

**Bill 103: Collective Rights and the declining vitality
of the English-speaking communities of Quebec**

An impact study submitted to the
Quebec Community Groups Network (QCGN)

by

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“La démocratie ce n’est pas la dictature de la majorité, c’est le respect des minorités”
Albert Camus

There are two version of the preamble of “The Charter of the French Language” (Bill 101). The 1977 version had the following wording:

« Langue distinctive d’un peuple majoritairement francophone, la langue française permet au peuple québécois d’exprimer son identité...

L’Assemblée nationale entend poursuivre cet objectif dans un esprit de justice et d’ouverture, et celui des minorités ethniques, dont elle reconnaît l’apport précieux au développement du Québec.

SA MAJESTÉ, de l’avis et du consentement de l’Assemblée nationale du Québec, décrète ce qui suit : Le français est la langue officielle du Québec »

Following the initiative of Gérald Godin, an esteemed democrat of the Parti Québécois, the preamble of Bill 101 was modified in 1984 to read as follows:

« Langue distinctive d’un peuple majoritairement francophone, la langue française permet au peuple québécois d’exprimer son identité...

L’Assemblée nationale entend poursuivre cet objectif dans un esprit de justice et d’ouverture, ***dans le respect des institutions de la communauté québécoise d’expression anglaise*** et celui des minorités ethniques, dont elle reconnaît l’apport précieux au développement du Québec

SA MAJESTÉ, de l’avis et du consentement de l’Assemblée nationale du Québec, décrète ce qui suit : Le français est la langue officielle du Québec »

Key elements of Bill 103 modifying the Quebec *Charter of Rights and Freedoms* and further restricting access to English schools respect neither the memory of Gérald Godin, nor the legitimate institutions of the English speaking communities of Quebec.

Executive Summary

The first part of this brief deals with the declining vitality of the English speaking communities of Quebec (ESCQ) and the strength of the dominant Québécois francophone majority in the Province. We argue that a key premise of Bill 103 is based on the erroneous notion that the French language and its speakers are threatened in the Province of Quebec. This false premise brings the current government to draft Bill 103 with regulations making it virtually impossible for Allophone and immigrant children to be approved as pupils in the publicly funded English schools of the Province. As the past Education Minister Michele Courchesne stated on June 3rd 2010 “*I won’t deny that the objective (of Bill 103) is to have as few as possible (approved)*”.

This first part of the brief documents the demographic decline of the English speaking communities of Quebec and also provides clear evidence of the 50% enrolment decline in the English school system since the adoption of Bill 101. Bill 103 is proposed by the Quebec Government despite repeated pleas by English School Boards to be granted ‘a bit of oxygen’ by allowing entry of some immigrant pupils from English speaking countries as a way of stemming the enrolment decline of English schools in the Province. It is noted that Bill 103 is proposed at a time when polling results show that 61% of Francophones and 87% of Allophones and Anglophones would like their children to have more access to English schooling in the Province (May 11, 2010).

Consequently we propose a first paradigm shift to reduce the ‘us/them’ rhetoric which continues to undermine French/English community relations in Quebec. It is time to shed the notion that the Québécois French are a besieged and threatened linguistic majority in Quebec. Following the Quiet revolution, the Québécois French have grown to be the dominant majority in the province. It has become dysfunctional for Quebec society to depict Anglophone, Allophone and immigrant communities as threats to the French language and culture. Thus our *first paradigm shift* is that Québécois Francophones have the demolinguistic, political and economic ascendancy to act as a secure dominant majority that has the power and responsibility to protect the institutional vitality of its vulnerable national minorities including the English-speaking communities of Quebec.

The second part of this brief proposes another paradigm shift for improving the social cohesion of the French and English language communities in the province. The Québécois Francophone majority is not the only community that needs the support of collective rights in the Province. Our judicial analysis of Bill 103 shows that by proposing to amend the *Quebec Charter of Rights and Freedoms* and features of the *Charter of the French language*, Bill 103 undermines both the individual and collective rights of English speaking communities of Quebec. For instance Article 19 of Bill 103 proclaims that the Quebec *Charter of Rights and Freedoms* should be amended so that : “*Toute personne a droit de participer au maintien et au rayonnement de la culture québécoise, dont le français en constitue l’un des éléments indissociables*”. We assert that there are other languages that constitute ‘des éléments indissociables’ of québécois culture. Given the presence of English-speaking and immigrant minorities on the Quebec territory for the last 300 years, we propose that ALL citizens of the Province, Anglophone, Allophone and Autochtones have the right to contribute to the construction of Québécois culture as this culture has never been uniquely French and also includes English as well as First Nation languages.

As argued in part two of the brief, the individual and collective rights of Quebec Anglophones are also eroded by another proposed amendment to the Quebec Charter of Rights and Freedom. Article 21 of Bill 103 proposes that: “*Les droits et libertés énoncés dans la présente Charte sont interprétés en tenant compte du fait que le français est la langue officielle du Québec et de l’importance d’en assurer la pérennité.*”. The Quebec Government Bill 103 proposal is undermining the principle of protection of minorities enshrined in the *Canadian Charter of Rights and Freedoms* which set forth that English and French are the official languages of Canada (s.16 (1)). The protection of minorities, including English speaking minorities in Quebec, is a fundamental and unwritten constitutional principle, as emphasized in the Quebec’s secession reference (1998, 2 R.C.S. 217). The mention of French as the dominant language in Quebec as a legal principle of interpretation of individual and collective rights runs against this essential element of the very fabric of Canada. The equilibrium sought for by the Canadian Supreme Court in protecting minority rights is jeopardised.

Why should the individual and collective rights of Quebec’s linguistic minorities be subsumed under the imperative of pursuing only the perenity of the French dominant majority ? As Albert Camus observed long ago, it is the linguistic and cultural rights of minorities that are

most in need to be protected from the excesses of the dominant majority. Consequently we propose that there are strong grounds to balance mention of Quebec as a French speaking majority within Bill 103, with a recognition that English speaking minorities have rights that are as important and legitimate. Consequently, the *second paradigm shift* is that as a language minority whose official status is enshrined in the Canadian Constitution and as a national minority with deep historical roots in Quebec society, English-speaking communities must also be guaranteed collective rights to foster their development as a distinctive linguistic community in the Province.

The Postscript of this document provides a brief review of the events which followed the tabling of Bill 103 in June 2010 and which eventually lead the Quebec Government to adopt Bill 115 on October 19, 2010.

Bill103: Collective Rights and the declining vitality of the English-speaking communities of Quebec

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1. Paradigm shift 1: Francophones are a secure dominant majority in Québec

In Quebec the 'two solitudes' often speak at cross purposes when considering their respective fate in the Province: while Francophones feel most concerned about the fate of their own language relative to the spread of English, Anglophones feel most concerned about the decline of their community relative to the Francophone dominant majority. Thus Francophones have tended to focus on the threat and drawing power of the English language relative to French worldwide, while ignoring the decline of the Anglophone community as a national minority in the province. Conversely, Anglophones have focused on the dominant position of the Francophone majority in the province while asserting that French is no longer threatened as the majority language in Quebec. Many Québécois Francophones choose Canada and North America as the territorial units of analysis to highlight the threatened status of French relative to English on the continent. Rhetorically it is to protect the threatened status of French at the continental level of analysis that the Francophone majority seeks to legitimize laws that in effect erode the demographic and institutional support of the Anglophone minority within the Province. Anglophones with little support from the rest of Canada, focus on the Province of Quebec as the territorial unit of analysis to highlight their declining community vitality relative to the vitality of the Francophone majority who controls the political agenda in provincial ministries and the National Assembly. Given that it is on the Quebec territory that key language laws are adopted and applied by the Provincial government, our unit of analysis in this section must remain the Province of Quebec as the jurisdiction having the most immediate impact on the vitality of the Francophone and Anglophone communities of Quebec.

1.1 Language policies and the vitality of language communities in Quebec.

The group vitality framework was originally proposed by Giles, Bourhis & Taylor (1977) to analyse the Quebec context at a time when sociolinguistic research was developed to guide the crafting of the Charter of the French language (Bill 101) adopted by the Parti Québécois government in 1977. *Group vitality* was defined as ‘*that which makes a language community likely to behave as a distinctive and collective entity within multilingual settings*’. The more vitality a group was assessed to have, the more likely it was expected to survive collectively as a distinctive linguistic community within its multilingual environment. Conversely, communities that had little vitality would be expected to assimilate more readily and eventually disappear as distinctive linguistic communities (Bourhis, El-Geledi & Sachdev, 2007). The vitality framework was originally developed as an analytical tool to assess the position of the Francophone majority relative to the English-speaking elite of the day in three socio-structural domains: demography, institutional support, and status (Giles, Bourhis & Taylor, 1977).

In the 1970s, four factors were identified as undermining the future vitality of the Francophone majority in Quebec: 1) the decline of Francophone minorities in the rest of Canada; 2) the drop in the birthrate of the Quebec Francophone population from one of the highest to one of the lowest in the Western world; 3) immigrant choice of the English rather than the French school system for their children; and 4) Anglophone elite domination of the Quebec economy (d’Anglejan, 1984). Successive Quebec governments promulgated a number of language laws designed to address each of the above factors undermining the long-term prospects of the French language and its majority in the province (Bourhis, 2001).

Bill 101 was the major legislative tool designed to address most of the perceived threat to the French language relative to English in Quebec (Bourhis, 1984). During the three decades following the adoption of Bill 101, many studies acknowledged its success in increasing the status and use of French relative to English in the Province (Bouchard & Bourhis, 2002; Plourde, Duval & Georgeault, 2000; Stefanescu & Georgeault, 2005). However, many Québécois Francophones including language activists, separatist party militants and academics consider that the law did not go far enough and has been unduly diluted by Quebec and Canadian Supreme Court rulings, thus claiming that French is still threatened in Quebec (Corbeil, 2007). Numerous analyses are devoted to assessing the effectiveness of current and proposed language laws designed to more firmly establish the predominance of French in Quebec against a backdrop that

highlights the increasing presence of Allophone immigrants settled in the Province (Georgeault & Pagé, 2006). Numerous government commissions must also report on the health and status of French in the province, thus keeping the language debate topical in the media and amongst various factions claiming that the French language is more or less threatened in Quebec. However, it is only recently that sustained attempts were made to assess the impact of Bill 101 on the vitality of the English-speaking communities of Quebec (Bourhis 2001, 2008; Jedwab, 2004; Johnson & Doucet, 2006).

1.2 The declining demographic vitality of Anglophones in Quebec.

Fundamental variables likely to influence the vitality of language groups are demographic factor. Demographic variables are those relating to the number of individuals constituting the language community, as well as the number of those who still speak the language and their distribution throughout a particular urban, regional, or national territory. The number component refers not only to the absolute number of language speakers, but also refer to their birth and mortality rates, endogamy/exogamy, and patterns of immigration/emigration. Further, the distribution component includes such variables as the numeric concentration in various parts of the territory, the proportion of group members relative to that of other linguistic groups, and whether or not the group still occupies its “ancestral” or “national” territory. In turn ‘strength in numbers’ legitimises the institutional support of language communities in domains such as education, health, the judiciary, business and mass-media (Harwood, Giles & Bourhis, 2004).

---- Figure 1: Mother tongue population in Quebec: 1971-2006 ---

What impact did pro-French language laws have on the demographic vitality of the Francophone and Anglophone communities in Quebec? The immediate reactions of many Francophones to Bill 101 were quite positive, given the law was seen as being effective in securing the linguistic future of the French language in the province (Bourhis, 2001). As seen in Figure 1, while the number of French mother tongue speakers increased by over a million from 1971 to 2006, the proportion of French mother tongue (L1) speakers in Quebec remained stable from 1971 (80.7%) to 2006 (79.6%). The one percent drop in the proportion of French mother tongue speakers during this period was due mostly to the increase in the proportion of Allophones in the province from 6.3% in 1971 to 11.9% in 2006.

However, in the Montreal metropolitan region, the proportion of French mother tongue speakers (L1) dropped from 68.1% (2, 255,610) in 1996, to 65.7% (2,356,980) in 2006. This marginal decrease reflects the fact that Quebec Francophones have tended to move to the outer suburbs of Montreal during the last decades (Levine, 2002). Meanwhile more than 85% of immigrants to Quebec settle in Montreal, a trend reflected in the growing proportion of Allophones residing in the Montreal region, which rose from 27.7% (484,970) in 1996 to 32.6% (594,525) in 2006. “*Nous perdons Montréal*” is the reaction of many French nationalists who fear that Québécois francophones will lose their majority position in the Quebec metropolis.

----- **Figure 2: Most frequent language use at home: 1991 to 2006** -----

Bill 101 sought to ensure knowledge of French as the public language of all citizens. Language use at home is a private matter beyond the reach of the State. Thus language use at home (HL) should *not* be used as an indicator of the success of Bill 101 in promoting the French language. However, language use at home, when contrasted with mother tongue, can be used as an indicator of linguistic assimilation, especially for language minorities. Overall, the majority of Quebec residents have used mostly French at the language of the home during the last three decades: 80.8% in 1971, 83% in 1991, and 81.8% in 2006 (see Figure 2). Taken together, trends in mother tongue and home language use suggest an increasing intergenerational transmission of French from 1971 to 2006 in Quebec. For instance, more residents reported using French at home (HL) than the number of French mother tongue speakers (L1): in 1991: L1: 5,585,645 vs. HL: 5, 651, 790 = + 66,145 (+1%); and more so in 2006: L1: 5,916,840 vs. HL: 6,085,155 = + 168,315 (+ 2.2%). Thus, compared to the drawing power of French as the home language in 1991, the 2006 census results suggest a doubling in language shift in favour of French. Of course, French language activists are most interested in the drawing power of French relative to English during this period.

