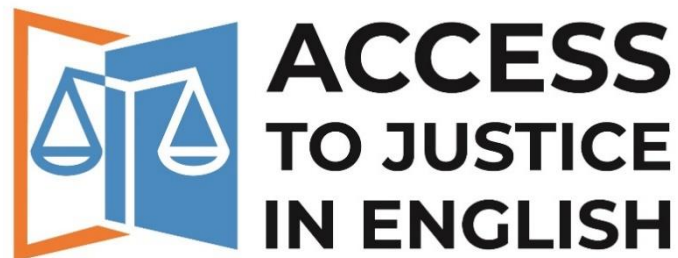


## *Access to Justice in English Project*

# Access to the Courts of Quebec in English

Executive Summary and Recommendations

*March 31, 2023*



# Access to the Courts of Quebec in English: Executive Summary and Recommendations

## Overview

QCGN's Access to Justice in English project ("the Project") identifies and researches areas where the English-speaking community are experiencing difficulty accessing their rights, with a strong focus on community access to public services. It leverages information as a strategic resource to understand and improve access to justice in English in Quebec.

The fourth issue studied by the Project was access to the Courts of Quebec in English. Our research methodology included a thorough investigation of the issue along four main lines of inquiry: the relevant policy and legal framework, the internal organization and administration of services of Quebec's courts and tribunals, system navigation from a user perspective, and firsthand population experience obtained through quantitative and qualitative research.

This investigation uncovered several **systemic barriers to accessing justice in English in Quebec courts**. We then validated these findings through a population survey conducted in Spring 2023, in which 1,003 English-speaking Quebecers provided answers about their knowledge of and experiences interacting with the Quebec court system.

The present document contains an **executive summary of our top findings**, informed by our research and validation process. The document concludes with a **series of recommendations for the Ministère de la Justice**, presented by QCGN's Access to Justice in English project to the government of Quebec for further consideration.

## Introduction

English-speaking Quebecers have a constitutional right to access the courts of Quebec in English (s. 133). Yet, barriers persist in practice because the scope of this right is limited, and its precise contours remain undefined. This right is bolstered with respect to criminal matters by the Criminal Code; the remedies for violations create strong incentives for the prosecution to ensure that the accused's right to proceed in English is respected. However, the application of s. 133 of the Constitution to civil matters is less well-defined.

Multiple sources, including government reports, community organizations, and survey data, confirm that judges, court staff, and legal services are more difficult to access in English. These sources identify the following as the main barriers to access to justice in English in Quebec:

- Increased costs, delays, and complexity;
- Uneven availability and fluency of bilingual judges;
- Inability to access to court services in English (e.g., client services, stenographers, judgement translation);
- Lack bilingual of court staff;

- French-only documentation and forms; and
- The cumulative effect of these and other barriers on dissuading English-speaking litigants from accessing the justice system at all.

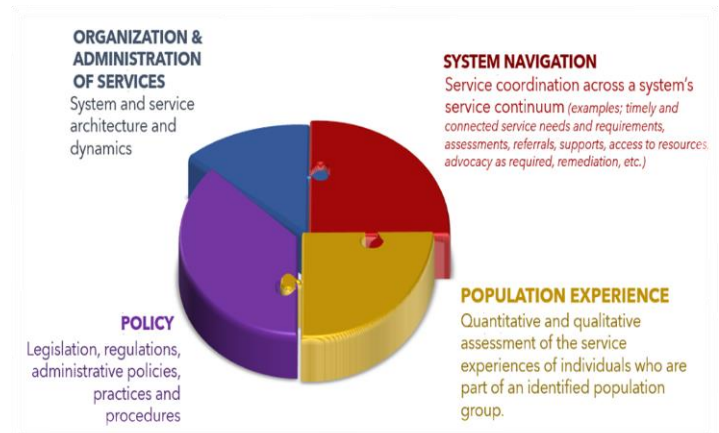
In addition, legislative changes adopted under *An Act respecting French, the official and common language of Quebec* (known as Bill 96) threaten to exacerbate these barriers by imposing administrative restrictions on the use of English as well as by restricting bilingualism in the judiciary.

## Methodology

Our findings are based on a mixed methodology combining the following strands of research:

- A review of the existing framework of policy and law pertaining to individual rights to access courts and related services;
- An external legal opinion submitted by Novalex on February 28, 2023;
- An analysis of available literature on the Quebec government’s systemic and organizational practices as they pertain to courts and court services;
- In-depth informational interviews with representatives of community stakeholder groups and legal experts;
- A quantitative survey of English-speaking Quebecers who have accessed Quebec government courts or tribunals, conducted by Léger in Spring 2023.

