



Association des commissions scolaires anglophones du Québec
Quebec English School Boards Association

Brief presented to

**the National Assembly Committee
on Culture and Education**

by the Quebec English School Boards Association

on

Bill 96

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

September 2021

Introduction

Since 1929, the Quebec English School Boards Association (QESBA) and its predecessors have served as a vehicle through which school boards, elected commissioners, and parents have shared ideas and worked together to achieve our community's common goal of ensuring quality educational services. The member school boards of QESBA serve some 100,000 students in roughly 330 elementary and high schools, as well as adult and vocational centres across Québec. Each Board has its unique demographics, orientations, and history. All of them share a "made-in-English-Québec" sensibility to delivering public education services, with equal regard for the needs of all students, staff, and communities.

- *Parent and community involvement:* as our school boards answer to the taxpayers, our schools have always been accessible to and transparent towards parents and community;
- *A recognition of our particular status as English-speaking institutions:* Québec's English-speaking community, in all its diversity, continues to contribute to the rich tapestry of Québec life. English public school boards, representing the sole level of elected government answerable to that community, assumes as part of their mission the job of teaching about and strengthening that fundamental contribution.

Elected commissioners are on the front lines of all decisions that will affect and ultimately benefit students. Our sector has much to be proud of including attaining an 86% success rate.

History

QESBA has been advocating for English (protestant boards before 1998) public education in Québec since the association was founded in 1929. QESBA (and predecessors) have gone, through amalgamation, from 129 member boards to 9

(plus the Centre de services scolaire du Littoral, which is a special status CSS) since the creation of the Ministry of Education in 1964.

Our enrolment in 1975 was over 250,000 students across Québec and has declined to approximately 100,000 in 2020. There were as many as 172-elected Commissioners in 1975 and as of November 2014 there are 95 Commissioners and 9 elected Chairpersons. We registered a nearly 86% success rate as of June 2017 and rising annually; our administrative overhead costs are among the lowest of any publicly funded institutions at a 4% average.

French in Québec

The French language is in a minority position in Canada and, of course, in North America. The QESBA recognizes that legislative, regulatory, and collective efforts are needed to protect and promote the French language here in Québec and throughout Canada. But the protection and promotion of the French language in Québec should not be done by infringing on the Québec Charter of Human Rights and Freedoms (which reflects the fundamental common values of Quebecers) nor at the expense of the rights of English-speaking Quebecers and their institutions, including our Constitutional rights to control and manage our school system by virtue of section 23 of the Canadian Charter of Rights and Freedoms.

The QESBA does not wish to engage in a socio-demographic discussion about the fragility of the French language in Québec. We feel compelled to observe, however, that by many measurable criteria, Québec has never been more French than today. According to the 2016 Canadian Census (single responses), 82.3% of Quebecers speak French most often at home, 10.1% speak English most often at home and 7.6% speak another language most often at home. Regarding public schooling, the Ministère de l'Éducation du Québec (MEQ) estimates for the 2020-2021 school year indicate that 91.2% of students from pre-school to the end of high school are enrolled in French-language school service centres and 8.8% are enrolled in

English-language school boards. As was noted previously, enrolment in Québec's English schools and adult centres has fallen from roughly 250,000 in 1975, to roughly 100,000 today, a reduction of 60%. Despite the fact that our enrolment numbers have been relatively stable over the past several years, Québec's English school boards have been managing decline rather than growth for many decades and it is a constant challenge to maintain our high standards of teaching and learning with the resources at our disposal.

The Teaching of French

We have long understood that one of our responsibilities is to adequately prepare our students to live and work in Québec. Québec's English school boards have been the pioneers of French second language instruction in Canada. French immersion, now widely in use in our schools, and indeed right across Canada, was driven largely by English-speaking parents and developed and first implemented in the mid 1960s in the Saint-Lambert Protestant School Board on the South Shore of Montreal. The majority of students in English school boards are enrolled in some form of intensive French second language programs and many boards have students who succeed at French mother tongue courses at high school.