When comparing scores presented in Figures 1 and 2 for English mother tongue (L1) and English use at home (HL), the following trends in private language use emerge. More Quebec individuals reported using English at home than the number of English mother tongue speakers in 1991: L1: 626,195 vs. HL: 761,805 = + 135, 610 (+21.6%); and in 2006: L1: 607,165 vs. HL: 787,885 = + 180,720 (+ 30%). Though in absolute terms, almost as many individuals switched to French as their home language (168,315) as those who switched to English (180,720) during the

2006 census period, the relative drawing power of English (+30%) remained much greater than that of French (+ 2.2%) during this period. However, it is noteworthy that English language use at home in the Quebec population dropped from 14.7% in 1971 to 10.5% in 2001, and remained at 10.6% in 2006 (Figure 2). Even if the majority of Anglophones declared using English at home (85.7%) in the 2001 census, 12.5% declared using French, thereby attesting to the rising “drawing power” of French among Quebec Anglophones. While these trends could be seen as encouraging for those who wish French to increase its drawing power as the home language, French language activists remain outraged as they consider it abnormal that the language of a minority such as Quebec Anglophones should have more drawing power than French as the home language in the Province. Such concerns ignore the role of English as the *lingua franca* of business, technology and culture in North America for all Quebecers.

As seen in Figure 1, Allophones increased from 6.3% of the population in 1971 to 11.9% in 2006, reflecting increasing immigration to the province. When contrasting mother tongue (L1) and home language use (HL) of Allophones in the province, one notes a steady loss in the transmission of heritage languages in the 1991 to 2006 census. In 1991 the loss in heritage language transmission in the home was: L1: 598,445 vs. HL: 396,690 = - 201,755 (- 33.7%). In the 2006 census, heritage language loss was greater: L1: 866,000 vs. HL: 562,860 = - 303,140 (- 35%). Census results also showed that Allophones who declared using English as the language of the home dropped from 61% in 1996 to 49% in 2006. Conversely, Allophones who declared using French as their home language increased from 39% in 1996 to 51% in 2006. Thus by 2006, Allophones were assimilating as much to French as to English at home, though such language shifts represent a net loss of multilingual and multicultural diversity for Quebec society.

----- **Figure 3: French-English bilingualism in Quebec: 1971-2006 ----**

The growing integration of Quebec Francophones within the North American economic and cultural mainstream is implied by the rise of French-English bilingualism amongst Francophones especially from 1971 to 1996. As seen in Figure 3, whereas only 26% of French mother tongue speakers reported being French-English bilingual in 1971, this proportion had increased to 34% in 1996, but reached a plateau at 37% in 2001 and 36% in 2006. Thus, only a minority of Francophones bother to learn English in Quebec, a trend found for other dominant language minorities in the world. In the last century many Francophones who learned English

experienced “subtractive bilingualism”: their acquisition of the second language (L2) was achieved at the cost of losing fluency in L1 and often resulted in cultural assimilation to English. However, Francophones learning English today are more likely to experience “additive bilingualism”: a type of bilingualism contributing to greater cognitive development and a broadening of cultural horizons without undermining mother tongue skills and cultural attachment to the ingroup culture (Hamers & Blanc, 2000).

As seen in Figure 3, an increasing proportion of Anglophones have become French/English bilinguals since the adoption of Bill 101: a rise from 37% in 1971 to 69% in 2006. For Anglophone communities concentrated in the western sectors of Montreal who benefit from health, education and mass media institutions also provided in English, this bilingualism is more likely to be ‘additive’ than ‘subtractive’. However, for declining Anglophone minorities residing in isolated regions of the province where English language services are declining, this bilingualism may develop to be more ‘subtractive’ than ‘additive’.

As seen in Figure 3, Quebec Allophones have become increasingly bilingual: from 33% in 1971 to 50.2% in 2006. This trends reflects in part the cumulative effect of the Bill 101 provision requesting children of international immigrants to attend French rather than English primary and secondary schools in Quebec. As seen above, Allophones have suffered more than a 30% loss of heritage language use at home, an assimilation trend suggesting the effect of “subtractive bilingualism”.

Though the English language is not threatened in Quebec, Bill 101 did have the intended effect of eroding the demographic vitality of the English-speaking minorities of the Province. Anglophone reactions to Bill 101 were largely negative because the law was seen as threatening the traditional elite status of the English minority in the province (Stevenson, 1999). Pro-French laws forced many Anglophones to see themselves as a linguistic minority like any other rather than as individuals belonging to a dominant elite. Following the election of the pro-sovereignty Parti Québécois in 1976, many Anglophones, dissatisfied with Quebec’s language laws and fiscal policies, emigrated to Ontario and other provinces of Canada. Emigration from the province and a low fertility rate were key factors that contributed to the erosion of the demographic vitality of Quebec Anglophones.

----- **Figure 4: Net inter-provincial migration in Quebec, 1966-2006** -----

As seen in Figure 4, the outmigration of Quebec Anglophones was particularly important in the decade following the election of the Parti Québécois in 1976 and the adoption of Bill 101 in 1977. However, note that Anglophone out migration in the 1966 to 1976 decade coincided with the linguistic tensions surrounding the adoption of language laws such as Bill 63 in 1969 and Bill 22 in 1972. Census results showed a decline of 12% in Quebec's English mother tongue population between 1971 and 1981. This net loss of English L1 speakers occurred among the more qualified and economically mobile elements of the Anglophone community, a trend still very much in evidence in the 2001 and 2006 census (Floch & Pocock, 2008). By this century, these outmigration trends took their toll on the proportion of Anglophones in Quebec. As seen in Figure 1, while English mother tongue speakers made up 13% of the population in 1971, this proportion dropped to only 8.2% by 2006, a net drop of 181,835 Anglophones in the province. English mother tongue speakers also dropped in the metropolitan Montreal region, from 13.6% (451,855) in 1996 to 12.5% (448,325) in 2006. Retention rate is the proportion of a particular mother tongue group that continues to reside in a province of birth at the time of a census. Expressed as provincial retention rate, Quebec born Anglophones had a retention rate in the Province of 69 % in 1971 which dropped steadily to only 50% in 2001. In 2001, this retention rate dropped to 34% for Anglophones holding Master's degree and to 27% for those holding Ph.Ds. (Floch & Pocock, 2008). In contrast, the retention of Quebec born Francophones was a steady 96% during the 1971 to 2001 census periods (Floch & Pocock, 2008).

The out migration of many unilingual Anglophones, combined with more Anglophones learning French, had an impact on the proportion of Anglophones who declared having knowledge of French as a second language in the province. Thus for Anglophones who stayed in Quebec, the percentage of bilinguals increased from 37% in 1971 before the adoption of Bill 101, to as much as 68.9% in 2006 (Figure 3). The 2006 census also showed that as many as 80% of young Anglophones (between 15 and 30 years of age) were bilingual in Quebec. However, according to Magnan (2004), this high rate of bilingualism among young Anglophones was not sufficient to prevent their exodus from the province. Magnan's study revealed that it was their feeling of not being accepted by the Francophone majority, especially in the work world, that forced many highly educated Anglophones to emigrate from Quebec. A study by the *Quebec Human Rights Commission* showed that whereas Quebec Anglophones made up 8 % of the

provincial working population, their presence as employees in the Quebec government public service was less than 2%, a trend obtained after controlling for French language skills, number of Anglophones applying for Quebec government jobs, and years of experience in the Quebec workforce (CDPDJ, 1998). Surveys also revealed that political uncertainty due to the separatist movement, pro-French language laws, and more promising economic opportunities in the others regions of Canada remain important reasons for the outmigration of young Anglophones. In their recent analysis based on the 2001 census, Flock & Pocock (2008) showed that Anglophones who left Quebec were almost as likely to be bilingual (61.4%) as those who stayed (70.7%), suggesting that lack of French skills is not the main reason for the continuing dearth of Anglophones hired in the Provincial Public Administration or their exodus from Quebec.

Despite an optimal rate of intergenerational transmission, it is clear that the Quebec Anglophone minority is experiencing a sharp decline on more fundamental indicators of demographic vitality such as absolute and relative group numbers, outmigration, and fertility rates. With a declining fertility rate from 3.3 children per woman in 1961 to only 1.4 in 2001 and few prospects for Anglophone immigration from Anglo-Canada, Quebec Anglophones have recognized their growing dependence on the dual linguistic integration of Allophones and international immigrants to maintain the vitality of their institutions. However, Figure 4 also shows that Allophones have also been steadily leaving Quebec since Bill 101, including the children of Bill 101 in 1996–2001 (-19,000) and in 2001–2006 (-8,700).

Growing linguistic tensions between the Francophone and Anglophone host communities put added pressure on Allophone minorities to openly “take sides” in the Quebec linguistic debate (Bourhis, 1994). One response of Allophones was to learn both French and English. As seen in Figure 3, the rate of French-English bilingualism amongst Allophones increased since 1971 with as many as 80% of young Allophones (age 15-30) declaring they were French-English bilinguals in 2006. With the knowledge of their heritage language, as many as 50% of Quebec Allophones can be considered trilingual, thus creating a linguistic and cultural capital that contributes to the diversity and dynamism of Quebec society, especially in Montreal.

---- **Figure 5: Knowledge of French and English in Quebec: 1991-2006** ----

A key role of Bill 101 was to promote the conditions necessary to ensure the widespread knowledge of French as the shared public language of Quebec society. Figure 5 provides data on

the knowledge of French and English amongst the population of Quebec based on the 1991 to 2006 Canadian census. Figure 5 shows there are still some English unilinguals in Quebec, though their share of the provincial population dropped from 5.5% in 1991 to 4.5% in 2006. Most English unilinguals are older Anglophones who did not leave Quebec and a number of recent Canadians from the ROC, as well as some new Canadians recently established in the province. In contrast, more than 50% of the Quebec population can afford to stay unilingual French in the province: 58% in 1991 and 54% in 2006. The knowledge of English is rising in the province: from 41% of the population in 1991 to 45% in 2006. This individual bilingualism trend attests to the continuing economic integration of Quebec within the North American market, especially since the adoption of the North American Free Trade Agreement (NAFTA).

However, the greatest success of Bill 101 has been its role in ensuring that the vast majority of the provincial population knows French: a steady majority of 93.6% in 1991 and 94.5% in 2006. Taken together, these trends show that Bill 101 had the effect of improving the demolingistic ascendancy of the Francophone majority in Quebec. Bill 101 along with other provincial government measures also had the intended effect of eroding the demographic vitality of the Anglophone minority in Quebec. In turn, the demographic decline of the Anglophone community undermines the institutional vitality of this minority. English speaking communities of Quebec (Bourhis, 2008). The closure of English schools and hospitals in the last decades attest to this institutional decline. Maintaining and developing the institutional vitality of the Anglophone minority in education, health, welfare, the economy and in cultural industries will help reduce the out migration of young talented Anglophones, thus improving the future overall vitality of the English speaking communities. Ideally, Provincial Government support of English language institutions contribute to the linguistic duality of Quebec society while enhancing its economic, scientific and technological drawing power within North America.

1.3 Erosion of Quebec Anglophone institutional support in Education

The demographic decline of the Anglophone minority has had a dramatic impact on the vitality of English language institutions across the province. This negative impact is most strongly felt in the English school system. Because language laws such Bill 101 and Bill 104 were specifically designed to reduce access to English schooling it is relevant to review the impact of such laws on school enrolments in the English and French school systems. This is

important given that both Bill 104 and Bill 103 invoked the threat to the vitality of the French language as the legitimising argument for reducing access to the English school system. The following analysis shows that it is the English School system more than the French one that suffered the most decline since the adoption of Bill 101 and Bill 104. First it is useful to cite Michel Paillé, a demographer of the Office québécois de la langue française, on the impact of Bill 101 on enrolments in the French and English school system of the Province.

« Il importe, enfin, de situer les effets de la loi 101 en matière de langue d'enseignement dans le contexte démographique général du Québec. Bien que la Charte de la langue française s'applique depuis 1977, 100 600 adultes scolarisés en français plutôt qu'en anglais ne peuvent compter que pour 1,7% de la population adulte du Québec en 2001 (5.8 million adultes au Québec en 2001). C'est relativement peu. L'apport de toute immigration à une population majoritaire n'a pas la même signification numérique qu'à l'endroit d'une minorité. Ainsi dans le cas particulier du Québec, 100 écoliers qui optaient jadis pour l'école anglaise comptaient pour la minorité anglophone ce que 13 écoliers, que la loi 101 dirige à l'école française, sont maintenant à la majorité francophones. Espérer trouver dans les effets de la scolarisation en français des enfants des immigrants la panacée à nos problèmes démographiques tant généraux que linguistiques reviendrait à donner à la Charte de la langue française une mission qu'elle n'avait pas. Ce serait confondre notre politique linguistique, aussi efficace soit-elle dans le milieu scolaire, à une politique de population. » (Michel Paillé, 2002; pp 65-66)

The first obvious point made in Paillé's analysis is that Bill 101 was very effective in getting immigrants/allophones to enrol in French schools rather than in the English school system. But for the Francophone majority, this influx of immigrant/allophone pupils in the French school system does not have as much impact on the overall demography of the Francophone majority as it does on the Quebec Anglophone minority. Michel Paillé demonstrates that 13 immigrant students enrolled in the *French majority* school system are worth 100 immigrants enrolled in the *English minority* school system. Put yet another way, we could say that a gain of 13 immigrants to the French majority school system is worth the gain of 100 immigrants for the English minority school system. Conversely, the loss of any pupil from the school system has a much greater negative impact on the school system of the English speaking minority than it does for the French majority school system. When considering pupils gained in the French school system who have now reached adulthood, Paillé calculated that obtaining 100 600 adults of immigrant background schooled in French since Bill 101 only contributed to an increase of 1.7% of the total adult Quebec *Francophone* population by 2001. So relying on

immigrant enrolment in French schools to boost the Quebec Francophone population does not significantly impact the overall demolinguistic weight of the Francophone majority in the Province.

We could make the same argument as regards the marginal impact of Bill 104 and the proposed Bill 103 in significantly increasing the number of pupils in the French school system and in ultimately boosting the population of the Francophone adult majority in the Province. We also know that Bill 101 regulations did the major share of the job in limiting access to English schools relative to Bill 104 and the proposed Bill 103. However, Bill 101 and possibly Bill 104 caused a much greater relative *cost* on the English school system and on Anglophone demographic and institutional vitality than the relative *benefit* gained from these laws for the French school system and the Francophone dominant majority.

