English and French in Quebec’s legislature, courts, legislation and regulations.
- ◆ While a preliminary analysis would find that S. 45 is not sufficient for the amendment, and S. 43 might apply to it given the linguistic provisions, there is the dual “nation” and other language changes inserted into the Constitution.
- ◆ This adds an additional layer of analysis to the amendment.
- ◆ S. 41 requires unanimity of all provincial legislatures and Parliament, and states, “(c) subject to section 43, the use of English or the French language”
- ◆ While S. 43 might apply to part of the amendment, that, “[French] is also the common language of the Quebec nation,” means that there is a modification to the Constitution of Canada in regards to the use of English and French that falls outside S. 43 and 45
 - This requires unanimity to be a valid amendment
- ◆ If, indeed, unanimity did not apply, the dual “nation” proclamation would not fall under any established amending formula, thus leading to the use of the general amending procedure at S. 38(1), requiring 7 provinces with at least 50 percent of the population to approve of the amendment.
- ◆ As we can see, plainly, Quebec cannot modify the Constitution in the ways it is attempting to in Bill 96.

TOPIC: Quebec’s Official Languages

Implied restructuring of our Constitution and Quebec's legal status (Preamble, S. 1, S. 2)

Preamble, S. 1:

Preamble: The purpose of this bill is to affirm that the only official language of Québec is French. It also affirms that French is the common language of the **Québec nation**;

1: "Whereas the National Assembly recognizes that French is the common language of the **Québec nation** and that it is essential that all be aware of the importance of the French language and Québec culture as elements that bind society together, and whereas it is resolved therefore to ensure that everyone has access to learning that language and to make French the language of integration;"

"Whereas Québec is the **only French-speaking State in North America** and shares a long history with the francophone and Acadian communities of Canada, and whereas that confers a special responsibility on Québec, which intends to play a leading role within La Francophonie;"

"Whereas, in accordance with parliamentary sovereignty, it is incumbent on the **Parliament of Québec** to confirm the status of French as the official language and the common language and to enshrine the paramountcy of that status in Québec's legal order, while ensuring a balance between the collective rights of the **Québec nation** and human rights and freedoms;"

ANALYSIS:

- **"Que(é)bec nation":**
 - Quebec nation incorporation into preamble twice
 - The current CAQ Government has been inserting this term into legislation on a regular basis. This was hitherto almost unknown in Quebec legislation, regardless of governing party.
 - This was recently used in, for example, "An Act to amend the Natural Heritage Conservation Act and other provisions."
 - This term had previously, upon legislative research, only been used in one law, "Act to affirm the collective nature of water resources and to promote better governance of water and associated environments" adopted in 2011.
 - Quebec with an accent is not the official name of the Province of Quebec, as a legal entity defined by its' legal status in our Constitution
 - ◆ The official name for Quebec, which must be used in legislation, must be spelled without an accent.
 - ◆ The only official version of the 1867 Constitution is in English, thus the English name for Quebec is officially without an accent in English and in French.
 - ◆ The issue is succinctly noted here: "The official English name of Quebec, as an entity of public law, is written without an accent. This was the spelling when the province was created by the Constitution Act, 1867 (for example s. 5 and 6). It seems that alteration to the name of a province requires the participation of the federal parliament and of the legislature of the province: Constitution Amendment, 2001 (Newfoundland and Labrador), 6 December 2001, S.I./2001-117, C.Gaz. 2001.II. Extra no 6. The latest constitutional amendment involving Quebec was enacted at its

request and still spells its name without an accent: Constitution Amendment, 1997 (Quebec), 19 December 1997, SI/97-141. C. Gaz. 1997.II. Extra no. 8. It is worth noting that the actual amendment to the constitution is the proclamation issued by the Governor General: Constitution Act, 1982, s. 43. In recent decades, the spelling “Québec” has become widespread in the English texts of the legislation of the province and documents issued by the provincial government.” from Edmund Coates, “The English Voice of the Civil Code of Québec: An Unfinished History” in La Revue du Barreau du Québec, Printemps 2011, Tome 70.

- **“Only French-speaking State in North America”**
 - Factually incorrect, by its own definition. Externally and internally.
 - Manitoba, New Brunswick and Canada have to pass all legislation and regulations in French, other provinces have statutory French requirements, all Quebec laws and regulations must be in English to be official
 - Haiti is a French-speaking state
 - All meet definition of “State” in art. 3077 of the Civil Code of Quebec (CCQ)
 - Quebec has 20% if its population who are not mother-tongue French-speaking

- **“State”**
 - S. 14, “For the purposes of this Act, “State” has the meaning assigned by the first paragraph of article 3077 of the Civil Code.”
 - While State is used to refer a territorial unit with a different legislative jurisdiction from other units of “a State”, the meaning here seems to confer some sort of “Statehood”, meaning the status of an independent state on the international stage, in law and international relations

- **Parliamentary sovereignty, Parliament of Quebec**
 - The term “parliamentary sovereignty,” while it can refer to a provincial legislature, raises concerns.
 - This term seems to imply a sovereign legislature, which presumably, would be of an independent or sovereign Quebec
 - Parliament of Quebec is a radical expression to refer to the legislature of Quebec, and is previously unknown in nomenclature and legal interpretation
 - ◆ While the buildings are known as the Parliamentary Building of Quebec, largely this expression is used uniquely in French, and does not refer to the legislature inside its walls. It refers to the actual building.
 - Once again, the term Parliament of Quebec, is used to refer to the legislative bodies and this implies a name and status that is heretofore unknown.
 - ◆ It would appear to equivocate the name with the federal Parliament which is the federal legislature of the Government of Canada. The Parliament of Canada is composed of three parts: the monarch, The Senate and the House of Commons.

- Taken as a whole, the terms Quebec nation, only French-speaking State, State, Parliamentary sovereignty, Parliament of Quebec and Quebec spelled erroneously with an accent, all seem to factually, legally, constitutionally, politically and morally confer and imply an illegitimate legal status that Quebec, a province defined by the Constitution Act of 1867 and created by the United Kingdom's Royal Proclamation of 1763, that is *ultra vires* (meaning unconstitutional) of the legislature and current legal status of an (unaccented) Quebec entity of public law whose status is conferred and bounded by the Canadian Constitution.

Preamble and S. 2 and S. 62:

Preamble: The purpose of this bill is to affirm that the **only official language** of Québec is French;

“confirm the status of French as **the official language** and the common language and to enshrine the **paramountcy of that status** in Québec’s legal order,”

2: (1) by adding the following sentence at the end: “**Only French has that status.**”;

(2) by adding the following paragraph at the end: “French is also the **common language** of the Québec nation and constitutes one of the foundations of its identity and distinct culture.”

62. “THE COMMON LANGUAGE

“88.9. As the **common language of the Québec nation, French is, among other things,**

(1) **the host language and the language of integration** that enables immigrants to interact, thrive within Québec society and participate in its development;

(2) the language of **intercultural communication** that enables all Quebecers to **participate in public life** in Québec society; and

(3) the language that makes it possible to **embrace and contribute to the Québec nation’s distinct culture.**

ANALYSIS:

1. Common language:

- Perpetuate the legally and politically unfounded idea that French is the sole or the most critically defining characteristic of being a Quebecer
- What legal definition, if any, can be accorded to this statement?
 - ◆ S. 62
- Does it simply mean the most frequently occurring language in Quebec, given that most people speak this language as a mother or acquired language?
- Common: what is the definition?
 - ◆ From Larousse, which is used for statutory interpretation: ‘Qui appartient à tous, qui concerne tout le monde, Qui est propre au plus grand nombre, Qui appartient à plusieurs choses ou personne, universel,’ are ordinary uses of the word.
 - ◆ Also from Larousse, it can mean: ‘Qui se rencontre fréquemment, qui n'est pas rare ; abondant ou habituel, répandu, ordinaire, courant, Qui manque de distinction, d'élégance ; vulgaire’
 - ◆ From Merriam-Webster, it can mean: occurring or appearing frequently, widespread, general, and also: characterized by a lack of privilege or special status, falling below ordinary standards or second-rate, lacking refinement, coarse and vulgar (once again).

- It remains to be seen what definition the judiciary will accord the common language of Quebec, but objectively, it may not be a desired or pleasant one.
 - The term has been twice incorporated into legislation in An Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful immigrant integration, SQ 2019, c 11 and Québec Immigration Act, CQLR c I-0.2.1
- **2. The only official language of Quebec is French**
 - French is not the only official language of Quebec.
 - French has never been the only official language of Quebec.
 - Even if one were to erroneously regard New France as foundational state of Quebec, French was not the official language, though it was presumably the defacto official language
 - ◆ “By the same token French does not seem to ever have been declared the official language of New France.” in Patrick Riley, *The Official Language Act of Quebec*, 1976 7-2 *Manitoba Law Journal* 93, 1976.
 - S. 133 of 1867 Constitution Act places the equality of status on English and French in Quebec’s legislature, laws, regulations and courts
 - This is a significant revision, indeed perversion, of bilingual statutory interpretation. In Quebec due to S. 133 of Constitution Act, 1867 both English and French have equality of status in our Courts, laws, regulations and in the legislature.
 - ◆ *Section 133*
 - ◆ *Use of English and French Languages*
 - ◆ *133 Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.*
 - ◆ *The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.*
- **3. Officialdom: There is a definitional aspect: what status does officialdom confer? Is being official a status to itself?**
 - ◆ From Larousse: Dont le caractère authentique est publiquement reconnu par une autorité, Qui émane du gouvernement, de l'Administration, des autorités compétentes, Qui appartient au gouvernement, à la haute administration, qui est revêtu légalement d'une autorité publique
 - ◆ From Merriam-Webster: having authority, authoritative, prescribed or recognized as authorized.
 - William Johnson wrote, “The two most central functions of any state are the adopting of legislation by its legislature and maintaining of the rule of law and equal justice for all through the judicial system. Since 1867, English has been constitutionalized as an equal and official language of the provincial legislature and the provincial courts. Every single law

passed since Quebec was created as a province to this day was passed in English as well as French, under both federalist and separatist Quebec governments. Any law not passed in English was declared unconstitutional and void. That's the very essence of an official language. And that Section 133 has never been rescinded. Its intent was confirmed by the 1982 Constitution Act. No law passed by the Quebec legislature can or did abolish the official status of English. The Charter of the French Language in 1977 pretended to, but that pretention was struck down unanimously in 1979 by the Supreme Court of Canada in Quebec (AG) v. Blaikie." (themetropolitain.ca/articles/view/1707)

