

STAY GRANTED IN FIRST COURT CHALLENGE TO BILL 96

August 12, 2022 – Earlier today, Justice Chantal Corriveau of the Superior Court of Quebec handed down her judgment regarding a stay on the legal translation obligations of Bill 96, [An Act respecting French, the official and common language of Québec](#).

In her decision, Justice Corriveau granted the stay – i.e. a legal ‘pause’ – on the application of sections 9 and 208.6 of the *Charter of the French Language* (modified by Bill 96), which were to come into effect on September 1. These two provisions require legal persons (such as corporations, non-profit organizations, and small businesses) to file certified French-language translations of all English-language documents submitted during court proceedings, at their own expense. This decision means that until the case is reviewed on its merits (likely later this autumn), sections 9 and 208.6 will not take effect.

During hearings held last week, the plaintiffs in this challenge, a coalition of lawyers led by M^{tre} Doug Mitchell and M^{tre} Michael Shortt, argued that the two provisions in dispute restrict access to justice by imposing additional financial burdens on litigants, some of whom already have limited resources. They argued that these provisions violate section 133 of the *Constitution Act, 1867*, which guarantees the right of every person to use either French or English in any of Quebec’s courts. During their pleadings, the plaintiffs also pointed out that section 133 cannot be overridden by the notwithstanding clause.

Acting as interveners, representatives of the Barreau du Québec presented arguments in support of the plaintiffs. While they support the purpose of Bill 96 to promote the French language in Quebec, the Barreau also highlighted its role in upholding access to and quality of justice in the province.

The Three-Step Test

The plaintiffs relied on Supreme Court case law that outlines the three conditions that must be met for a stay to be granted. In accordance with this three-step test, the plaintiffs argued that: (1) the case raises a serious question at trial; (2) the provisions in dispute cause irreparable harm; and (3) the balance of convenience favours granting the stay.

The first condition is uncontroversial and easily met, according to the plaintiffs, as the case raises the question of whether sections 9 and 208.6 are unconstitutional and limit access to justice. When determining whether the provisions cause irreparable harm, the plaintiffs presented affidavits attesting to the harms to English-speaking litigants, including from members of the Mohawk Council of Kahnawake. They also referred to Simon Jolin-Barrette’s

statement in the National Assembly that in urgent court matters, litigants would have to file court documents in French instead of English. The plaintiffs claimed this situation “flagrantly” violates section 133 of the Constitution.

The third condition, called the “balance of convenience”, asks which of the two litigants will suffer the greater harm: the Quebec government if the stay is granted; or the English-speaking community (represented by the plaintiffs) if the stay is denied. Here, the plaintiffs argued that English-speaking Quebecers accessing the courts will suffer the greatest harm under these two new provisions. They claimed that the language rights at stake are not simply individual interests, but also implicate human dignity and society as a whole.

Finally, Quebec’s Attorney General (AG) presented the government’s arguments to deny the stay. Firstly, the AG claimed that the evidence of irreparable harm was too speculative and questioned the reliability of evidence of harm that has not yet occurred. Secondly, under the balance of convenience condition, the AG argued that a stay on one part of Bill 96 cannot be applied without disrupting the “coherent whole” of the legislation. The AG provided examples of specific sections of Bill 96 that would be affected if a stay were granted on sections 9 and 208.6.

Judge Sees Risk of “Insurmountable Obstacle”

In her reasoning, Justice Corrivieu balanced the harm to English-speaking litigants if the stay were denied against the harm to French-speaking litigants if the stay were granted. She concluded that as formulated, sections 9 and 208.6 impede filing court documents only in English, even where both parties in a case are English-speaking. These new provisions, according to Justice Corrivieu, “risk creating an obstacle that may prove to be insurmountable, equivalent to a denial of justice, particularly in the case of urgent proceedings.”

She also stated that the provisions’ effect of prolonging translation delays, especially for urgent cases, is “worrisome”.

Finally, she noted that the question of additional translation costs in relation to its effect on access to justice deserves an assessment. She ultimately sided with the plaintiffs and granted the stay, preventing sections 9 and 208.6 from taking effect at least until the case is reviewed on its merits.

This ruling is one of several constitutional challenges that have been filed against sections of Bill 96 in the last few months. In early June, the English Montreal School Board filed a challenge to Bill 96, on the grounds that it violates both section 133 and section 23 of the *Canadian Charter of Rights and Freedoms*, which gives Quebec’s English-speaking minority community the right to management and control over their English-language schools. The EMSB also filed to have declared invalid Bill 96’s amendment to the *Constitution Act, 1867*, additions which state that

“Quebecers form a nation” and that French is the only official language of Quebec and the “common language of the Quebec nation.” And just a few days ago, the Conseil de la magistrature du Québec, alongside Chief Justice Lucie Rondeau of the Court of Quebec, filed their own challenge against Bill 96 on the grounds that portions of the legislation undermine judicial independence.

The Quebec Community Groups Network and its Access to Justice in English team will continue to follow these developments as the judicial challenges to Bill 96 proceed.