

**The Language of Communication Between
Individuals and the State in Quebec:
Threats to Economic, Social and Health Rights
Posed by Bill 96**

Brief submitted to the Committee on Culture and Education

Bill 96

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

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Executive Summary

Bill 96 proposes to forbid employees of the public sector from communicating with individuals to whom they are offering services in languages other than French, subject to some exceptions. This represents a fundamental change to the *Charter of the French Language*, which has always allowed the administration to communicate with natural persons in languages other than French.

These new provisions of Bill 96 risk compromising access to essential services in the health, social security, educational and municipal sectors for a large number of allophones and anglophones living in Quebec.

Henceforth, all oral and written communication between the administration and natural persons will have to take place in French with some exceptions, the main ones being:

- People who attended elementary school in English in Canada;
- People who had communicated in English with a specific agency before Bill 96 was introduced, but only for further communications with that agency;
- Immigrants during the first six months following their arrival in Quebec;
- Indigenous persons;
- Where “health, public safety or the principles of natural justice so require”

The “administration” is defined very broadly. It includes government employees, employees of the health and social services network, school personnel, municipalities, legal aid offices and other public bodies. Recognized bodies serving the anglophone community (such as anglophone hospitals and schools) do maintain the right to communicate in English with their service users, but not in other languages.

These provisions would mean, for example, that it would be forbidden for a nurse in a hospital to speak a language other than French or English to an immigrant who arrived in Quebec more than six months ago. It seems that she would not even have the right to use an interpreter. A social worker meeting a Spanish-speaking immigrant woman who has been living in Québec for more than six months would not be allowed to communicate with her in Spanish, even if she is a victim of domestic violence who is too upset to express herself clearly in French. Failure to comply with the prohibition on communication in languages other than French would bring disciplinary action. Anyone witnessing an act of non-compliance with the law, such as the unauthorized use of languages other than French when speaking to a service user, may anonymously denounce such non-compliance to the Office québécois de la langue française.

These new provisions would also pose problems in schools, as it appears that teachers would not have the right to communicate with allophone parents regarding their children’s educational progress in languages other than French (or English, in anglophone schools). Other examples of people who could be affected include those contacting the CNESST following a workplace injury, Youth Protection in cases of child mistreatment, the municipal housing authorities for social housing or the social assistance office to apply for welfare.

In most cases, public sector employees would not have the right to provide services in English to anglophones unless the latter are able to prove that they have attended elementary school in English in Canada. To do so, the person would have to show official documents like a letter from the school board where she or he did their elementary schooling. The only places where anglophones could receive services in English without going through such formalities would be in recognized bilingual institutions such as English-language hospitals and possibly elsewhere in the health and social services network.

These provisions are liable to jeopardize the health and well-being of a large portion of the Québec population. The bill indicates that it is possible to derogate from these provisions where “health, public safety or the principles of natural justice so require,” but there is reason to believe that this exception will be interpreted narrowly.

It is simply not realistic to expect non-francophone immigrants to learn French well enough in six months to navigate the bureaucratic system and communicate about complex and important subjects like income support, housing or healthcare. It would not be realistic even without the long waiting lists for *francisation* courses that currently exist.

As to anglophones, it is equally unrealistic to assume that they will always have in their back pocket the official documents proving that they attended elementary school in English in Canada, ready to exhibit them to public servants so that the latter will be permitted to communicate with them in English.

A recent study of francophones outside of Quebec who only had access to healthcare in English showed that quality of care and patient safety were often compromised. Other studies have shown that linguistic barriers can prevent people from exercising their rights to compensation for workplace accidents or to old-age pensions.

For all of these reasons, we recommend that sections 6, 7 and 15 of Bill 96 be withdrawn.

This would have the effect of removing the provisions prohibiting communication with natural persons in languages other than French and maintaining the status quo in the matter. Currently, the *Charter of the French Language* does not regulate oral communication between the state and natural persons, and its section 15 allows the administration to respond in writing in languages other than French to persons who address it in those languages.

We believe that our recommendations reflect the vision expressed by Camille Laurin in the *Livre blanc*, introduced along with Bill 101 in 1977:

“La Charte a été rédigée, volontairement, de façon à promouvoir les droits du français sans pour autant enlever aux individus la possibilité d’utiliser la langue de leur choix dans la vie de tous les jours. (...) Les individus pourront continuer à s’adresser à l’Administration en anglais et recevoir une réponse dans cette langue; mais dans le cas des personnes morales, la situation sera différente (...). La même formule a été utilisée en ce qui concerne les relations entre les individus et les services de santé, les services sociaux, les ordres professionnels, les syndicats, les entreprises avec lesquelles ils font affaires; tout Québécois pourra exiger l’utilisation de la langue française, mais rien n’empêchera l’utilisation d’une autre langue lorsque tous les intéressés en conviendront.” (p. 49-51).

The Language of Communication Between Individuals and the State in Quebec: Threats to Economic, Social and Health Rights Posed by Bill 96

Introduction

The proposed *Act respecting French, the official and common language of Québec* (hereinafter Bill 96) is the most significant change to Quebec's language laws since the *Charter of the French Language*, CQLR c C-11 [hereinafter *current CFL*] was enacted by Bill 101 in 1977. Bill 96 is intended to affirm that French is the “only official language of Québec” and the “common language of the Québec nation” (Bill 96, Explanatory Notes).