**Figure 6: Pupils enrolled in French & English school systems in Quebec
and Figure 6a on the Island of Montreal**

As can be seen in Figure 6, for the Quebec school system as a whole (public and private system) the number of pupils studying in English schools dropped from 256,251 in 1972, before the adoption of Bill 101 in 1977, to only 119 508, thirty years later in 2007 (MÉLS, 2008). This represented a loss of 136, 743 pupils in the English school system, a massive 53% drop in enrolment for the official minority school system. Did further restrictions on access to English schooling since the adoption of Bill 104 in 2002 have an impact on school enrolments by 2007 the year when the law was challenged in the courts? The separate effects of Bill 101 and Bill 104 cannot be distinguished, so changes in enrolment numbers must reflect the combined effects of both laws. As seen in Figure 6, the number of pupils in the English school system dropped from 121,225 in 2002 to 119,508 in 2007, a loss of 1,717 pupils representing a 1.4% drop in enrolment for this five year period of application of Bill 104.

The current nationalist campaign to scrap Bill 103 is based on the fact that while in 1991-1992 enrolment in English schools bottomed at 111,391 pupils (9.6% of total pupils in Quebec school system), enrolment in English schools did increase to 121,225 in 2001-2002 (10.8%), while numbering 119,508 in 2006-2007 (11.1% of total pupils in Quebec school system). This recent increase in English school enrolments is portrayed as a dire threat to the vitality of the French language in Quebec. The rise in enrolment in English schools from the 1991-1992 to the

2006-2007 period is the main evidence used by nationalists to scrap Bill 103 and replace it by a ban on access to all non subsidized private English schools in the province other than for Anglophone rights holders protected by article 23 of the Canadian Constitution. However, as seen in Table 6a, nationalist avoid drawing attention to enrolment trends in English schools on the Island of Montreal which bottomed at 61,955 pupils in 1991-1992 and stayed constant in 2001-2001 and 2006-2007 periods. Clearly Bill 103 is assailed by French nationalist for allowing too much access to English schools while the Bill is criticized by the Anglophone and Allophone minorities for further limiting access to English schools.

Figure 6 also shows that the number of pupils studying in French schools dropped from 1,378 788 in 1972 to 961,738 in 2007, a decline of 427,050 pupils representing a 31% drop in the French school system for the Province. Enrolment in the French school system declined from 997,358 in 2002 when Bill 104 was adopted to 951,738 in 2007, a drop of 45,620 pupils representing a 4.6% enrolment decline in the French school system. As seen in figure 6a, a similar drop in enrolments to French schools emerged on the Island of Montreal. Even after blocking the so-called loophole of bridging schools ('écoles passerelles') with Bill 104 during five years, one must still account for the 4.6% enrolment drop in the French school system across the Province. Why further restrict access to English schools through Bill 103 as a panacea for addressing the more critical issue of solving the large school drop-out rates prevalent in the French school system across the Province and the continuing low fertility rate of the Francophone dominant majority ?

Taken together, Figure 6 and 6a shows that Bill 101 had a dramatic impact in reducing the size of the English school system (combining public and private) which dropped by **53%** during the 1972 to 2007 period across the Province. Despite the avowed goal of Bill 101 to forcibly boost immigrant/allophone enrolment in the French school system, the enrolment in the French school system nevertheless dropped by 31% during the 1972 to 2007 period. However Ministry of Education figures (MELS, 2008) showed that in 1972 the percentage of pupils enrolled in French schools amounted to **84.3%** of the school population while pupils enrolled in English schools constituted **15.7%** of total school enrolment in the Province. By 2007 the percentage of pupils enrolled in the French school system had grown to **88.9%** while those in the English school system had dropped to **11.1%** of the total enrolment in the provincial school system. Clearly Bill 101 succeeded in its intended effect of eroding the size of the English school

system relative to that of the French in Quebec. Even when combined with Bill 101, Bill 104 had little effect in reducing the number of pupils enrolled in the English school system from 2002 to 2007 across the Province. However for the 1971 to 2006 period as a whole, important factors such as the net exodus of 181,835 Quebec Anglophones from Quebec contributed to the enrolment drop suffered by the English school system (Quebec arrivals-departure = net loss, Statistics Canada, 2007).

Given the more than 50% loss of enrolment in the English school system since 1971, how can the present Quebec government invoke threats to the French language as an excuse to further limit access to English schools as proposed in Bill 103 ? Why should the English minority school system be forced to pay for the declining school enrolment of the Francophone majority ?

**Figure 7: Mother tongue of pupils attending English schools in Quebec and
Figure 7a on the Island of Montreal**

The government proposals in Bill 103 are even less justified when considering the mother tongue background of pupils attending English schools from 1971 to 2007. Figure 7 shows that Bill 101 achieved its intended goal of restricting access to English schools (combining public and private system) for all categories of pupils including Anglophone, Allophone and Francophone pupils in the Province (MÉLS, 2008). As seen in Figure 7, for Quebec as a whole, the number of Anglophone pupils studying in the English school system dropped from 171,175 in 1972 to 72,092 in 2007 a loss of 99,083 pupils. This represents a 58% drop in the number of Anglophones pupils enrolled in the English school system. In 2002 the year of adoption of Bill 104, the number of Anglophone pupils in the English school system in Quebec was 76,818 and dropped to 72,092 in 2007, a loss of 4,726 pupils. Figure 7a shows a similar trend in English school enrolment on the Island of Montreal.

Figure 7 shows that the number of Allophones studying in the English school system dropped from 56,376 in 1972 to 22,057 in 2007, for a loss of 34,319 pupils. This represents a 61% drop of Allophone students from the English school system since the adoption of Bill 101 which specifically restricted Allophone/immigrant access to English schools. As seen on Figure 7a, there was a 65% drop of Allophones students from the English school system from 1971 (48,617) to 2007 (16,837). By the time of the adoption of Bill 104 in 2002, the number of Allophones pupils in the English school system for Quebec as a whole was 22,199, an enrolment

which dropped slightly to 22,057 in 2007 representing a loss of 142 pupils during the five year period. These trends suggest that Bill 101 more than Bill 104 is having its intended effect of limiting Allophone access to English schools in the Province.

Figure 7 also shows there were 28,700 **Francophones** enrolled in the English school system (public + private) across the Province in 1972 before the adoption of Bill 101. With Bill 101 restrictions on access to English schools, 22,101 Francophones were in English schools by 2007, a decline of 6599 pupils. This represents a drop of **23%** in the proportion of Francophones in the English system since the adoption of Bill 101. Thus while 4.1% of Francophone pupils in the Province attended English schools in 1972 this percentage dropped to 4.1% in 2007. Note that this overall drop in Francophone enrolment in English schools prevails, despite the fact that in many cases of French- English mixed marriages in Quebec, some mixed language couples decide to exert their ‘rights holder’ option by sending their children to English schools. Since the adoption of Bill 104, the number of Francophones attending English schools in Quebec increased from 19,505 in 2002 to 22,101 in 2007, an increase of 2596 pupils, many of whom were likely ‘rights holder’ as children of French-English marriages, though some were likely enrolled in non-funded private English schools.. As seen in Figure 7a, on the Island of Montreal 12,180 Francophone pupils were enrolled in English schools in 1972, a presence which dropped to only 4,203 Francophones in 2007 representing a 65% drop in Francophone pupils attending English schools. During the application of Bill 104 from 2002 to 2007 there was a marginal increase of 116 Francophone pupils attending English schools on the Island of Montreal..

Taken together these results show that in Quebec, enrolment of Allophones and Anglophones in English schools dropped considerably from 1972 to 2007. One must also consider that as intended, Bill 101 and to a lesser degree Bill 104 did limit the number of Francophones enrolled in the English school system since 1977 and 2002. The overall decline in the number of pupils attending the English school system also reflects the general demographic decline in the school aged population of Quebec from 1972 to 2007. Overall, the exodus of Anglophones from Quebec and the weak fertility rate of Anglophone women contributed to the demographic decline of this community during the last 30 years (fertility rate 1.4 to 1.6). However the effects of language laws such as Bill 101 and Bill 104 restricting access to English schooling also contributed to the systemic decline of this federally funded school system in

Quebec, a trend further entrenched by the current Quebec Government through its Bill 103 proposal.

**Figure 8: Mother tongue of pupils attending French schools in Quebec and
Figure 7a on the Island of Montreal**

As can be seen in Figure 8 as many as 1,351,212 Francophones were enrolled in the public and private French school system across the Province in 1972 before the adoption of Bill 101 (MÉLS, 2008). Thirty years later, Francophone pupils enrolled in the French school system had dropped to 830,339, a loss of 520,873 pupils (-38.5%) enrolled in the French school system by 2007. As seen in Figure 8a similar trends emerged for Francophones enrolled in schools on the island of Montreal. With the adoption of Bill 104 the number of Francophones attending French schools in Quebec as a whole declined from 893,105 in 2002 to 830,339 in 2007 a drop of 62,766 pupils. While Bill 101 (1977) and Bill 104 (2002) increased access to French schools, these language laws could not offset the low fertility rate of the Francophone majority and the large systemic drop-out rate in the French school system.

Figure 8 shows that for Quebec as a whole, the number of Anglophone pupils studying in the French school system increased from 17,924 in 1972 to 19,688 in 2007 a gain of 1,764 pupils (+ 9.8%). Thus while French schools attracted 9.5% of Anglophone pupils in the Provincial school system in 1972, as many as 21.4% of all Anglophone pupils attended French schools by 2007. As seen in Figure 8a, a similar trend was observed for Anglophones enrolled in the French school system on the Island of Montreal. Around the time of the Bill 104 adoption in 2002, the number of Anglophone pupils in the French school system was 17,585 and increased to 19,688 in 2007, a gain of 2,103 pupils across the Province. That so many Anglophone ‘rights holders’ to English schools have chosen instead to attend French schools attests to the growing drawing power of the French majority school system in the Province. Despite the prevalence of French immersion in the English school system, these Anglophone ‘rights holders’ are switching to French schools to gain stronger French fluency at the collective cost of further undermining the institutional vitality of the English school system across the Province.

Finally the number of Allophones studying in the French school system in Quebec increased from 9,652 in 1972 to as much as 97,285 in 2007, for a gain of 87,633 pupils. This represents a **90.7%** gain of Allophone students within the French school system. Thus while only 14.6% of all Allophone pupils in the Province were enrolled in the French school system in

1972, this proportion increased to 81.5 % by 2007. As seen in Figure 8a, a similar increase is observed for Allophones attending French schools on the Island of Montreal. This substantial increase of Allophone pupils enrolled in French schools attest to the success of Bill 101 in restricting access to English schooling for international immigrants/Allophones across the Province. When Bill 104 was adopted in 2002, the number of Allophones pupils in French schools within Quebec was 81, 831. This number increased to 97,285 in 2007 representing a gain of 11,868 pupils (+14.4%) which reflected the combined effect of greater number of school aged Allophones present in the school system and the impact of Bill 101/Bill 104 restrictions on access to English schools.

Table 1: Number of pupils in private and public French and English schools in Quebec

We recall that Bill 104 was adopted in 2002 to close the so called loophole of ‘bridge schools’ which allowed some pupils to pay the full fees of non-funded private English schools for a year or so and then as new ‘rights holders’, transferred to the English public school system. As can be seen in Table 1, the enrolment of pupils in Quebec private schools increased from 102,844 in 1998 to 124,108 in 2007 (21.6% increase), while the number of pupils enrolled in public schools dropped from 1,036,763 in 1998 to 947,002 in 2007 (9.1% decrease). These enrolment trends testify to growing dissatisfaction with public schools amongst both Francophone and Anglophone parents in the Province. Of the pupils enrolled in Private schools, Table 1 shows that in 1999 before the adoption of Bill 104, the number of pupils enrolled in French semi-private schools was 85,216, an enrolment which increased to 105,281 by 2007 (23.5% increase). The English semi-funded private school system is much smaller than the French one, though it was the main target of Bill 104 and now Bill 103. While 10,644 pupils were enrolled in semi-funded private English schools in 1999, this enrolment increased to 11,194 (9% increase) in 2007, five years after the adoption of Bill 104. As noteworthy, is the small number of pupils enrolled in both French and English *non-funded* private schools in Quebec. While enrolment in non-funded French schools was 4,700 pupils in 1999, enrolment dropped to 3,750 in 2007 (20% decrease). In contrast, while 2,284 pupils were enrolled in non-funded English schools in 1999 before the adoption of Bill 104, the number of pupils enrolled in such schools increased to 3,873, five years after the adoption of Bill 104 (70% increase). Thus despite

five years of Bill 104 legislation restricting access to non-funded English schools as so-called ‘bridges’ to English public schools, enrolment in such English non funded schools still increased, probably for reasons of parental concerns for children’s scholastic achievement. In the end, it remains that Bill 104 and now the proposed Bill 103 are socially divisive language laws which target the potential illicit behaviour of a tiny minority of pupils attending semi-funded and non-funded English private schools. All told in 2007, enrolment in semi-funded (11,194) and non-funded English private schools (3,873) totalled 15,067 mainly Anglophone pupils out of a total of 124,108 pupils enrolled in French and English Private schools, 840,798 pupils in French public schools and 104,201 pupils in English public schools. Thus Bill 103 is designed to curtail the potential illicit behaviour of 15, 067 pupils attending English private schools who are perceived as threatening the development of a combined French private and public school system made-up of 949,829 French pupils in Quebec.

