

## Policy Matters Blog #24 – Bill 96

### COMMITTEE CONCLUDES EXAMINATION OF BILL 96:

#### CAQ ENSHRINES PRIMACY OF FRENCH LANGUAGE AND “QUEBEC NATION” OVER CANADIAN AND QUEBEC HUMAN RIGHTS CHARTERS

**April 15, 2022** – The National Assembly’s [Committee on Culture and Education](#) yesterday resumed its clause-by-clause analysis of Bill 96, [An Act respecting French, the Official and Common Language of Québec](#). After a particularly intensive day, the committee last night concluded its examination.

Having been significantly revised by the government during some 180 hours of committee meetings and debate, Bill 96 will soon be presented for Third Reading in the National Assembly.

Given the majority held by the Coalition Avenir Québec (CAQ), passage into law is virtually assured prior to the Quebec general election scheduled Oct. 3.

The committee spent most of the morning debating the proposed Liberal amendment to add clause 164.1 to the bill. This amendment was proposed by Liberal MNA Hélène David. It was mentioned during the discussions that it had been drafted with the assistance of members of the staff of Simon Jolin-Barrette, Minister of Justice and Minister Responsible for the French Language.

MNA David explained that this amendment was designed to uphold “equity of success,” to ensure that both French- and English-speaking students in Quebec are provided with an equal chance and opportunity to succeed in CEGEP. She added that for admission to highly selective university programs (such as medicine, pharmacy, or law), every grade in every course counts. Therefore, she said, obligating English-language rightsholders (CEGEP students) to take three core courses in their programs in French, without adequate French-language preparation in elementary and high school, places these English-speaking CEGEP students at a competitive disadvantage. She further argued that her amendment would still allow English-speaking students in Anglophone CEGEPs to improve their French-language capabilities. This objective, she added, is one on which she hopes all agree. It is also aligned, she said, with the stated goal of Bill 96.

After MNA David’s time allocation expired, Québec Solidaire MNA Ruba Ghazal asked Minister Jolin-Barrette to provide his explanation of the amendment under debate. The Minister stated that the Liberal amendment, as written, would allow an exemption to the rule currently in place under the new Article 88.0.2 of the *Charter of the French Language* (the Charter). This exemption, he added, would allow English-language rightsholders attending Anglophone CEGEPs to take a total of five French courses: the two French-language courses already in place in CEGEP program curricula; and an additional combination of three courses, either courses providing French-language instruction, or program-content courses (such as science, math, history, etc.) taught in French. This explanation implies that francophone and allophone students enrolled in Anglophone CEGEPs will still be required to complete three program-content courses in French.

The Liberal amendment adding clause 164.1 to Bill 96 would ultimately grant English-language rightsholders more freedom in deciding how they want to tailor their French-language education in CEGEP, while improving their French-language skills in accordance with the objectives of Bill 96. However, when asked how these three additional courses would affect the overall course load of students or affect their complementary course options, Minister Jolin-Barrette responded that more deliberations would be needed with the Minister of Higher Education.

The Minister then requested that the vote on the amendment be suspended to provide him with more time to reflect and deliberate on its wider implications within the bill. After off-camera talks, Parti Québécois MNA Pascal Bérubé and MNA David refused to consent to the Minister's request.

Minister Jolin-Barrette then declared that because the vote was being forced without adequate time for him and his government to reflect and deliberate, he and the other CAQ MNAs were being "forced" to vote against the amendment.

The vote then took place. MNA David voted in favour of the amendment; MNAs Ghazal and Bérubé abstained; and the Minister and the rest of the committee voted against. The Liberal amendment was rejected.

The committee then raced through clauses 165 to 179. The clauses were adopted after votes, with MNA David abstaining for each clause.

Clauses 180 through 196 and clause 198 were adopted without discussion. Clause 197, which reinforces the time-cap placed on children of temporary Quebec residents to attend school in English, was adopted on division (i.e. expressing dissent) from MNA David.

In the afternoon session, the committee decided to begin deliberation of suspended clauses before returning to clauses 199 and 200.