- While a declaratory statement that a language is official, it does not confer any special status. Officialdom must relate, necessarily, to authenticity of valid acts of the state which have legal value, in some form or another.
 - ◆ These matters are outside the legislative competence of the Quebec legislature.
 - ◆ As well, language is not an exclusive power of either the provinces or the Government of Canada. This division of powers is in itself a protection for linguistic minorities.
- English and French are definitively the official languages of the Government of Canada, due to S. 133, the Official Languages Act (in its present form) and the Constitution Act 1982.
- Quebec, as a territory defined by the Constitution and comprising provincial and federal jurisdictions within this constitutionally defined territory, has English as an official language.
- The aspects of Bill 96 and the CFL which purport to confer some unique and singular officialdom on French are either declaratory and symbolic, or, of no legal force and effect as they relate to deligitmization, deinstitutionalization and disestablishment of the English language in Quebec are ultra vires of the Constitution, the Canadian one as a whole and the internal Quebec Constitution.
- These matters are outside the legislative competence of the Quebec legislature.

Changes to the interpretive framework for Bill 101, the Quebec Charter and other laws will distort fundamental freedoms and human rights. (ss. 63, 66, 120-126, 133-136, 138)

REFERENCE:

63. "Every Act must be interpreted in a manner respectful of the rights intended to protect the French language that are conferred by this Act."

Analysis:

- This is a significant revision, indeed perversion, of bilingual statutory interpretation. In Quebec due to S. 133 of Constitution Act, 1867 both English and French have equality of status in our Courts, laws, regulations and in the legislature.
- The predominant interpretation of French in the interpretation of a statute is illegitimate and unconstitutional under the Constitution
- The equality of English and French has been upheld, notably in Supreme Court of Canada (SCC) cases *Blaikie I* and *Blaikie II* in the early 1980s

which overturned the predominant French aspects of the original *Charter of the French Language*

REFERENCE

66. “Where, in accordance with the first paragraph, a text or document is drafted in French and in another language, the French version must be understandable without having to refer to a version in another language.

Where there is a discrepancy between the French version and a version in another language of such a text or document, the adhering party or the consumer, in the case of a contract of adhesion or a consumer contract, or, in any other case, the person who did not draft the text or document may invoke either version, according to his interests.”

Analysis

- In the first paragraph, French predominance in public acts of the state which fall under S. 133 cannot be subject to this provision and cannot be effected by this.
- All official acts of the Province of Quebec must be of equal authority in English and in French. The lack of one language nullifies the contents of the legislative or executive instrument.
- In the second paragraph, this is a normative contractual clause. The adhering party or the consumer, in other words for the interests of those who did not draft the document, can invoke either language for their benefit. This seems to contradict the previous clauses, which give exclusive predominance to French only.

CIVIL CODE OF QUÉBEC

REFERENCE:

120. The Civil Code of Québec is amended by inserting “Charter of the French language (chapter C-11), the” after “in harmony with the” in the first paragraph of the preliminary provision.

Analysis

- This inserts the CFL into the interpretive framework for the Civil Code of Quebec (CCQ) and seems to imply that the CFL has a predominant interpretive status to interpreting the CCQ than the CHRF.
- This signals a fundamental revision to the interpretative framework for the CCQ, which regulates nearly the entirety of private and civil rights in Quebec.

REFERENCE

121. “Article 108 of the Code is amended by striking out “or English” before “the name” and “or English, at the option of the interested person” in the second paragraph.”

Original

“Where a name contains characters, diacritical signs or a combination of a character and a diacritical sign that are not used for the writing of French ~~or English~~, the name must be transcribed into French ~~or English~~, ~~at the option of the interested person~~. The transcription is entered in the register and is substituted for the original form of the name on copies of acts, certificates and attestations. The original spelling of the name is preserved, subject to the modifications required by the transcription.”

Analysis

- The names of individuals, which have letters or characters that are not used in French must be assigned a name in French
- This, presumably and necessarily, applies to linguistic minorities in Quebec, predominantly New Canadians and Indigenous Canadians
- This could apply to English-speakers in Quebec, if they were assigned a non-French name
- This is a bizarre intrusion on basic civil rights in Quebec, where now a person's name under which they exercise civil rights must now be francized.

REFERENCE

122. "Article 109 of the Code is amended

(1) by replacing "he receives, or by drawing it up himself in accordance with the judgment or other" in the first paragraph by "drawn up in French that he receives, or by drawing it up himself in French in accordance with the judgment, with a declaration drawn up in English or with another";
 (2) by inserting "he signed or drew up" after the first occurrence of "declaration" in the second paragraph."

Original

"109. The registrar of civil status prepares an act of civil status by signing the declaration ~~he receives, or by drawing it up himself in accordance with the judgment or other~~ act he receives. Where necessary to obtain the information required to draw up the act of civil status, the registrar makes a summary investigation.

He dates the ~~declaration~~, assigns a registration number to it and inserts it in the register of civil status. The declaration thereupon constitutes an act of civil status."

Analysis

- Official acts of civil status will be drawn up in French, and only declarations in English
- This is a revision, indeed perversion, that official acts of the Province of Quebec must be drawn up in English and French, both having equal status, as prescribed by S. 133 of the Constitution

REFERENCE:

123. "Article 140 of the Code is amended by striking out "or English" in the first paragraph."

Original

"Every act of civil status or juridical act made outside Québec and drawn up in a language other than French ~~or English~~ shall be accompanied by a translation authenticated in Québec.

The same applies to Aboriginal customary adoption certificates and to acts recognizing such adoptions drawn up in a language other than French or English."

Analysis

- Unconstitutional section - ultra vires of S. 133 CA 1867. Quebec cannot disregard an English language judgment.
- A deinstitutionalization and delegitimization of the English language's legal status in Quebec.

- This article is unconstitutional, as the Province of Quebec cannot require a translated version of an English language judgment from another jurisdiction, as French and English have equality of status.
- This would apply to other Canadian jurisdictions, as well, and this would delegitimize the Canadian legal system by disregarding English language judgments.

REFERENCE

124. “Article 1060 of the Code is amended, in the first paragraph, (1) by inserting “exclusively in French” after “are filed”; (2) by adding the following sentence at the end: “The amendments must be made exclusively in French.””

Original

1060. “The declaration and any amendments to the act constituting the co-ownership or the description of the fractions are filed at the registry office. The declaration is registered in the land register under the registration numbers of the common portions and the private portions. The amendments are registered under the registration number of the common portions only, unless they directly affect a private portion. However, amendments to the by-laws of the immovable must be made expressly, in minutes or in a resolution in writing of the co-owners, and it is sufficient for such amendments to be filed in the register held by the syndicate in accordance with article 1070.

The emphyteuta or superficiary, if any, shall give notice of the registration to the owner of the immovable under emphyteusis or on which superficies has been established.”

Analysis

- Unconstitutional section - ultra vires of S. 133 CA 1867. Quebec cannot disregard an English language judgment.
- A deinstitutionalization and delegitimization of the English language’s legal status in Quebec.
- Co-ownership and other property law mechanism of ownership under civil law, and their formal constitutive acts, are extensions of the Province of Quebec’s legislative power, and have official status in both English and French.
- As defined in *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 000,
 - With respect to the content and effect of an instrument, we decided that the following characteristics are further badges of its legislative character (at p. 000):
 - ◆ 1. The instrument embodies a rule of conduct;
 - ◆ 2. The instrument has the force of law; and
 - ◆ 3. The instrument applies to an undetermined number of persons.
- This notion was reinforced in *Sinclair v. Quebec (Attorney General)*, [1992] 1 S.C.R. 579 where the existence of French language only acts were of no legal force and effect:
 - “All of the instruments in question were printed and published in the French language only, or were not officially published at all. Clearly, therefore, the requirements of s. 133 were not complied with. It follows that all of them are, and have always been, nullities and of no legal force and effect.”

REFERENCE:

125. Article 2984 of the Code is amended by adding the following paragraph at the end: “Applications for registration are drawn up exclusively in French.”

Original

2984. Applications for registration are signed, certified and presented in the manner prescribed by law, this Title or the regulations.

Analysis

- Same analysis as for section 124.

REFERENCE:

126. Article 3006 of the Code is amended by striking out “or English”.

Original

“3006. Where the law prescribes that the application shall, upon presentation, be accompanied by other documents, any such documents drawn up in a language other than French or English shall themselves be accompanied by a translation authenticated in Québec.”

Analysis

- Same analysis as for section 124.

REFERENCE:

133. The preamble of the Charter of human rights and freedoms (chapter C-12) is amended by inserting the following paragraph after the third paragraph:

“Whereas French is the only official language of Québec and the common language of the Québec nation and the language of integration into the Québec nation;”.

