

Policy Matters Blog #23 – Bill 96

COMMITTEE ADOPTS SERIES OF SURPRISE CHANGES REGARDING BILINGUALISM IN QUEBEC JUDICIAL APPOINTMENTS

April 14, 2022 – The National Assembly’s [Committee on Culture and Education](#) yesterday resumed its article-by-article analysis of Bill 96, [An Act respecting French, the Official and Common Language of Québec](#). Members discussed clauses 147 through 164, which include ten new adopted amendments tabled by Minister Simon Jolin-Barrette. These modify Quebec’s Consumer Protection Act and the Courts of Justice Act, among other pieces of legislation.

The committee adopted clauses 147 to 150 without much discussion.

Minister of Justice and Minister Responsible for the French Language Simon Jolin-Barrett introduced an amendment to modify clause 151, which deals with the language of consumer contracts under the Consumer Protection Act. With this new provision, consumer contracts can only be written in a language other than French if both parties so agree, and if the parties have first examined the French-language version of the contract. This amendment was adopted.

Clauses 152 and 153 were adopted without debate.

The committee then briefly discussed clause 154. This provision modifies Art. 300 of the Act respecting the legal publicity of enterprises. It is to be read alongside clause 111 of Bill 96 (a clause which is still to be examined by the committee). Businesses in Quebec would now be subject to the new and broad “inspection and investigation powers” (including search and seizure authority) conferred on the Office québécois de la langue française if their signage, advertisements, or public communications are found or believed to violate the Charter of the French Language. The committee adopted this provision without much commentary.

Clauses 155 to 158 were adopted without discussion.

Minister Jolin-Barrette then introduced two new clauses to Bill 96: 158.1 and 158.2. The second mirrors the new Articles 12 and 13 of the *Charter of the French Language*, regarding the language of the Quebec judiciary and the question of bilingualism for judges. Introducing new sections to Quebec’s Courts of Justice Act, clause 158.1 solidifies French as the “language of justice” in Quebec. Clause 158.2 reinforces that bilingual judges will only be required to be appointed to judicial districts where the Minister of Justice (after consulting the Minister of the French Language) deems such to be necessary. Further, this clause specifies that bilingual judges can only be appointed once every other reasonable option has been exhausted. This means that, as a consequence, bilingual judges would only be appointed as a last resort, even in judicial districts where a large number of English-speaking Quebecers reside.

Citing Art. 133 of the *Constitution Act, 1867*, Liberal MNA Gaétan Barrette expressed concern over the ramifications of these new provisions regarding access to the courts for English-speaking Quebecers. In

response, Minister Jolin-Barrette provided a very narrow interpretation of Art. 133. He stated that this constitutional provision guarantees English-speaking Quebecers the right to have their case heard in English before the court in Quebec, but that it does not guarantee that the entire proceeding must take place in English for civil cases. Such an interpretation, if accepted, could permit the possibility that evidence, testimony, and argumentation would be given in English before a judge who does not speak or understand the language.

To support his new amendments, the Minister cited statistical data indicating that Quebec currently has the highest proportion of bilingual judges of any province in Canada. The fact that Quebec judges are, at present, more bilingual as a group than their counterparts in the rest of Canada does not ensure that this trend would be maintained with the passage of time, particularly if the requirement for bilingualism is prohibited outright. Also, much like the commentary from this blog regarding the adoption of the new Articles 12 and 13 of the *Charter of the French Language*, no list of factors is set out which the Minister of Justice and the Minister of the French Language must consider and use when deciding which judicial districts will have bilingual judges. This process is not enshrined in any statute. Rather, it is left entirely to the personal discretion of the Ministers in office at a given time. As justification, Minister Jolin-Barrette emphasized that the power to appoint judges in a democracy rests with the executive branch only, not with other judges.

Liberal MNA H  l  ne David also vocalized her concerns regarding these two new clauses.

The Minister shifted the discussion away from the issue of access to the courts for English-speakers in Quebec. Instead, he framed the debate around the disenfranchisement of francophone candidates for the judiciary who are not “perfectly” bilingual. He insinuated that by questioning or criticizing these provisions, the Liberal Party of Quebec appears to be in support of this disenfranchisement of non-perfectly bilingual francophones applying to be judges. Minister Jolin-Barrette stated that it was under past Liberal governments that a “mastery” of English was needed to be appointed as a judge in Quebec. However, swinging in the complete opposite direction, the Minister’s new provisions – in both the *Charter of the French Language* (Articles 12 and 13) and in the Courts of Justice Act (Articles 1.1 and 88.1) – do away with even a requirement for a “functional” or “reasonable” level of English-language skills for judges across Quebec.

Clauses 158.1 and 158.2 were adopted, with abstentions from MNAs David and Barrette. Qu  bec Solidaire MNA Ruba Ghazal and Parti Qu  b  cois MNA Pascal B  rub   voted in favour of both articles.

The committee suspended discussion of clause 159, the bill’s unilateral amendment to the Canadian Constitution to formally recognize Quebec of a “nation” of Quebecers, for whom French is their common language. Debate on this controversial provision will be held at a later date.