To this end it makes a large number of changes to existing laws touching multiple aspects of life. The vast majority of these involve adjustments in areas that have been regulated for decades already, such as the language of work, commercial signs and contracts, and schools. In this brief we will not be discussing any of these aspects of the Bill. We will also not discuss issues regarding the rights of Indigenous peoples, as those are extremely complex issues which exceed the scope of this brief.

We will discuss only Bill 96's proposed changes to **written and oral communication between the civil administration and natural persons**. The current CFL guarantees that every person has the right to have the administration, health and social services and various other organizations and companies communicate with them in French (current CFL, s.2). The CFL also prescribes that written communication between the administration and moral persons (such as corporations) must be in French (current CFL, s.16), but does not regulate oral communication between the state and natural persons at all. The current CFL also allows the administration to respond in languages other than French to individuals who address it in those languages (s.15). Bill 96, on the other hand, contains a brand-new prohibition on oral or written communication by the administration with individuals in languages other than French, subject to a limited number of exceptions.

We believe that this change presents a grave risk to the exercise of **economic, social and health rights** by a large number of Quebecers by limiting their ability to communicate with the state in languages other than French. Some of those affected will be anglophones (defined as people whose mother tongue is English) who will not be permitted to receive services in English due to their country of schooling. Others will be allophones (defined as people whose mother tongue is neither French nor English), who are at risk both of losing access to government services in their own languages and also of losing the option to access services in English if they can communicate more effectively in that language than in French.

For both groups, the bill is likely to limit or compromise their access to **income security programs, social security, public services**, and in some cases even **healthcare**. This will have unintended negative consequences on their economic security, social inclusion, educational achievement and health. We therefore believe that Bill 96's restrictions on communication between the state and natural persons in languages other than French should be abandoned.

In Section I we will present research and arguments about the importance of linguistic access to economic, social and health rights in general. In Section II we will examine specifically how Bill 96 will impact individuals' ability to receive services in languages other than French. And in Section III we will present specific recommendations for modifications to Bill 96 that would remove the risk it poses to access to services which are essential to people's health and wellbeing.

Section I: Consequences of Linguistic Barriers on the Exercise of Economic, Social and Health Rights

Economic, Social and Health Rights

Human rights can be classified as being either negative or positive. Negative rights, including civil and political rights, are rights *against* interference. Positive rights, including economic and social rights, are rights *to* services or resources (Fabre, 1998).

Positive economic and social rights are recognized by the *Universal Declaration of Human Rights*, which guarantees in Articles 22 through 25 an adequate standard of living, social security, and fair working conditions (UN General Assembly, 1948). The Quebec *Charter of Human Rights and Freedoms*, in Chapter IV of Part I (entitled "Economic and Social Rights"), guarantees among other things that "[e]very person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living" (s. 45).

In this brief, we will focus primarily on those economic and social rights which impact most directly on "an acceptable standard of living," such as income support programs and workplace regulations, as well as the right to healthcare.

Implementation of Economic and Social Rights in Quebec

As explained in the Universal Declaration of Human Rights, the right to social security depends on "realization," by state and international efforts, of economic and social rights (UN General Assembly, 1948, Art. 22). In Quebec, the government seeks to realize the economic and social rights contained in its *Charter of Human Rights and Freedoms* through a set of income support programs, regulations and social services. In addition to healthcare and education, some of the most important of these programs are:

- **Social Assistance** and **Social Solidarity**, commonly known as "welfare" and "disability." Administered through Emploi-Québec.
- Retirement pensions (the **Quebec Pension Plan**). Administered through Retraite Québec.
- **Family Allowance** payments for families with children under 18 years old. Administered through Retraite Québec (but dependent on proof of income through Revenu Québec)
- The regulation of **labour standards**, and **worker's compensation** for people injured at their workplace. Administered by the Commission des Normes, de l'Équité, de la Santé et de la Sécurité du Travail (CNESST).

- The **Quebec Parental Insurance Plan** (Régime québécois d'assurance parentale) for those who take leave from work to care for infants.
- **Social housing.** Administered by municipal bodies such as the Office municipal d'habitation de Montréal. Also dependent on proof of income through Revenu Québec.
- The right to **safe and salubrious living conditions.** Administered through the Tribunal administratif du logement.
- Financial compensation for **victims of automobile accidents.** Administered through the Société de l'assurance automobile du Québec.
- Financial compensation for **crime victims.** Administered through the Régime d'indemnisation des victimes d'actes criminels (IVAC).
- The **Shelter Allowance Program, Solidarity Tax Credit** and other refundable tax credits. Administered through Revenu Québec.

Together, and in combination with federal programs such as Employment Insurance and Old Age Security, these programs form a vital safety net which allows Quebecers to survive through periods of unemployment, sickness or other difficult circumstances.

The Importance of Access to Economic and Social Rights

Economic and social rights such as the right to an acceptable standard of living can be available in theory (in charters of rights) and in practice (through specific government programs), but still be out of reach to many people due to problems of **access**. Bowen (2015) states that access to services refers “non seulement à la disponibilité des services, mais aux caractéristiques de ces services qui les rendent faciles d'utilisation pour les destinataires” (p. 20). Barriers to access can include geographic remoteness, lack of information or bureaucratic complexity.