The committee began with debate around clause 159. This provision of Bill 96 unilaterally amends Canada's Constitution (specifically, the *Constitution Act, 1867*) to add two new sections, 90Q.1 and 90Q.2. These would recognize that "Quebecers form a nation," that "French is the official language of Quebec," and that French "is also the common language of the Quebec nation."

MNA Bérubé said this provision is essentially a symbolic addition, and that the clause ought to have explicitly rejected Quebec's provincehood and instead recognized Quebec as a "state associated" with Canada, and as a "nation of the French language" within Canada. He also said that it was contradictory of the Minister to admonish the imposition of the Canadian Constitution (specifically the *Canadian Charter of Rights and Freedoms*) on the Quebec legislature and population, while simultaneously deferring to it through clause 159. MNA Ghazal described the clause as one of "comfort and indifference." She reaffirmed her party's support for Quebec sovereignty and the desire for a separate constitution for Quebec, in place of provisions that operate within a federal constitutional framework.

Minister Jolin-Barrette responded that Quebec did not consent to the *Canadian Charter*, but the *Constitution Act, 1867* is not a part of that document. He also said that the CAQ was the first party in

Quebec and in Canadian history to enshrine Quebec's nationhood within both Quebec's laws as well as Canada's Constitution, thereby creating a constitutional status for the Quebec nation and for the French language.

He stated that his party's efforts should be applauded, and that Quebec must use all legislative means necessary to validate its nation status. The Minister also rejected the unofficial proposal of MNA Bérubé to change the phrasing of clause 159 to recognize Quebec as a "nation of the French language."

Indeed, the wording suggested by MNA Bérubé could risk unleashing a sequence of unpredictable events – including exposure of clause 159 to an additional series of court challenges. For instance, MNA Bérubé's phrasing could insinuate that anything or anyone not "of the French language" is not part of the Quebec nation. Further, being "of the French language" could be argued by some to carry a variety of loose-ended meanings. This, in turn, could, at least on a potential basis, expose persons of varying origins, ethnicities, or languages outside the francophone mainstream (i.e. persons who may or may not have certain levels of skills in the French language) to an existence outside of rights and protections granted within the legislative domain of the Quebec nation. Despite a lengthy exchange with the Minister on the subject, MNA Bérubé did not table a formal amendment.

Clause 159 would enshrine the collective French-language rights of the Quebec nation within Canada's Constitution. What remains uncertain, nevertheless, is where this provision places English-speaking Quebecers in relation to this Quebec nation.

While the provision states that "Quebecers form a nation," it is unclear whether a Quebecer's inclusion within said nation, and all the rights and benefits granted thereunder, will now be based solely on their ability to speak French. Similar to other changes made by Bill 96 to Quebec's *Charter of Human Rights and Freedoms*, clause 159 could also create a new balancing act for judges – requiring them to rule between the individual rights of Quebecers on the one hand and, on the other, the collective right of the Quebec nation to protect the French language. These changes open the possibility for new judicial precedents, under which infringements of certain individual rights (including religious or linguistic minority rights, rights to privacy, etc.) could be judged to be justified if these infringements are ruled to be incidental or inadvertent consequences of preserving the collective right of the French-speaking Quebec nation.

At this point, MNA Ghazal introduced an amendment to clause 159. This would permit elected officials in Quebec to swear allegiance to the Quebec people (rather than to the Queen) in order to be sworn into office. She explained that this amendment was a substantive reflection of Bill 192, which her party proposed before the pandemic began. The Minister responded that he would need time to study the constitutional consequences of such an amendment. MNA Ghazal replied that given the original tabling of Quebec Solidaire's Bill 192 more than two years ago, government representatives had already been provided enough time. The amendment was put to a vote. MNAs Bérubé and Ghazal voted in favour. MNA David abstained. The Minister and other committee members voted against. The amendment was thus rejected.

The Minister called a vote on clause 159. It was adopted unanimously.