Language laws such as Bill 101 and Bill 104 were designed to restrict access to English schools especially for Allophones, immigrants and Francophones. Gains in enrolment in the French school system as a result of the influx of Allophones increased the share of French school enrolment in the Province from 84.3% in 1972 to 88.9% in 2007. Note that the French mother tongue population of Quebec was 80.7% in 1971 and 79.6% in 2006, well under the proportion of pupils now enrolled in the French school system. However the Bill 101 and Bill104 restrictions on access to English schools were not sufficient to offset the 38.5 % drop in the number of Francophone pupils attending French schools from 1972 to 2007. Demographers and education specialists agree that the drop in the fertility rate of the Francophone majority from the 1960s onwards contributed to the decline of Francophone pupils enrolled in the French school system. Surely Anglophones and Allophones cannot be blamed for the drop in the fertility rate of the French majority in Quebec. While the Francophone majority school system *gained* somewhat in its enrolments by restricting access to English schools in the province, the *cost* suffered by minority English schools has been enormous. We have seen a dramatic 53% drop in the English School system between 1972 and 2007. As mentioned earlier, English school enrolments in the province constituted 15.7% of the total school enrolment in the Province in 1972 but constituted only 11.1% of school enrolment by 2007. The education system in jeopardy is the English school one not the French one which increased its share of pupils in the Province from 84.3% in 1972 to 88.9% in 2007. The *costs* imposed on the minority English school system to maintain the

dominant French majority school system through Bill 101 and Bill 104 dramatically eroded the viability of the English school system, while also contravening Article 23 of the 1982 Canadian constitution and recent features of the Official Languages Act. Despite the Canadian Supreme court ruling of November 2009 which struck down Bill 104, the proposed Bill 103 pursues the Quebec government quest to further curtail access to English schooling. Ultimately, Bill 103 is probably about gaining votes amongst those Francophone ‘soft sovereignist’ who consider that restricting access to English schools will reduce threats to the French language in the Province, the very rhetoric adopted by the Parti Québécois and the French nationalist movement.

1.4 Nurturing a feeling of threat from the presence of ‘others’ in Quebec

The nationalist rhetoric about the threat to the French language in Quebec remains constant and ever present in the Francophone electronic and mass media. The threat to the French language is portrayed as being due not only to the drawing power of the English language worldwide but also to the presence of the English speaking communities of Quebec who by their very presence and institutions (schools, hospitals) undermine, from within, the last bastion of a dominant French society in North America. Few studies have examined empirically feelings of threat experienced by Francophones, Anglophones and Allophones in Quebec. As part of a number of studies examining host majority and immigrant acculturation orientations in Quebec, college students attending French and English language CEGEPS in the Montreal region rated how threatened they felt from the presence of various ethnolinguistic groups in the Province (Montreuil & Bourhis, 2004; Bourhis, Barrette & Moriconi, 2008). The students who took part in the studies were: 1) Francophones (N= 637) born in Quebec with French as a mother tongue and with both parents born in Quebec also with French as a first language (L1); 2) Anglophones (N= 399) born in Quebec with English as a mother tongue and with both parents born in Quebec with English as their L1; 3) first and second generation Anglophone immigrants with English as a mother tongue (N= 473); 4) firsts and second generation Francophone immigrants with French as a mother tongue (N=103). The college students rated how threatened they felt by the presence of: immigrants in general, ‘valued’ and ‘devalued’ immigrants, as well as host majority Québécois Francophones and host minority Québécois Anglophones. For Francophone students the ‘valued’ immigrants were those from France while ‘devalued’ immigrants were visible minority Haitians. Note that both these French-speaking immigrants contribute to the French

speaking majority in Quebec. For Anglophone respondents the ‘valued’ immigrants were those from Britain while the ‘devalued’ ones were visible minority Sikhs from the Punjab in India.

---- Figure 9: Feeling of threat from the presence of various groups in Montreal ----

As seen in Figure 9, feelings of threat were generally low on the seven point scale, though the following trends emerged. Compared to the three groups of minority students, Francophone host majority respondents felt more threatened by the presence of *all* outgroups in the province. Notably, Francophones felt more threatened by the presence of Québec Anglophones (3.7) than by French immigrants from France (2.1). Anglophone host minority students did not feel threatened by the presence of immigrants in general (1.8), immigrants from Britain (1.5) or Sikhs from India (1.7) but did feel threatened by the presence of the Québécois Francophone majority (4.7). As seen in Figure 9, Francophone and Anglophone immigrants did not feel threatened by immigrants in general (1.9 & 2.5) or by Québec Anglophone host minority members (2.1 & 2.5). However, Anglophone immigrants felt more threatened (3.6) than Francophone immigrants (2.7) by the presence of Québecois Francophones.

Taken together, Anglophones and immigrants of both French and English background share in common their feeling of threat from the dominant majority in Quebec, namely Québecois Francophones. On the symbolic front it is the case that Anglophones and Allophone immigrants remain painfully aware of the former Quebec Prime Minister statement that the sovereigntist vote was lost in the 1995 referendum because of ‘money and the ethnic vote’. In a follow-up interview in 1997, Jacques Parizeau clearly identified those he blamed for the referendum defeat: the Jews, the Greeks and the Italians, and this despite the fact that 40% of the Québecois francophone majority also voted against separatism in 1995. Subsequent nationalist campaigns blamed immigrants and Anglophones for not speaking French at home and being the cause of the decrease in the proportion of French mother tongue Québecois on the Island of Montreal (Nous perdons Montréal). Though ethnic, linguistic and religious diversity is high amongst English-speaking communities of Quebec, the feeling of being ‘singled out’ as part of the problem rather than as part of the solution in the public discourse contributes to a sense of exclusion when issues of language, ethnic and religious identities are made salient by influential segments of the Québecois Francophone majority.

Why do Québécois Francophone majority students in our studies feel more threatened by the presence of ‘others’ than do minority group members such as Québec Anglophones, Allophones and immigrants of French and English background ? It must be recalled that the Québécois nationalist movement has long nurtured feelings of insecurity as regards the position of the French language in Quebec, a security represented as being undermined by the presence of linguistic outgroups such as Quebec Anglophones, English-speaking immigrant and Allophone minorities in the Province. Nationalist movements have a vested interest in nurturing feelings of threat from the presence of ‘exogenous’ groups as such sentiments reinforce feelings of ingroup solidarity, foster the derogation of outgroups, boost loyalty to the ingroup ‘cause’ and mobilize action against outgroups perceived as diluting the authenticity of the ingroup (Branscombe et al., 1999; Montreuil, Bourhis & Vanbeselaere, 2004; Vaes & Wicklund, 2002). The Quebec nationalist movement nurtures a sense of linguistic insecurity despite the fact that over 94% of the Quebec population declared a knowledge of French attesting to the success of Bill 101 in establishing French as the language of public life in Quebec society.

That Québécois Francophone students also felt threatened by the presence of Francophone immigrants from Haiti shows that feelings of threat can be generalized to any outgroup: even Haitians contributing to the French speaking majority in Quebec. Thus Québécois Francophones can feel threatened by the presence of Haitians because their ‘devalued’ position is related to another dimension of difference, namely their visible minority status. Other studies have shown that as with other Canadians, Québécois Francophones tend to hold prejudicial attitudes towards outgroups, especially towards visible minorities such as Arab Muslim immigrants (Bourhis, Barrette & Moriconi, 2008).

1.5 The economic ascendancy of Québécois Francophones

In an interview a year before his death, Camille Laurin, the architect of Bill 101, stated that: *“The ultimate goal of the Charter of the French language was to insure that more and more Francophones seize power in business, that they become the directors and CEOs, and that the Quebec economy be at last controlled by them.”* (Picard, 2003, p. 247-248). This ascendancy was largely achieved as is evident in the growth of ownership of Quebec’s economy by Francophone firms, from 47% in the 1960s to 67% today (Vaillancourt, Lemay & Vaillancourt, 2007). By virtue of its control of the state through the government, the public administration and

the economy, the Francophone dominant majority plays an important role in the successful economic, linguistic, cultural and political integration of immigrants and linguistic minorities. Of these interrelated domains of integration, it is economic inclusion which contributes most to the successful integration of minorities thus contributing to social cohesion and intercultural harmony. What can be said of the economic integration of Allophones and Anglophones depending on their language skills within the Quebec economy ?

Figure 10: Income differentials by mother tongue and language competence: Quebec: 1971 -2001

Based on Canadian census data, a recent economic study used the labour income of unilingual Francophone men to calculate the percent income advantage or disadvantage of being a unilingual or bilingual Anglophone, and a bilingual or trilingual Allophone in the Quebec workforce. These percentage income differentials were calculated based on the 1971 census data, before the adoption of the Charter of the French language (Bill 101) and in 2001, twenty years after the adoption of the law. These labour income comparisons were statistically adjusted so as to control for age, level of education, years of work experience in Quebec and the number of weeks in paid employment in the province (Vaillancourt, Lemay & Vaillancourt, 2007).

As seen in Figure 10, the horizontal line represents the income of unilingual Francophones adjusted in constant dollars for 1971 and 2001. The income of Anglophones and Allophones depending on language competence is represented as a percentage of the income of unilingual Francophones in 1971 and 2001. While unilingual Anglophones had a 10.1% income advantage over unilingual Francophones in 1971, it was the unilingual Francophones who had an 18.1% income advantage over unilingual Anglophones by 2001. While bilingual Anglophones had a 17% income advantage over unilingual Francophones in 1971, this advantage was reduced to a zero advantage by 2001. The income position of Allophone men relative to Francophone unilinguals declined substantially from 1971 to 2001. While English-speaking Allophones had a zero advantage in 1971, they suffered a **-30%** income disadvantage relative to Francophone unilinguals by 2001. While French-speaking Allophones contribute to the French fact in Quebec, such French bilinguals had income parity with Francophone unilinguals in 1971, but were suffering a **-33.9%** income disadvantage relative to Francophone unilinguals in 2001. While French-English bilingual Allophones enjoyed a 6% income advantage over Francophone unilinguals in 1971, such trilingual Allophones were suffering a **-11.8 %** income disadvantage

relative to Francophone unilinguals by 2001. However, the economic advantage of being a Quebec Francophone rather than an outgroup Allophone or Anglophone is evident when considering that bilingual Francophones maintained their income advantage over unilingual Francophones in both 1970 at + **12.6%** and in 2000 at + **12.2%**. Why should the bilingualism of Québécois Francophones be better rewarded economically than the bilingualisms and trilingualism of Allophones and Anglophones ? Not being an ethnic member of the Québécois Francophone dominant majority has a cost, even in a meritocratic society such as Québec (Eid, 2009).

Taken together these results attest to the economically advantaged position of Québécois Francophones relative to Anglophones and Allophones minorities in the province. Despite the income advantage of unilingual Francophones, survey results and testimonials during the 2007 Commission on '*Reasonable Accommodation*' showed that many Francophones in Quebec still felt threatened and ambivalent about the presence of 'others' in the province, including Quebec Allophones and Anglophones (Bouchard & Taylor, 2008). Portraying French as an endangered language in Quebec is predictable nationalist rhetoric designed to nurture linguistic insecurity amongst elements of the Francophone dominant majority. Invoking the threatened status of French to justify language laws designed to erode the vitality of linguistic minorities simply reflects the intolerance of dominant majorities towards their minorities. By international language planning standards, the demolinguistic and institutional position of Québécois Francophones cannot be considered a threatened linguistic majority in Québec (Bourhis, 2001; Bourhis & Landry, 2008). That Québécois Francophones are the dominant majority in Quebec is undeniable economically, sociologically and linguistically.

2. Paradigm Shift 2: Quebec Anglophones also have Collective Rights.

The goal of this section is to analyze the judicial implications of Bill 103 for individual and collective minority rights in Quebec. Our analysis focuses on the proposed amendments to the *Quebec Charter of Rights and Freedoms* and also to the *Charter of the French Language*. This section closes with an outline of why the protection of minorities is an important part of Canadian nation building since confederation. Note that implications of Bill 103 for Aboriginal minority rights are not addressed in the present analysis. As per the legal tradition, this second part of the brief is organized in numbered sections for easy reference.

1. To answer the Supreme Court's decision in *N'Guyen v. Quebec (Attorney general)*, [2009] 3 RCS 208, the Quebec's government introduced *An Act to amend the Charter of French language and other legislative provisions* (hereinafter "Bill 103"). The present analysis will try to evaluate the possible impact of some of the measures contained in that Bill with regard to the *Canadian Charter of Rights and Freedoms*. The educational aspects of the Bill are not covered by this analysis.
2. Bill 103 seeks to modify two important pieces of legislation : the *Charter of French Language* and the *Quebec Charter of Rights and Freedoms*. Both sets of modifications are destined to reinforce the French fact in Quebec, from a legal point of view. Both sets of modifications introduce new rights and principles of interpretation that will orient judicial analysis of Quebec's laws.

2.1 Modifications to the Charter of the French Language (CFL)

3. The Charter of the French language (CFL) would be modified to impose obligations on educational institutions and municipal bodies, as well as increasing the powers of the *Office de la langue française du Québec (OLFQ)*.

Language policies of educational institutions

4. The *CFL* already requires colleges and universities to develop a language policy. It acknowledges the special needs of English speaking institutions but require them to provide for the use of French in some circumstances. The proposed modifications would have the institutions publicize their language policy, report periodically to the Minister on its implementation, and empower the Minister to order corrective measures, after consultation with the OLFQ.
5. This is an administrative mechanism destined to regulate, in some measure, the language activities of educational institutions. As such, its impact is almost impossible to measure, until the power has been fully exercised. It leads to an increase in the Minister's discretion and enhances the role of the OLFQ. Should the Minister decide to impose French, it could impact on the language of communication of these institutions with legal persons established in Quebec and with the Quebec government's administration.