A recent article described access problems as “the ‘time tax’—a levy of paperwork, aggravation, and mental effort imposed on citizens in exchange for benefits that putatively exist to help them” (Lowrey, 2021). In situations of unavailable information and complex eligibility requirements and applications the government is effectively “shifting the burden of public administration onto individuals,” which discourages these individuals from seeking assistance (Lowrey, 2021).

Access problems can be difficult enough for literate and highly educated people operating in their mother tongues. But they can be even more difficult, even seemingly insurmountable, for people navigating these complex systems in their second or additional language. The availability of government services and programs in a language in which the user can communicate effectively – linguistic access – is therefore fundamental in order to guarantee equitable access to economic, social and health rights without distinction based on language to every person living in Quebec, as will be explained in the following sections.

Linguistic Barriers to Healthcare Access

For allophones who are not fluent in either English or French, Bill 96 may compromise their access to healthcare, as will be explained in detail in Section II. We will therefore examine in this section the research surrounding linguistic access in the healthcare field, and in the next section examine linguistic access to social security and social services more generally.

Traditionally, scholars conceived of access to health care as involving primarily questions of geographic proximity and waiting times. But more recently an understanding has developed that access problems can also involve social and cultural factors such as language, sex and education level (Bouchard et al., 2012).

When healthcare or other public services are not available in a language in which the recipient can communicate effectively, that can lead to a large number of negative outcomes including problems with informed consent and increased likelihood of readmission to the hospital and emergency room (Bowen, 2015). There is a consensus among researchers that linguistic barriers have a negative impact on access to healthcare (Rocque & Leanza, 2015) and patient satisfaction (Farooq et al., 2015). There is also a growing awareness that they negatively impact patient security, safety and appropriateness of care, sometimes leading to adverse events and medication errors (Bowen, 2015; de Moissac & Bowen, 2019; Goodwin, 2018).

Two particularly vivid examples illustrate this. First, a recent study of Canadian francophones outside of Quebec found that language barriers negatively impacted quality of care and patient safety. It gave an example of a francophone woman who was unable to effectively communicate her symptoms to her English-speaking physician, who treated her for a urinary infection while overlooking her cancer of the uterus, of which she later died (de Moissac & Bowen, 2019). In the United States, a Spanish-speaking patient was left quadriplegic after being treated for a drug overdose rather than accidental ingestion of poison because doctors at the Emergency Room misunderstood the family's description of events (Goodwin, 2018).

In Quebec too, research has widely documented language barriers in the health system, for both anglophones and allophones (Hanrahan et al., 2016; Merry et al., 2011; Rink et al., 2017; Ruiz et al., 2013; Mianji et al., 2020). Significant language barriers persist despite Quebec's legal framework providing for English services and for interpretation (Falconer & Quesnel-Vallée, 2014; Vissandjee et al., 2015).

Linguistic Barriers to Access for Other Social Services

It is in the area of social security that the threat to linguistic access posed by Bill 96 is the most explicit, both for allophones lacking sufficient mastery of French and for anglophones not eligible for English-language services. The literature is clear that language can constitute the same kind of barrier to access for other social services as it does for health, with many of the same consequences. In the case of old-age and retirement pensions, there is evidence that lack of fluency in the host country's language can be a barrier to public pension uptake among immigrants, even for those who meet all of the eligibility requirements (Curtis et al., 2017). Intervenants from PRAIDA (Programme régional d'accueil et d'intégration des demandeurs d'asile) have reported the need for accompaniment of allophone asylum seekers as they navigate social welfare systems (Bentayeb et al., 2021).

And in a qualitative study of people who had suffered workplace accidents in Quebec and Ontario, Premji et al. (2021) find many ways in which language barriers have impeded access to worker's compensation. They find that workers with language barriers are often late to report accidents and that they often have to go through the process of filing their claim without being able to fully understand the written and oral communication they receive from the government. This leads to consequences which are "dévastatrice"

(Premji et al., 2021, p. 15) such as delays in diagnosis of their injuries, lower financial compensation, and avoidable long-term handicaps.

These same access problems could also impede access to other social security measures. For instance, applicants for Social Assistance and Social Solidarity have to complete a lengthy application form, respond in due time to government requests for additional documents, and communicate any changes in their financial situation to Emploi-Québec (Emploi-Québec, 2021a; Emploi-Québec, 2021b). Linguistic barriers can significantly impede all of these steps, potentially leading to erroneous findings of ineligibility for financial assistance or reduced amounts, or delays in their access to critical benefits and services. The situation is similar for the other income support programs listed above in this section, for instance family allowance, refundable tax credits or workers' compensation. Errors in the application process for any of these can threaten a person's very livelihood and security (Côté et al, 2015; Hanley et al, 2014) .

The Social Determinants of Health

Linguistic access to social services is tied to health in another way as well. There is a consensus among researchers that inadequate realization of economic and social rights have a direct and significant negative impact on physical and mental health outcomes. Under the social determinants of health model, research is focused on “the societal factors that shape the health of individuals and populations” (Bryant et al., 2011, p. 45). Working under this framework, scholars have found that factors such as income, socioeconomic status, conditions during childhood, housing, and access to services all have significant impacts on health. According to the World Health Organization, “poverty and low living standards are powerful determinants of ill-health and health inequity” (WHO, 2008, p. 84). This research has helped policymakers around the world take these determinants, and their equitable or inequitable distribution in society, into account in order to improve health outcomes.

