

Townshippers' Association

Brief

Bill 96, An Act respecting French, the official and common language of Québec.

10-6-2021

SUMMARY

Following careful consideration of the proposed changes to existing legislation put forth in Bill 96, Townshippers' Association is compelled by its mandate to advocate on behalf of the English-speaking community in the historical Eastern Townships to react and raise concerns as they may apply to the diverse communities in our region.

While in full agreement that the protection and promotion of the French language and culture is imperative to preserving Quebec's unique character, the Board of Directors of Townshippers' Association deplores the government's attempts to achieve this through an omnibus piece of legislation and its sweeping use of the notwithstanding clause. It is our considered opinion that Bill 96 is not so much a measure designed to raise the status of French within the province and work against its perceived decline in the public sphere, but one aimed at achieving a certain level of social control over the access to, the use, and overall presence of, English within Quebec.

Parliament, i.e., the National Assembly, must apply the Canadian and Quebec Charters of Rights and Freedoms as *the* measure for the legitimacy of all legislation; Bill 96 would require that all future pieces of legislation are written in conformity with *its* provisions, and not those of either Charter. Setting aside the individual civil and legal rights of all Quebecers under the auspices of the protection and promotion of the French language and culture will further divide the population and disenfranchise Quebec's most vulnerable. Using Quebec's mainstream media and motions on the National Assembly floor in an attempt vilify, condemn, and silence those expressing disagreement with the government's opinion of the prejudicial nature, or not, of the proposed legislation is dangerous, irresponsible, and completely incoherent with the norms and values of a Western Democracy.

As Albert Camus, once said, "La démocratie, ce n'est pas la dictature de la majorité, c'est le respect des minorités." Within a democratic structure such as Quebec's, it is understood that the majority is responsible for the legal and economic well-being of its minority groups; it is our opinion that Bill 96 does not reflect those values. When carefully explored, the proposed legislation presents several issues that are important to all Quebecers as we struggle to rebuild our economy in the context of an ongoing global pandemic.

INTRODUCTION

Townshippers' Association was originally created in response to a suggestion put forward by Camille Laurin, following the enactment of Bill 101 in 1977. Dr. Laurin suggested that the English population in our region needed to have an organization that could inform the government on matters that directly impacted English speakers in our region and as such, help to build an informed relationship between our community and its government.

To understand our community, one must know its history. From the very beginning in 1792 when the Eastern Townships was opened for settlement by the British American Land Company, our vast forested territory was a buffer between the United States and Canada. The community of the Eastern Townships was from the very start quite diverse, with most settlers coming from the US, England, Scotland, Wales, and Ireland. England's priority was that the US did not become the dominant force in an area regarded as quite important and almost totally unsettled. These settlers were soon joined by French Canadians from other regions of Lower Canada who were also looking for opportunities to acquire prime farmland. These pioneers coming from diverse cultural and linguistic backgrounds encountered enormous hardships, nevertheless, they carved out a life for themselves and future generations based on mutual respect and common goals - a working model for the development of prosperity.

From being a predominantly English-speaking community at the time of Confederation, we have seen a steady decline in our numbers due to outward migration, the promise of greater opportunity in the West and the impacts of Bill 101. In 2021 our community is now a small minority group struggling with issues related to poverty, school readiness, unemployment, and access to services in English from Quebec's health care system and government agencies. The institutions that were built and managed by our community are gone, having been amalgamated into the French system or disappeared outright over time and with outmigration. In many ways we have a great deal in common with many of the smaller French speaking communities living in provinces outside of Quebec, particularly those in rural settings with less access to infrastructure and transportation options; without institutions issued from within our communities by which to pass down our culture and heritage, their vitality becomes precarious or is lost.

CONCERN #1: QUEBEC'S ENGLISH-SPEAKING COMMUNITY, THE MANIPULATION OF STATISTICS, & THE GLOBAL THREAT OF ENGLISH UNDER BILL 96

The narrative that this bill's primary focus is the promotion and protection of the French language in Quebec is widely accepted until one explores the measures put forth to be enshrined in law to achieve the vision being laid out. Rhetoric claiming that the English-speaking community is a valued part of Quebec society is quickly dismantled, exposing a sophisticated and well-crafted approach to curtailing access to the English language within the province; an approach that will effectively disinherit the English-speaking community from any legal status or official recognition as an integral part of the Quebec Nation.