Language of communication with government institutions

6. A proposed s. 133.1 would give the OLFQ the power to investigate and propose corrective measures with regard to the language used by government's departments in their communications with the public.
7. The *CFL* contains a duty for departments to communicate in French with other governments, other governmental agencies and legal persons doing business in Quebec (s. 16). Furthermore, there are detailed rules as to the compulsory use of French within government, and limited exceptions authorizing either the use of bilingual forms or the use of an English translation on a separate document. The proposed s. 133.1 would augment the Office's powers with regard to these matters.
8. The existing rules are already quite restrictive and have not yet been challenged on a constitutional basis. The *CFL* intends to rule the use of French within Quebec's government and the Supreme Court has recognized the right of any government to organize its official language policy (*Jones v. New Brunswick* [1975] 2 RCS 182).
9. S. 133 of the *Constitution Act, 1867*, imposes the use of both French and English to adopt laws, and case law has extended this obligation to regulations and necessarily incorporated documents (including forms required by the Act or a Regulation) – see *Blaikie v. Quebec (Attorney general)* no 2, [1982] RCS ; and *Re : Minority language rights (Manitoba)* no 2, [1992] RCS; *Sinclair v. Quebec*. That is the extent of Quebec's constitutional obligations with regards to official communications with the public. Other than that, it can establish its own rules.
10. S. 133 of the *Constitution act, 1867*, does not specify the exact form that the documents need to take to comply with its disposition. Therefore, it has so far been assumed that both bilingual (either French-English on each side, or English on one side and French on the reverse) and bi-unilingual forms would comply with the constitutional obligation, as long as both have the same legal value and are adopted simultaneously in both languages. It has been held that a mention on English census form that “Ce document est aussi disponible en français” did not violate any linguistic obligation.
11. But this could be subject to attack. Linguistic equality could mean compulsory bilingualism on forms. Even if this was so, it would apply only to forms mandated by legislation or regulations, on the basis of an interpretation of s. 133 of the *Constitution Act, 1867*, requiring real equality.

12. In *R. V. Remillard*, 2009 MBCA 112, 249 CCC (3d) 44, the Manitoba Court of Appeal was examining the extent of an obligation contained in some sections of the City of Winnipeg Charter. Namely, s. 456(1) stated : “All notices, statements of account, certificates, demands in writing and other documents sent or given by the city to persons resident in the designated area shall be in both official languages.”. The City provided its notices of municipal offences, delivered by police officers, on pre-printed bilingual forms, and the Court just assumed that this was what was required. The Court found that the form had also to be filled in a bilingual way.
13. S. 841(3) of the *Criminal Code*, providing for pre-printed bilingual forms, was interpreted as not including the handwritten information added by officials – see *R. v. Goodine* (1992), 71 CCC (3d) 146 (NSCA). But it was interpreted as meaning that the pre-printed forms have to be bilingual, rather than available in either unilingual English or French forms, albeit not on a constitutional basis but only on a statutory interpretation of the clause : *R c. Noiseux* (1999), 172 DLR (4th) 447 (QCA).
14. There is not much that can be legally argued against this proposed modification. It falls within Quebec’s constitutional powers and does not offend any constitutional language rights, except maybe, as was said, with regard to bilingualism of official government forms under a possible interpretation of s. 133 of the *Constitution Act, 1867*.

Language policies of municipal bodies

15. Municipalities are under provincial jurisdiction and as such, a provincial government is empowered to establish its linguistic regime (*Baie d’Urfe v. Quebec* [2001] JQ 4821 (QL)). New Brunswick has imposed some linguistic obligations to its cities (*Official Languages Act* (2002), R.S.N.B. c. O-0.5 s. 35-38); Ontario let cities decide for themselves (*French Language Services Act* R.S.O. c. F-32, s. 14). So far Ottawa has a language policy (validly adopted : *Canadian for Language Fairness v. Ottawa*, 2006 OJ 3969 (Ont. S. Ct) and some municipalities from Eastern Ontario have imposed bilingual commercial signs (by-laws are valid : *Galganov v. Municipality of Russell*, 2010 OJ 3512 (Ont S.Ct) .
16. The proposed modification would have all cities in Quebec, even those where a substantial proportion of the population is English speaking, to establish a language policy. The thrust of the measure is explained in the proposed s. 156.2 : the policy must state that French is the official language of Quebec, that it has a prominent place in the activities of the municipality, that it is the language of public communications, and an essential instrument for Quebec’s social cohesion.

17. Designated municipalities under s. 29.1, that are empowered to use English in their communications with their citizens, are not exempted from either requirement. It may be that to impose the adoption of a language policy, and to empower the authorities to monitor its implementation, is acceptable. But s. 156.2 seems to run contrary to the intent, if not the letter, of s. 29.1 and generally of the *rationale* for designated municipal institutions, capable of offering public services in English. Such a language policy would make it more difficult for designated municipalities under s. 29.1 to continue operating as English-language institutions.
18. This should therefore be balanced with a recognition that when a municipality has been designated under s. 29.1, the language policy it must put in place should duly take this factor into account, or exempt altogether designated municipalities from s. 156.2.
19. We now turn to the proposed modifications to Quebec's Charter of Human Rights and Freedoms.

2.2 Modifications to the Quebec *Charter of Human Rights and Freedoms*

20. Three modifications have to be noted here: adding the right to learn French and integrate Quebec's society; adding the right to contribute to Quebec's culture of which French is an indissociable aspect; and adding an interpretative clause reinforcing French.

Proposed s. 40.1 : The right to learn French and to integrate within Quebec society

21. As Quebec is a predominantly French speaking society in an Anglo-dominant continent and as the Quebec's English speaking communities are a minority, and should be considered as such to benefit from any minority rights (even if, under international law, it seems that the concept of minority is appreciated only in relation to a country and not its federal components), the right to learn French should be viewed as an asset. It does not deny the historical rights of the English Speaking Communities of Quebec. It conforms to international conventions; for example, s. 4.5 of the International Declaration of the Rights of National Minorities grants the right to fully participate in their country's progress, presumably in the country's official language. Section 14.3 of the Framework Convention for the Protection of National Minorities guarantees the right of minorities to learn the country's official language and Section 8(1) of the European Charter for Regional or Minority Languages grants some rights to minority language education "without prejudice to the teaching of the official language(s) of the State".

22. It is difficult to see how the right to integrate Quebec society can be put into concrete operation. From a symbolic point of view, it would be preferable that the clause also recognizes that Quebec's society is also comprised of an English speaking minority.

Proposed s. 42.1 : The right to contribute to Quebec's culture of which French is an indissociable aspect

23. The right to contribute to Quebec's culture can be viewed positively if the remarks made in the above paragraphs are taken into account. Furthermore, international documents cited above also guarantees to minorities the right to contribute, in their language and culture, to the cultural life of their country.
24. Does the mention of the French Language as "an indissociable aspect" of Quebec's culture trumps any cultural rights of the English speaking minorities? The answer would depend on the interpretation of the reach of this clause. If it is viewed as granting preference to French language cultural endeavours, it might then put in jeopardy efforts from the English speaking communities to promote their own cultural elements; access to governmental programs could, based on this proviso, be oriented so as to deny that English cultural endeavours benefit from a full and unobstructed access to governmental programs aimed at supporting culture.
25. Some cultural endeavours need governmental support, such as community radios, community centers, local theatres, local newspapers, etc. Some cultural activities do not generate sufficient revenues to support themselves without state intervention. So even if French is "an indissociable part" of Quebec's culture, so is English and the English speaking communities of Quebec.

Proposed s. 52.1 : The Quebec Charter of Rights and Freedoms shall be interpreted so as to reinforce the fact that French is the official language of Quebec and that it is important to ensure its perpetuity

26. An interpretative clause serves as a guide for the courts when they give content, meaning and substance to specific rights. It also serves as an indication of any reasonable limits that may be put on rights. For example, in *R. v. Beaulac*, [1999] 1 RCS 768, it was held that language rights should, in all cases, be given an interpretation that is compatible with its object and purpose. The right to a criminal trial in one's official language should therefore be interpreted as being almost absolute and not limited to bilingual accused.
27. Two interpretative rules are proposed here :
- French is the official language of Quebec

- It is important to ensure its perpetuity
28. These two interpretative principles could have an impact both on the individual rights guaranteed by Quebec's *Charter* and on collective rights also recognized in that *Charter*.
29. The clause is carefully drafted so as not to have any impact on constitutional rights, but it could have this effect nevertheless if Courts begin to use them as a further aid to interpretation when language rights apply to Quebec.

Effect on individual rights and freedoms

30. Individual rights that have a linguistic component in the *Quebec Charter* and in the *Canadian Charter* could be affected. Although the interpretative clause is limited to the *Quebec Charter*, it could be invoked for the interpretation of the *Canadian Charter*'s limitation provision in s. 1.
31. The individual rights that could be affected are, firstly, freedom of association. An association should have the right to function in its own language and pursue its goals, as long as they are lawful. In *Dunmore v Ontario* [2001] 3 RCS 1016, the Supreme court decided that legislation could not deprive a category of workers from the right to affiliate and create a labour union. In *Delisle v. Canada* [1999] 2 SCR 989, it decided that Freedom of Association enabled individuals to pursue collectively goals that they can pursue lawfully individually. Private schools are of this nature and the interpretation clause proposed here could lead a court of law to consider it permissible for the Quebec government to restrict access to English private schools. Should this be seen as infringing freedom of association *per se*, the interpretative clause could lead the Court to consider that it is a reasonable limit under s. 9.1 of the Quebec Charter.
32. The other right that could be affected is Freedom of expression. Forbidding the use of English in some circumstances was considered unconstitutional in *Ford v. Quebec* [1988] 2 R.C.S. 712. This interpretative clause could, if there is evidence that French is not progressing in Quebec, justify a court of law to consider that it is a reasonable limit on freedom of expression.
33. Another right that could be affected is the equality rights in s. 10 of the Quebec Charter. This guarantees that all other rights in that Charter should be enjoyed without discrimination and the courts have determined that language can be an illegal basis of discrimination when other rights are involved (*Ford, supra*). With the interpretative clause, linguistic discrimination could be considered a reasonable limit, if evidence is adduced as to the precarious status of French in Quebec.

Effect on limitation clauses

34. Individual rights may be limited, under s. 9.1 of the *Quebec Charter* if the limit is imposed in the name of public order, democratic values and the general wellbeing of the citizen of Quebec, and under s. 1 of the *Canadian Charter*, if the limit is reasonable in a free and democratic society.
35. Limitation clauses in charters of rights are introduced to enable government to pursue collective values and to encroach upon individual rights and freedoms, if their goal is legitimate and if the limits are reasonable. The interpretative clause would include in these values the need to ensure French's perpetuity, which is not *per se* problematic, but could become so if it allows forbidding the use of English in any public sphere. It also denies that the English speaking communities are legitimate and a true part of Quebec's society.
36. So far, limitation clauses have been invoked by Quebec to attempt to justify its legal measures in favour of French. Although the Courts have recognized the legitimacy of the legislative objective of promoting French in Quebec (see *Ford and N'Guyen, supra*), they have consistently decided that the measures contemplated by the Quebec's legislation were not reasonable and that this objective could be achieved with less intrusion on the rights of members of the linguistic minority. The proposed clause could give courts some legal ammunition to "cross that bridge" and consider it reasonable, at least in the context of Quebec's laws, to not only impose French but to forbid the use of English in some contexts.
37. Absent a true factual situation, it is impossible to go further in the analysis.

Effect on socio-economic rights

The Quebec's Charter contains some socio-economic rights. They are generally non-justiciable, meaning that their violation does not lead to a judicial remedy. The *Canadian Charter* does not, generally speaking, contain socio-economic rights, either within its text or by interpretation (see *Louise Gosselin v Quebec*, [2002] 4 SCR 429), except for official bilingualism (limited to the federal sphere) and minority language education rights (not addressed here). Although there has been some indication that the Court could, in some cases, recognize a socio-economic aspect to the right to life, liberty and security of the person (see *Chaoulli v. Quebec* [2005] 1 SCR 591), this has been very limited and fact specific. Generally speaking, the cultural and social aspects of language are treated within language rights themselves, and as was said, they do not – except for language of legislation, of court proceedings and of education – apply here.

38. Socio-economic rights are nevertheless an indication of what government's policy should be. They serve as guidelines for governmental programs.
39. A few socio-economic rights contained in the Quebec *Charter* are engaged by the proposed modifications.
40. The right to choose private schooling (s. 42), provided the establishments are approved by law, is one of them. The interpretative clause could justify the government in imposing, for instance, *CFL* standards of eligibility to private schools.
41. The right to maintain and develop cultural interests in common with other members of ethnic minorities (s. 43) is another. Since French would be by law the predominant language, ethnic minorities could receive less state support if their cultural interests are not pursued in French, even if language is an integral part of culture (see, in other context, *Mahe v Alberta*, [1990] 1 SCR 342).
42. A better balance should therefore be sought: the interpretative clause should be modified, or another clause added, saying : “nothing in this Charter shall derogate from the rights of Quebec’s English Speaking Communities”.

