

Brief regarding Bill 96 to the National Assembly Committee on Culture and Education, from Robert Hajaly

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[Please note: References below to sections of laws are generally to sections of the Charter of the French Language, as amended and added to by Bill 96, not references to sections of Bill 96 itself; while the associated page number references are page numbers in the English text of Bill 96 where the sections of the French Language Charter that are amended and added to by Bill 96 may be found.]

Hello; my name is Robert Hajaly. I'm an anglo-Quebecer, born and raised in Quebec. I reside in the city of Montreal, and am a retired teacher at Dawson College, an English-language CEGEP. I wish to express my concerns with certain provisions of Bill 96.

First, I object to the provision of Bill 96 that agencies of the civil administration, including municipalities and health and social services institutions, may serve people in English only if these people are eligible for English language education in Quebec (section 22.2, page 14). According to the Quebec government, people so eligible are 8.7% of the Quebec population, whereas according to the 2016 census, 13.7% of people in Quebec use English as their "first official language spoken," a difference of over 400,000 people. In my view, people should receive services in the language they understand best and whose use they prefer. They pay equally for these services, and have a right, under the Canadian Charter of Rights and Freedoms, to the "equal protection and equal benefit of the law," and this should not be sacrificed to the imposed use of French. This is especially true of health and social services, where a failure of understanding can lead to a violation of the Charter right to "life, liberty and security of the person."

I understand that Minister Jolin-Barette has said that Bill 96 does not lessen the rights to English care guaranteed by the Quebec Health and Social Services Act. In fact, Bill 96 clearly states that all Quebec laws are to be "construed" (s. 146, p. 82) and "interpreted" (s. 88.14, p. 40), so as not to limit any right conferred by Bill 96 and the Charter of the French Language, which includes the right to work in French, and such a French language right is to "prevail" (s. 88.15, p. 40) over any contrary right. So this is an aspect of Bill 96 that clearly needs to be changed.

As a resident of Montreal, I object more specifically to the provision (s. 8, p. 8) that by-laws and regulations of civil bodies, and in particular of municipalities not given bilingual status, are to be "drawn up, adopted and published exclusively in French." Related to this, I object to the

criterion of bilingual status for municipalities, that more than half of their residents have English as their mother tongue. This is manifestly and unjustifiably too high and biased against access to English service, given also that there is no minimum requirement for access to French service. Allowing municipalities who originally met this criterion but have now fallen below it to retain their bilingual status, as Bill 96 does, is no remedy for cities which never satisfied this criterion but who have many English-speaking residents. I'm thinking most obviously of Montreal, which has over 470,000 residents whose first official language is English, but which is denied bilingual status. In my view, municipalities should be allowed to decide, without having to meet a minimum criterion, whether or not they want bilingual status and to serve their residents in both French and English. And if there is to be a minimum criterion, it should be no more than 15% of their residents speaking English as their first official language, not their mother tongue.

My next objection is to the requirement (s. 18, p. 10) that only French be used in all written and oral communication within all bodies of the civil administration (apart from those given bilingual status), civil servants being subject to disciplinary measures for infractions of this requirement (according to s. 204.30, p. 75). This strikes me as excessively and intolerantly suppressive of people's freedom of expression and biased against people whose first language is not French. It's also likely to discourage non-francophones from working in the civil administration, so maintaining their already very low numbers there. Therefore this provision should be removed from Bill 96 or at least relaxed.

Turning now to the courts, I object to the provision (s. 9, p. 8; also s. 208.6, p. 77) that all pleadings in English by a legal person before the courts in Quebec, or before an adjudicative body of the civil administration, must be accompanied by a certified French translation, at the expense of the legal person pleading, for the pleading to be considered by the court or adjudicative body. This will add to the burden, expense and time necessary to access justice in English in Quebec, and so may discourage such access, and is thus a clear impairment of the right to such access guaranteed by s. 133 of the 1867 Constitution of Canada. This provision should be removed from Bill 96, or, failing this, struck down by the courts as impairing s. 133; and similarly for the related provision (s. 12, p. 9) to reduce the number of bilingual judges.

