

## **Bill 96 is profoundly flawed and must be withdrawn**

**MONTREAL, October 18, 2021** – Since the start of September, a wide cross-section of Quebecers has engaged in a discussion about Bill 96, *An Act respecting French, the official and common language of Québec*.

Slightly more than 50 individuals spoke out during the QCGN’s consultations. Some are eminent jurists, academics and educators, entrepreneurs, or business leaders. Others speak for health and social services, the arts community, women’s rights groups, and underrepresented communities. The National Assembly’s Committee on Culture and Communication subsequently heard from a limited number of hand-picked individuals and organizations.

Briefs submitted to the Committee, and remarks from its invited witnesses, shed a stark spotlight on many serious flaws embedded in the proposed legislation. Voices from across Quebec society identified how seriously Bill 96 would erode individual rights and freedoms – while simultaneously weakening our economic vitality and prospects. One element throughout is particularly striking: a clear absence of evidence that the heavy-handed approach adopted under Bill 96 would or could effectively protect and promote the French language in Quebec.

A superficial feel-good advertising campaign cannot and will not mask the bill’s inherent defects.

As the Quebec Government prepares for the start of a new session tomorrow, we urge it once again to take a step back and bring Quebecers together to identify challenges, to separate myths from realities and, most importantly, to build a consensus on the best path forward to promote French in Quebec.

If, on the other hand, the government remains determined to move forward with Bill 96, we urge it to address the concerns we raised in our brief and which we are pleased to note have been echoed and underscored by many others.

The pre-emptive use of the notwithstanding clause would constitute the most sweeping override of human rights and freedoms in Quebec and Canadian history. For many months we have been asking Minister Jolin-Barrette: “Why does the protection of the French language require the blanket suspension of human rights?” Our conclusion is that it doesn’t. This is why we are calling for any invocation of the notwithstanding clause to be set aside.

In this, we are not alone.

Philippe-André Tessier, President of the *Commission des droits de la personne et des droits de la jeunesse*, noted that “it is ... important, in a democratic system where human rights and freedoms are respected, to ensure that the language rights of the majority do not infringe on the rights of the individual.” Quebecers understand that the final arbiter of rights is, and should remain, the judiciary and not the legislative branch of government. Bill 96 offends the rule of law. It upends Quebec’s system of liberal democratic governance, which until now has guaranteed that all Quebec citizens are shielded from the power of the National Assembly and the Government of Quebec by the *Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms*. As the Lord Reading Society testified: “Seldom has proposed legislation impacted access to justice, equality before the law, and the most fundamental principles underpinning our legal system to the extent that Bill 96 does.”

The Barreau du Québec’s brief explained in detail how Bill 96 would adversely impact access to justice and undermine the language protections contained in Sec. 133 of the *Constitution Act, 1867*, which ensures the use of English and French in the National Assembly, and in the courts. This is far more than a dusty constitutional question. It would have a direct and negative effect on individuals and businesses accessing the courts. It would delay the timely delivery of justice. The Barreau raised additional red flags, notably how Bill 96 violates the principle of judicial independence – another deep wound on one of the pillars supporting our system of democratic government.

The Lord Reading Society and other jurists also raised concerns that Bill 96 would allow for warrantless search and seizures of computers, tablets, cell phones and emails, without judicial review or notice, even in a lawyer’s office. “This would fly in the face of the basic human right to be protected from unlawful search and seizure that applies in all liberal democracies. Furthermore, the Bill would set up a system whereby neighbours are permitted and even induced to anonymously report on their neighbours, resulting in such searches, seizures, fines, and penalties.”

The adverse effects of Bill 96 on Québec’s economic life were made clear. Michel Kelly-Gagnon, the President and CEO of the Montreal Economic Institute, noted that this legislation would actually incentivize some extremely significant businesses to downgrade their Québec presence: “Bill 96 will make it much more difficult for our large companies to require bilingualism as a condition of employment, while English is the international language of business.... Our Québec flagship companies that do business abroad will therefore have an incentive to base some of their more vital operations outside the province. It’s as if the government’s right hand didn’t know what its left hand was doing.”

Throughout the public hearings, the Minister Responsible for the French Language and other members of the government attempted to equate opposition to Bill 96 with extremist views opposing the will of the Québec nation. They tried to associate reasoned critiques of Bill 96 with hostility toward the *Charter of the French Language* and the societal project of making French the language of government and the law, as well as the normal and everyday language of work, instruction, communication, commerce, and business. This is a false narrative.

All Quebecers understand the need to protect and promote French, and support the policy aims of the *Charter of the French Language*. This support is not restricted to French Quebecers. As the Quebec English School Board pointed out: “We were the pioneers of French immersion, bilingual programs, and now what we call Français Plus. We ensure the success in French for all our students and prepare them to live and work in Québec with pride.”

It provides a tremendous advantage for qualified young Quebecers to freely choose between receiving their post-secondary education in English or French. To take this choice away is both regressive and counterproductive. Proposed enrolment restrictions on attendance at English CEGEPs would devastate regional institutions. As the Fédération des cégeps made clear, our real societal challenge is to increase the literacy levels of Quebecers and solve the challenge of low secondary-school graduation rates within the French system. A positive approach was recommended to promote the French language and Quebec culture. As Bernard Tremblay pointed out, asking young people to study in French “will not generate less interest in Netflix and Facebook.”

Finally, the Minister has repeatedly encouraged us to read the fine print of the Bill. We have. Our position remains unchanged. Bill 96 attempts to restrict the provision of government services in English to citizens eligible under Bill 101 to attend English schools. This, apparently, is the government’s attempt to identify an ‘historic anglophone community.’ Unfortunately, eligibility to attend school in English is not in any way linked to the language of the student or the parent. Rather, it is linked to the language of instruction received by the parent.

The use of the “English-eligible” concept is deeply problematic. It is divorced from the community’s self-identification. It would revoke the right to access services such as health and social services for between 300,000 and 500,000 English-speaking Quebecers. The QCGN maintains that the right to communication and services in English should never be based on eligibility for English instruction. “Such a definition of eligibility to service in English would be totally inappropriate,” writes Eric Maldoff, the lawyer and longtime health care advocate who heads the QCGN’s Health and Social Services Committee: “Whether a person was eligible for English-language instruction would have no reasonable correlation to their health and social service status or needs. Those denied service by this criterion would be denied access to effective and safe services. Further, such a definition would also be inoperable. A substantial number of those eligible would not have official documents in their possession to prove eligibility. Service providers would not have a way of determining who is eligible and who is not. The means to prove eligibility would be odious in a democratic, liberal society and reminiscent of societies in which measures imposing differential, less beneficial treatment were or are accompanied by documentation requirements for the minority.”

Bill 96 would do nothing to improve the protection and promotion of French in Quebec. The clear consensus that has emerged across linguistic lines is that Bill 96 is unnecessary and damaging: It would

harm Quebec's economy. It would fragment Quebec society. It would undermine the inalienable human rights and freedoms of all Quebecers.

As the Premier prepares to put a fresh face on his government, we urge him to withdraw this gravely flawed proposed law. Instead, we ask him to take the time to listen to Quebecers and build a consensus on the path forward.

The Quebec Community Groups Network ([www.qcgn.ca](http://www.qcgn.ca)) is a not-for-profit organization bringing together English-language community organizations across Quebec. As a centre of evidence-based expertise and collective action it identifies, explores, and addresses strategic issues affecting the development and vitality of the English-speaking community of Quebec and encourages dialogue and collaboration among its member organizations, individuals, community groups, institutions, and leaders.

**For further information:**

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