Regardless of the academic program they are in all the graduates of high schools in the English network are considered, by the Government of Québec, to have an adequate knowledge of spoken and written French. This is demonstrated in two ways. First, by the fact that graduates from English school are exempt from the French competency exams required by various professional orders in order to practice in Québec. Secondly Bill 96 explicitly recognizes the competency of high school graduates from English schools by exempting them, in section 58, from the new uniform French language exams in order to obtain a Diploma of Collegial Studies. All of this supports the fact that graduates from English schools are adequately prepared, in terms of their knowledge of spoken and written French, to live and work in Québec.

Bill 96

Our comments on Bill 96 cover two broad themes, those related directly to the education related provisions of the Bill, and those which are more generally of concern to the English-speaking community of Québec, in which school boards play a major role. But first, a couple of general observations.

Bill 96 is a major overhaul of the Charter of the French Language and the linguistic regime that it sets out. The Bill is both voluminous and complex. Bill 96 contains 201 sections and two schedules, and in addition to the Charter of the French Language, it amends 24 pieces of Québec legislation (including the Civil Code of Québec, the Code of Civil Procedure, and the Charter of human rights and freedoms) and the Constitution Act, 1867. It is regrettable that the Government of Québec did not propose or agree to hold open consultations on the Bill rather than the invitation only ones in which we are participating. The subject matter certainly would have merited unlimited public consultations. The QESBA was dismayed to not have been included in the original list of participants, but thanks the Committee on Culture and Education for the opportunity to be heard. However, we deplore that fact that a number of other groups in civil society who represent English-speaking Quebecers or individuals with grave concerns about Bill 96 have not been given this opportunity.

Secondly, if the intention of the Government of Québec was to have an update to the Charter of the French Language contribute to reinforcing the common values of Quebecers, Bill 96 has failed to do so. Public opinion surveys demonstrate a deep cleavage in the appreciation of Bill 96 among French-speaking and English-speaking Quebecers. The representative groups of the English-speaking community who will appear before this Parliamentary Committee will all voice opposition to or serious reservations with Bill 96. We have enjoyed many years of what has often been described as “linguistic peace” in Québec. Bill 96, and other

recent pieces of legislation, have greatly divided Quebecers and have fragilized that linguistic peace. This situation does not foster a mutual appreciation for and reinforcement of Québec's common values.

Education Provisions

Temporary Eligibility Certificates

In the area of eligibility for instruction in English, Bill 96 amends the Charter of the French language to limit its duration and amends the pertinent Regulation governing temporary certificates.

Section 85 of the Charter currently specifies that the Government may adopt a regulation governing temporary eligibility certificates. The current regulation on temporary certificates covers four categories of persons living in Québec temporarily; foreign nationals, Canadian citizens here for work or study, nationals posted in Québec as representatives of a foreign country or international organizations and, members of the Canadian Armed Forces posted in Québec.

Section 56 of Bill 96 amends the Charter by specifying that the temporary certificates for dependent children of foreign nationals living temporarily in Québec are issued for three years and may not be renewed.¹ This is a major change. Currently, these temporary certificates are issued for three years but can be renewed as long as the status of the parents (i.e. the temporary nature of their stay in Québec) doesn't change.

Here is the new section of the Charter as introduced by section 56 of Bill 96:

¹ These three-year certificates expire on June 30th of the school year (in order to allow students to complete their year) and may, for those students who have a temporary certificate at the time of the assent of Bill 96, be renewed for one more year.

The Charter is amended by inserting the following section after section 84:

“84.1. A child who is a foreign national and who stays in Québec temporarily may, at the request of one of his parents, be exempted from the application of the first paragraph of section 72 and receive instruction in English in the following cases:

(1) he holds a permit issued under the Immigration and Refugee Protection Act (Statutes of Canada, 2001, chapter 27) that authorizes him to work or study in Canada;

(2) he is a dependent child of a foreign national authorized to work or study in Canada under such a permit; or

(3) he is exempted from the obligation to obtain the consent of the Minister of Immigration, Francization and Integration to stay in Québec where the holder of parental authority is staying in Québec as a temporary foreign worker or international student.