Analysis

- Partly unconstitutional - ultra vires of S. 133 of CA 1867.
- A fundamental revision, indeed perversion, of our legal order. These modifications to the interpretive framework for the preamble of the *Charter of Human Rights and Freedoms* (CHRF) could have a potentially detrimental effect on the linguistic minorities in the province of Quebec. The fields of application of the CHRF are very broad and apply to private and public law. They govern private law relations and public law relations. Private law relationships are broad, for example: art. 55 in legislative matters of the QC, therefore the Civil Code of Quebec, preamble, for example: s. 12 for legal acts, s. 13 for clauses in a legal act, s. 14 for residential leases, ss. 16 and 20 for employment, and 20.1 for insurance. The Charter applies to government in the broad sense, from the legislature to s. 52, to the government to s. 54, and s. 56 para. 3 which includes the regulations. Given the wide-ranging nature of the application of the Quebec Charter, and the new inclusion of an interpretive framework to further emphasize Quebec’s « common language » and the right to live and work in French, could have a detrimental effect on the basic rights of minorities in the province of Quebec. Given the broad and purposive interpretation of language rights in *Beaulac* and the quasi-constitutional nature of the CHRF, it is conceivable that the modifications to the preamble could have a wide application to human rights in the province of Quebec, and the favouritism of the French language could come to the potential detriment of minority groups.

- Unconstitutional - “French is the only official language of Quebec.” This statement is not accurate and English and French have equality of status in laws, regulations, Courts and the legislature under S. 133 CA 1867, and as stated in SCC judgments *Blaikie I and II*, *Sinclair* and *Manitoba Language Rights*.
- “French is the common language of the Quebec nation” - this statement is of legal ambiguity and discussed in analysis of Preamble, S. 1 and 2.
- ‘Common language’ is not defined in statute, case law, or the Constitution, to our knowledge. See analysis of Preamble, S. 1 and 2.
- “Quebec nation” - stated twice.

REFERENCE:

134. Addition of “3.1. Every person has a right to live in French to the extent provided for in the Charter of the French language (chapter C-11).”

Analysis

- Same analysis as for section 133.

REFERENCE:

135. (1) by replacing “fundamental freedoms and rights” by “human rights and freedoms”, (2) by inserting “the importance given to the protection of French,” after “State laicity,”.

Analysis

- S. 9.1 of the CHRF is the limitation clause, and an interpretive clause used in Quebec, similar to S. 1 of the Canadian Charter
- In paragraphs 61-32 of *Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712, S. 9.1 is comparable to S. 1 of the (Canadian Charter) Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
- The standard justification test for the S. 9. 1 and S. 1 is known as the Oakes test
- As described in *Mouvement laïque québécois v. Saguenay (City)*, [2015] 2 SCR 3: “This section gives the state the possibility of showing that a provision that, in its effect, infringes an individual’s freedom of conscience and religion constitutes a reasonable and justified limit on that freedom in a free and democratic society. This means that the criteria developed by the Court in interpreting s. 1 of the Canadian Charter apply to the interpretation of s. 9.1 (*Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 980; *Ford*, at pp. 769-71). The impugned provision must therefore satisfy the justification test enunciated in *Oakes*, which requires the state to prove on a balance of probabilities (1) that the legislative objective is of sufficient importance, in the sense that it relates to pressing and substantial concerns, and (2) that the means chosen to achieve the objective are proportional. This second requirement has three components: (i) the means chosen must be rationally connected to the objective; (ii) they must impair the right in question as little as possible; and (iii) they must not so severely trench on individual or group rights that the objective is outweighed by the seriousness of the intrusion (*Edwards Books*, at pp. 768-69)
- That the “importance” and “protection of French” is now incorporated into such a critical legislative article of law, that not only frames the rights under the CHRF, but this has a quasi-constitutional status that places it above all

other Quebec legislation. Though, if Bill 96 is adopted, the CHRF will itself conform to the CFL.

- This inclusion will likely have broad effects on the legal interpretation of rights in Quebec.
- Given the broad and purposive interpretation of language rights in *Beaulac* and the quasi-constitutional nature of the CHRF, it is conceivable that the modifications to the preamble could have a wide application to human rights in the province of Quebec, and the favouritism of the French language could come to the potential detriment of minority groups.
- Similar analysis to S. 133

REFERENCE:

136. ““Moreover, the Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any right intended to protect the French language conferred by the Charter of the French language (chapter C-11).”

Analysis

- S. 50 of the CHRF is similar to s. 26 and the 9th Amendment to the US Constitution, as it is a cautionary provision to confirm that rights and freedoms are not infringed by the lack of explicit, or insufficient, acknowledgment in the Charter
- Rights not within the CHRF still do exist. New rights can also be created.
- These rights will now be interpreted by the French language provisions in the CFL
- Same analysis as S. 133

REFERENCE:

138. The Code of Civil Procedure (chapter C-25.01) is amended by inserting “Charter of the French language (chapter C-11), the” after “in harmony with the” in the first paragraph of the preliminary provision.

Analysis

- Adding interpretive clause for CFL to preliminary provision of the Code of Civil Procedure (CPC)
- The CPC is a critical law that frames our ability to enforce civil rights in Quebec courts
- The new predominant framework for the CFL is incorporated into the interpretive framework for the CPC
- Purpose of CPC: “This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role. It is also designed to ensure the accessibility, quality and promptness of civil justice, the fair, simple, proportionate and economical application of procedural rules, the exercise of the parties’ rights in a spirit of co-operation and balance, and respect for those involved in the administration of justice.”
- Similar analysis to S. 133

REFERENCE:

146. The Interpretation Act (chapter I-16) is amended by inserting the following sections after section 40: “40.1. Acts shall be construed so as not to suppress or limit the enjoyment or exercise of any right intended to protect the French

language conferred by the Charter of the French language (chapter C-11). “40.2. Every Act is presumed to allow using only French in the performance of the obligations it prescribes.” 40.3. Every Act shall be construed so as to promote the use and protection of French.”

Analysis

- Bizarre statutory interpretation framework for all statutes which place the predominance of French above every other human and civil right in Quebec.
- “Using only French in the performance of the obligations” is a revision of previously mentioned interpretive norms where English and French have equality of status. English must also be allowed for the official acts.
- Extreme limitation on interpretation of statutes and basic civil rights

TOPIC: CEGEP Admissions

REFERENCE

62. ... “In addition, the policy of an English-language college-level educational institution must include measures to give priority to admitting, to that institution, students declared eligible to receive instruction in English in accordance with Division I where the number of admission applications is higher than the number of students that may be admitted.”

Analysis:

- Admission is based on “eligible to receive instruction in English status”
 - What is this new status?
 - Division I definition: see discussion of Article 15 below
- Depends meritocracy, that your admission to post-secondary education is based on an inherited ethno-linguistic background designated by the state

REFERENCE

58. ... “When determining a defined total number of students for a school year, the Minister shall ensure that, for that school year, the combined defined total number of students for all the English-language institutions meets the following conditions:

- (1) it does **not exceed the lesser** of the following proportions of the **combined defined total number** of students for all the English-language and French-language institutions:
 - (a) **17.5%**; or
 - (b) the proportion that the combined defined **total number of students for the English-language institutions for the previous school year is of the combined defined total number of students for all the English-language and French-language institutions for that same school year**; and
- (2) if applicable, the increase in that number, in relation to the previous school year, does not exceed **8.7% of the increase**, for that same school year, in the combined defined total number of students for all the English-language and French-language institutions.”

Analysis:

- The CAQ government said this year they count the English-speaking population as 8.7 per cent of Quebec.
 - <https://montreal.ctvnews.ca/experts-say-quebec-is-under-counting-english-speakers-minister-defends-bill-1.5429132>

- We have about 8.7 per cent of Quebecers who are anglophones, with the rights,” Legault said at the news conference on Bill 96.
- Defines the English-speaking community and intentionally undercounts it
- Cripples the English-language college (CEGEP) system, and would hinder CEGEPs like Champlain-St-Lawrence and Lennoxville in their abilities to function with a majority Francophone student body.

TOPIC: Business

ANALYSIS:

- The OQLF currently requires broad conformity to the requirement that enterprises with fifty employees or more get a francization certificate.
 - 2010-2011: 84.7% of enterprises certified (up from 71.4% in 2002)¹.
 - 2016-2017: 85.9% of enterprises certified²
 - 2019-2020: 2.1% growth rate of enterprises certified, as set out as an objective by the OQLF³
- The OQLF receives thousands of complaints per year about businesses breaking the law, where a significant amount of complaints are not founded.
 - 2014-2015: 2538 complaints where 15.8% were not founded⁴
 - 2016-2017: 3200 complaints where 18.9% were not founded⁵
 - 2017-2018: 2724 complaints where 21% were not founded⁶
- Given that businesses are compliant towards the Charter of the French language, what justifies the massive increase in powers to the OQLF?
- Given that the OQLF regularly receives a substantial percentage of unfounded complaints against businesses, how will the government ensure that these new powers given to the OQLF are not abused?
- How will these powers benefit the protection of the French language further?

ANALYSIS:

- The Language Barrier Index uses detailed linguistic data to show that language barriers are significantly negatively correlated with bilateral trade (Lohmann, 2011). The Language Barrier Index suggests that the implementation of an increased language barrier between Quebec and Canada could create a proportional decrease in trade flows between this province and the rest of Canada as well as other countries that use English as a language of trade.
- The cost of a language barrier to trade has been estimated to be the equivalent of a 15%-22% trade barrier while sharing a common language can reduce these costs by 75% to 170% (Canadian Heritage, 2016). This suggests that legislation that restrains bilingualism/plurilingualism will have significant impacts on trade and the cost of living.