These findings served to complete the four dimensions of the information strategy that governs the structure of the final report: Organization & Administration of Services, System Navigation, Population Experience, and Policy (see Fig. 1, right).



## Research Highlights

This section provides a high-level summary of the knowledge obtained within each dimension of the information strategy.

### The Policy Dimension

- ▶ The main language right protecting English-speaking litigants in Quebec is s. 133 of the Constitution Act, 1867.
  - **S. 133 grants the right to use either English or French in any proceeding before a court or an administrative tribunal of Quebec.**
  - Limitations:
    - This right covers the right to speak or write in either official language, rather than the right to be understood by the judge or by any other court actor.
    - S. 133 does not currently clearly protect access to court staff in the litigant's official language of choice, although the state may have a positive duty to ensure such access in order to give meaning and purpose to s. 133.
- ▶ **Other rights, in s. 96 of the Constitution Act, 1867, the Canadian Charter, and the Quebec Charter, may also ground a right for litigants to access Quebec court services in English.**
  - Many of these rights may be analyzed pursuant to the generous and liberal interpretation afforded to constitutional language rights.
  - A constitutional right to legal representation for English-speaking litigants could potentially be recognized on a case-by-case basis.
- ▶ The concept of **meaningful access** is crucial to understanding rights within the context of the justice system.
  - Meaningful access refers to where the government has succeeded in delivering upon the objectives and mandate of a given service (i.e., citizens are able, in practice, to access the full range of service offering).
- ▶ **Barriers, including delays and costs, can be challenged on constitutional grounds, on administrative law grounds, or by invoking judicial discretion** to grant an individual exemption, depending on the legal source of the barrier and the specific situation of the litigant.
- ▶ **Bill 96 threatens to worsen access to justice for English speakers in Quebec** by reducing the number of bilingual judges and by requiring translations that will increase costs and delays. There are currently four ongoing legal contestations of Bill 96.

### The Organization and Administration of Services Dimension

- ▶ **The court system in Quebec is composed of:**
  - Courts of first instance (municipal courts, Court of Quebec, Superior Court).

- Appeal courts (Court of Appeal of Quebec and Supreme Court of Canada, the court of final jurisdiction for all of Canada).
- Administrative tribunals (human rights, housing, labour, and administrative matters).
- ▶ **Judicial appointments are split between the federal government and the government of Quebec, which can cause tension.**
  - This shared jurisdiction adds a layer of complexity in instituting reform within the judiciary – for instance, to increase the bilingual capacity of the judiciary – since reform would require intergovernmental collaboration.

### The System Navigation Dimension

- ▶ Throughout the life cycle of a civil case, parties must submit and respond to documents, gather and present evidence, and communicate with both each other and with the court. **At each step, a language barrier can cause significant delays and translation costs.**
- ▶ Judgements can be written in English or French at the discretion of the judge.
  - Translations can be requested by either party, free of cost.
  - **Translation delays can cause hardship in time-sensitive cases** (e.g., preliminary injunctions, child custody).
- ▶ Legal representation may often be the only way for English speakers to access the justice system without encountering significant language barriers – but **the cost of legal representation can be prohibitive.**
  - Legal aid is available to lower-income householders under some conditions.
  - Availability of bilingual legal aid lawyers is variable, especially outside of Montreal, and few private-practice lawyers accept legal aid mandates.
- ▶ Some crucial forms and documentation, such as those required to enter certain court programs, are only available in French on the website of the Ministère de la Justice.
  - Accessing court programs, such as those that reduce incarceration if the offender undergoes mental health treatment, is also made difficult by the lower availability of health services in English in Quebec.

### The Population Experience Dimension

- ▶ The Access to Justice project consulted with community organizations working with English-speaking clients across Quebec.
  - **These community organizations identified the following barriers** for English-speaking Quebecers' access to justice:
    - Low bilingual capacity among judges and court staff.
    - Low awareness of rights and lack of information about procedures.