Debate then shifted to the controversial clause 111, which replaces Art. 174 of the *Charter of the French Language*. This provision bestows the Office québécois de la langue française (OQLF) with new and broad

inspection powers when investigating alleged violations of the Charter. These new powers include authority for OQLF investigators to: enter a premises (except a private residence); take photographs; demand access to data stored in files or on electronic devices; and demand copies of data related to their investigation.

MNA David said this provision would open the possibility of potential abuses of power by OQLF investigators, infringing Quebecers' rights to security and privacy and their protection against unreasonable search and seizure. She stated that such protections have long been provided in Quebec law, particularly in the *Charter of Human Rights and Freedoms*.

She then introduced an amendment that would require an OQLF investigator's demand to access data be based on a "reasonable belief" that the devices contain information related to a violation of the *Charter of the French Language*. Minister Jolin-Barrette responded that the "reasonable belief" standard is used in the context of criminal investigations by police. He said it is therefore inapplicable to OQLF personnel.

The amendment was put to a vote. MNA David voted in favour. Quebec Solidaire MNA Manon Massé (replacing MNA Ghazal) abstained. The Minister and other committee members voted against. MNA David's amendment was rejected.

In an effort to clarify the scope of the new provision, the Minister introduced an amendment to clause 111. His modification specifies that OQLF investigators only have the right to access data that is "pertinent to the application of" the *Charter of the French Language*. He explained that this amendment was intended to make clear that OQLF investigators are not allowed to access an individual's personal information in the course of their investigations.

However, in practice, this amendment fails to consider the reality of modern workplaces, evolving work practices and methods, and how data is collected and stored. Particularly since the onset of the COVID-19 pandemic, hybrid workplaces have become more common, with employees working both remotely from home and, on occasion, in an office or a public space. This hybrid model also means that more workers use their personal electronic devices to perform their work. Not every employer provides electronic equipment to its workforce. This means that workers who store data on their personal computers, smartphones, tablets, cameras, or other devices could have their personal information breached if they are obliged to provide access to OQLF personnel.

The Minister's amendment was adopted. Clause 111 was also adopted, with division from MNA David.

The committee then turned to consider clause 118 of Bill 96, which adds Articles 213.1 and 214 to the *Charter of the French Language*. This provision introduces into the Charter total overrides of both Quebec's *Charter of Human Rights and Freedoms* and Canada's *Charter of Rights and Freedoms* (this last override is often called the notwithstanding clause).

Art. 213.1 provides that any infringement of Quebec's human rights charter (specifically Sections 1 to 38, including the right to privacy, security, freedom of expression, protection from unreasonable search and seizure, etc.) in the *Charter of the French Language* cannot be challenged in court.

Art. 214 similarly provides that any violation of Canada's *Charter of Rights and Freedoms* (specifically Sections 2 and 7 through 15, including freedom of expression, rights to security, protection from unreasonable search and seizure) in the *Charter of the French Language* cannot be challenged in court. However, this override needs to be reviewed and renewed every five years to continue to remain in effect.

Minister Jolin-Barrette stated that these provisions intend to cement the collective right of the Quebec nation to exist in French. He also said that the use of these overrides is meant to ensure Quebec's parliamentary sovereignty to minimize the impact of Canada's *Charter of Rights and Freedoms*, imposed on Quebec in 1982 without its consent. However, clause 118 overrides not only the Canadian charter, but the Quebec human rights charter as well. The latter was not imposed upon Quebec by the federal government.

These provisions could ultimately create a new legal order within Quebec. With the passage of Bill 96, Quebec's *Charter of the French Language*, and the French-language rights it grants, could become the new supreme law, with Quebec's human rights law relegated to second place, in a position of lesser importance in future court interpretations and judgments rendered. It could send the ultimate message that the collective right of the French-speaking Quebec nation is more important under the law than either minority rights in Quebec or Quebecers' individual rights and freedoms.