Next, education: I object to the provision (s. 84.1, p. 33) that limits the period a temporary foreign student, or a child of parents temporarily in Quebec, can study in English in Quebec to only 3 years. Having to temporarily switch to French after 3 years can be disruptive of the child's education, and possibly discourage his or her parents from coming to Quebec. Moreover, this provision would further diminish the number of students attending English public schools in Quebec, bearing in mind that these schools have already lost over 60% of their student numbers from the time that Law 101 was passed and partly due to the effect of this

law. In fact, bearing this effect in mind, I would like to suggest that Law 101 be amended to allow children of immigrant parents to Quebec whose mother tongue is English to be educated in English, in accordance with s. 23 of the 1982 Constitution Act of Canada. It seems to me that this is a perfectly natural and logical provision given that English is already a recognized language of education in Quebec. It would also enable English schools to recover a little bit of their lost student numbers, without significantly affecting the French school system--in fact, relieving some of their schools of overcrowding pressures.

As for English-language CEGEPs, I object to the proposed limits in their numbers in s. 88.0.4 (p. 34-35), especially to the limit of a yearly increase of 8.7% of the total increase in CEGEP numbers in any year. I understand that 8.7% is the proportion of English high school graduates of the Quebec total of such graduates. However, this figure is artificially depressed because of the limits now placed on who can attend English schools, which I've just argued should be relaxed. A more appropriate figure, if one is to be used, is the proportion of Quebecers whose first official language used is English, 13.7% according to the 2016 census. In any case, what is clear is that with the greater economic integration of Quebec into the North American market and the greater use of the internet, proficiency in English is economically valuable, and attending English CEGEPs is an effective way to obtain it. Moreover, as CEGEP students are of adult age, or become so in the course of their studies, their right to freedom to promote their interests as they think best should be respected and not sacrificed to the further imposition on them of French language education. On the other hand, I would not object to the requirement of the passage of a French language test by allophone and francophone, and possibly anglophone, students, as a condition of graduation from CEGEP.

Turning now to the professional orders, I think that the provision (s. 32, p. 21-22) requiring professional orders to communicate, both in writing and orally, only in French, whether to all, some or an individual member, regardless of their language preference, is inconsiderate, disrespectful, and discriminatory to non-francophones, and contrary to the freedom of expression of the officials of the orders so required to communicate. And being imposed by the government on the professional orders, regardless of the preference of those orders or their members, this provision is authoritarian and oppressive. The professional orders should be allowed to regulate their own use of language as their members think best, without government imposition.

Regarding provisions bearing on enterprises, I object first to the provisions (s. 41, p. 24; s. 55, p.31) that employment or commercial contracts must be offered in French first before an English contract can be used, even if both parties to the contract have already indicated their wish to use an English contract. Such a provision adds unnecessarily to the burden of doing business. Moreover, a contract not complying with this provision may be subsequently

cancelled, according to ss. 204.17-204.20, p. 73, which may cause an injustice if, for example, one party has already delivered goods or services which the other party, or the government, avoids paying for by having the non-compliant contract cancelled by a court.

Second, Bill 96 halves the time available for enterprises to analyze their linguistic situation (s.139, p. 49), to prepare a francization program to remedy its deficiencies (s.140, p. 50), and to report on the implementation of this plan (s. 143, p. 50), while imposing these obligations on companies with half as many employees, from a minimum of 50 to 25 employees (s.139, p.49). In my view, companies with fewer employees should if anything be given more time, not less, to perform these francization tasks, so these time reductions should be removed from Bill 96, particularly for companies with fewer than 50 employees.

Third, s. 152.1, p. 52 requires companies with as few as 5 employees to accept a government offer of French language education for their employees, which if a company refuses will disqualify it from receiving contracts or subsidies from the civil administration. What makes this more problematic is that if a company accepts this offer it is required, according to s.150, p. 51 and s. 137.1, to pay its employees their normal income while they are learning French rather than performing their jobs for their company. It seems to me that this could produce a personnel shortage and a financial burden for a company that few small companies could bear. So either these companies should be compensated for the loss of their employees' job time while they're learning French, or this learning should occur outside work hours, and perhaps in either case should be made voluntary, with the government paying for the French lessons.