Discussion then moved on to clauses 160 and 161 of Bill 96, which together seek to regulate the exemption that may be granted to children staying in Quebec temporarily from the application of the *Charter of the French Language* section specifying that the language of instruction in kindergarten classes, elementary, and secondary schools is French (Art. 72, paragraph 1). This issue has recently received media attention, with the debate over allowing Ukrainian refugee children arriving in Quebec to, on an exceptional basis, pursue their education in English if they already have some knowledge of the language.

Clauses 160 and 161 were adopted without debate, including amendments 160.1 and 161.1 introduced by Minister Jolin-Barrette.

Clause 162, which regulates the candidate selection procedure for judges at the Court of Quebec and municipal courts, and for justices of the peace, was adopted with minimal discussion.

Minister Jolin-Barrette introduced a total of seven amendments to this clause. These include 162.1, which reaffirms that the government has authority regarding the secretariat managing judge selection and the criteria used to select judges. Liberal MNA Gaétan Barrette voiced displeasure with this amendment and questioned its place in a language bill. It was adopted without extensive debate.

Another amendment, clause 162.2, requires the secretariat to report on the linguistic profile of judges, namely the number of judges with knowledge of a language other than the official language of Quebec. These reports are also required to detail the number of cases taking place in the application of Art. 530 of the Criminal Code of Canada (i.e. in a language other than French). The amendment was adopted, with Liberal MNAs abstaining.

Clause 162.3 adds a new Chapter to the regulation on judge selection. This amendment requests that chief judges from the Court of Quebec and municipal courts submit to the Minister of Justice, at least once a year, planning information on the number of judge positions to expect. The amendment was adopted without debate.

Clause 162.4 adds the provision that when a new judge is to be appointed, the Minister of Justice requests the secretariat to publish a notice on the Ministry of Justice website and the Barreau du Québec website inviting candidates to submit applications. MNA Barrette asked whether this notice would be published in both French and English. Minister Jolin-Barrette responded that it would be published in French only. The amendment was adopted unanimously.

Liberal representatives abstained from voting on the three final amendments to clause 162:

Clause 162.5 outlines the content of the notice of judicial openings.

Clause 162.6 prohibits these notices from including a requirement for knowledge of a language other than the official language for the position, unless the Minister of Justice consults with the Minister of the French Language and decides that the role requires such knowledge and that “all reasonable means” had already been taken to avoid imposing the requirement of knowing another language.

Clause 162.7 is worded to the effect that French is the language of justice in Quebec.

Each of these three amendments were adopted.

The committee then debated, in depth, the adoption of clause 163. It renames the provincial riding of Bourget (currently represented by Coalition Avenir Québec MNA Richard Campeau) as Camille-Laurin. This provision had the effect of uniting MNAs from three parties, the Parti Québécois, the Liberals, and Québec Solidaire. While members from each expressed respect and admiration for Camille Laurin, considered the

father of the *Charter of the French Language*, each also conveyed strong reservations about the way in which the name change was being carried out.

Parti Québécois MNA Pascal Bérubé spoke at length about his opposition to this clause, and stated that the Chief Electoral Officer of Quebec had advised against changing the name of an electoral riding in an omnibus bill. MNA Bérubé told Minister Jolin-Barrette that consultation and legislative processes should be upheld when changing electoral riding names and boundaries. Liberal MNA Gaétan Barrette said the clause was irrelevant to Bill 96, adding that Quebec's democratic institutions need to be respected.

Minister Jolin Barrette replied that Camille Laurin was "a great Quebecer" and it was important to honour his legacy. MNA Bérubé proposed that the clause be removed from Bill 96 but that Minister Jolin-Barrette launch a separate initiative in November to change the name of the Bourget riding. MNA Bérubé pledged his support. Québec Solidaire MNA Ruba Ghazal voiced her agreement with this proposal, as did Liberal MNA Hélène David. The article was eventually adopted, with the Liberals, Parti Québécois, and Québec Solidaire all voting against.

Clause 164 is also related to the Bourget name change, adding a provision to update the list of electoral divisions accordingly. The committee adopted this, with the Liberals and Parti Québécois opposed (MNA Ghazal was absent for this vote).

Lastly, Liberal MNA Hélène David introduced an amendment, clause 164.1. It would amend clause 58 of Bill 96, which in turn amends Art. 88.0.2 of the *Charter of the French Language*. That provision relates to CEGEP and university instruction. Earlier, the committee amended Art. 88.0.2 so that students at English CEGEPs would be required to take three core-content courses taught in French.

The fresh amendment put forward by MNA David proposes that these three courses should instead be French-language courses, with the level of French taught to be assessed based on the abilities of the students. MNA David argued that providing students with an opportunity rather than an obligation to master the French language would encourage more young Quebecers to continue to work in French and develop an appreciation of French culture. As well, she acknowledged critical feedback her party had received, most notably that the three-CEGEP-course provision in its current format was being phased in too quickly and that, in many cases, students' existing level of French was simply not strong enough for them to be able to successfully take core-content courses in French.

MNA Bérubé made a motion to declare the proposed amendment irrelevant. He stated that it has nothing to do with the topic of clause 164. Liberal MNA Gaétan Barrette said jurisprudence exists that allows such an amendment to be considered. He invited the committee chair to study this jurisprudence.

Following a brief suspension, the committee chair ruled on MNA David's amendment, saying it was receivable because it relates to the general topic of Bill 96. The amendment will be debated and voted on in the next session.

The committee will reconvene today.