

BRIEF OF LORD READING LAW SOCIETY ON BILL 96
PRESENTED TO THE QCGN
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INTRODUCTION

1. Seldom has proposed legislation impacted access to justice, equality before the law and the most fundamental principles underpinning our legal system to the extent that Bill 96 does. Its provisions will soon be “reviewed” by Parliamentary Commission through public hearings to which, exceptionally and alarmingly, only persons or institutions who have been invited by the Commission to address it have standing to submit observations, criticism or suggestions for amendment.
2. True to its mission statement as an association of lawyers dedicated to the protection and advancement of human rights within Québec’s legal order, the Lord Reading Law Society cannot remain indifferent. This summary brief seeks to address some of the Bill’s provisions that fundamentally challenge the rule of law in the most direct, immediate and egregious way.
3. Bill 96’s proposed provisions extend far beyond language rights and undermine constitutionally protected “fundamental” and “inalienable rights” that belong to Québec’s citizenry as a whole. The Bill creates a hierarchy with respect to fundamental rights, making language paramount while severely restricting or eliminating human rights protections articulated in

both the Québec and Canadian Charters which are essential to the rule of law in a free and democratic society.

4. The English speaking minority of Québec, as well as Quebec's indigenous communities, are and have been, for the past 250 years, part of "*le peuple du Québec*" and "*la nation de Québec*". The English speaking minority of Québec and Quebec's indigenous communities are part of Quebec's fabric and citizenry. Non-francophones have made significant contributions to every facet of Quebec life, culture and economy. The fundamental rights of such communities are inalienable. The government and National Assembly of Québec have an obligation to safeguard these communities' rights within the framework of "*la nation de Québec*".
5. Bill 96 does not confirm that the English speaking minority and indigenous communities of Quebec are part of "*la nation de Québec*". Bill 96 may be interpreted as excluding non-francophones in general from "*la nation*".
6. Currently, every Quebecer has the right to fulfill his/her obligations, under the laws of Quebec, in the language in which they can best express themselves. Bill 96 changes this. Bill 96 amends Section 40.2 of the *Interpretation Act*, to read as follows "Every Act is presumed to allow using only French in the performance of the obligations it prescribes". Therefore, all Quebecers must exclusively use the French language to fulfill their legal obligations under all of the laws of Quebec. The use of any other language will not constitute the fulfillment of those obligations.

7. Bill 96 declares that the right to the French language is the paramount and supreme right over all other rights. The Bill declares this supremacy both for individual rights and collective rights. The Bill uses the notwithstanding clause of the Canadian Charter which forms part of Canada's Constitution, and a derogation clause of the Quebec Charter to override any other rights that may detract from the right to the use of the French language. With rights come obligations, which the Bill enumerates in detail, extending through all facets of Quebec society. Justice Blanchard of the Québec Superior Court in his 2021 judgment on Bill 21 says, "*En effet, en ce qui concerne la Charte québécoise, on note que la Loi 21 stérilise sans restriction l'application de ses articles 1 à 38, et qu'il en va de même avec les articles 2 et 7 à 15 de la Charte canadienne.*" (Hak et al v. PGQ et al 2021 QCCS1466, para. 755). We believe that the same can be said of Bill 96.
8. The triumvirate of the new Minister of the French language, the new Commissioner of the French language and the empowered *Office québécois de la langue française* ("Office") will oversee a system to ensure the mandatory and exemplary use of French in all parts of the civil administration, public agencies, para-public agencies, healthcare facilities, school bodies and municipalities. These 3 entities will have considerable regulation and policymaking authority which will supplement Bill 96. No one

currently knows what these regulations and policies will say. Matters concerning the French language have been delegated to a bureaucracy.

9. Dispensing access to justice and health services at the very minimum requires the ability to communicate and understand the challenges at hand and to devise appropriate remedies. It requires clear communication and comprehension between the citizens and the system. State-sanctioned restriction of communication rights would be inefficient and ineffective and, more importantly, could lead to tragic or fatal results.
10. The Bill provides a state-sanctioned legal and protected basis for discrimination against those whose common language is other than French with non-compliance potentially leading to both civil and penal consequences.
11. By amendments to the *Act respecting the Legal Publicity of Enterprises*, the Office may, in the sectors or industries it selects, require employers with more than five (5) employees to declare as part of their annual declaration “the proportion of employees not capable of communicating in French”
12. The Bill places limits on the rights of everyone to post-secondary education by capping the number of students (including francophone students) that may attend English language CEGEP, thereby restricting the freedom of adult and near-adult students to further their education in a

non-Francophone setting and improve their economic prospects in the global economy.