Fourth, I object to the claim made by s. 135 and implied by s. 89.1, p. 41, that the French Language Charter applies to all enterprises and employers in Quebec, therefore applying to federally regulated companies and even to the federal government and to its agencies and crown corporations operating in Quebec. This presumes that Quebec has a universal jurisdiction over language (and in the case of cultural institutions, over culture) in Quebec, including in regard to federal institutions, which in fact it does not have. So this claim should be withdrawn from both Law 101 and Bill 96, failing which it should be challenged in the courts, and not conceded by the federal government. I would also like to add, in this regard, that the federal Official Languages Act, which does apply to federal institutions in Quebec, is far more fair in its treatment of anglophones here than is Law 101, inasmuch as the Official Languages Act protects equally the right of anglophones as well as of francophones to be served and work in their language, which Law 101 does not. To this extent the Official Languages Act satisfies the right to the equal protection and equal benefit of the law of the Canadian Charter of Rights and Freedoms, while Law 101 violates this right.

Fifth, the provisions in s. 174, p. 64 for inspection of premises to investigate compliance with the French Language Charter do not require that the inspectors first obtain a warrant from an

independent court judge verifying that there is sufficient justification for such an inspection and establishing the corresponding permitted extent or limits of this inspection. It seems to me that without requiring such a warrant, such an inspection, especially if it is excessive, might reasonably be argued to violate the right to “be secure against unreasonable search or seizure” guaranteed by the Canadian Charter of Rights and Freedoms. Therefore the requirement of such a warrant, verifying the justification for an inspection and establishing its proper limits, should be included in this section on inspections.

My sixth and final objection to Bill 96 regarding enterprises, though applying also to other bodies, concerns the severity of the penalties provided for offences against the French Language Charter, as increased by Bill 96. In particular, I would like to draw attention to s. 208, p. 76, which provides that, “If an offence... continues for more than one day, it constitutes a separate offence for each day it continues.” This means, taking into account the fines specified for offences in ss. 205 and 206, p.75, that an enterprise or any legal person would be subject to a maximum fine of \$90,000 each day for every day that their offence continued beyond the second day. This strikes me as an excessively high and highly coercive penalty and likely to seriously damage, if not render bankrupt, any but the largest company that continues, for whatever reason, to not comply with the French Language Charter. The message implied by this penalty seems to be, comply with the French Language Charter or you will not do business in Quebec. And in fact, s. 204.27, p. 74, allows the Minister of the French Language to suspend or revoke the permit or authorization of an enterprise that continues to be non-compliant to operate in Quebec--if the enterprise hasn't already decided to leave here! It seems to me that more thought should be given to the economic consequences for Quebec of these excessive penalties, which should be reduced and made less damaging and coercive for enterprises.

I now wish to comment on the provision of Bill 96 that bears on the applicability of the Canadian and Quebec Charters of Rights to the Charter of the French Language, including as amended by Bill 96. I strongly disapprove of s. 118, pp. 77-78, of Bill 96 that exempts the French Language Charter from the application of both ss. 1-38 of the Quebec Charter of Human Rights and Freedoms and of ss. 2 and 7-15 of the Canadian Charter of Rights and Freedoms. In my view, those provisions of the French Language Charter, as amended and added to by Bill 96, which I discussed above, would variously violate, impair or unduly limit the Canadian and/or Quebec Charter rights to the equal protection and equal benefit of the law, to life, liberty and security of the person, to freedom of expression, and to be secure against unreasonable search and seizure. But Bill 96 shields these French Language Charter provisions from the application of these charter rights which would otherwise remedy these French Language Charter deficiencies. And while these amended or added provisions of the French Language Charter admittedly increase the use of French in Quebec, they aren't necessary to protect or maintain Quebec's predominantly French character, as I'll argue below. So on balance the exemption by

Bill 96 of the French Language Charter from the human rights charters is harmful and unjustified and should be removed.