Research has also shown that, for immigrants, language barriers themselves are a significant independent social determinant of health (Ng et al., 2012). And the effects of these determinants are cumulative: language barriers can both contribute to and compound other social determinants such as low income and socioeconomic status.

Limitations of Other Solutions for Reducing Linguistic Barriers

We believe that the most direct and efficient way to reduce linguistic barriers to access to social services is for the government to provide access to its services in minority languages where possible. The current CFL leaves the administration a great deal of flexibility with regard to communication with individuals. The administration must in all cases ensure that public services are offered in French and, in certain specific cases, English, but for other languages it retains a great deal of flexibility to adapt its services to users' linguistic needs as it sees fit. This can be done either by using translators and interpreters or directly by civil servants who speak languages other than French and English.

Some would argue that linguistic obstacles could be overcome in other ways if the government were to communicate only in the majority language. Two such possibilities will be examined here, along with the reasons that they alone are inadequate to reduce linguistic barriers to access.

a. Improving French Fluency Among Service Users

This objection to providing services in minority languages could be stated as follows: “*if a person cannot understand the language in which social services are offered, that person merely has to improve his or her fluency in that language in order to eliminate this barrier to access.*”

Indeed, Bill 96 contains a new right to French-language instruction for every person domiciled in Quebec (Bill 96 s.4, new CFL s. 6.1; Bill 96 s.62, new CFL s.88.11 & 88.12). This is a very positive development. However, improving service users’ eligibility for French instruction is by itself insufficient to eliminate or seriously reduce the barriers to access described above, for the following reasons.

First, research has long demonstrated that it is much more difficult for adults to learn a new language than it is for children. More importantly in this context, this decline in language-learning ability continues throughout the lifespan, meaning that immigrants and refugees over 40 will likely have a significantly harder time learning French than 20- or 30-year-olds (Wang, 1999). So, for some people it may be so difficult as to be almost impossible to reach the level of French fluency necessary for communication with the government about complex issues.

Second, research also shows that there are significant practical and logistical barriers facing many people who wish to pursue and remain in Quebec’s *francisation* classes, even if they are theoretically young enough to thrive in them. Recent studies have found that many asylum seekers in Quebec are not in practice able to complete their *francisation* studies because of obstacles such as the lack of free child care, long waiting lists for registration, and inflexible hours that conflict with their ability to reconcile work, family and study responsibilities (Hanley, Cleveland et al, 2021; Ives et al, forthcoming; St-Laurent et El-Geledi, 2013; Papazian-Zohrabian et al. 2021). Research has also documented the difficulties of Temporary Foreign Workers, particularly caregivers and farmworkers, in accessing *francisation* courses due to their visa obligation to work full-time or lose their status in Canada (Hanley et al, 2019).

Furthermore, Papazian-Zohrabian et al. (2021) documented that parents who are vulnerable (such as refugees or asylum seekers) or have a low level of previous education are often prevented by family obligations (such as staying home with sick or handicapped children or being called to parent-teacher meetings) from regularly attending their *francisation* classes. This can lead to abandonment or expulsion from the programs for repeated absences. The same research highlights the specific difficulties that these immigrant adults face resulting from their pre-migratory traumatic experiences and losses as well as their stressful post-migratory lives. In the study, 89.3% of the interviewed education workers as well as 55.6% of the interviewed learners mention these difficulties as among the main impediments to the *francisation* process.

The research is therefore clear that the theoretical availability of French instruction is not always a guarantee that it will be accessible in practice, and a mere 6 months of study under such difficult circumstances does not turn a migrant learning French for the first time into a fluent French-speaker. Bill 96 does not remedy these access problems.

Third, even once a person acquires sufficient competency in French such that communication with the state in that language is possible, they can still have difficulty communicating effectively in more difficult or stressful situations. There is ample research demonstrating that knowledge of a second or additional language does not necessarily give a person sufficient competence to speak comfortably about complex

or sensitive subjects in that language (Bowen, 2015). This phenomenon is especially acute when a person “est en détresse, exprime des émotions, ou analyse et interprète des événements” (Drolet et al., 2015, p. 8). Discussions about eligibility for income or other social security can be complex, technical and, especially in situations of acute financial strain, emotional. In order to prevent outcomes that can have serious negative impacts on a person’s financial security, services providers should strive toward a linguistic match – or “concordance linguistique” (Drolet et al., 2015, p. 8) – between the service user and the service provider, if such a match is logistically feasible.

This means that, among the languages which the civil administration is able to offer, it is the service user that should be able to choose the one in which he or she is most able to have these complex discussions. In many cases this will be the person’s mother tongue, which for anglophones is English. For allophones, written materials in their mother tongues are rarer, but they do still exist in some government departments (such as CNESST, 2021). And oral communication with state agents in an allophone’s mother tongue is also sometimes available, either through telephone translation (which is used in Montreal’s 211 social and community information system, for instance) or directly with the agents themselves (who are increasingly multilingual due to the diversity of the public workforce, especially in Montreal).