13. The Bill does not protect English language health institutions and hospitals. Instead, in conjunction with other measures taken by the government, advisory bodies, regional healthcare and management services (CIUSSS and CISSS) and patient care services are now subject to re-evaluation in respect of the use of languages other than French. This compromises the right to life and healthcare.

BILL 96 AND ITS EFFECTS UPON THE ADMINISTRATION OF JUSTICE

14. Bill 96 provides that a person appointed to be a judge shall not be required to have knowledge or a specific level of knowledge of a language other than French unless both the Minister of Justice and the New Minister of the French Language consider that the exercise of that office requires such knowledge and “that all reasonable means have been taken to avoid imposing such a requirement”. This applies to members of all administrative tribunals including, but not restricted to, the *Tribunal des droits de la personne*, the *Tribunal administratif du Travail*, the *Tribunal administratif du logement* as well as the Small Claims Court, where no one is represented by a lawyer. It also applies to bodies like the CNESST where workers’ hard-won rights are supposed to be protected by state agencies. If workers

cannot effectively express themselves in French, they will not be able to obtain justice if the judges cannot understand them. The Bill requires that justice and legislation be dispensed in French. Increasingly, individuals choose to represent themselves in the diverse tribunals of Quebec. Anglophones will be at a clear disadvantage both in addressing a tribunal and understanding what the presiding judge is saying.

15. The new Section 13 of the *Charter of the French Language*, as amended by Bill 96, makes the restrictions on the judiciary set out in paragraph 14 hereinabove applicable to persons appointed by the government or by a minister to “exercise” any adjudicative function within any agency of the civil administration. Bilingualism is discretionary and only upon the agreement of both Ministers that both aforesaid conditions have been met.
16. Henceforth, any pleading that emanates from or is prepared on behalf of a legal person that is drawn up in English must, on pain of it not being able to be filed, have attached to it “a certified French translation”. In the event of discrepancy, it is unclear which version would prevail. Moreover, who is approved for translation and certification is unknown.
17. Furthermore, the legal person is required to bear the costs of the certified translation to French, which presents a serious cost and access to justice concern in a society where the costs of litigation are already prohibitive to small and medium-sized businesses.

18. Statutory offences are prosecuted in the *Cour du Québec* under the Québec penal code. The consequences of a judge being unable to speak or understand English can be horrendous and can result in errors in the court's appreciation of the evidence and in its judgement.
19. By way of background, it took the government and National Assembly of Québec more than 20 years to correct the 5000 errors in the English version of the Québec Civil Code, originally adopted in 1994. Bill 96 attempts to set aside an already minimalist approach to English in the Québec legal arena.
20. The practical impact of a unilingual Québec judiciary would be that judges, and ultimately Québec citizens, would have less of an opportunity to derive the full benefit of non-French language case law from elsewhere in Canada that could materially affect outcomes in many areas of law, including those that are rapidly evolving. Perhaps more significantly, due to the French requirements of the Bill, in a world dominated by cross-border trade, non-Québec businesses would likely force Québec resident businesses to be bound by laws other than Québec law in commercial contracts (such as Ontario law, New York law and Delaware law), thereby undermining the use and development of Québec civil law and the use of Québec courts. Such an outcome would have the unintended effect of weakening the influence of the French language and Québec courts and diminishing the importance of Québec legal professionals.

21. The Supreme Court of Canada has recognized that the rule of law requires equality of all before the law and that the “rule of law” is a central organizing principal of the Canadian Constitution. Bill 96 institutionalizes inequalities in the application of the law based on language.
22. The language of contractual documents, as long as the parties understand the language in which the document is written, should be immaterial. A contract written in German in Québec, signed in Québec, and performed in Québec, is currently just as valid before the law as a contract written in French. The requirement that all contracts be written in French, with limited exceptions, is a restriction on the will of the parties to consent to a contract in accordance with ordinary legal principles. As suggested above, adoption of the Bill would dissuade companies located outside of Québec from entering into complex contractual documents in Québec due to cost and access to justice considerations, which would undermine the development of Québec civil law and likely deprive Québec citizens of goods and services available elsewhere.
23. The obligation that all enterprises provide their services in French in the performance of their legal obligations, failing which there will be sanctions, will have an adverse effect on the legal provision of services and the common courtesy between service providers and service users. Essentially, corporations and enterprises in Quebec will be unable to

conduct their business in English, whether that be via written or oral communications.