The exemption is valid for a period of up to three years and may not be renewed. However, the exemption is extended until 30 June of the school year during which the period of validity ends if that period ends before that date.

The Government shall prescribe by regulation the conditions of the exemption and the procedure to be followed in order to obtain it.”

Section 197 of Bill 96 provides for the possibility of a one-year renewal for temporary certificates for children who have an exemption before Bill 96 is assented to.

Finally, sections 160., 161., and 162 of Bill 96 amend the Regulation on temporary certificates.

It is critical to note that temporary certificates are revoked (at the end of the school year) when the person staying in Québec temporarily applies for refugee status or a Québec certificate of selection. In other words, if the person begins the process of remaining in Québec permanently, they or their children are no longer eligible to receive instruction in English and they must enroll in French-language school the following school year. Furthermore, the issuance of a temporary certificate does not confer any acquired rights to attend English school in the future.

The actual number of students that require a temporary stay is a small percentage of students in the English system. The QESBA has made an access to information request to the Ministère de l'Éducation to document the number of temporary certificates issued over the past five years and the number of students actually attending English schools by virtue of a temporary certificate. According to the Access to Information Act, the MEQ had until September 1st to reply. As of September 20th, no reply has been received.

However, on March 19, 2021 Le Devoir published a story by Lisa-Marie Gervais headlined *Augmentation des résidents non-permanent dans les écoles anglaises*. In this story Le Devoir states that it "has learned" that the number of temporary certificates issued has more than doubled, increasing from 2010 in 2010 (sic) to 4428 in 2019. The story also states that the number of temporary stay permits issued by Québec tripled from roughly 50,000 to 150,000 over the same period. So, although the number of temporary stay permits has tripled, the number of temporary certificates for instruction in English has, according to the figures in Le Devoir, only doubled. If the number of temporary certificates to receive instruction in English, issued in 2019 (4428), is expressed as a proportion of the temporary stay permits issued in 2019 (150,000), this would seem to indicate that only 3% of temporary stays theoretically result in temporary English enrolment. This situation is depicted in the article as one of concern.

Anticipating the possibility of a delay, the QESBA asked our nine member school boards and the CSS Littoral the number of students enrolled in the 2020-2021 school year by virtue of a temporary certificate. We received the answer from all boards and Littoral. The total of students in English public schools on temporary certificates last school year was 4108. However, of that number, 926 were temporary exemptions for Canadian Armed Forces personnel and, by definition, not foreign nationals. Therefore, the maximum number of foreign students studying in English public schools (the object of the Bill 96 amendments to the CFL) last year is 3182.

There are roughly 85,000 students in English elementary and high schools, and 963,000 students in elementary and secondary schools in Québec overall in 2020-2021 (MEQ estimates). Therefore, the number of foreign national students on temporary certificates to study in English represents 0.33% of the total elementary and high school student enrolment. While the number of foreign nationals with temporary certificates represents at 3182 a drop in the bucket in the overall student enrolment in Québec, it provides a little bit of badly needed oxygen for the English school network, which has declined by 60% since 1975.

We are concerned that restricting the temporary eligibility certificates to a maximum of three years for foreign nationals may put a damper on the ability of Québec companies and institutions to recruit workers and professionals to accept employment here temporarily if they want their children to attend English school. Universities often recruit foreign professors and researchers with limited contracts. The same is true of medical doctors and health researchers and certain members of the clergy. Multinational companies operating in Québec also transfer personnel here for a limited period. In all these cases, the children of these talented individuals may have limited or no French language skills, but some English language knowledge. The opportunity to have them attend English schools for the duration of their temporary stay is an important consideration.

Concrete examples:

Many general managers of Reynolds Aluminum (now Alcoa) were Americans who committed to living and working in the regions of Québec. One of whom lived in Baie-Comeau for 10 years with two daughters who attended English public school. One of the daughters took French as a minor in her American college once she graduated from Baie-Comeau High School and further did a year of College in France to pursue her French education. Today, she is the Vice-President of City Bank and is responsible for the implementation of French for Canada and Europe.