¹ http://oqlf.gouv.qc.ca/office/rapports/rap20102011/OQLF_2010_2011.pdf, p. 64

² <http://oqlf.gouv.qc.ca/office/rapports/rap20162017/rag2016-2017.pdf>, p. 23

³ <http://oqlf.gouv.qc.ca/office/rapports/rag2019-2020.pdf>, p. 18

⁴ http://oqlf.gouv.qc.ca/office/rapports/rap20142015/20150929_RAG-2014-2015.pdf, p. 47

⁵ <http://oqlf.gouv.qc.ca/office/rapports/rap20162017/rag2016-2017.pdf>, p. 34

⁶ <http://oqlf.gouv.qc.ca/office/rapports/rap20172018/rag2017-2018.pdf>, p. 39

- Several European studies confirm that 15% to 20% of companies say they have lost business due to an inability to communicate in a foreign language (Canadian Heritage, 2016). This suggests that the implementation of Bill 96 would negatively impact the profitability of companies operating in Quebec. Consequently, companies with a focus outside the limited francophone market (roughly 3.5% of world population) will find it increasingly disadvantageous to remain in or start operating in Quebec.
- Being able to trade in two languages adds 3.3 billion dollars each year to the economies of New Brunswick and Quebec (Canadian Heritage, 2016).

TOPIC: Socio-Economic Status of English-speaking Quebecers

REFERENCE

English-speaking Quebecers are poorer than French-speakers.

ANALYSIS:

The Quiet Revolution sought to overturn the perceived and real socio-economic differences between English and French-speakers in Quebec. French-speaking males earned half that of their Anglo males. Francophone economic advancement was the purpose of government, education and labour market expansion in the 1960s. The problem is, the measures targeted did not only lift Francophone sails. They constructed systemic barriers to freedom of expression, education, healthcare and social services along with diminished labour market and economic prospects for non-francophones.

Lets us put to bed the myth of the wealthy Anglophone. Two key-terms are useful for understanding the plight of the community: missing-middle and the missing-out-middle. The English-speaking community is defined by a declining population, an aging population, and what is described as the “missing-middle” with a low proportion of people aged 15-44 and a “missing-out-middle” having, on average, lower levels of income and employment than their French-speaking counterparts.⁷ English-speaking Montrealers earn 5000\$ less a year than a Francophone.⁸ In the Eastern Townships, English-speaking youth earn 4000\$ a year than French-speakers their age with the same education and 51% of English-speaking women are out of the workforce.⁹ English-speaking Quebecers are substantially poorer than Francophones, with 38.5% of English-speakers earning under 20,000 dollars annually vs. 31.8% for Francophones.¹⁰ There are fewer high-income Anglophones, with 26.3% earning more than 50,000\$ a year vs. 28.6% for Francophones.¹¹ The portion of the Anglophone population below the low-income cut-off is 17.8% vs. 11.8% French-speakers.¹² In regards to median income, Anglophone men earn 29,405\$ to 31,412\$ for Francophone

⁷ Klimp, Kalina. Profile of the English-speaking Community in the Eastern Townships, 2008, Townships' Association, p. 13.

⁸ Statistics Canada. 2012. Census Profile of Montreal. 2011 Census.

⁹ Klimp, Kalina. Profile of the English-speaking Community in the Eastern Townships, 2008, Townships' Association, p. 13.

¹⁰ Dr. Joanne Pocock. Demographic profiles of the English-speaking communities in RTS de L'Estrie CHU de Sherbrooke, based on the 2016 Census of Canada. Baseline Data Report Series 2017-2018. Community Health and Social Services Network (CHSSN), p. 15.

¹¹ Ibid, p. 16.

¹² Ibid, p. 22.

males.¹³ English-speaking women are slightly advantaged at 20,982\$ to 20,351\$ for Francophones.¹⁴ English-speaking Quebecers are at once extremely well-educated, and also have a higher rate of low education. Of Anglophones aged 25-44, 26.4% have a high school degree or less vs. 23.9% for French-speakers.¹⁵ Overall, 40.7% vs. 41.2% English-speakers vs. French-speakers have low educational attainment, slightly less than Francophones.¹⁶ English-speakers are also much more likely to have a high educational attainment, with 29.6% having a university degree or better vs. 19.2% of Francophones.¹⁷ Of those aged 25-44, 42.7% of English-speakers vs. 29.5% of French-speakers have a higher education.¹⁸ In regards to percentage of Anglophones in the labour force, 65.2% are working vs. 64.3% of Francophones.¹⁹ However, unemployment is greater for Anglophones despite this, with 8.9% of English-speaker unemployed vs. 6.9% of Francophones.²⁰ The level of bilingualism for English-speakers is high, with 69% of English-speakers being bilingual, and the cohort that is ages 15-24 being 79% bilingual and 24-64 being 74% bilingual.²¹ Another critical aspect are the English-speakers whom have left Quebec. Their presence, or lack thereof, is felt at our dinner tables, social gatherings and workplaces. Over 50% of mother-tongue English have left Quebec compared to only 4% of Francophones.²² Quebec Anglophones are much more likely to have graduated from university (+46%), to have a Master's degree (+51%) and are substantially more likely to hold a doctoral degree (+32%) than other Canadians in the ROC.²³ They are also much less likely than other Canadians to be without a high school graduation certificate. "This exodus of Quebec Anglophones during their best working years constitutes a real loss of human capital for the English-speaking communities of Quebec, and also a loss of know-how for Quebec society as a whole."²⁴ The unemployment rate for Anglophones who stayed in Quebec was twice that of the Quebec Anglophones now living in other provinces (4.3%).²⁵

Comparatively, only Franco-Newfoundlanders have less rate of retention to their home province. Francophones living in P.E.I., N.S., N.B., Manitoba have higher retention rates than Anglophones. Socio-economically, Franco-Ontarians

¹³ The Socioeconomic Status of Anglophones in Québec Institut national de santé publique du Québec, 2012, p. 10.

¹⁴ Ibid, p. 10.

¹⁵ Dr. Joanne Pocock. Demographic profiles of the English-speaking communities in RTS de L'Estrie CHU de Sherbrooke, based on the 2016 Census of Canada. Baseline Data Report Series 2017-2018. Community Health and Social Services Network (CHSSN), p. 15

¹⁶ Ibid, p. 30.

¹⁷ Ibid, p. 33.

¹⁸ Ibid, p. 34.

¹⁹ Ibid, p. 38.

²⁰ Ibid, p. 37.

²¹ Statistics Canada, 2016 Census.

²² Floch, William and Joanne Pocock. The Socio-economic status of English-speaking Quebec: Those who left and those who stayed. In R.Y. Bourhis (Ed.) The Vitality of the English-Speaking Communities of Quebec: From Community Decline to Revival. Montreal, Quebec: CEETUM, Université de Montréal, p. 50.

²³ Ibid, p. 53.

²⁴ Ibid, p. 25.

²⁵ Ibid, p. 58.

earn up to 6,000\$ a year more than non-francophones in Ontario and Franco-Albertans incomes are on par with the majority.^{26 27}

TOPIC: Municipal status: Excising the English language from Quebec’s bilingual Cities, Towns and Boroughs

REFERENCE

5. “8. Regulations and other similar acts to which section 133 of the Constitution Act, 1867 does not apply, such as municipal by-laws, shall be drawn up, adopted and published exclusively in French.

Bodies and institutions recognized under section 29.1 may draw up, adopt and publish those acts in both French and another language; in the case of a discrepancy, the French text of such an act shall prevail over the text in another language.”

ANALYSIS:

- Circumscribes the ability of municipalities to adopt by-laws in the English, French or other language they adopted if under S. 29.1
- S. 29.1 municipalities may already adopt another language than just English as the second language they use, which is bizarre, as they must have a majority of mother tongue English-speakers
- Rules of statutory interpretation should accord equality to English and French versions, and even potentially another language, under ordinary rules of statutory interpretation. The interpretation that most benefits the citizen or resident or user of services should predominate, and in the language that best serves them.

REFERENCE

19. The Charter is amended by inserting the following after section 29.1: “29.2. Where the Office ascertains, in light of the language data from each census carried out in accordance with Canadian statistics legislation, that a municipality recognized under section 29.1 does not meet the requirement of subparagraph 1 of the second paragraph of that section, it shall send the municipality a written notice informing it accordingly. The recognition obtained by the municipality is withdrawn, by the sole operation of law, on the expiry of 120 days after receipt of the notice sent by the Office. Recognition is maintained, however, if the municipality adopts, before the expiry of the 120-day period, a resolution to that end; if so, it shall notify the Office without delay. The notice sent under the first paragraph shall be published by the Office and by the municipality that receives it.

“29.3. Where the recognition obtained by a municipality is withdrawn under the third paragraph of section 29.1 or the second paragraph of section 29.2, the Office shall send every body recognized under section 29.1 that is under the authority of that municipality a written notice informing it of that fact. The Office shall send a copy of the notice to the municipality. The recognition obtained by

²⁶Profile of the Francophone population in Ontario – 2016, <https://www.ontario.ca/page/profile-francophone-population-ontario-2016#section-12>.

²⁷ Francophone Community Profile of Alberta. La Fédération des communautés francophones et acadienne du Canada, https://www.acfa.ab.ca/Documents/alberta_en.pdf, p.9.

the body is withdrawn, by the sole operation of law, on the expiry of 120 days after receipt of the notice sent by the Office...”

“29.23. A body or institution recognized under section 29.1 may depart from the obligation to use French in an exemplary manner if, in accordance with this Act, it uses the other language allowed under its recognition, without having to comply with the provisions of this subdivision.”

