



STATEMENT ON BILL 96

An Act respecting French, the official and common language of Québec

Submitted by

The English Speaking Catholic Council

Thursday, September 9, 2021

The English-Speaking Catholic Council (ESCC) was formed in 1981 as a focal point for coordinating community activities among English-speaking Catholics in Montreal. Though based in Montreal, the Council is concerned with the entire English-speaking Catholic community of Quebec.

Inspired by the contemporary Catholic understanding of the role of the laity in the modern world, the ESCC identifies, analyses and assists in the promotion of the English-speaking Catholic community's values in education, health and social services, social justice and cultural domains. English-speaking Catholics are more than 397,000 strong in Quebec and are an active presence in society.

The passage of Bill 96: *An Act respecting French, the official and common language of Québec* as it stands will have profound effects upon the constitutional, legal, societal and human rights framework of the province and the federation.

The ESCC, like other organizations and institutions that represent the English-speaking communities of Quebec, is concerned with the scope and implications of the bill and its expected outcomes, i.e., the curtailment and infringement of Quebec's citizens' basic rights and freedoms.

The negative impacts of the bill have been well articulated and will be further elaborated by our colleagues at the Quebec Community Groups Network (QCGN) at their testimony before the Committee on Culture & Education in October. It is not our intention to recapitulate those arguments in this statement and the Council is in full agreement with their reading and response to the Bill.

For the record, however, the Council would like:

- To underline its strong opposition to the use of sec. 33 of the Charter of Rights and Freedoms to override heretofore guaranteed Charter rights.
- To note the exclusionary insertion of "Quebecois et Quebecoise" as an amendment to the Constitution Act.

Use of the Notwithstanding clause (sec.33 Canadian Charter of Rights and Freedoms)

It bears repeating, in every submission and in every statement, that the pre-emptive use of section 33 of the Canadian Charter of Rights and Freedoms to circumvent application of sections 1 through 38 of that same Charter is one which tips the balance of power towards the legislature and deprives citizens of their freedoms. These freedoms and rights should not be understood as arbitrary privileges to be dispensed by the government but as human rights that should never be subject to the whims of a particular cohort of elected officials. As in the case with Bill 21, any future legal challenges to Bill 96 will be hamstrung by the use of the notwithstanding clause.

In his decision on the challenge to Bill 21, Justice Marc-André Blanchard of the Quebec Superior Court noted that the bill, "brings about serious and negative consequences for all people who display religious symbols in public." It was not just religious freedoms, freedom of expression and gender rights which have been suspended in Bill 21. In applying a blanket suspension of all rights in Sec. 2 and Secs. 7-15, Bill 21 suspended, for example, the right to a lawyer and lawyer-client privilege. Blanchard acknowledged in his judgement that, in fact, none of those suspensions of Charter rights matters in so far as Quebec properly proceeded in their invocation of the notwithstanding clause, which it did. As Robert Leckey, constitutional expert and dean of the McGill law faculty remarked at the time, the decision highlights

the fragility of minority rights in Canada when "a legislature doesn't have the instinct to check its power."

Who is a Quebecer?

The QCGN has expressed its concern that Bill 96 narrowly defines an English-speaker as one who is eligible for education in an English school, thereby excluding a large percentage of the Quebec population who do not qualify for an English eligibility certificate but whose mother-tongue or preferred official language is English. The Council would like to draw attention to a broader definitional problem introduced in Bill 96. The amendment to the Constitution Act, 1867 moves the language of nationhood from, "Quebec forms a nation" to "Quebecers form a nation." (CONSTITUTION ACT, 1867 159. The Constitution Act, 1867 (30 & 31 Victoria, c. 3 (U.K.); 1982, c. 11 (U.K.)) is amended by inserting the following after section 90: "FUNDAMENTAL CHARACTERISTICS OF QUEBEC "90Q.1. Quebecers form a nation.)

This shift in terminology raises important questions around identity and belonging.

Though it is entirely possible to understand a "Quebecer" as one who is a resident of Quebec, it is not the common understanding of the term. Since at least the Quiet Revolution, the "Québécois et Québécoise" are those who are by birth French-Canadian, descended from the first settlers of Nouvelle France and defined by a particular history and culture. This tacit understanding of what it means to be a Quebecer makes it impenetrable as an identity to those who do not share this heritage or history. Apart from heritage, it is also not an identity that offers inclusion based on knowledge and proficiency in a common language, French. This is indicated by the mere 1% of mother-tongue English-speakers employed in the Quebec public service despite the high levels of bilingualism of this demographic.¹

Whether it be newcomers to Quebec or an individual descended from Irish, West Indian, Jewish, or Italian (to name just a few) settlers whose family history in Quebec goes back one, two or multiple generations, it is not clear that the identity of "Quebecer" is one that is either offered to or adopted by these populations.

Quebec, like Canada more generally, is dependent upon immigration for population growth and economic stimulus. In Quebec last year, immigrants accounted for 17% of the working age population. How many of those immigrants would self-identify as a "Quebecer?" How many French-Canadians would identify them as such?

The question must be asked, if you are not a "Quebecer", what rights do you have within the borders of the Quebec nation? Do you have rights as a Canadian within the Quebec nation? If the Quebec Charter of Rights and the Canadian Charter of Rights and Freedoms has been abrogated by both an Act Respecting the Laicity of the State and the Charter of the French Language, where does a resident of Quebec turn for protection?

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¹ https://www.concordia.ca/content/dam/artsci/scpa/quescren/docs/Quescren_QPSRPTEnglish.pdf

The two elaborated points are not the only ones with which the Council is concerned as regards Bill 96, but they are the two upon which all other concerns rest.

The ESCC is grateful to the QCGN for providing the forum in which the Council is able to voice its objections to Bill 96.