U.S. Vice-President Kamala Harris spent five years and graduated from Westmount High School when her mother, Dr. Shyamala Gopalan Harris, a breast-cancer scientist originally from Chennai, India, brought Harris and her sister, Maya, to Montreal in the 1970s when she took a job teaching at McGill University and doing research at the Jewish General Hospital. This talented researcher might not have accepted this position if told her children could not benefit from a bilingual education in Québec.

This new restriction limiting the duration of temporary eligibility certificates will undoubtedly result in a small reduction of enrolment in our network. It may also have a negative impact on the ability to attract foreign nationals, who may want their children to study in English, to temporary positions here. Given the relatively small number of students involved, given that these temporary certificates confer no acquired rights to attend English school, given that the foreign students enrolled in English schools receive excellent French-language instruction, the proposal in Bill 96 to limit the temporary certificates of foreign nationals to three years seems to be a solution in search of a problem. If it is important for the Government of Québec to be competitive in attracting foreign nationals with specific talents to Québec, on a temporary basis, and for all the reasons highlighted above, this measure should not be adopted.

Recommendation:

The QESBA recommends that the government of Québec abandon this change and leave the option for renewal of temporary certificates open for their entire duration of the temporary stay.

Language of Communication

The Charter of the French Language establishes the language of communication requirements for the civil administration, of which school boards are considered part. For school boards (according to section 29.1 of the CFL), it outlines under what circumstances French must be used, when French and English may be used (in names, internal communications, communications with each other – section 26 of the CFL), and when English may be used alone (in communications between two persons – section 26 of the CFL and; in communications connected with teaching [*“dans leurs communications d’ordre pédagogique”*] – section 28 of the CFL).

This latter section of the CFL (section 28) allows English schools and school boards to communicate with parents in English only in matters regarding pedagogy writ large.

Bill 96 proposes a number of modifications to this regime, some of which appear to apply to school boards (as recognized bodies under section 29.1 of the CFL), and some which do not:

- Section 28 of the CFL which reads “28. Notwithstanding sections 23 and 26, school bodies recognized under section 29.1 may use the language of instruction in their communications connected with teaching without having to use the official language at the same time” is unaffected by Bill 96;
- The Bill 96 amendments (Bill 96 section 16) to section 26 of the CFL do not appear to significantly modify the ability of school boards to use English

along with French in their internal communications and in their communications with each other. Bill 96 also continues to allow for written communication between two people within a school board to be in English;

- Bill 96, section 16 also makes the obligation for deliberative assemblies of school boards to publish notice of meetings, agendas and minutes in French (without prohibiting English) clearer. This is already the practice in our school boards.

Finally, it is not entirely clear to us if Bill 96 alters the language of communication requirements for school boards when dealing with legal persons, other than other school boards and the civil administration, such as companies and associations such as our community partners. A clarification of this point would be most welcome.

French Second Language Instruction

There are English-speaking adults who want to improve their written and verbal French language skills. Section 62 of Bill 96 amends the Charter of the French Language (new section 88.11) directing that Francisation Québec provide French language learning services to persons domiciled in Québec who are not subject to compulsory school attendance under the Education Act. This is a welcome initiative, one that has been proposed by the English-speaking community for some time. Québec's English school boards, which already offer a wide array of adult education courses including French as a second language, are interested and willing to play a role in the delivery of these new course offerings.

CEGEP Enrolment

Bill 96 introduces a cap on the increase in enrolment in English-language CEGEPs and, in section 62, introduces a new concept requiring that they have a policy which must include measures to give priority to admitting “students declared eligible to receive instruction in accordance with Division I [of the CFL]”.

This new measure will likely make it easier for our graduates to be accepted into high applicant programs. On the other hand, the enrolment cap may also affect the longer-term viability of certain smaller English CEGEPs outside the Greater Montreal Area.