Researchers from the Association for Canadian Studies¹ have recently demonstrated that the argument positing the French language as evolving into a minority language on the island of Montreal is false flag, and that French is only a minority on the island of Montreal when the number of anglophones and allophones are combined and treated homogenous language group. Why do the governments arguments around the decline of French ignore that there are twice as many French-speakers than English-speakers on the island of Montreal and that the number of people who speak French at home has actually increased slightly to 55.3 per cent in 2016, up from 55.2 per cent in 2006; while the increase is not exponential, surely this shows that French is not in the free fall that Quebec's political class, or its mainstream media, would have us believe. The consistent exaggeration of the projected decline serves the narrative that French in Quebec must be protected at all costs and that the measures introduced in this Bill are necessary; it uses fear and insecurity among Francophones to gain support for the blanket dismissal of the rights on its citizens.

Quebec's English-speaking community is in no way responsible for the reality that the English language is the *lingua franca* in the World for matters pertaining to commerce, science, technology and the bulk of mainstream social media; by consistently failing to differentiate between the outside threat of the English language and the members of Quebec's own population, the government is an active participant in the vilification of and problematic status our community holds in the eyes of the province's mainstream French language media outlets. Taking action to curtail the use of English in the workplace, or, arguably, on the island of Montreal by limiting our community's rights and dismantling our remaining

¹ Jedwab, J. Webinar. *What Really underlies the Narrative around the decline of French and the 'anglicization' of Quebec*. July 27th, 2021.

institutions will not impact the global threat of English, however it will have a devastating impact on already vulnerable populations in rural communities such as the ones you find in our region. Taking action to limit our community's rights and dismantle our remaining institutions will not change the global situation, however one can easily foresee the impact it will have on Quebec's ability to compete effectively in the global marketplace.

Has a serious nonpartisan impact study been carried out to evaluate the potential impact of the limitations on the use of English proposed in Bill 96 on vulnerable English-speaking populations off the island of Montreal?

Has a serious nonpartisan impact study been carried out to evaluate the potential impact on immigration and cross border trade given that North American trade agreements open huge markets for Quebec goods and services?

CONCERN #2: THE AMBIGUOUS STATUS OF QUEBEC'S ENGLISH-SPEAKING COMMUNITY WITHIN THE QUEBEC NATION UNDER BILL 96

At Townshippers' Association, we understand the term *nation* to have two well-known and popular meanings. The first as a means by which to designate a territory that is inhabited by citizens who make up a nation; citizens are treated equally under the rule of Law and considered part of the collectivity of the nation. Proof of citizenship in this context is most often demonstrated upon presentation of a passport.

The second is more specific and relates primarily to a designation of inclusion based on race & ethnicity, religion, or language; members of this nation are identified as possessing the necessary defining characteristics.

This latter definition of national identity can be a rallying point that brings people together and makes space for them to take and share pride in their identity and culture, however without great care and consideration, it can be misused to foster a sort of tribalism whereby identifiably different individuals become othered or undesirable and they are excluded from the collectivity.

Which definition of the Quebec nation is the driving force behind this proposed legislation; does the English-speaking community's inclusion in the Quebec nation go beyond the financial investments

made to it via the various funding programs created by the *Secretariat aux relations avec les Québécois d'expression anglaise*? Does the fact that a secretariat dedicated specifically to building bridges between the provincial government and members of this community exists not indicate that there is ambiguity as to whether the ESCQ is considered an integral and contributing part of the Quebec nation?

CONCERN #3: ELIGIBILITY TO RECEIVE GOVERNMENT SERVICES IN ENGLISH, HEALTH AND SOCIAL SERVICES IN PARTICULAR, IS REDEFINED.