Perhaps trying to limit the breadth of the powers conferred on the OQLF in clause 111, MNA David proposed an amendment to Art. 213.1. Her amendment exempted Sections 5, 9, and 24.1 of the Quebec *Charter of Human Rights and Freedoms* (the rights to privacy, non-disclosure of confidential information, and protection from unreasonable search and seizure) from the total override. She also introduced an amendment to Art. 214 that would exempt Sections 7 and 8 (right to life, liberty, and security of the person, and protection from unreasonable search and seizure) from the total override. On both amendments, she voted in favour. MNA Massé abstained. The Minister and other committee members voted against. MNA David's amendments were rejected.

Clause 118 was then adopted, with division from MNA David. She told the committee that she lamented how human rights were not being respected through these provisions.

Minister Jolin-Barrette then retroactively introduced an amendment to the bill that added clause 179.1. This provision allows English-language rightsholders in Anglophone CEGEPs who were enrolled before the start of the 2024-2025 school year to obtain their Diplôme d'études collégiales or Attestation d'études collégiales even if they did not take three program-content courses taught in French. It also allows English-language rightsholders in Anglophone CEGEPs who were enrolled before the start of the 2023-2024 school year to obtain their diploma or attestation even if they do not possess the newly assessed level of proficiency in French (post-Bill 96) required by the Minister of Higher Education.

MNA David condemned the rapid pace with which the Minister wishes to implement Bill 96's new rules on English-language rightsholders in Anglophone CEGEPs. She expressed her concern that less than two years is not sufficient time for CEGEP administrators to adapt their curricula, nor enough time for English high schools to improve their French-language courses to better prepare English-speaking students for these new French-language requirements at the CEGEP level. MNA Massé expressed agreement with MNA David, and added that she trusts the Liberal MNA's many decades of experience in the realm of public education. The Minister replied that the delay before the new rules take effect is reasonable.

Clause 179.1 was adopted with division from MNA David, who described it as “cruel”.

The committee temporarily suspended consideration of clauses 199 and 200. Members then moved onto clause 201. This provision outlines when the different portions of Bill 96 take effect. Minister Jolin-Barrette introduced an amendment that specifies that the new “three courses taught in French” requirement will take effect starting with the 2024-2025 school year, while the rules pertaining to the maximum number of students permitted to enroll in Anglophone CEGEPs (referred to as the “freeze” on the number of spots available) will take effect starting with the 2023-2024 school year.

Once again, MNA David expressed frustration at the speed with which these new rules will come into force, not giving educators enough time to adequately adapt to both the new laws and the needs of their students. MNA Massé expressed her support with MNA David’s concerns. At this point, MNA David introduced an amendment that would have all these new rules only take effect at the start of the 2026-2027 school year. She and MNA Massé voted in favour of this amendment. The Minister and other committee members voted against. The amendment was rejected.

Clause 201 was then adopted, with division from MNA David.

Finally, the Committee returned to clauses 199 and 200. Similar to clause 118, these provisions immunize Bill 96 as a whole from any court challenges for possible violations of Quebec’s *Charter of Human Rights and Freedoms* and *Canada’s Charter of Rights and Freedoms*. MNA David expressed the same concerns as she had with clause 118. She repeated her desire to protect the French language, albeit without violating the rights of Quebecers to achieve that end.

MNA Massé then introduced an amendment to Bill 96, adding clause 200.1 This provision would require the Quebec government to work with First Nations to enact a law to protect and promote Indigenous languages. She explained that Indigenous communities were subjected to forced assimilation in Quebec and other provinces in Canada, losing their language in the process. As with the recent law passed in Nova Scotia to recognize the Mi’kmaq language, she said she hopes this amendment will oblige the Quebec government to draft similar legislation. MNAs David and Massé voted in favour of the amendment. The Minister and other committee members voted against. The amendment was thus rejected.

This vote concluded clause-by-clause consideration of Bill 96.

The committee is scheduled to reconvene during the week of April 25. In early May, the committee will present its report to the National Assembly – at which time further amendments could be tabled, debated, and adopted.

While the clause-by-clause examination has ended, the debate is not yet over and the provisions of Bill 96 are not yet completely set in stone.