But even in situations in which agents of the civil administration cannot communicate in a service user’s mother tongue, that person should be able to decide which of the languages that the government does offer he or she wishes to use. For some allophones this will be French; for some it will be English now but French later as their French improves; and for some adult immigrants it may always be English (for instance if they learned English in childhood but only started learning French later in life). With the health and social consequences of loss of income and social security potentially so devastating for vulnerable people, the goal should not be merely to improve a person’s French until they are minimally competent to communicate in it with the government, but rather to offer them services in a language in which they are able to understand complex subjects.

b. The Use of Informal Interpreters

A second objection to providing services in minority languages might be: “*a person who cannot understand the language of the state can rely on friends, family members, or community groups when they have to communicate with the government.*”

Informal interpreters such as family members or friends can sometimes be necessary in emergency situations in which no other options for communication are available (Pollock, 2020). But research has made clear that they are wholly inadequate as a permanent or systemic solution (Alhomoud et al, 2013; Hadziabdic & Hjelm, 2013; Van Eechoud et al, 2016). Bowen (2015) discusses studies which have found dozens of translation errors, omissions or additions in transcripts even of short meetings with informal interpreters. Such translation errors in the healthcare field can threaten a person’s life, and in the social services can threaten a person’s livelihood.

Premji and colleagues (2021) point out that the use of informal interpreters in the worker’s compensation and workplace safety field can be a problem not only for the accuracy of translations but also for discretion, confidentiality and informed consent. They conclude that just and equitable access to worker’s compensation services must come not from the use of informal interpreters but rather from the “*amélioration des compétences linguistiques des intervenants*” at the CNESST (p. 16). It is easy to imagine

how this may also apply to other income security programs. People may feel extremely uncomfortable or even ashamed to discuss the details of their financial situation with the friends or family members who are most often available to serve as informal interpreters.

Finally, reliance on family members or community organizations for interpretation represents a significant downloading of responsibility for service provision from the state to the private and charitable sectors. This can have significant negative impacts on equality of treatment due to insufficient resources and service gaps or duplication in that sector (Hall & Reed, 1998). It can also place significant time and financial burdens on community organizations who will not be equipped to handle the increased amount of translation they will be called upon to do for non-French-speaking individuals in their communities. And if people have to turn to family members for help with interpretation in communicating with the government, it introduces dependency, removes confidentiality and, especially in the case of child interpreters, can expose those family members to information that may be disturbing or beyond their maturity (Farooq et al, 2015; Rocque & Leanza, 2015; Kalich et al, 2016). Confidentiality can also be an issue for interpreters from co-ethnic community groups (Hemmings et al., 2016). In both cases, community or family interpreters, the quality of interpretation may not be sufficient.

Conclusion of Section I

It might never be possible for the state to offer services in all the languages spoken by its population (although with rapid advances in communication technology and machine translation, it may someday be more possible than it now appears). But the literature is clear that it is extremely important for people to have access to government services in a language in which they can communicate effectively, not just at a basic level, especially in areas such as health and social security in which the consequences of inadequate communication can be so devastating.

In Quebec, the capacity for the government to offer those services is already present for English, and is in many cases present for other languages as well, either in written or oral form. To artificially limit that capacity, and furthermore to do so only for some people but not for others, imperils equitable access to social, economic and health rights. Yet that is the approach taken by one particular aspect of Bill 96, as will be discussed in the following Section.

Section II: Analysis of Bill 96's Provisions Concerning Communication Between the State and Individuals

Current Situation of Access to Services in Languages Other than French

The current, pre-Bill 96 legislative framework surrounding access to government services in languages other than French for natural persons in Quebec is complex, and involves the interaction of the CFL and other statutes.

Health and social service institutions are governed by the *Loi sur la santé et les services sociaux*, CQLR c S-4.2 (hereinafter LSSS), and are defined as including CLSCs, hospital centres, child and youth protection centres, residential and long-term care centres (CHSLDs), and rehabilitation centres.

The LSSS provides that “English-speaking persons are entitled to receive health services and social services in the English language”, taking into account institutional resources and the access program mentioned at s. 348. Under this latter provision, each regional agency (nowadays, the CIUSSS and CISSS) “must develop a program of access to health services and social services in the English language for the English-speaking population of its area” (s. 348). This program includes access to institutions recognized as bilingual under s. 29.1 of the CFL “which are required to make health services and social services accessible in the English language to English-speaking persons”. However, the access program may also provide for access to services in English for “English-speaking persons” in francophone institutions, depending on the needs of the population.

Importantly, the LSSS category of “English-speaking persons” is not limited to those who attended elementary school in English in Canada, contrary to Bill 96. The potential conflict between the two statutes is discussed below.

The LSSS also includes a much weaker provision for minority languages other than English, namely a statement that the organizational structure of the health system should be “designed [...] to foster, to the extent allowed by the resources, access to health services and social services in their own languages for members of the various cultural communities of Québec” (LSSS, s. 2(7)). As explained in the next section, the relative weakness of this provision allowing healthcare services for allophones in their own languages means that those services may be very vulnerable to the changes contained in Bill 96.

Other agencies of the civil administration not governed by the LSSS also offer social services. This includes agencies such as Centres locaux d’emploi and Revenu Québec which administer the income security programs listed above in Section I, such as Social Assistance and refundable tax credits. It also includes agencies such as the CNESST which both offer income security programs (workers’ compensation) and also administer regulations around workplace conditions, another important facet of economic and social rights. Since these agencies are not subject to the LSSS, they generally are not subject either to the LSSS’s requirements of providing access in English where resources allow.