ANALYSIS:

- Census data will lead to a revocation of 29.1 status for designated municipalities
 - 120 days to respond, if not, loses the status in perpetuity
 - 50 / 89 municipalities will lose status
 - While this section leaves a municipal opt-in, it will lead to the disappearance of S.29.1 municipalities every 5 years with each census.
 - If the municipality does not have a cooperative council, or neglects or forgets to pass a resolution, the status is lost forever.
 - These provisions ensure a straight-line towards oblivion for “bilingual” municipalities.
- 29.23 - an odd derogation from exemplary use of French, though exemplary seems an ill-defined term
- No French-speaker, Quebecer or other resident receives less French services in a bilingual municipality than in a unilingually French one.
 - If this is the case, why revoke this status?
- The proposed legislation runs contrary to unwritten constitutional principles of the Canadian constitution and recent case law outlining a broad, purposive interpretive framework for language rights and their positive implementation on an institutional level by governments in Canada.

Effect of Proposed changes to Municipal status in Bill 96

The revocation of the narrow bilingual municipal status accorded in the Charter of the French Language was ruled upon in *Rosemère (Ville de) c. Office de la langue française*, [1990] R.J.Q. 2622. The OLF could not use its’ discretionary power to unilaterally revoke the s. 113 f) status (now s. 29.1) of the city of Rosemère.

The effect of the modifications to municipal status would be detrimental to the self-expression of the English-speaking community through their municipal institutions. Out of the ninety currently recognized s. 29.1 recognized municipal institutions, fifty of the municipalities no longer meet the criteria to attain, and with the proposed modifications - to retain, bilingual status.

Certain regions off the island of Montreal would face drastic reductions in the number of recognized municipalities. In particular, out of the 18 Eastern Townships villages currently recognized as bilingual, fifteen of them would lose their bilingual status under the proposed changes.

Current extent of the rights accorded to recognized municipalities:

The CFL defines the extent and limits of the rights of recognized institutions. The rights to use another language besides French are limited to signage, the names of the body in question, their internal communications and in communicating with each other. These rights are enumerated at s. 24 and 26 of the current Charter,

“24. The bodies and institutions recognized under of section 29.1 may erect signs and posters in both French and another language, the French text predominating.”

“26. The bodies and institutions recognized under section 29.1 may use both the official language and another language in their names, their internal communications and their communications with each other.” As well, at s. 23, municipal bodies recognized under 29.1 must ensure their services are available in French and all notices and communications available in the French language

“23. The bodies and institutions recognized under section 29.1 must ensure that their services to the public are available in the official language. They must draw up their notices, communications and printed matter intended for the public in the official language.”

Allowing English-speakers access to services in the language of their choice does not hinder access to French language services at the municipal level. Bill 96’s changes have the sole effect of prohibiting Quebec’s linguistic minority from attaining government services in their preferred language and from self-expression.

As the Supreme Court of Canada reasoned in the infamous ‘Ford’ signage case, “the requirement of the exclusive use of French... has the effect of impinging deferentially on different classes of persons according to their language of use. Francophones are permitted to express themselves in their language of use while Anglophones and other non-Francophones are prohibited from doing so.”

REFERENCE

137. Section 335 of the Cities and Towns Act (chapter C-19) is amended by striking out the third paragraph.

Original

~~“335. Every notice shall be either special or public, and shall be in writing. Public notices shall be published; special notices shall be notified. Public notices must be drawn up in French and in English.”~~

ANALYSIS:

- Public notices are no longer to be in English as a requirement for all municipalities under the Cities and Towns Act
- Given other aspects of Bill 96, English notices will not be allowed to be drawn up by the civil service in non-S. 29.1 municipalities

TOPIC: The Notwithstanding clause in the Canadian Charter

REFERENCE

118. The Charter is amended by inserting the following sections after section 213:

“213.1. This Act applies despite sections 1 to 38 of the Charter of human rights and freedoms (chapter C-12).” “214. This Act has effect notwithstanding sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).”

199. This Act and the amendments it makes, other than those made by sections 1 to 119 and 133 to 136, apply despite sections 1 to 38 of the Charter of human rights and freedoms (chapter C-12).

200. This Act and the amendments it makes, other than those made by sections 1 to 119, have effect notwithstanding sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

ANALYSIS:

- S. 118 insulates the CFL in its entirety from Charter scrutiny
- S. 33 only allows to S. 2, 7-15 of the Charter, and if including S. 33 and S. 34 of the Charter, 22 sections of the Charter are still in-force
 - S. 33 does not touch democratic rights, mobility rights, language rights (S. 16-23), the enforcement provision or the gender equality clause
- So, 2/3 of the Charter applies to these articles
- It should be remembered that S. 33 applies for 5 years, and the Charter trumps the override unless it is re-enacted by the legislature
- There is debate and ambiguity regarding S. 1 application to S. 33, in other words whether the notwithstanding clause is itself potentially evaluated for reasonableness and justification using the Oakes test
 - This would allow for S. 33 to be neutered in its use by the Charter itself, as it does not apply to S. 1,
 - This was not contemplated in Ford, a leading case on S. 33, however.
 - S. 1 application would subject S. 33 to judicial review itself, and, where there is a fundamental conflict between the use of the Notwithstanding clause a free and just society, the Government of Quebec would have to justify this in a judicially scrutinized manner.
 - All from Peter Hogg, *Constitutional Law of Canada*
- In conclusion, Bill 96 does have the Canadian and CHRF apply to it, and this is true even where the notwithstanding clause is used. The 5 year limitation clause and a renewed attempt to apply S. 1 to S. 33 could all lead to significant judicial invalidation of Bill 96.

TOPIC: Naming a child

REFERENCE

121. Article 108 of the Code is amended by striking out “or English” before “the name” and “or English, at the option of the interested person” in the second paragraph.

Original

Where a name contains characters, diacritical signs or a combination of a character and a diacritical sign that are not used for the writing of French ~~or English~~, the name must be transcribed into French ~~or English~~, ~~at the option of the interested person~~. The transcription is entered in the register and is substituted for the original form of the name on copies of acts, certificate and attestations. The original spelling of the name is preserved, subject to the modifications required by the transcription.

ANALYSIS:

- Outlandish clause where acts of civil status will now be forced to use French names

TOPIC: Civil sanctions - (700-7K for individual, 3-30K for organization, doubled and tripled)

REFERENCE

Civil sanctions - (700-7K for individual, 3-30K for organization, doubled and tripled).

114. “205. Anyone who contravenes any of sections 78.1 to 78.3 and 176 or an order issued by the Minister under section 128.3 or by the Office under section 177 commits an offence and is liable to a fine of \$700 to \$7,000 in the case of a natural person and \$3,000 to \$30,000 in other cases.

“206. The minimum and maximum fines prescribed by this Act are doubled for a second offence and tripled for a subsequent offence.

Relevant sections of the CFL

78.1. No person may permit or tolerate a child’s receiving instruction in English if he is ineligible therefor. 1986, c. 46, s. 7.

78.2. No person may set up or operate a private educational institution or change how instruction is

organized, priced or dispensed in order to circumvent section 72 or other provisions of this chapter governing eligibility to receive instruction in English.

It is prohibited, in particular, to operate a private educational institution principally for the purpose of

making children eligible for instruction in English who would otherwise not be admitted to a school of an English school service centre or to a private English-language educational institution accredited for the purposes of subsidies under the Act respecting private education (chapter E-9.1).

177. Where the Office is of the opinion that this Charter or a regulation thereunder has been contravened, it shall give the alleged offender formal notice to comply therewith within the time indicated. If the alleged offender fails to comply, the Office shall refer the matter to the Director of Criminal and Penal Prosecutions so that he may, where required, institute appropriate penal proceedings. In the case of a contravention of section 78.1, 78.2, 78.3 or 176, the Office shall refer the matter directly to the Director of Criminal and Penal Prosecutions, **without giving prior formal notice.**

Analysis

- Extreme level of penal fines: **700-7K for individual, 3-30K for organization. Doubled and tripled for repeat infractions.**
 - Up to 21,000\$ for an individual, 90,000\$ for all other entities
- Example: S. 78.1 - “tolerate a child’s receiving instruction in English if he is not eligible”, could be referred to the DCPD without formal notice, and for a third offence you could have a 21K to 90K fine.
 - **Example: Letting your child, in your own home, read a story book in English to a neighbour’s child, who lacks the S. 23 right to an English education, could lead to a 21,000\$ fine. If you have a home business, this could be increased to 90,000\$.**

TOPIC: Division of Powers Unconstitutionality

REFERENCE

65. “No provision of this Act may be interpreted in such a way as to prevent its application to any enterprise or employer carrying on its activities in Québec.”