2.3 To conclude : English speaking minorities and Canada’s linguistic duality

43. Canada’s linguistic duality is a prominent part of the fabric of the country. As the Supreme Court of Canada has emphasized in *Solski v. Quebec* [2005] 1 SCR 201, in Quebec the challenge is to balance the rights of the English speaking minorities, who are a majority within the country as a whole, with the fact that Quebec is a majority inside its territory but a minority in Canada, and furthermore that the English language is the dominant language of the world today.
44. In *Solski v. Quebec* [2005] 1 S.C.R. 201, the Supreme Court has aptly remarked :

5 Owing to the existence of these two levels of social and legal relationships, the establishment of rules to govern language rights is a sensitive issue. First, the members of the minority communities and their families, in every province and territory, must be given the opportunity to achieve their personal aspirations. Second, on the collective level, these language issues are related to the development and existence of the English-speaking minority in Quebec and the French-speaking minorities elsewhere in Canada. They also inevitably have an impact on how Quebec’s French-speaking community perceives its future in Canada, since that community, which is in the majority in Quebec, is in the minority in Canada, and even more so in North America as a whole. To this

picture must be added the serious difficulties resulting from the rate of assimilation of French-speaking minority groups outside Quebec, whose current language rights were acquired only recently, at considerable expense and with great difficulty. Thus, in interpreting these rights, the courts have a responsibility to reconcile sometimes divergent interests and priorities, and to be sensitive to the future of each language community. Our country's social context, demographics and history will therefore necessarily comprise the backdrop for the analysis of language rights. Language rights cannot be analysed in the abstract, without regard for the historical context of the recognition thereof or for the concerns that the manner in which they are currently applied is meant to address. [emphasis added]

45. In *R v. Mercure* [1988] 1 S.C.R. 234, Justice La Forest commented on the nature of language rights in these terms at 268 :

If human rights legislation can be said to be fundamental or almost constitutional, it is at least equally true of the legislation at issue here; for many years it was entrenched, so far as the inhabitants of the area to which it applied were concerned, since it could only be removed by Parliament, not the local legislature, something, it will be remembered, Parliament had refused to do. It formed part of the basic law of a vast area of this country from the earliest days of the founding of the nation and is rooted in a deeply sensitive reality recognized in the *Canadian Charter of Rights and Freedoms*, which, among our fundamental constitutional values, sets forth that English and French are the official languages of this country (s. 16(1)). (Emphasis added)

46. The protection of minorities, including English speaking minorities in Quebec, is a fundamental and unwritten constitutional principle, as emphasized in the *Quebec's secession reference*, [1998] 2 R.C.S. 217 :

80 However, we highlight that even though those provisions [pertaining to minority rights] were the product of negotiation and political compromise, that does not render them unprincipled. Rather, such a concern reflects a broader principle related to the protection of minority rights. Undoubtedly, the three other constitutional principles [Rule of law, federalism and democracy] inform the scope and operation of the specific provisions that protect the rights of minorities. We emphasize that the protection of minority rights is itself an independent principle underlying our constitutional order. The principle is clearly reflected in the *Charter's* provisions for the protection of minority rights. See, e.g., *Reference re Public Schools Act (Man.)*, s. 79(3), (4) and (7), [1993] 1 S.C.R. 839, and *Mahe v. Alberta*, [1990] 1 S.C.R. 342.

47. And the Court hastens to add :

81 The concern of our courts and governments to protect minorities has been prominent in recent years, particularly following the enactment of the *Charter*. Undoubtedly, one of the key considerations motivating the enactment of the *Charter*, and the process of constitutional judicial review that it entails, is the protection of minorities.

However, it should not be forgotten that the protection of minority rights had a long history before the enactment of the *Charter*. Indeed, the protection of minority rights was clearly an essential consideration in the design of our constitutional structure even at the time of Confederation: *Senate Reference, supra*, at p. 71. Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes. The principle of protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution.

48. The Government's proposal is undermining the principle of protection of minorities. Beyond the strict legal effect it could or could not have on other rights, the mention of French as the dominant language in Quebec as a legal principle of interpretation of individual and collective rights runs against this essential element of the very fabric of Canada. The equilibrium sought for by the Supreme Court is jeopardised.
49. Even in the Meech Lake Accord and in the Charlottetown Accord, the mention of Quebec as the "foyer" of French speaking Canadians was counterbalanced with a mention that there were also Francophones outside Quebec, and the mention of the rest of Canada as being the foyer of English speaking Canadians was balanced by the mention that there were also Anglophones in Quebec. The language used in the first draft of the Meech Lake Accord was even more explicit by referring to a French Canada and an English Canada, to be replaced down the road by a more individualistic formulation. The clause was to be used as an interpretative one for the application of more specific provisions of the Canadian Constitution.
50. As was mentioned, Ontario now has some protection for its French speaking minority. New Brunswick is not only officially bilingual but it recognizes the equal rights of both linguistic communities. Other provinces have followed suit and have some legal recognition of their French speaking minorities.
51. Even if each province is free to have its own language policy, that policy operates within a Canadian context in which linguistic duality and the protection of linguistic minorities, who are national minorities in Canada, play an integral part.
52. So there are strong grounds to balance the mention of Quebec as a French speaking majority, with a recognition that English speaking minorities have rights that are as important and legitimate.

3. Postscript

The Canadian Supreme court ruling of October 2009 recognized Quebec 's right to preserve the French language but gave the province one year to craft a new law to limit access to English schools without violating Article 23 of the Canadian Charter of Rights and Freedoms. Citing obstruction from the Parti Québécois opposition in the National Assembly, the Liberal

Government declared that adoption of Bill 103 in time for the deadline would be impossible without suspending the normal rules for debate. Using the closure procedure in the National Assembly, a shorter modified version of Bill 103 known as Bill 115 was adopted by the Liberal majority Government on October 19, thus avoiding the legal void caused by the suspension of Bill 104 if a new law had not been adopted by the October 22, 2010 deadline set by the Canadian Supreme Court.

The Bill 115 law allows pupils, not eligible to attend public English schools in Quebec under Bill 101, to potentially obtain that right after studying three consecutive years in a private unsubsidized English school. Each pupil must also undergo a personal evaluation by a panel of four civil servants from the Québec Ministry of Education who will rule, using a point system, whether the pupil applying for inclusion in the English public school system was engaged in a 'legitimate educational pathway' in English. This notion of legitimate pathway came from the *Solski v. Quebec* (2005) 1 SCR 201 Canadian Supreme Court ruling. The Supreme Court said that to ascertain if a student had done most of his or her studies in English, enabling him or her to attend an English public school in Quebec, simply counting the number hours of schooling time in each language was not enough and that regard had to be made for other criteria, one of them being the idea of a legitimate educational pathway in English. As mentioned earlier, it is estimated that only a few Francophone, Allophone or Anglophone 'non rights holders' to English schools could possibly gain access to public English schools under such stringent conditions.

The Parti Québécois vehemently opposed Bill 103 because the law was seen as creating two classes of Quebecers: those with the financial means to attend three years of full fee English schooling and those without such financial means. The Parti Québécois proposed instead that the Liberal Government invoke the notwithstanding clause of the Canadian Constitution and also extend current Bill 101 restrictions on English *public* schools to all *private* unsubsidized English schools in the Province. The notwithstanding clause would have as an effect to shield the proposed law from any constitutional challenge based on individual freedoms or the anti-discrimination provision, but it could not prevent a challenge based on constitutional language rights. Thus the Parti Québécois sought to restrict access to fee paying English schools to only those Anglophone pupils who were already constitutional rights holders (*ayants droit*) to English public schools in the Province: those pupils of Canadian parents with at least one parent having

received most of their education in English anywhere in Canada. The 'Conseil supérieure de la langue française', the institution advising the Quebec Government on the protection of the French language, also supported this further restriction on access to private unsubsidized English schools through the application of the notwithstanding clause. Likewise, of the forty one briefs submitted to the Parliamentary Commission on Bill 103 during September 2010, most briefs submitted by Québécois francophone organizations such as trade unions, student and teacher federations, French language school boards, Artist trade unions and nationalist militants decried Bill 103 for being too lenient in providing access to English schools and instead supported stiffer restrictions on access to both private and public English schools across the province. Some of those briefs, including the Parti Québécois one, also supported banning access to English language Colleges (Cégep) to all students other than Anglophone rights holders currently protected by the Canadian Charter. Disagreeing with this position, the head of the Fédération des CEGEPs du Québec observed that the proportion of Francophone and Allophone students studying in English CEGEP remained at about 8% in the last decade, a proportion not likely to threaten the survival of the more than 47 French language CEGEPs relative to the 4 English language CEGEPs in the Province. The Federation head also noted that the Parti Québécois proposition would be contrary to the nature of higher education where freedom of choice should prevail.

Briefs submitted by English speaking groups such as English school boards, private schools and associations defending English minorities across the Province also decried Bill 103 but for different reasons. Some asserted that all Quebec parents regardless of citizenship and language status, should have the right to choose the language of schooling they felt was best for their children while arguing that the French language was not threatened in the Province. As summarized in 'The Gazette' newspaper, the Quebec English School Boards Association brief proposed that: "... children be allowed to switch to public English schools after two years in an unsubsidized English school. The Association pleaded that the English school system needs the "oxygen" of increased enrolment to sustain itself and insisted the English school system, which turns out fluently bilingual graduates, is no threat to the survival of French in the province. It added that the rules in Bill 103 probably will not allow a single new student to enter an English public school. The brief also challenged the notion of "bridging schools" as misleading, as most

unsubsidized private English schools are long established and their prime purpose is to provide quality education” (September 9, 2010).

Taken together, Bill 103 as amended within Bill 115 pleased no one. However Bill 115 did drop the re-writes of the Quebec Charter of Human Rights and Freedoms included in Bill 103. As seen in Section 2 of this document, we had numerous misgivings concerning Articles 17 to 24 of Bill 103 pertaining to the Quebec Charter of Freedoms. Bill 103 would have changed the Quebec Charter to give primacy to the protection of French: “Any interpretation of the rights and freedoms set out in this Charter must take into account both the fact that French is the official language of Québec and the importance of ensuring its perpetuity “(Article 21 of Bill 103). Thus Bill 103 stipulated that individual rights argued in courts and tribunals would be subordinated to the supremacy of French enshrined as the ‘collective right’ of the dominant majority. As pointed out by Don Macpherson in *The Gazette*: “The amendments could give protection of French priority over the protection against discrimination, notably on grounds of language, in the private sector as well as the public ones “(October 16, 2010). Furthermore as noted by Don Macpherson, Bill 115 did not actually replace Bill 103 which remains a proposed law in the Quebec National Assembly. Though Government sources asserted that the Quebec Charter amendments within Bill 103 could be adopted by the end of 2010, MacPherson in his October 28 article in *The Gazette* concluded that “... it might be significant that the government introduced Bill 115 instead of simply using closure to pass all of Bill 103...that might be a sign that the government prefers to leave the rest of Bill 103 to die a quiet death on the Assembly order paper”.

Taken together, tensions surrounding the adoption of Bill 115 following the growing French/English polarisation concerning Bill 103, attests to the fragility of provincial Charters of Rights and Freedoms which can be amended to enshrine the collective rights of the dominant language majority over the collective rights of linguistic minorities and over the individual rights of citizens. The Bill 103-104 saga shows that English-speaking communities of Quebec must learn to live dangerously, a reality that Francophone minorities in the rest of Canada have known for a long while.

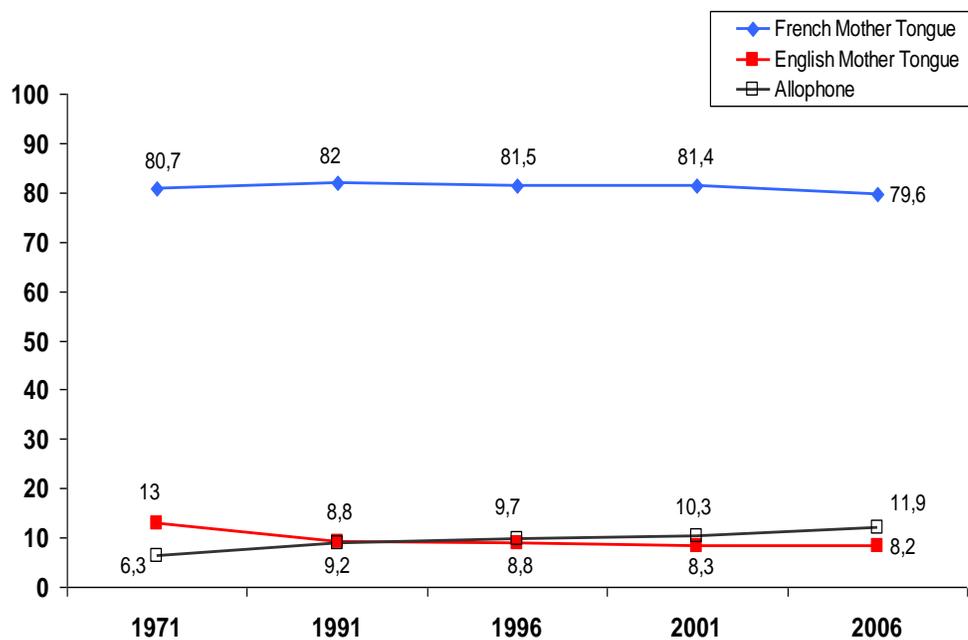
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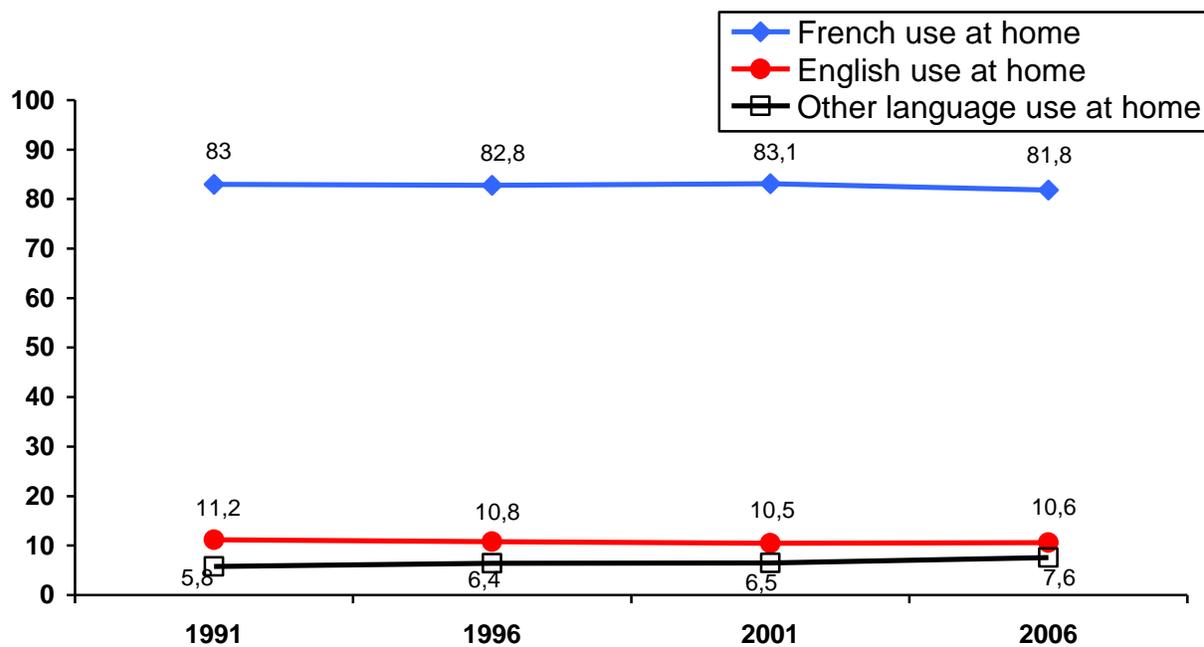
Figure 1: Mother Tongue (L1) Population in Quebec
Canadian Census: 1971 to 2006