However, in practice these institutions almost always have written documents in English available to any natural person who requests them, and also often have agents who can communicate orally in English in person or by telephone. Services in languages other than English are available less often, but there are some written materials available in other languages, such as the Spanish literature put out by the CNESST (2021). There is also a widespread use of interpreters for oral communication in immigrant languages in healthcare and other institutions, such as Montreal’s 211 information and referral service which offers “[a]ide multilingue (200 langues)” (Montréal, 2021). Additionally, there do not currently appear to be any restrictions on oral communication in other languages with natural persons by individual state agents who are able to speak those languages themselves.

Services in languages other than French are generally not available to **moral persons** such as corporations.

This situation – in which natural persons can communicate with the State in languages other than French when the State has such a capacity – is explicitly allowed by the current *Charter of the French Language*. Currently, s. 89 of the CFL states that “[w]here this Act does not require the use of the official language exclusively, the official language and another language may be used together”. S.15 of the current CFL allows (but not does not require) communication in languages other than French for “correspondence between the civil administration and natural persons when the latter address it in a language other than French.” As to oral communication between the State and individuals, it is not regulated by the current CFL. This division between the rules for natural and moral persons is not merely accidental: it stems directly from the vision of the framers of Bill 101, as will be discussed further in Section III.

Changes Contained in Bill 96

Section 7 of Bill 96 abolishes s.15 of the current CFL, which has permitted state agencies to communicate in languages other than French with natural persons who request it ever since the CFL was enacted in 1977. In its place, Bill 96 contains a requirement for the “civil administration” to use the French language “in an exemplary manner” (Bill 96 s.6, new CFL s.13.1). An “exemplary manner” is defined as the **exclusive** use of French in written or oral communications, even with natural persons, with the following relevant exceptions (Bill 96 s.6 & 15, new CFL s.13.2 & 22.2-22.5)¹:

- Individuals who have attended elementary school in English in Canada (new CFL s.22.2 and 22.3(2)(a)) will retain the right to communicate in English;
- People with a history of having communicated with a particular agency of the civil administration “only in English” before May 13, 2021 (new CFL s.22.2) will retain the right to communicate in English but only with that particular agency;
- “[I]mmigrants within Québec society during the first six months following their arrival in Québec” (new CFL s.22.3(2)(c)) will retain the right to communicate in English or other languages;
- “Aboriginal persons” (new CFL s.22.3(2)(b)) will retain the right to communicate in English or other languages;
- Where “health, public safety or the principles of natural justice so require” (new CFL s.22.3(1)).

Four specific points about this very significant change are worth examining before proceeding to a description of the groups of people whose linguistic access to social services will be negatively affected.

1. Definition of “Civil Administration”

The “civil administration” which will be subject to this new requirement to use exclusively French (subject to the above exceptions) is defined very broadly in Bill 96, Schedule I, Section A. In particular, it includes:

- All government departments and bodies, including those that administer essential income and social security programs;
- The Commission des services juridiques and regional legal aid centres;

¹ There are other exceptions which are not relevant to our topic (for instance, communication with tourists) which will not be discussed in this brief.

- The Commission des droits de la personne et de la jeunesse ;
- The Corporation d'urgences-santé de la région de Montréal Métropolitain;
- The Sûreté du Québec ;
- Municipal bodies. For example, this would include l'Office municipal d'habitation de Montréal which administer programs vital to economic and social security such as social housing;
- Public transit authorities;
- School bodies. For example, this might prevent teachers from communicating with immigrant parents about their child's academic progress in a language the parents can understand
- Bodies in the health and social services network

The municipalities, healthcare institutions and school bodies that possess recognized bilingual status are allowed to continue serving people in English or French, but would lose the right to communicate with them in other languages (Bill 96 s.19, new CFL s.29.23).

2. Scope of the Exception for "Immigrants"

Bill 96 states that the civil administration can use languages other than French for oral and written communication aimed at "providing services to welcome immigrants within Québec society during the first six months following their arrival in Québec". The scope of this exception is unclear, for two main reasons.

First the term "immigrants" (in French, "personnes immigrantes") is not defined. According to the *Grand dictionnaire terminologique de l'Office québécois de la langue française*, a "personne immigrante" is a "person arriving in a foreign country in order to settle there" (*our translation*). The term "immigrant" therefore clearly includes permanent residents. As to other newcomers, the situation is less clear. Perhaps the government wishes to include all newcomers within this category. However, the dictionary definition tends to suggest that individuals with a temporary work or study visa might not be considered "immigrants" because their visa does not indicate an intention of settling in Quebec. Everything depends on the interpretation of the term "settle" ("s'établir") – does it only cover people who intend to settle permanently in Quebec or also those who wish to settle in Quebec for a few months or years? The situation of people who are seeking permanent status but have not yet achieved it is also ambiguous. This would include asylum seekers and persons for whom a family sponsorship application is pending. If certain newcomers are not considered "immigrants" under Bill 96, they would have to communicate only in French with the administration as soon as they arrive, unless they come under another exception.

Secondly, one might wonder why the legislator wrote "providing services to welcome immigrants within Québec society during the first six months following their arrival in Québec" rather than simply "providing services to immigrants during the first six months following their arrival in Québec". Could this imply an intention to limit the use of languages other than French to certain specific services linked to welcoming immigrants, rather than the full range of services provided by the civil administration? This seems unlikely, but further clarification is needed.