ANALYSIS:

- Unconstitutional - jurisdiction
- The Government of Quebec is attempting to seize federally regulated labour jurisdictions
- This is unconstitutional, under the division of powers, and would not be allowed

Federal labour jurisdictions are not an anglicizing force in Quebec:

Federal labour jurisdictions are not an anglicizing force in Quebec. The vast majority of these workers work in French, and have the right to do so. There now exists 3 separate legal regimes for these workers. There are 171,000 employees under federal jurisdiction in Quebec, representing 4.4% of all employees in Quebec.²⁸ These employees fall under three separate regimes; under OLA regulated ones, ones that are voluntarily regulated by provincial language laws, and ones that are not regulated by any linguistic legal regime. Employees work in federal jurisdictions of international and inter-provincial transport (air, rail, road, and marine) and pipelines, telecommunications and radio broadcasting, banking, nuclear industries and Crown corporations such as Via Rail and Canada Post.²⁹ Of these workers, 36,400 are subject to the OLA, under current or former Crown corporations. These workers have their rights to work in English and French respected. The remaining 134,600 employees work at companies not under a language law. Of these companies, 63,411 people, 55% of employees not subject to the OLA, work for companies that have chosen to obtain a francization certificate. Some big names have acquiesced to Bill 101: Bell Canada, Rogers, National Bank, RBC, CIBC, TD, and Scotiabank. Recent census reports that 95.8% of all Francophone Quebecers reporting using French at work “most often,” 0.8% never use French and 70% never use English at work. 71% of employees in federally regulated businesses in the Montreal area work mainly in French, with 20% working in English. For the completely unregulated businesses, information is imperfect, but studies show that, “French seems to be the language of work and of internal communications in federal jurisdiction private-sector companies in Quebec, and that employees in these businesses can generally work in French and have access to work tools in French.”³⁰ So, definitively the language of work in Quebec is French. Changes to the current ‘triple entente’ will actually work to diminish the language of work exclusively in French and the right to work in either language, if the new OLA is imposed.

REFERENCE

47. The Charter is amended by inserting the following section after section 58:
“58.1. Despite section 58, on public signs and posters and in commercial advertising, a trademark may be drawn up, even partially, only in a language other than French, provided the trademark is registered within the meaning of the Trademarks Act (Revised Statutes of Canada, chapter T-13) and no corresponding French version appears in the register kept according to that Act.

²⁸ Language of Work in Federally Regulated Private Businesses not subject to the Official Languages Act, March 8, 2013, p. 3.

²⁹ Ibid.

³⁰ Ibid, p. 16.

However, on public signs and posters visible from outside premises, French must be markedly predominant where such a trademark appears in a language other than French.”

ANALYSIS:

- Unconstitutional - jurisdiction
- Trademarks are federal jurisdiction in Canada

TOPIC: Government and social services: Restrictions

REFERENCE

15. The Charter is amended by inserting the following after section 22.1:
 “22.2. An agency of the civil administration may depart from paragraph 1 of section 13.2 by corresponding or otherwise communicating in writing in English only with a person who so requests if **the person is declared eligible to receive instruction in English under the provisions of Division I of Chapter VIII**, other than sections 84.1 and 85.

Moreover, an agency of the civil administration that, before (insert the date of introduction of this bill), **corresponded only in English with a natural person in particular regarding a file concerning the person**, for a reason other than the public health emergency declared under section 118 of the Public Health Act (chapter S-2.2), may continue to correspond and otherwise communicate in writing with that person in English only.

... (a) **providing services in English to a person declared eligible to receive instruction in English** under the provisions of Division I of Chapter VIII, other than sections 84.1 and 85;

Relevant sections of the CFL

73. The following children, at **the request of one of their parents**, may receive **instruction in English**

(1) a child whose father or mother is a Canadian citizen and received elementary instruction in English in Canada, provided that that instruction constitutes the major part of the elementary instruction he or she received in Canada;

(2) a child whose father or mother is a Canadian citizen and who has received or is receiving elementary or secondary instruction in English in Canada, and the brothers and sisters of that child, provided that that instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada;

Analysis:

- “Declared eligible to receive instruction in English” required to receive Government of Quebec services
- How to do so?
 - One parent must request an eligibility certificate
 - Many English-speakers do not have a certificate, if they attended school before 1977, or attended French-language school or a private unsubsidized school
 - Therefore, most English-speakers over the age of 60 will not have this certificate, and if their parents have passed away (a fairly common occurrence unfortunately), cannot request a certificate of eligibility
- Constrains services to a fraction of S. 23 rights holders for Government services in the English-language

- ◆ <https://www.facebook.com/don.macpherson.39501/posts/517068112992615>

Musical choice

REFERENCE

18: ... (f) the implementation of a French-language environment, in particular with regard to vocal music and to the priority to be given to Québec cultural works...

ANALYSIS:

- Quebec French-language music would be coerced in all government offices
- Unconventional, dictatorial and mundane stipulation.

Search, Surveillance and Seizure - s. 107, 111 (3), 113 (204.2)

REFERENCE

107... "person believes could show that a failure to comply with this Act has occurred or is about to occur..."

111 (3)... "cause any person present who has access to any computer, equipment or other thing that is on the premises to use it to access data contained in an electronic device, computer system or other medium or to verify, examine, process, copy or print out such data; and..."

113 (204.2)

"204.2. No legal proceedings may be brought against the Commissioner or his employees for an act or omission in good faith in the exercise of their functions."

ANALYSIS:

- The search, surveillance and seizure sections of Bill 96 are of deep concern.
- Hypothetical complaints by anonymous complainants could lead to a warrantless and nearly Charter-free search of your premises by inspectors.
- Any electronic device of a client, employee or owner could be examined and searched.
- These sections throw out centuries of established law on the limitations of state action and governmental intrusion into the private sphere

No contracts with the Government of Quebec if the law is broken - S. 93

REFERENCE

S. 93: "The civil administration shall not enter into a contract with an enterprise to which Division II applies or grant it a subsidy where the enterprise does not have a certificate of registration, has not provided, within the time prescribed, an analysis of the language situation in the enterprise, or has no attestation of implementation of a francization program or francization certificate, or if its name appears on the list provided for in section 152.

ANALYSIS:

- No government contracts or subsidies without full compliance with new francization regulations

The surgical excision of English language in Quebec: Other legislative changes Administration of justice

REFERENCE

5. "7.1. In the case of a discrepancy between the French and English versions of a statute, regulation or other act referred to in paragraph 1 or 2 of section that

cannot be properly resolved using the ordinary rules of interpretation, the French text shall prevail.

“9: “A certified French translation shall be attached to any pleading drawn up in English that emanates from a legal person. The legal person shall bear the translation costs.

“12: “A person to be appointed to the office of judge shall not be required to have knowledge or a specific level of knowledge of a language other than the official language unless the Minister of Justice and the Minister of the French Language consider that the exercise of that office requires such knowledge and that all reasonable means have been taken to avoid imposing such a requirement.”

Analysis

- Delegitimization of English as a language of laws, regulations, the Courts and the general administration of justice

Contracts for homes - S. 44, 45

REFERENCE

44. “The parties to such a contract may be bound only by its version in a language other than French if, after examining its French version, such is their express wish. The documents related to the contract may then be drawn up exclusively in that other language.”;

45. The following documents must be drawn up in French: (1) a contract for the sale or exchange of part or all of a chiefly residential immovable...”

ANALYSIS:

- Contractual liberty, which is the bedrock of the Civil Code of Quebec and modern agreement making in the developed world, is violated
- Parties must draw up French language versions of contracts.

TOPIC: DIVISION III - CONCORDANCE OF THE CIVIL ADMINISTRATION’S ACTIONS WITH THE ROLE OF QUÉBEC IN THE CANADIAN FRANCOPHONIE AND ABROAD

REFERENCE

29.7. The Minister of Higher Education, Research, Science and Technology shall contribute to the mobility of francophone students across Canada, in particular, by entering into agreements in accordance with the law.

ANALYSIS:

- For the purposes of funding support, what is the Minister’s definition of francophone?
- Do English Canadian students fluent in French and looking to pursue higher studies in French regardless of subject count?
- How much money annually will be set aside for such mobility grants, loans, scholarships?
- Francophones hors Québec are more French-English bilingual than francophone Quebecers. Hence already more mobile within Canada. So, why have they been singled out for educational support?

- Is Quebec interfering in other provinces' education jurisdiction? What proof is there that French-Canadians are being discriminated against and/or denied post-secondary educational opportunities? What happens if other provinces refuse to negotiate agreements with Quebec for francophone mobility?
- Contradictory and ironic messaging by the Minister: helping French-Canadians to become more mobile while at the same time limiting the mobility of francophones living inside Quebec (English CEGEP quotas, English CEGEP enrolment freezes).

REFERENCE

Section 30.1 of the Charter is amended.

Before: The members of the professional orders must, where a person who calls upon their services so requests, provide a French copy of any notice, opinion, report, expertise or other document they draw up concerning that person, without requiring a charge for translation. The request may be made at any time.

After: The members of the professional orders must, ~~where a person who calls upon their services so requests,~~ provide a French copy of any notice, opinion, report, expertise or other document they draw up to any person authorized to obtain them and who so requests, without requiring a charge for translation. The request may be made at any time.

ANALYSIS:

- Imposition of mandatory and burdensome French documentation requirements on professionals. Now, multiple French copies for anyone in a position of authority, even if that person is not directly involved in the project.
- Does mandatory translation/duplication apply to all documents with French and English interspersed throughout them?
- Increased risk of individual professionals, companies moving out of Quebec to avoid additional translation costs.
- What happens if the client isn't satisfied with the French translation offered? Complaints to the Office Québécoise de la langue française (OQLF) or the French Language commissioner? And how far up the chain of command can unique requests for documents in French be made?
- More redtape, added price uncertainty for Quebec businesses, especially those that work in English. Risk that some translation requests may be completely unwarranted, deliberate, and without justification.

REFERENCE

20. Section 32 of the Charter is amended.

Before: 32. The professional orders shall use the official language in their written communications with their general membership.

They may, however, in communicating with an individual member, reply in his language.

After: 32. The professional orders shall only use the official language in their written and oral communications with their general membership with all or some of their members and of the candidates to the practice of the profession.

~~They may, however, in communicating with an individual member, reply in his language.~~ Unless otherwise provided for in this Act, they shall use only that language when communicating orally or in writing with an individual member.