Language Knowledge of Judges

Section 12 of the Bill stipulates that judges and members of administrative tribunals appointed by the Government of Québec cannot be required to have a knowledge of a language other than French unless the Minister of Justice and the Minister of the French Language consider that the exercise of their office requires such knowledge (and only after all reasonable means have been taken to avoid requiring the knowledge of another language).

This section has the potential, in practical terms, to reduce the ability of Québec courts (including municipal courts) to hear cases in English, thereby making access to justice for English-speakers more difficult. Furthermore, on the face of it this section seems to be incompatible with section 133 of the Constitution Act 1867 which allows bilingualism in the Québec legislature and in federal and Québec courts.

Constitutional Amendment

Section 159 of Bill 96 unilaterally amends the Constitution Act 1867 of Canada by adding sections:

- 90Q.1. Quebecers form a nation.
- 90Q.2. French shall be the only official language of Québec. It is also the common language of the Québec nation.

The constitutional implications for the English-speaking minority of Québec of these proposed amendments are not clear and constitutional experts are divided on this question. However, it is unlikely that such an amendment would be benign. Once again, on the face of it this section of Bill 96 seems to be incompatible with section 133 of the Constitution Act 1867 which allows bilingualism in the Québec legislature and in federal and Québec courts.

One of the fundamental tenets of the legislative process is to adopt laws that are clear and subject, to the minimum possible, to interpretation. Some clarity with these proposed Constitutional amendments is necessary.

Recommendation

That the Government of Québec refer section 159 to the Court of Appeal of Quebec as per the Court of Appeal Reference Act, to obtain the desired clarity on the Constitutional implications of the proposed amendment to the Constitution Act, 1867.

Pre-emptive and Blanket Use of the Notwithstanding Clauses

Section 118 of the Bill integrates the federal and Québec notwithstanding clauses directly into the Charter of the French Language and covers all the provisions of the Charter.

Sections 199 and 200 of the Bill stipulates that all the other provisions of Bill 96 apply notwithstanding, respectively, the Québec and Canadian charters of rights and freedoms.

This blanket and pre-emptive use of the notwithstanding clauses shields the modifications proposed in Bill 96 from judicial challenge under the charters of rights, including every single provision of the Charter of the French Language.

Quebecers are rightly proud of our progressive, comprehensive, and groundbreaking Charter of Human Rights and Freedoms. The Québec Charter is a fundamental, quasi-constitutional law of Québec. It was adopted unanimously by the Québec National Assembly on June 27, 1975 in a legislature formed of the governing Liberals of Robert Bourassa, the Official Opposition Parti québécois and two MNAs of the Ralliement créditiste. It has become one element of the common values of Québec. The fundamental human rights it protects for all Quebecers should not be set aside lightly. The same is true of the Canadian Charter of Rights and Freedoms. Both Charters contain a notwithstanding clause permitting the legislature, with certain limits, to adopt legislation which applies despite the fundamental rights outlined in the Charters. However, it is our opinion, shared by many including a number of judges and justices, that the use of the notwithstanding clauses should be done with circumspection and with limited application.

This is not the case with Bill 96. The rationale for invoking the Québec and Canadian notwithstanding clauses for every single provision of Bill 96 and, through Bill 96, every single provision of the Charter of the French Language, has not been clearly explained. This action deprives all Quebecers of the protection of the fundamental rights in the two charters of rights and freedoms in relation to the effects of Bill 96. It shields Bill 96 from any legal recourse to challenge the legislation by virtue of the Charters, legal recourse which is a normal and appropriate action in a society governed by the rule of law.

Recommendation

That sections 118, 199 and 200 invoking the notwithstanding clauses of the Québec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms be removed from Bill 96.

Conclusion

The Quebec English School Boards Association and our nine English language school boards believe in the need to promote and protect the French language in Québec and indeed throughout Canada. 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. But that protection and promotion should not be done by setting aside the fundamental rights of Quebecers, nor by infringing on the rights of the English-speaking community of Québec. We ask that the government reconsider some of the provisions of Bill 96.