3. Implementation Procedures

The implementation of the exemptions above is likely to be fairly narrow. First, exceptions are often interpreted restrictively. Second, the scope of the exceptions depends to a large degree on the Minister of the French Language, who will adopt a “language policy of the State” to “ensure cohesive action” by all of these agencies (Bill 96 s.19 & 94, new CFL s.29.9 & 156). This language policy will establish rules to govern when an agency is permitted to make use of the exceptions contained in the Bill, and each agency will have to produce a directive “specifying the nature of the situations” in which it will make use of them (Bill 96 s.19, new CFL s.29.14). In other words, the use by an agency of a language other than French will have to be not only permitted by Bill 96 but also by the Minister’s language policy implementing the Bill and by the agency’s directives implementing the Minister’s language policy. And all of these rules will be enforced by new disciplinary measures against public servants who contravene them (Bill 96 s.114, new CFL s.204.30).

Finally, public servants and other public sector employees who fail to comply with the obligation to communicate exclusively in the languages permitted by Bill 96 would be subject to disciplinary measures (s. 114 of Bill 96, new s. 204.30 of the CFL). They are likely to be less inclined to take the risk of communicating in languages other than French with the individuals to whom they provide services, even in cases where the individual may perhaps be covered by an exception. And this is not counting the impact of the anonymous denunciation system that is introduced by Bill 96 (s. 107 of Bill 96, new ss. 165.22 and 165.23 of the CFL). Anyone who believes that “a failure to comply with this Act has occurred or is about to occur” may make an anonymous denunciation to the *Office Québécois de la langue française*. When doing so, the person is exempted from their duty to respect professional secrecy (except for lawyers and notaries), as well as various other laws protecting privacy and confidentiality, and also “any duty of loyalty or confidentiality that may be binding on the person, in particular with respect to an employer or a client”. These provisions, combined with those concerning disciplinary measures, are very likely to have a chilling effect on the use of languages other than French in the public sector, even in interactions where it is permitted in theory. Furthermore, the infringement on the duty to respect professional secrecy, confidentiality and loyalty to clients is profoundly troubling in and of itself.

4. Interaction Between Bill 96 and the LSSS

Bill 96 does not explicitly modify the LSSS. However, there appears to be a conflict between Bill 96 and certain provisions of the LSSS concerning the languages used in health institutions, particularly for communications with allophones in their mother tongues.

The LSSS establishes “an organizational structure of human, material and financial resources designed to (...) foster, to the extent allowed by the resources, access to health services and social services in their own languages for members of the various cultural communities of Québec” (LSSS, s. 2(7)). Combined with Bill 96’s exemption in cases where health so requires, this may indicate that the government recognizes the special dangers posed by mutual incomprehension between patient and healthcare provider, and wishes to allow the use of other languages or interpreters in healthcare settings to continue.

However, unlike the LSSS’s guarantees of services in English, s.2(7), the section on other languages is just a general statement of intentions and does not seem to create a substantive right. This means that

courts, future governments or agencies are likely to conclude that s.2(7) of the LSSS is overridden by the Bill 96's substantive obligation for the government to use French only (Bill 96 s.6, new CFL s.13.2). Therefore, unless the exception permitting public sector employees to communicate in languages other than French where "health, public safety or the principles of natural justice so require" is interpreted broadly, healthcare services for allophones in their own languages are likely to be prohibited except for "immigrants" who have been in Quebec for less than six months.

This is not only the case for French-language healthcare institutions, but even for the historically anglophone hospitals and other healthcare institutions recognized as bilingual under current CFL s.29.1. This is because Bill 96 allows these recognized bilingual healthcare institutions to depart from the general requirement to communicate in French only, but only by using "*the* other language allowed under its recognition," (Bill 96 s.19, new CFL s.29.23, emphasis added), which is of course English. This means that recognized bilingual healthcare institutions may be able to communicate with allophone patients in French or English, but not in their own mother tongues.

We therefore fear that exception authorizing communication in languages other than French where "health, public safety or the principles of natural justice so require" (Bill 96 s.15, new CFL s.22.3(1)) is not strong enough to protect the right to communicate with allophones in their own languages in the health and social services network, whether directly or through interpreters. The wording of the provision suggests that it is limited to exceptional circumstances. One assumes that a Spanish-speaking nurse would be permitted to communicate in Spanish with a dying Spanish-speaking patient arriving in the emergency department after having been hit by a truck. However, it is less clear that one might rely on this provision in more routine contexts such as a program to make the Info-santé line available in languages other than French or English, or the production of pamphlets in multiple languages about vaccination of children.

Regarding access to health and social services in English for "English-speaking persons", the impact of Bill 96 is less clear. The only certainty is that the bilingual institutions recognized under s. 29.1 of the CFL will retain the right to provide services in English to whoever wishes to receive them. On the other hand, it is unclear what will happen to services in English in francophone institutions. Will francophone institutions retain the right to offer services in English to all "English-speaking persons" as provided by section 15 and 348 of the LSSS? Or will they have to restrict these services to people who went to elementary school in English in Canada, as required by Bill 96?