Bill 96, by employing the narrow definition of eligibility for government services in English to individuals who are eligible for English language instruction as outlined in the Education Act, would remove the right to access services in English for hundreds of thousands of Quebec's citizens who fail to meet that criteria and plunge others into anxious uncertainty as they try to ascertain whether they actually have the required certificate or are eligible but haven't actually applied for one; **what are the anticipated administrative delays for English-speakers who will need to apply for their rights to services in English? What are the consequences for individuals whose parents are no longer able to apply for the certificate on their behalf?**

What of the incoherence between the rights bestowed on English-speaking Quebecers by the Health and Social Services Act and the restrictions imposed by Bill 96? How will Quebec ensure that the delivery of health and social services, for example, which depends on human beings to provide those services, will remain accessible to rights holders given that Bill 96 includes several proposals that will create barriers and deterrents to the delivery of English services and staff with adequate competencies to provide it?

Is it not true that passed without modification, when it comes to provision of health and social service in English, the provisions in Bill 96 would see the Charter of the French Language, and the Minister of the French Language take priority over the Health and Social Service Act and as such, the Minister of Health and Social Services would be left without any final decision-making power regarding the communication and delivery of safe and effective health and social services?

CONCERN #4: THE ELIMINATION OF THE JUDICIARY AS A FUNDAMENTAL DEMOCRATIC MECHANISM SAFEGUARDING INDIVIDUAL RIGHTS AND FREEDOMS.

History has shown that the first step towards legalized discrimination is the removal of the principle of the rule of law, whereby even the government can be held accountable for its actions. Invoking the notwithstanding clause to set aside the Federal and Quebec Charters of Rights and Freedoms is a move that impacts the rights and freedoms of all Quebecers because of the far-reaching implications of such a radical step.

The notion that Quebec's National Assembly can take over the role of arbitrator in all matters pertaining to the rights and freedoms of its citizens must be rejected on several counts:

- 1) The National Assembly has no mandate to act in a moral or ethical fashion outside of the obligations spelled out in respect to the Charters. Constitutional democracy is based on the principle that governments can and do change which makes it necessary to ensure that the rule of law remains a constant guiding force in decision-making.
- 2) Any political party holding a simple majority in the National Assembly can evoke the Parliamentary procedure known as *Closure* to cut off debate and pass any piece of legislation it wishes because in a constitutional democracy it is the political party in power, and not the National Assembly of Quebec that rules the day. **What steps does Bill 96 take to ensure that the rule of law remains a constant guiding force in decision-making?**
- 3) The Quebec Charter of Rights and Freedoms adopted by unanimous vote in the National Assembly on June 27, 1975, and implemented the following year, seven years before the Federal charter, **will simply be set aside? Surely this foundational piece of Quebec legislation, which represents a powerful statement of Quebec values cannot be overruled without the unanimous approval of all members of the Assembly and most certainly not amended without unanimous consent?**

CONCERN #5: THE CREATION OF A BODY WITH ALMOST UNLIMITED POWER TO INTERVENE IN THE LIVES OF QUEBEC CITIZENS.

The threat posed by the loss of recourse the courts recurs when one delves deeply into the policing authority granted to the *Office québécois de la langue française* to enter, search the premises of a business without a warrant, and seize equipment if they suspect that an *unauthorized use of the English language has taken place*. **Are we, as members of Quebec's English-speaking community, supposed to interpret the extended authority of the OQLF as something other than the criminalization of our mother tongue with no courts to shield citizens in a constitutional democracy?**

It is a powerful statement considering that the Sûreté du Québec does not hold the power to enter and search without a warrant based on the legal demonstration of *just cause*; proceeding without a warrant is considered a violation of the rights of the citizen and recourse through the courts is certain to follow.

How will Quebec's government contend with the inevitable abuses that will ensue from disgruntled employees, competitors, and dissatisfied customers following the implementation of its anonymous tip line? Can you describe the mechanisms within Bill 96 to safeguard citizens against targeted, malicious false reporting?

How will the government sanction public service employees who refuse to offer services in English to certified rights holders and what agency will handle complaints?