Lastly I would like to discuss Bill 96's suggested additions, in s. 159, p. 84, to Canada's 1867 Constitution. It's claimed in these additions that French "shall be"--in the French version, that French "is"--the only official language of Quebec, and that Quebecers form a nation, whose common language is French. My own view, first, is that French is not the only official language of Quebec. The 1867 Constitution of Canada makes English an equal official language of the legislature, laws and courts of Quebec, while the 1982 Constitution makes English a recognized language of public school education in Quebec. To these extents, English is also an official language of Quebec. And it is important that no provision of Bill 96, including its sections regarding access in English to the courts in Quebec, derogates from or diminishes English as an official language. This would be a violation of the terms under which Quebec's representatives agreed to the creation of the Canadian confederation, and a betrayal of the English-speaking community in Quebec.

As for Quebecers forming a nation whose common language is French, this is only true, in my view, according to a traditional concept of nation, of Quebecers whose first language and primary culture is French, and who, on the basis of these common characteristics, conceive of themselves as forming and belonging to a distinct nation. Other residents of Quebec, while equally Quebecers, are not therefore members of this distinct Quebec French-speaking nation. I know this conclusion has been resisted by English-language groups in Quebec, because they fear it will lead to non-francophones in Quebec becoming second class citizens with fewer rights than francophones. It's true that it may be argued that nations have a collective right of self-determination, but in Quebec this right may be exercised only through the election of Quebec governments or in referenda on Quebec's status, in which everyone in Quebec, francophones and non-francophones alike, must have an equal vote, since these decisions affect everyone in Quebec, whatever group they belong to. So any addition to Canada's constitution regarding Quebec's national character must make clear that while there is a French-speaking nation in Quebec, this in no way creates unequal rights, both among Quebecers and between Quebecers and other Canadians.

Finally, I would like briefly to discuss the justification commonly given for Bill 96, including its more problematic provisions. It's claimed that French is declining in Quebec, so stronger measures must be taken to protect the French language in Quebec and Quebec's French character. In my view, while it's true there has been some recent decline in the percentage of French mother tongue people in Quebec due to immigration and a lower domestic birth rate, there has been no corresponding decline in the public use of French, which is the more relevant criterion for assessing the status of the French language in Quebec. Specifically, while 85.5% of

Quebecers used French as their “first official language spoken,” the relevant census measure, according to the 2011 census, 85.4% used French according to the 2016 census, virtually no change. Moreover, in metropolitan Montreal, where the decline in French has been claimed to be greatest, the relevant figures are to the contrary: 76.1% use of French according to the 2006 census and 76.6% according to the 2016 census. As for the use of French at work in metropolitan Montreal, where again a decline has been claimed, the figures are 91.5% in 2006 and 91.8% in 2016 (These figures are from the ‘Focus on Geography’ series published by Statistics Canada, and are for the Census Metropolitan Area of Montreal). So there is no relevant decline in the use of French that would justify stronger measures in the French Language Charter, especially if these measures jeopardize people’s rights.

In fact, in my view, while the justification given for Bill 96’s proposed changes to Law 101 is to protect the French character of Quebec, the Bill’s provisions have a further intended effect that goes beyond this, and that is to maximize the use of French in virtually all domains in Quebec society and to minimize the use of other languages, particularly English. This is especially true of the limitation of English services to only persons eligible for English language education in Quebec, and the insistence that only French may be used in all written and oral communications in all the branches of the civil administration and in all the professional orders. This minimization or exclusion of non-French languages is very prejudicial towards non-francophones in Quebec, suppressive of their rights to freedom of expression and to the equal protection and benefit of the law. And as I’ve already shown, these measures are not necessary to preserve the existing French character of Quebec. They are rather an expression of a non-inclusive, intolerant, domineering and unbounded nationalism that places Quebec outside the bounds of liberal democratic states, that respect universal individual rights. In general, then, these measures of Bill 96 are unjustified and unacceptable and should be withdrawn by the government, failing which, they should be challenged and overturned in the courts.

In closing, let me express my wish that the members of the Culture and Education Committee of the National Assembly consider my views carefully, even if they should disagree with them, and let me thank you for this opportunity to give you my views and for your consideration of them.

Robert Hajaly