ANALYSIS:

- Is “official language” only the French language? National (Canadian) Constitution versus revised provincial constitution?
- Interference with language of communication between professionals and their order is detrimental to growth and development. Particularly insulting and infuriating to its non-francophone members and candidates.
- Risk that professionals will drop their Quebec membership, and eventually accelerate out of province transfers in order to practice in their field of choice. Leave profession altogether.
- French as Quebec’s only official language will entrench a language hierarchy of permit holders/dues-paying members in Quebec orders, i.e.: French-speaking members, Other members (English communication preferred).
- Encourages inferior treatment of English-speaking members even though they pay the same dues as their francophone counterparts.

REFERENCE

22. Section 35 of the Charter is amended to: “The professional orders shall not issue permits except to persons whose knowledge of the official language is appropriate to the practice of their the profession.

When issuing a permit, a professional order shall consider that a person has such knowledge if a ~~person is deemed to have the appropriate knowledge if~~

- (1) he has received, full time, no less than three years of secondary or post-secondary instruction provided in French;
- (2) he has passed the fourth- or fifth-year secondary level examinations in French as the first language;
- (3) from and after the school year 1985-86, he obtains a secondary school certificate in Québec.

In all other cases, a person must obtain a certificate issued by the Office québécois de la langue française or hold a certificate defined as equivalent by regulation of the Government.

The Government, by regulation, may determine the procedures and conditions of issue of certificates by the Office, establish the rules governing composition of an examining committee to be formed by the Office, provide for the mode of operation of that committee, and determine criteria for evaluating the appropriate knowledge of French for the practice of a profession or a category of professions and a mode of evaluating such knowledge.

ANALYSIS:

- Discriminatory towards Quebecers who have completed secondary and post-secondary schooling in the English sector.
- French language competency tests should be requested of both the majority and minority official language groups in Quebec.

REFERENCE

23. The Charter is amended by inserting the following sections after section 35:
“35.1. The holder of a permit issued in accordance with section 35 shall, as long as the permit is held, maintain knowledge of the official language that is appropriate to the practice of the profession.

The permit holder may not, in carrying on his professional activities, refuse to render a prestation for the sole reason that he is asked to use the official language in performing the prestation.

ANALYSIS:

- What exactly is appropriate language knowledge maintenance to practice a profession?
- Isn't the language certificate issued by the Office québécois de la langue française (OQLF) or its equivalent to a professional good enough to demonstrate language knowledge?
- To what extent does the provincial government want to interfere with the professional lives of its residents and the provincial economy, all in the name of “protecting” the French language?
- Additional language requirements on top of what Bill 101 already demands are unwise and unnecessary; they don't add economic value, improve productivity, nor make French language use more attractive.

REFERENCE

“35.2. A professional order that considers, for serious reasons, that a member's knowledge of the official language is not appropriate to the practice of the profession may, in addition to the measures that may be taken in respect of the member under the Professional Code (chapter C26), require that the member obtain the certificate issued by the Office under the third paragraph of section 35.

Moreover, the refresher courses that a member of a professional order may be required to successfully complete as well as any other obligation, determined by a regulation made under section 90 of the Code, that may be imposed on the member may be aimed at enabling the member to recover knowledge of the official language that is appropriate to the practice of the profession.”

ANALYSIS:

- According to the Office des professions, Quebec recognizes 46 professional orders with a total membership exceeding 411,000 people. Does that mean policing the French language skills of 411,000 people on a regular basis? Does that make any sense?
- Why is professional competence and the ability to perform duties based on technical/managerial qualifications, skills and previous work experience taking a back seat to linguistic background in Quebec?
- The need for French “refresher courses” even AFTER obtaining the OQLF certificate or equivalent?

- Will francophone professionals - including Quebec-born, mother-tongue francophone québécois professionals - be subject to this same French language quality control scheme as their non-francophone counterparts?
- Stereotyping non-francophones as the cause of the alleged “decline” of French in Quebec.
- Supports French unilingualism in the workplace, even when serious studies demonstrate that French-English bilingualism is a socioeconomic asset.

REFERENCE

24. Section 37 of the Charter is replaced by the following section:

Before: The professional orders may issue temporary permits valid for not more than one year to persons from outside Québec who are declared qualified to practice their profession but whose knowledge of the official language does not meet the requirements of section 35.

After: “37. Despite section 35, a professional order may issue a permit referred to in sections 40 to 42.2 of the Professional Code (chapter C-26) to a person whose knowledge of the official language is not appropriate to the practice of the profession, provided that

(1) the permit is temporary; and

(2) the person has, outside Québec, successfully completed the training or obtained the diploma required to practise that profession in Québec. A permit issued under the first paragraph is valid for not more than one year.”

ANALYSIS:

- Admission that Quebec requires talented professionals from other provinces/countries to contribute to its economy and societal well-being.
- Why aren't Quebec residents - including francophones - who fail to satisfy the OQLF French language requirements also eligible for a temporary one-year permit, during which time they can improve their French language skills without fear of permit (and possibly employment) loss?
- Can the permit be renewed after one year if the nature of the professional's employment status, project duration, etc. has changed? How many renewals are possible?

REFERENCE

25. Section 40 of the Charter is amended by adding the following paragraph at the end:

Before: Where it is in the public interest, a professional order, with the prior authorization of the Office québécois de la langue française, may issue a restricted permit to a person already authorized under the laws of another province or another country to practice his profession. This restricted permit authorizes its holder to practice his profession for the exclusive account of a single employer, in a position that does not involve his dealing with the public. In the case of this section, a permit may be issued to the spouse as well.

After: 40. Where it is in the public interest, a professional order, with the prior authorization of the Office québécois de la langue française, may issue a restricted permit to a person already authorized under the laws of another

province or another country to practice his profession. This restricted permit authorizes its holder to practice his profession for the exclusive account of a single employer, in a position that does not involve his dealing with the public. In the case of this section, a permit may be issued to the spouse as well. When authorizing an order to issue such a permit, the Office may determine the term of the permit and the other related conditions.

ANALYSIS:

- Labour mobility rights (Section 6 of the Canadian Charter of Rights and Freedoms).
- Wording evokes worst elements of migration worker treatment. Why does the original French Charter clause and its update treat professionals from outside Quebec with utter contempt?
- Why is the Government of Quebec empowering its language bureaucracy to make business and hiring decisions for companies?
- Does a francophone Quebecer become less francophone by interacting with a non-Quebec professional (or an English-speaking Quebecer, for that matter), even on a limited basis?

REFERENCE

27. The Charter is amended by inserting the following sections after section 40: “40.1. The Office des professions shall, each year and for each professional order, send the Office the number of permits issued under section 37 and the number of special authorizations granted under section 42.4 of the Professional Code (chapter C-26), as well as the number of renewals for such special authorizations.

The Office shall indicate in its annual report of activities the information so transmitted by the Office des professions.”

“40.2. A professional order may use another language in addition to the official language in a particular written communication to

- (1) a candidate to the practice of the profession who applies for a permit to be issued to him in accordance with section 37 or under section 40; or
- (2) a member of the order who, under this Act, is not required to have knowledge of the official language that is appropriate to the practice of the profession.

A professional order may also use that other language in a particular oral communication with one of those persons, without being required to use the official language at the same time.”

ANALYSIS:

- Subservience of the Office des professions (and the orders it represents) to the Office québécois de la langue française, future Commission de la langue française.
- Negative impact on professionals who identify as English-speakers, work in at least a partially English environment, and interact with an English-speaking or international clientele on a regular basis.
- Gauging Quebec’s reliance on out of province or international professionals is perfectly legitimate for responding to the province’s labour and

educational deficiencies. However, data collected by the OQLF will be used to justify further language restrictions for “non québécois” professionals.

- The Minister is willing to allow restricted use of English by non-resident professionals, and English communication by the professional orders, because it is deemed to be in the public interest. Is he also willing to be as generous with professionals who identify as English-speaking Quebecers - born, raised and educated in Quebec? Some of whom have roots in the province that go back years, decades, if not centuries?

REFERENCE

68. Section 97 of the Charter is amended

Before: The Indian reserves are not subject to this Act.

The Government, by regulation, shall determine the cases, conditions and circumstances where or whereunder an agency or body contemplated in the Schedule is authorized to make an exception to the application of one or several provisions of this Act in respect of a person who resides or has resided on a reserve, a settlement in which a native community lives or on Category I and Category I-N lands within the meaning of the Act respecting the land regime in the James Bay and New Québec territories (chapter R-13.1).

After: The Indian reserves are subject to this Act.

The Government, by regulation, shall determine the cases, conditions and circumstances where or whereunder an agency or body contemplated in Schedule I is authorized to make an exception to the application of one or several provisions of this Act in respect of a person who resides or has resided on a reserve, a settlement in which a native community lives or on Category I and Category I-N lands within the meaning of the Act respecting the land regime in the James Bay and New Québec territories (chapter R-13.1).

In addition, the Government may determine by regulation the cases, conditions and circumstances in which a professional order is authorized to depart from the first paragraph of section 35 in respect of a person who resides outside Québec and practices his profession in Québec solely on such a reserve, settlement or lands. **ANALYSIS:**

- Does the Quebec government have the right to dictate to indigenous nations which professionals they can hire to work in their territory, and does the provincial French language charter give it the right to dictate these professionals' work terms?
- Do self-governing indigenous peoples (e.g., the Cree of Eeyou Istchee, Inuit of Nunavik, Kanien'kehá:ka (Mohawk) etc.) have the right to hire professionals without interference from the provincial government, especially with regards to the imposition of onerous French proficiency requirements?