What is Quebec's communications plan vis a vis the international community if Quebec begins to be compared to other countries in the world where there are measures in place to ensure that individual rights and freedoms do not interfere with the will of the government in power?

CONCERN #6: UNDERMINING THE POTENTIAL FOR PROSPERITY IN QUEBEC'S BUSINESS AND PROFESSIONAL SECTORS DURING A PROVINCIAL WORKER SHORTAGE.

Quebec already suffers from a negative image as the most heavily taxed and over-bureaucratized jurisdiction in North America; this Bill will cost taxpayers a great deal at a time when the province is facing a serious deficit situation with a global pandemic that is not yet under control. It is difficult to reconcile that the added burden of the considerable administrative work that will be required to actualize the bill should it pass with or without modification is going to effectively address the use of French in Quebec workplaces.

What other solutions did the government explore to improve the use of French in the workplace before settling on the provisions found within Bill 96?

Has a serious nonpartisan impact study been carried out to evaluate the potential impact on limiting access to English CEGEPS for young French speakers seeking to acquire an important linguistic tool that will allow them to compete in international job markets?

Was the opportunity to turn the *Office québécois de la langue française* into a provincial resource to help small and medium sized business, which are the backbone of rural communities striving to compete in a North American market where English is the language of the customer, acquire French skills and ensure their ability to compete in both local, North American, and international markets considered?

To repeat a previous question, **has a serious nonpartisan impact study been carried out to evaluate the potential impact on immigration and cross border trade given that North American trade agreements open huge markets for Quebec goods and services?**

IMPLEMENTATION AND ASSOCIATED COSTS

Bill 96 itself does not provide a clear outline what bureaucratic and administrative structures might be required to control, inspect and follow-up on the long-term implementation of this legislation, but, given the already very divisive public discourse around its contents, Bill 96 will inevitably require additional spending. The anticipated investments to ensure compliance alone will be costly, endless and sure to cast an indelible shadow upon Quebec; **do we know what the total costs associated with Bill 96's implementation will be, financial or otherwise?**

CONCLUSION AND RECOMMENDATIONS:

As the preamble of the Charter of the French Language makes clear, the promotion and protection of the French language and culture can be accomplished “in a spirit of fairness and open-mindedness, respectful of the institutions of the English-speaking community of Québec, and respectful of the ethnic minorities, whose valuable contribution to the development of Québec [the National Assembly] readily acknowledges.”; renewing tensions over language, inviting international criticism about the

contravention of human rights in Quebec, and alienating communities that have worked to build this province hand in hand with their French-speaking counterparts serves no one's interests. To this effect, Townshippers' Association makes the following recommendations:

- Withdraw Bill 96.
- Invite the input of those that a piece of legislation of this girth will impact through each phase of the drafting of a new piece of legislation. Consultations can easily be arranged through the SRQEA and other implicated instances and ministries, including the MSSS.

If the bill is modified but not withdrawn:

- **Do not invoke the Notwithstanding Clause and ensure that the Quebec Charter of Rights and Freedoms remains intact;** any part of legislation that cannot stand up in a court of law merits removal.
- Differentiate between Quebec's English-speaking minority community and the global threat of English by recognizing, in law, that the ESCQ is officially a minority community in Quebec with a legitimate historical and legal status. Granting official minority status to the ESCQ is a powerful indicator of the status of the French language as the province's official language and that French-speaking Quebecers have achieved a dominant, secure majority.
- Set aside the narrow definition of eligibility for government services in English as only those individuals who are eligible for English language instruction as outlined in the Education Act; it's impractical, has no valuable correlation with a person's health status or needs, and stands to deny countless individuals access to effective and safe services.
 - **Grandfather the right to access services so that anyone presently receiving government services in English can continue to do so once the bill is enacted.**
- In lieu of granting the *Office québécois de la langue française* with the excessive authority described in the current bill, make strategic investments in it and other government instances that would the creation of provincial resources for the educational, business, and tourism sectors offering data-driven programs and incentives that promote and celebrate the French language in dynamic ways that are inclusive and stimulating; not rigid and imposed.