EXTRA-ORDINARY POWERS OF INTRUSION AND INVESTIGATION

24. Québec is a pioneer in Canadian human rights law. For instance, it was the first jurisdiction in Canada to enshrine “privacy” and its protection as a “fundamental right”, not only specifying it as a right in the Civil Code and the *Québec Charter* but also by creating its own privacy regime, including a Commission and its formal apparatus to implement, oversee and protect such rights.
25. In democratic societies, such a right to privacy is and was always twinned with the most fundamental of restrictions on the state’s security apparatus that is integral to the “rule of law”, i.e. the prohibition against warrantless search or seizure save in the most exceptional circumstances, even in the event of serious suspected criminal behavior. The “rule of law” requires, generally, that even the police require judicial authorization by way of a warrant to enter business establishments and search and seize only that which such warrant, issued by a judge, after review of at least minimally convincing evidence, allows.
26. Bill 96 would give the inspection arm of the *Office québécois de la langue française* powers that public security officers do not possess, namely the

right to enter and seize without warrant and without judicial review before or after.

27. The Office would be empowered, on pain of civil and/or penal sanction, to examine the contents of computers, tablets, telephones and any other storage medium, and to seize same or require copies of whatever information is contained therein which, in the inspector's estimation, may be related to enforcement of the stringent new obligations imposing the "exemplary" and/or "exclusive" use of French, even in lawyers' offices, where professional secrecy is supposed to govern. Such inspections can cause inspectors to access confidential information that has nothing to do with language, and which can cause economic damage. Furthermore, the inspector may be able to report this non-language related information to other agencies of the government, including Revenu Québec.
28. The Bill allows for anonymous complaints about either the use of French or someone's "competency in French". This system of anonymous complaints allows for persons who may have personal grudges of one form or another to "inform" on their co-workers, neighbours, competitors, etc. without any way of verifying the truth of what may be baseless allegations that can lead to disastrous consequences. The Bill protects and encourages every Quebecer to anonymously disclose alleged violations of the use of the

French language. In so doing, it greatly supplements the reach of the inspectors of the *Office*.

29. Anonymous complaints can trigger extra-judicial searches and seizures, lead to investigations by disciplinary or licensing bodies that govern a host of professions, and may force employers to react and take “action” against employees of good standing because of “perceived” insufficient use or proficiency in French.
30. Bill 96 introduces a form of secret denunciations on neighbours or colleagues that has no place in a free and democratic society. Combined with the intrusive extra-judicial powers of search and seizure noted above, the attempt to render inoperative inalienable human rights that predate the Québec and Canadian Charters should alarm anyone in Québec that treasures human rights and “democratic values”. Appreciated in its entirety, Bill 96 would introduce an extra-judicial and coercive system, incompatible with a free and democratic society.

CONCLUSION

31. By virtue of the legislative amendments discussed above, notably the rendering of Québec and Canadian Charter rights inoperative, discrimination and harassment based on insufficient command of language other than French would be institutionalized.

32. However laudable the objective of the protection of the French language may be, the forfeiture of basic and fundamental rights can and will affect all Québécois, irrespective of their language of origin.
33. Bill 96 and its provisions, under the guise of “language legislation” needed to protect the French language, erases or at least very substantially limits the liberties and freedoms of its residents, liberties and freedoms which Québec citizens of all types have fought for since the Quiet Revolution.
34. Bill 96 makes natural justice and the rule of law subservient to the discretion of state agencies and their personnel and is a legislative attempt to silence the courts. An independent judiciary is the means through which all persons have their rights protected and enforced. Without judicial review and judicial remedies, all rights are meaningless.
35. As a result, it is incumbent upon those charged with protecting the very fabric of democracy to loudly protest Bill 96 in order to avoid irreversible harm to human rights, access to justice and social cohesion in Québec.

LORD READING LAW SOCIETY

36. For more than seventy-three years, the Lord Reading Law Society has been a voluntary association dedicated to the furtherance of human rights and fundamental freedoms of all Québécois of all origins. The Lord

Reading Law Society was created at a time where, in our country and our province, many minorities did not enjoy the full equality which would have allowed them to flourish in accordance with their potential. With its history as being the collective voice of Jewish jurists in Quebec, the Society proudly counts jurists of diverse backgrounds among its members.



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****N.B. The present Brief was prepared without the participation whatsoever of any member of the judiciary or of any quasi-judicial tribunal****