◆ French MT	4,860,410	5,585,645	5,741,435	5,802,020	5,916,840
■ English MT	788,830	626,195	621,865	591,380	607,165
□ Allophones	390,415	598,445	681,285	732,180	866,000

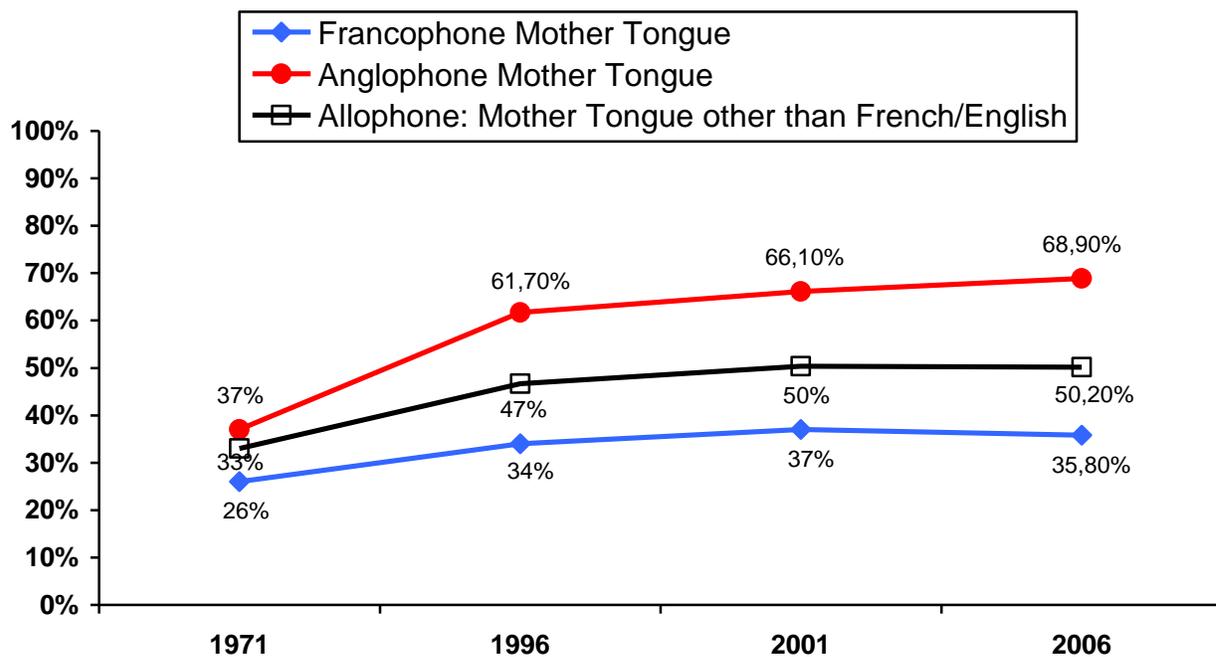
PS: Mother Tongue (MT): First language learned at home as a child and still understood at census time

Figure 2: Most frequent language use at home in Quebec population:
Use of French, English & other languages.
Canadian Census: 1991 to 2006

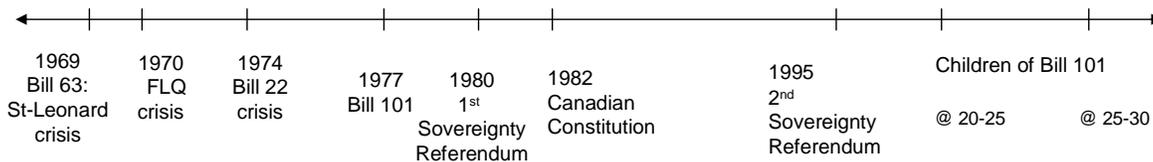
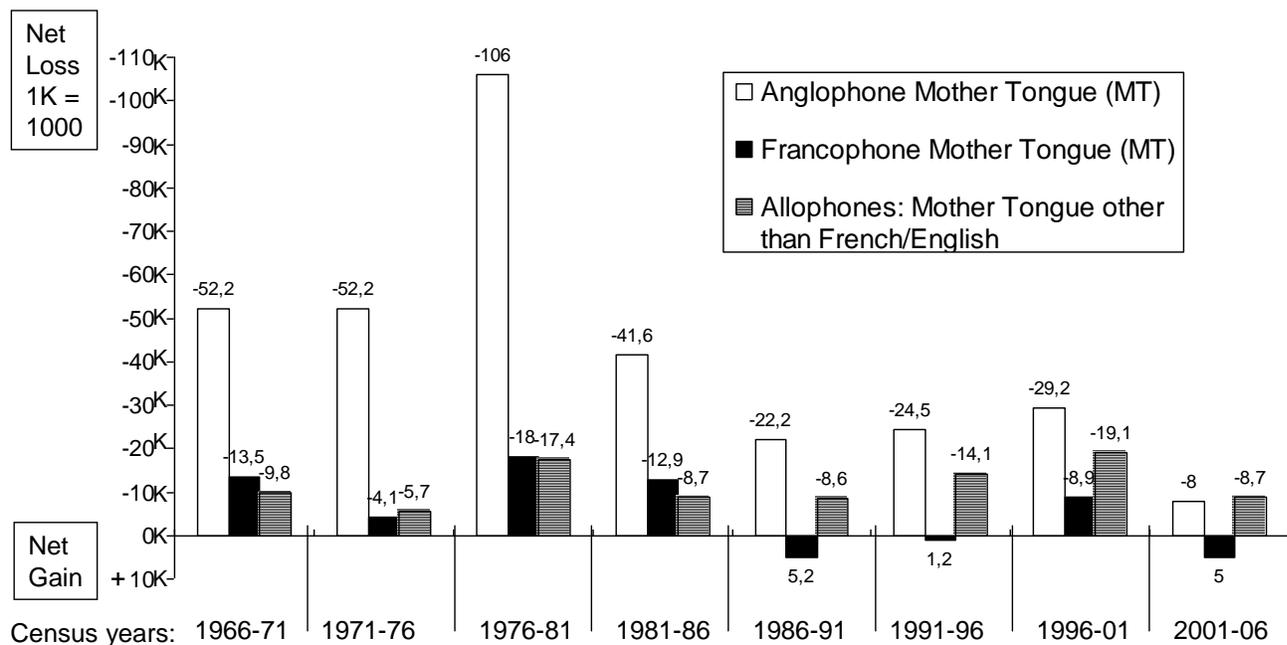


◆ French use	5,651,790	5,830,085	5,918,390	6,085,155
● English use	761,805	762,460	746,895	787,885
□ Other lang.	396,690	452,540	460,295	562,860

Figure 3: French – English Bilingualism in Quebec: Francophones: French L1; Anglophones: English L1; and Allophones: L1 other than French or English.
Canadian Census: 1971 to 2006



**Figure 4: Net Interprovincial Migration of Anglophones, Francophones & Allophones in Quebec Arrival – Departure = Net loss in thousands (K)
Canadian Census: 1966 to 2006**



**Figure 5: Knowledge of French and English in Quebec Population:
Canadian Census: 1991 to 2006**

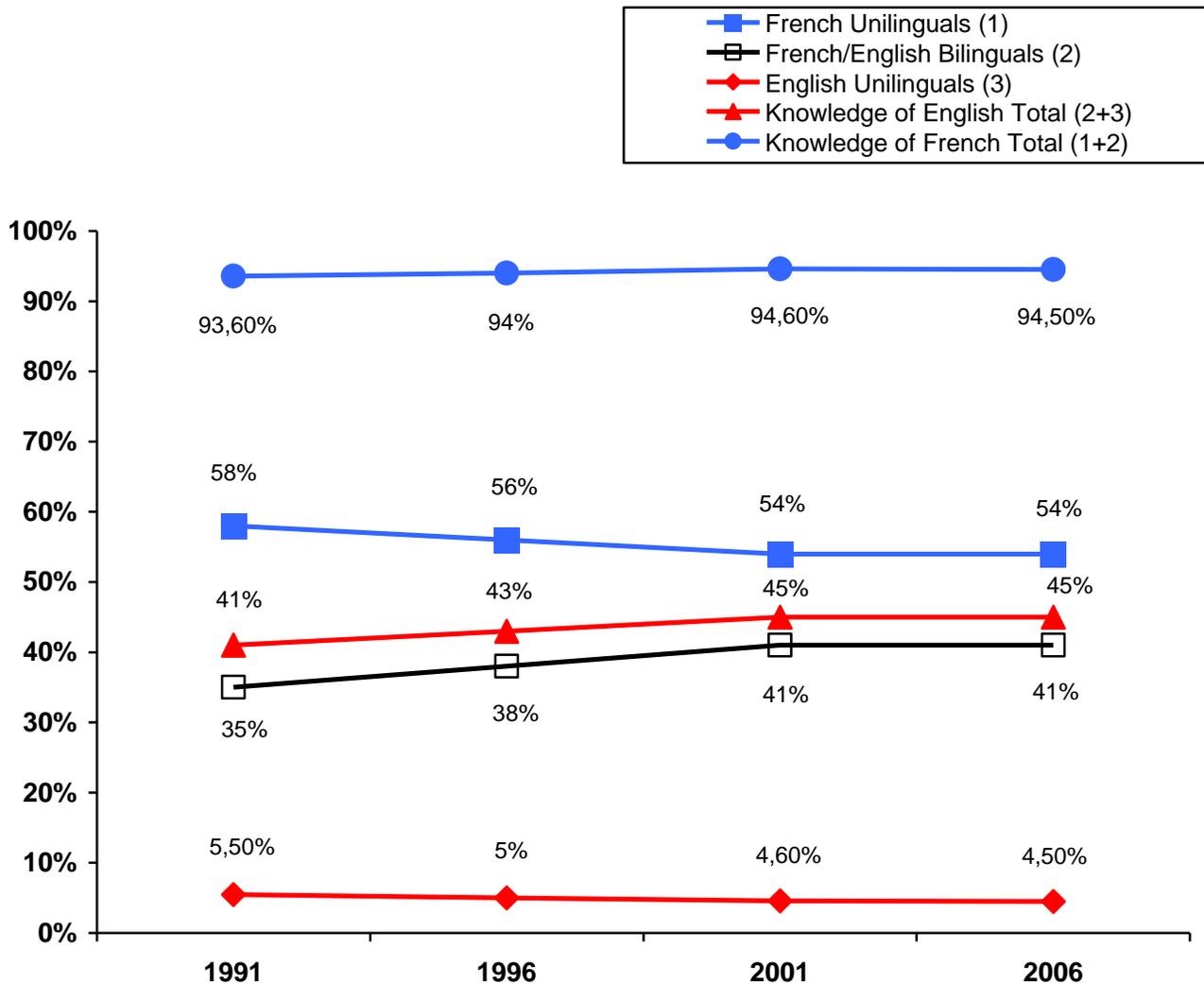
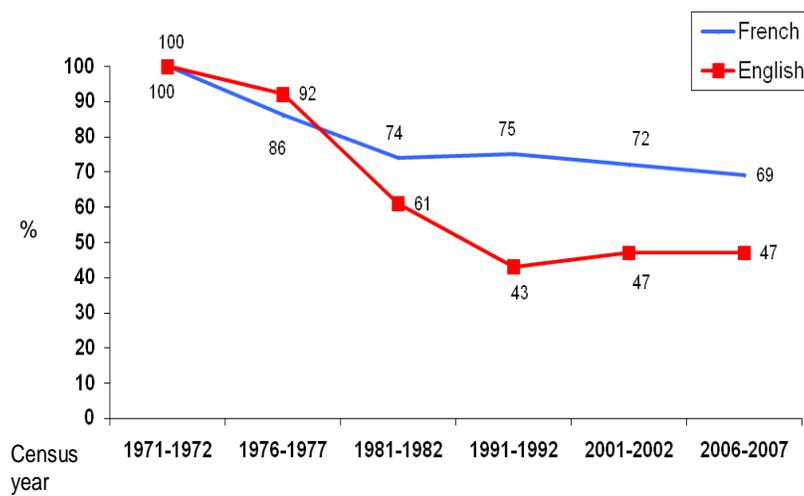
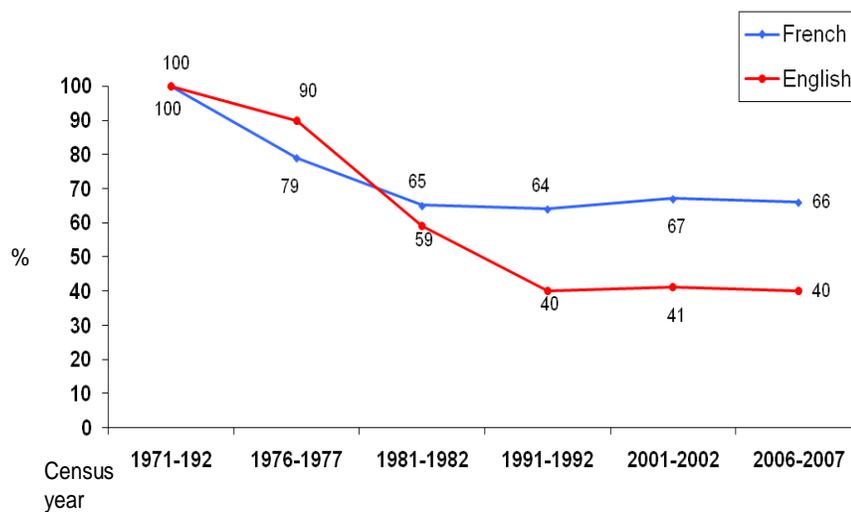