- Regional inequities, with English-speaking communities outside of greater Montreal facing both exacerbated and unique difficulties – particularly in areas that are remote or with a population thinly spread over a large territory.
  - Dissuasion from attempting to access justice at all, given the costs, complexities, and delays, in addition to the fear of bias due to language.
  - Intersectional factors, where being an English speaker adds an additional layer of difficulty in accessing the justice system for immigrant, racialized, and First Nations communities, as well as disabled persons and seniors.
- **The following needs and proposals were identified by the community organizations:**
    - Increased access to legal information in English.
    - Mediation services in English, especially in regions without a courthouse.
    - Region-specific services and information on rights and procedures.
    - Expanded virtual offering of legal services (e.g., stenographers).
    - English-language versions of documents and forms that are currently only available in French – or, alternatively, funding for translation costs.
    - Funding for legal information workshops.
- ▶ To test the themes that emerged from the qualitative interviews, **the Access to Justice project retained Léger to develop a survey of 1,003 English-speaking Quebecers**, including 200 with personal experience as litigants at a Quebec civil court or administrative tribunal in the past five years.
- Between 23% and 43% of those who interacted with the courts in the past five years found it **difficult to complete their preparations in English**, depending on the court or tribunal they accessed.
  - A majority of those who had their case heard before the Court of Appeal (55%) and TAT labour tribunal (55%) said they found it **difficult to have their case heard in English**.
    - Half (50%) of those whose case was heard by the TAL housing tribunal also found it difficult to have their case heard in English, as did many of those whose case went before the Court of Quebec (46%), human rights tribunal (40%), Superior Court of Quebec (40%), TAQ (38%), and municipal courts (29%).
  - **Most commonly mentioned barriers:**
    - Municipal courts: Court proceedings being held in French (60%) and documents being unavailable in English (55%).
    - TAL housing tribunal: Court proceedings in French (59%), court staff who did not speak English (58%) and materials relevant to the case that were not translated into English (58%).
    - The survey did not have a sufficient base size of respondents with respect to other courts or tribunals to report the barriers faced there.

- More than one in three recent litigants (35%) experienced delays in their court proceedings, running to 31 weeks on average. **The top language-related reasons for delay** were:
  - Lack of staff resources at the court who could speak English (23%);
  - Time needed to get documents translated or in English (17%);
  - Inability to find legal representation in English (12%);
  - Lack of a judge who could speak English (11%).
- **Few English-speaking Quebecers know what rights they have to access the courts in English.** Only one in three (34%) claim to have a good understanding of what rights they have to interact with a Quebec court or administrative tribunal in English, while more than half (54%) disagree and a further 12% don't know.
- When asked **what resources would help them learn more about how to interact with the Quebec court system**, the resources most likely to be seen as helpful were:
  - A dedicated government website that provides information in English (59%);
  - English-speaking legal representation (53%);
  - Free online videos and tutorials in English (42%);
  - An information hotline to speak to court staff in English (41%); and
  - More availability of English documentation at the Court (41%).

## Recommendations

Based on available data on areas of unmet need on in the Quebec justice system, we have developed recommendations for ways in which the Ministère de la Justice can take action to improve access to courts, legal information, and court services in English in Quebec. We feel that these actions are needed to ensure that English-speaking Quebecers can meaningfully access the full range of justice services to which they are entitled and have equal opportunity to exercise their constitutional language and equality rights.

### **We recommend that:**

1. All forms and documents required to institute legal action be made available in English on all relevant Quebec government websites, at courthouses, and at government points of service.
2. All informational materials produced by courts, tribunals, and the Ministère on the legal process and court services (including legal aid, court programs, and youth protection) be made available in English.
3. That bilingual staff be recruited or flexible procedures be put in place in courts across Quebec to accommodate local needs for services in English, with a particular focus on regions outside the greater Montreal area.
4. A monitoring mechanism be implemented to track the number of proceedings filed in English per district per year.
5. A monitoring mechanism be put into place to collect data on the availability of court services available in English.
6. The Ministère de la Justice collaborate with regional community organizations to provide English-language information on citizens' rights, court procedures, and available judicial services.
7. Virtual solutions be explored to increase the offering of legal services to English-speakers across Quebec.
8. A plan be implemented to increase access to alternative dispute resolution services in English to meet the current and future demand of English-speaking Quebecers, with a particular focus on regions outside the greater Montreal area.
9. Judicial independence be maintained, allowing for bilingualism in the linguistic profile of candidates considered for appointment to Quebec courts.
10. Minority language status be added as a factor for determining admissibility to legal aid.

Finally,

11. **We invite the Ministère de la Justice as well as the Secretariat for relations with English-speaking Quebecers to explore tangible collaboration with QCGN and its partner organizations** to identify community groups with the capacity to complement the offer of English-language legal information and support needed by English speakers across all regions of Quebec, with a particular focus on regions outside the greater Montreal area.