REFERENCE

96. Section 160 of the Charter is amended by adding the following paragraphs at the end:

Before: The Office shall monitor the linguistic situation in Québec and shall report thereon to the Minister at least every five years, especially as regards the use and status of the French language and the behaviour and attitudes of the various linguistic groups.

After: Above paragraph plus:

“The report shall compare, in particular, the progression of the use of French and English in Québec and the progression of the use of those languages in the rest of Canada. For that purpose, the Office shall take into account the statistical data produced by the Institut de la statistique du Québec.

The Office, together with the French Language Commissioner, shall determine the indicators of the use of French in the public sphere by the Québec population as well as the other monitoring indicators used to produce the report.

The Minister shall table the report in the National Assembly within 30 days after receiving it or, if the Assembly is not sitting, within 15 days after resumption.”

ANALYSIS:

- Empowers Language Charter bureaucrats (OQLF, Office of the French Language Commissioner, etc.) and even the Institut de la statistique du Québec to continue intimidating and targeting “various linguistic groups” perceived as not “Québécois” enough.
- Set up to scapegoat ethnic minorities for the alleged decline of French language use in Quebec.
- Will the provincial government have the guts to single out the majority linguistic community of Quebec for the demise of French in Quebec, if indeed that’s the conclusion from the OQLF, the French Language Commissioner, and the Institut de la statistique du Québec?
- Prime responsibility for the province’s French language’s health belongs to the majority population, the Québécois, who constitute 79% of the population.
- If French language use in the province today is deemed a failure, it’s the failure of the majority, not the minority language communities who are increasingly French-English bilingual if not multilingual, and Montreal’s emerging socioeconomic and cultural force.

TOPIC: PROFESSIONAL CODE

REFERENCE

142. Section 59 of the Professional Code (chapter C-26) is amended by adding the following paragraph at the end:

Every professional who contravenes section 58 or 58.1 commits an act derogatory to the dignity of his profession.

The same applies to a professional who contravenes section 35.1 of the Charter of the French language (chapter C-11).

ANALYSIS:

- Putting French language deficiencies – no matter how minuscule – on par with professional misrepresentation or misconduct (e.g., collusion, corruption, breach of trust, etc.) is completely out of line with norms and practices throughout North America and Europe.
- At any time and on a whim, a language bureaucrat with the blessings of your professional office and order can penalize you and threaten your career and livelihood.

- Sanctions can be handed out because you fail some ill-defined measure of French functionality that may or may not be relevant to your job.
- Contrary to the spirit of a globalized world where people frequently cross interprovincial and international borders to apply their trade. An artificial barrier, i.e., not having sufficient fluency in “professional” French (?) is now grounds for professional misconduct and a citation.
- Will native-born, francophone Quebec professionals be monitored and duly reprimanded for their poor quality of professional French in proportion to non-francophone and especially ethnic minority Quebecers? High risk of language profiling and discrimination along ethnic lines.
- Before proceeding with this clause, now may be a good time to deeply contemplate the concepts of dignity and human respect and their real meanings.

TOPIC: Act Respecting the Institut de la Statistique du Québec

REFERENCE

145. Section 3.1 of the Act respecting the Institut de la statistique du Québec (chapter I-13.011) is replaced by the following section:

Before: 3.1. In the pursuit of its mission, the Institut shall collect, produce and disseminate the statistical information needed to develop and monitor the Government’s sustainable development strategy, including the statistical information needed for sustainable development indicators, as well as the statistical information needed to prepare the reports provided for in the Sustainable Development Act.

After:

“3.1. In the pursuit of its mission, the Institut shall, among other things, collect, produce and disseminate the statistical information necessary for the following purposes:

- (1) to help develop and monitor the Government’s sustainable development strategy, including the statistical information required for sustainable development indicators;
- (2) to draft the reports provided for in the Act respecting sustainable development (chapter D8.1.1);
- (3) to help monitor the language situation in Québec, including the indicators of the use of French in the public sphere by the Québec population; and
- (4) to draft the reports, conduct the research, analyses and studies and draft the opinions provided for in the Charter of the French language (chapter C-11).”

ANALYSIS:

- Politicizing and weaponizing the Institut de la statistique du Québec on language issues jeopardizes its independence and reputation.
- Jack Jedwab, President and CEO of the Canadian Institute for Identities and Migration and the Association for Canadian Studies offers analysis that’s far superior to that found in certain Quebec tabloids that ignore basic demographic history when discussing Quebec’s actual situation, Montreal in

particular. Why not give Dr. Jedwab a call and invite him to testify in this special session?

TOPIC: MISCELLANEOUS PROVISIONS

163. The name assigned to the electoral division of Bourget is replaced by the name “Camille-Laurin”.

ANALYSIS:

Provincial ridings shouldn't be named after politicians, especially divisive and controversial figures like the late Dr. Laurin who has already had many honours bestowed on him in life and after death.

In the era of Black Lives Matter, reconciliation efforts with indigenous peoples, and an increasingly multilingual, ethnically diverse Montreal, it seems rather bizarre to polarize Quebecers yet again when more suitable names can be found. Or leave the riding name as is.

TOPIC: Analysis of Major Research on the Economic Impacts of Language Policy for the Period 1966 - 2020

- The Language Barrier Index uses detailed linguistic data to show that language barriers are significantly negatively correlated with bilateral trade (Lohmann, 2011). The Language Barrier Index suggests that the implementation of an increased language barrier between Quebec and Canada could create a proportional decrease in trade flows between this province and the rest of Canada as well as other countries that use English as a language of trade.
- Canada-wide national polls show growing support for Canadian bilingual policies amongst both Francophone (93%) and Anglophone (87%) citizens (Jedwab, 2011).
- There has been a net out-migration of Allophones from Quebec to the rest of Canada for each census period from 1966 to 2016, amounting to a net outflow of 120,000 individuals. Many of these were well qualified and had received government language training in French (Bourhis, 2019).
- There has been a net out-migration of Anglophones from Quebec to the rest of Canada for each census period from 1966 to 2016, amounting to a net outflow of 310,000 individuals (Bourhis, 2019). A study of outmigration based on the 2011 census showed that Quebec-born Anglophones with a higher university degree (Ph.D, M.A., MD, Dentistry) were less likely to stay in Quebec than Quebec-born Anglophones with a college or high school diploma, despite being as likely to be bilingual as their peers who remained in Quebec (Floch, 2018). Given that the Quebec government spends roughly \$29,000 per student per year in higher education, any legislation that precipitates further outmigration represents a significant loss of financial capital and will lead to a large loss of human capital, cultural diversity, and tax revenue (Québec, 2014).
- From 1971 (pre-Bill 101) to 2018, enrolment in English primary and secondary schools dropped from 256,251 to 96,235. As a result, English school boards such as the Eastern Townships School Board must serve an area the size of Belgium, making access to English school difficult for their pupils (ABEE, 2018). This threatens the critical mass necessary to maintain

such institutions off the island of Montreal, despite the government's vows to protect minority linguistic communities. Should Bill 96 pass, this effect will be amplified by capping access to English CEGEPS and will likely put the future viability of small CEGEPS such as Champlain Lennoxville, Champlain St. Lawrence, and Cégep de la Gaspésie English Section in peril.

- Bilingual employees earn 7% to 21% more than monolingual employees working in Quebec (Christofides, 2010). Bill 96 will discourage bilingualism, which will negatively impact Quebec's GDP. It will also further exacerbate outmigration as well skilled bilinguals seek will be lured by the relative advantage of being bilingual when working outside the province.
- Bilingual employees in the rest of Canada earn 3.6% to 6.6% more than monolingual employees (Christofides, 2010).
- The cost of a language barrier to trade has been estimated to be the equivalent of a 15%-22% trade barrier while sharing a common language can reduce these costs by 75% to 170% (Canadian Heritage, 2016). This suggests that legislation that restrains bilingualism/plurilingualism will have significant impacts on trade and the cost of living.
- Several European studies confirm that 15% to 20% of companies say they have lost business due to an inability to communicate in a foreign language (Canadian Heritage, 2016). This suggests that the implementation of Bill 96 would negatively impact the profitability of companies operating in Quebec. Consequently, companies with a focus outside the limited francophone market (roughly 3.5% of world population) will find it increasingly disadvantageous to remain in or start operating in Quebec.
- In the United States, the awareness of the limits of monolingualism has affected all fields of academic inquiry (of science and technology). In 2007, the Office of Scientific and Technical Information of the Department of Energy launched an international multi-lingual platform (worldwidescience.org) to enable the search in 10 major languages of scientific information from 69 institutions in 66 countries (Nikuze, 2013).
- Being able to trade in two languages adds 3.3 billion dollars each year to the economies of New Brunswick and Quebec (Canadian Heritage, 2016).
- Bilingual workers in Canada contribute almost 31 billion to Canada's Gross National Product in the finance, insurance and real estate industries, and contribute a total of roughly 135 billion to the country's Gross Domestic Product each year (Diaz, 2019).
- Based on 2016 census data, only 12% of bilingual Canadians fail to complete high school, compared to 17.2% for monolingual anglophones and 29.7% for monolingual francophones (Diaz, 2019). Bilingual Canadians are also more likely to hold a university degree, with 20.4% of bilinguals holding a bachelor's degree compared to 15.8% of monolingual anglophones and 6.7% of monolingual francophones. This suggests that being bilingual contributes to higher earning potential and reduced reliance on public social programs.
- GDP generated by bilinguals outside Quebec is higher than that of monolinguals in every province except Saskatchewan and Alberta (Diaz, 2019).³¹

³¹ ABEE. (2018). Plus ça change, plus c'est pareil. Revisiting the 1992 Task Force Report on English Education in Quebec. Québec: Gouvernement du Québec.

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