Figure 6: Percentage of students in pre-school, primary and secondary schools in **Quebec** province by language of schooling (public & private): 1971-2007 (Ministère de l'Éducation, du Loisir et du Sport; MELS, 2008)



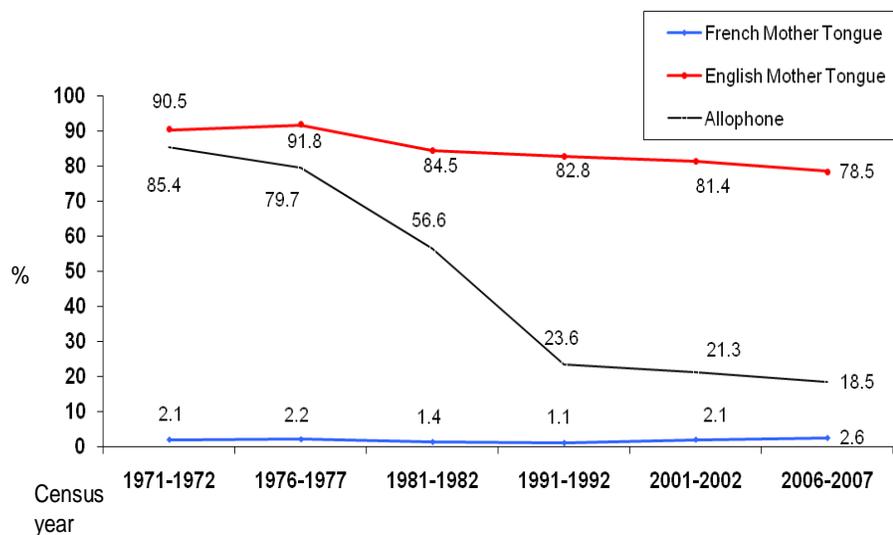
■ French	1,378,788	1,186,102	1,026,951	1,035,358	997,358	951,738
■ English	256,251	236,588	155,585	111,391	121,225	119,508

Figure 6a: Percentage of students in pre-school, primary and secondary schools by language of schooling (public & private) on **Island of Montreal**: 1971-2007 (Ministère de l'Éducation, du Loisir et du Sport, MELs, 2008)



■ French	271,753	214,876	177,704	172,762	181,713	178,086
■ English	154,338	138,144	90,898	61,955	63,812	61,002

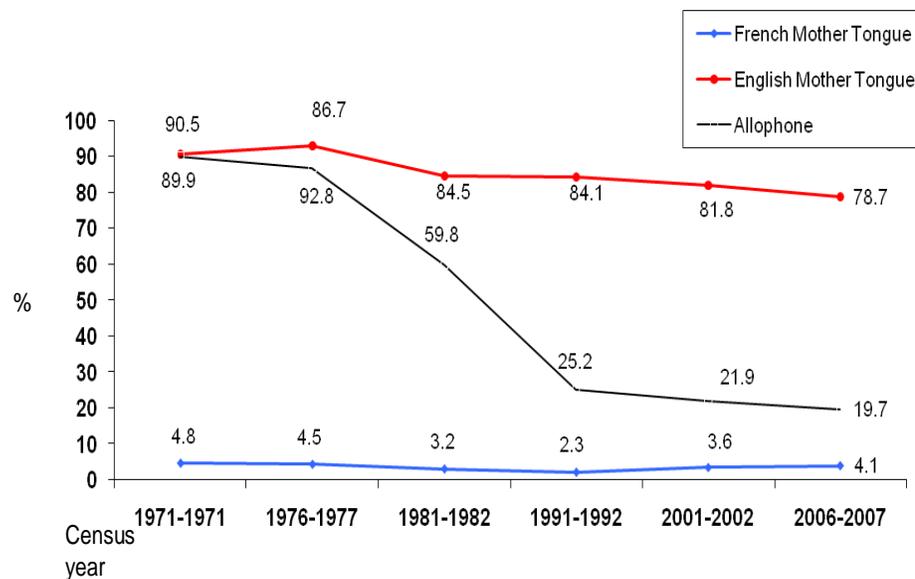
Figure 7: Percentage of students in **English** pre-school, primary and secondary schools in **Quebec** province by mother tongue : 1971 – 2007
(Ministère de l'Éducation, du Loisir et du Sport, MELSL, 2008)



■ French	28,700	26,012	13,839	10,361	19,505	22,101
■ English	171,175	159,385	101,695	79,004	76,818	72,092
■ Allophone	56,376	51,080	37,264	19,508	22,199	22,057

PS: Mother Tongue (MT): First language learned at home as a child and still understood at census time

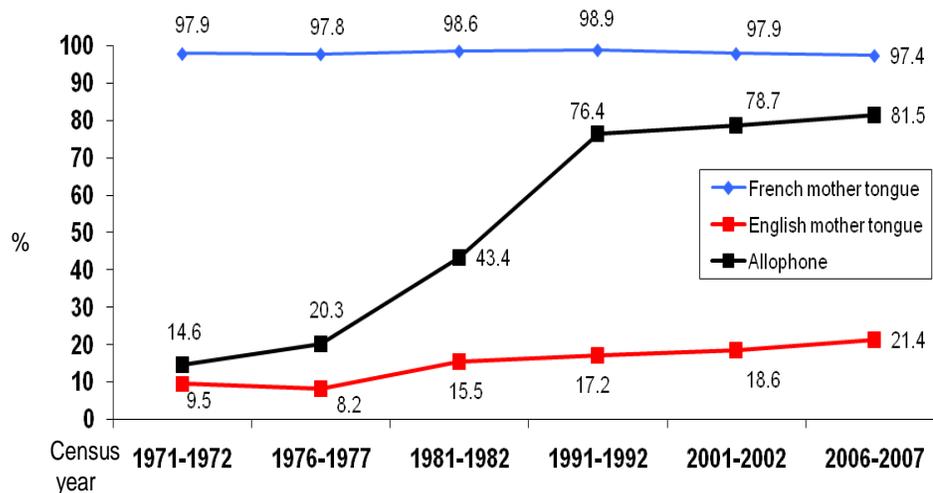
Figure 7a: Percentage of students in **English** pre-school, primary and secondary schools on **Island of Montreal** by mother tongue: 1971-2007
(Ministère de l'Éducation, du Loisir et du Sport, MELs, 2008)



■ French	12,180	9,394	4,811	2,814	4,087	4,203
■ English	92,911	85,373	54,691	43,161	42,079	39,878
■ Allophone	48,617	43,377	31,172	15,908	17,572	16,837

PS: Mother Tongue (MT): First language learned at home as a child and still understood at census time

Figure 8: Percentage of students in **French** pre-school, primary and secondary schools in **Quebec** province by mother tongue : 1971- 2007
(Ministère de l'Éducation, du Loisir et du Sport, MELs, 2008)



■ French	1,351,212	1,158,822	975,897	951,220	893,105	830,339
■ English	17,924	14,233	18,708	16,414	17,585	19,688
■ Allophone	9,652	13,047	28,595	62,995	81,831	97,285

Figure 8a: Percentage of students in **French** pre-school, primary and secondary schools on **Island of Montreal** by mother tongue : 1971- 2007
(Ministère de l'Éducation, du Loisir et du Sport, MELS, 2008)

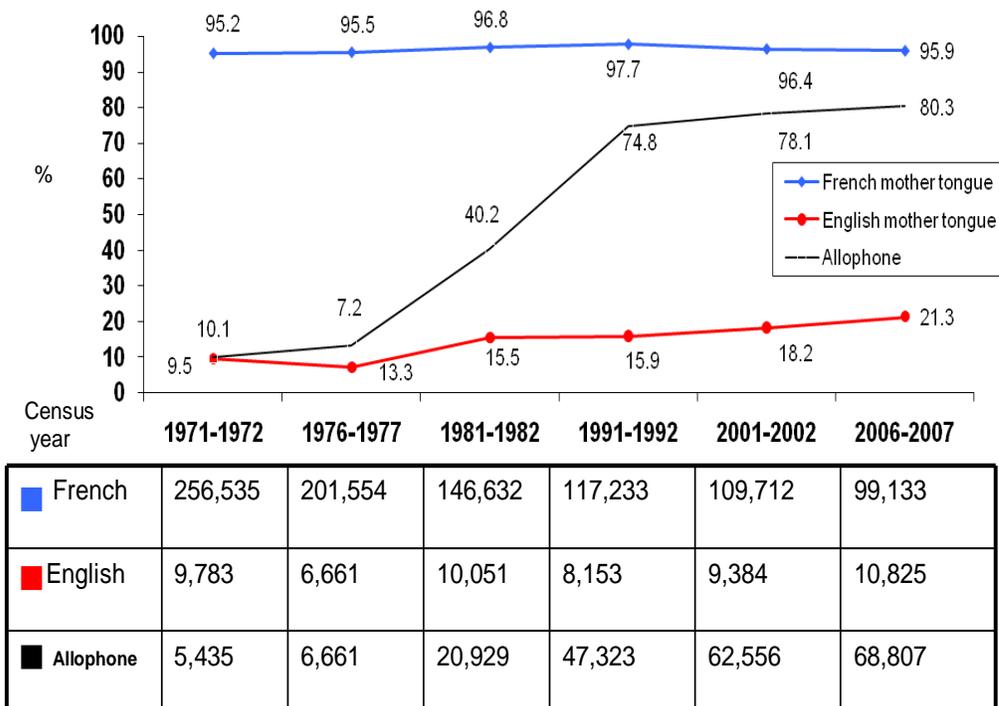


Table 1: Number of primary & secondary pupils in private and public schools according to language of instruction in Quebec: 1998 - 2007 (MELS, 2008)

	1998-1999	2001-2002 Adoption of Bill 104	2004-2005	2006-2007
PRIVATE SCHOOLS: TOTAL	102,844 (100%)	108,387 (100%)	118,441 (100%)	124,108 (100%)
Semi-funded private schools				
French schools	85,216 (82.8%)	89,814 (82.9%)	100,804 (85.1%)	105,281 (85%)
English Schools	10,644 (10.3%)	10,917 (10.1%)	11,310 (9.5%)	11,194 (9%)
Non-funded Private schools				
French schools	4,700 (4.6%)	4,702 (4.3%)	3,108 (2.6%)	3,750 (3%)
English schools	2,284 (2.2%)	3,134 (2.9%)	3,219 (2.7%)	3,873 (3.1%)
PUBLIC SCHOOLS: TOTAL	1,036,763 (100%)	1,008,276 (100%)	978,614 (100%)	947,002 (100%)
French schools	932,005 (89.9%)	900,192 (89.3%)	868,719 (88.8%)	840,798 (88.8%)
English schools	102,541 (9.9%)	106,914 (10.6%)	107,787 (11%)	104,201 (11%)

Figure 9: Feeling threatened by presence of various groups in Quebec: Montreal college students.
(Montreuil & Bourhis, 2004; Bourhis, Barrette, Moriconi, 2008)

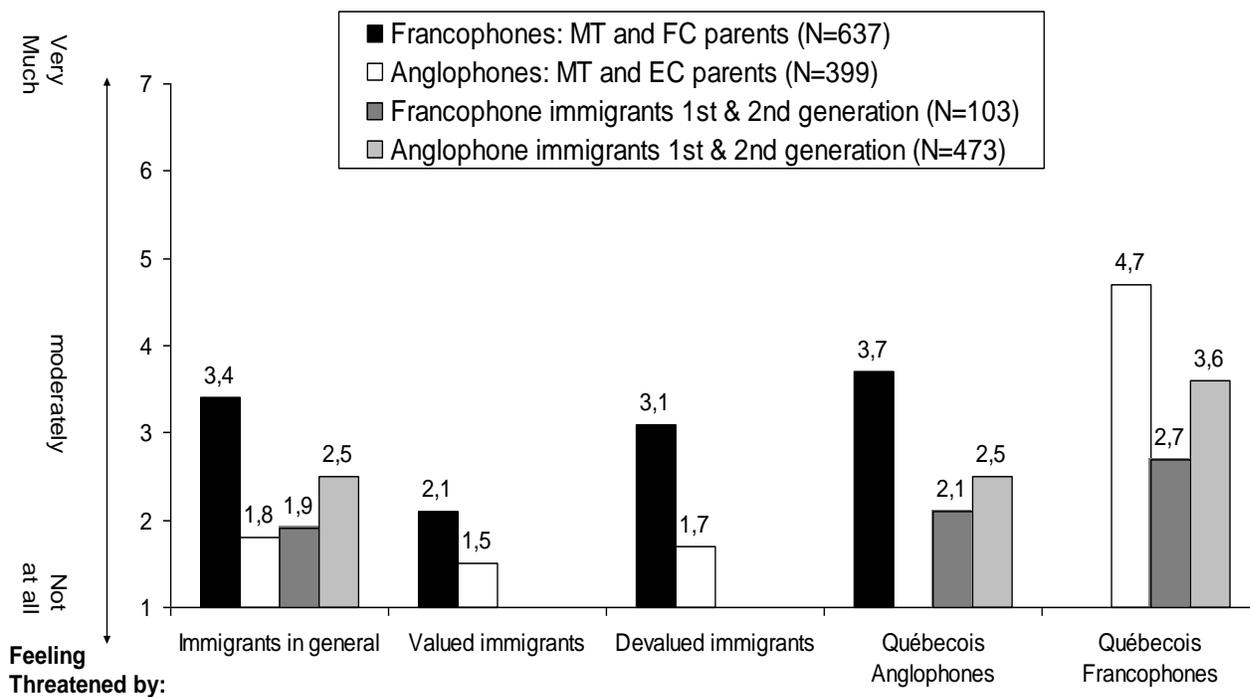


Figure 10: Income differential of unilingual and bilingual Anglophones and Allophones relative to base rate unilingual Francophones in Quebec: 1971 vs 2001
(Vaillancourt, Lemay, & Vaillancourt, 2007)