Groups at Risk of Reduced Access to Services

In practice, then, the exemptions linked to health, public safety, and natural justice will likely be narrowly construed. And unless a person can show that they are exempted by a personal-status exemption (such as English eligibility or being in Quebec less than six months), civil administration bodies will not be allowed to communicate with them in writing or orally in any language other than French. As explained above in Section I, this could lead to devastating consequences for these individuals' access to social rights, income security, and health. The people who are likely to be adversely impacted by the new restrictions to the language of communication between the State and individuals may be divided into three categories.

a. Communication Limited Exclusively to French

People who did not attend elementary school in English in Canada and who have no history of communicating with Quebec's civil administration in English will generally have to communicate solely in French with the civil administration. The main exceptions to this rule are "immigrants" who have been in Quebec for less than six months and indigenous people. In addition, the health and social services network will still have to take the necessary measures at the regional level to offer services in English as well as in French, consistent with ss. 15 and 348 of the LSSS.

This group is mainly composed of newcomers, but also includes certain people who have lived in Canada for many years. Individuals who did not attend elementary school in English in Canada will not be entitled to receive services in English (except in the health and social services network), even if they have been Canadian citizens for decades. And even if they are mother-tongue anglophones who were educated in English outside of Canada (for instance in the United States or Jamaica).

These groups are likely to experience difficulty accessing social security programs that are currently available in English, such as social assistance, and also services that are currently available in other languages, such as the CNESST literature available in Spanish. As previously discussed in Section I, barriers to accessing economic and social rights in their mother tongue (or in English for allophones who communicate more effectively in English than in French) may have devastating effects on these persons' economic security and health.

b. Partial Access to Services in English

According to new CFL s.22.2, people who are otherwise ineligible for government services in languages other than French, but who have a history of communicating with a specific agency of the civil administration in English before May 13, 2021, may continue to communicate with that specific agency in English (but not others). This provision may have been intended as a grandfather clause for anglophones who currently live in Quebec but did not attend elementary school in English in Canada. If that was its intention, it is inadequate to this task for the following reason.

Many economic security programs are designed to be used for the first time only when needed, often on an emergency basis. An anglophone who attended elementary school in English outside of Canada and has lived in Quebec for several decades may well have built up an array of agencies with which he or she has communicated in English already and will therefore be grandfathered in, such as Revenu Quebec when filing income taxes or the SAAQ for a driver's license. But this array will *not* include emergency-based economic assistance programs, because this person will not yet have communicated with the particular agency overseeing them. Social assistance is administered by Emploi-Québec: an anglophone who has never experienced unemployment will likely never have dealt with them before and will therefore not be grandfathered in for that agency. The situation will be similar for workplace injuries (the CNESST) and perhaps for retirement pensions and child allowance (Retraite Québec). People in this category could therefore be grandfathered in for all government agencies *except* for the ones for which they have the greatest and most urgent need.

Furthermore, s.22.2 grandfathers people in based on past communication in English only, not in other languages. So, for example, a Spanish-speaker who has previously received written communications in

Spanish from the CNESST, or who has spoken to individual CNESST agents in Spanish, will lose that right once Bill 96 becomes law. Their history of communicating with the government in Spanish will not give them the same grandfathered rights available to anglophones.

c. Access to Services in English in Theory, but not in Practice

A third group of people who may have difficulty exercising their undeniable right to access government services in English is made up of certain native-born Canadian anglophones living in Quebec who attended elementary school in English. These people are part of Quebec's "anglophone community" under even the most restrictive definitions. Unlike the first two groups, they will theoretically continue to be eligible for service in English by agencies of the civil administration regardless of whether or not they have dealt with them before. But making use of this right in practice will require them to prove to the government's satisfaction where they attended elementary school. This may be difficult or impossible for some of them, for the following reasons.

As discussed above in Section I, complex bureaucratic requirements for accessing government programs or social services function as a significant barrier to their use (Lowrey, 2021). These can include requirements for producing identification, filling out forms or contacting different agencies. These barriers are compounded for people living in stressful situations, with low income or with mental health issues. And they are compounded again for people with language or literacy barriers.

Canadian anglophones contacting a specific government agency for the first time will now be required to prove to the government's satisfaction that they attended elementary school in English in Canada in order to receive information in English. This may not pose a problem for some anglophones, such as those who have already gone through the same process when registering their children for English schools. But for people living in poverty or precarity this new requirement will place significant new barriers between them and necessary financial support, with potentially devastating effects on their health and well-being.

Imagine for instance a 59-year-old man in Montreal living in a situation of homelessness, with no children, who grew up in Ontario but has been living in Quebec for the past several decades. He may be grandfathered in to communicating with Emploi-Québec in English for his Social Assistance. But once he turns 60 he will have to start communicating with a new agency, Retraite Québec, for his retirement pension. In order to do so in English he will have to go through the process of contacting his elementary school in Ontario (which may have closed decades ago) and requesting that they verify his attendance to the Quebec government's satisfaction. And he will have to do this quickly in order not to lose out on necessary income for which he is eligible.

The process of proving eligibility for English schooling for children is very complex, and includes a large number of necessary supporting documents such as letters from the parents' school board, proofs of Canadian citizenship, and long-form birth certificates (EMSB, 2021). The requirements surrounding proof of English eligibility were designed by the architects of the CFL for English school access, and are not unduly problematic in predictable and non-urgent situations like registering a child for school. But in the context of an application for emergency financial assistance, for instance, trying to prove one's attendance at a specific elementary school years earlier is a barrier that may be so difficult as to be impossible.

Paradoxical Effects of these New Requirements

If Bill 96 is adopted in its present form, civil administration employees will be barred from communicating orally or in writing with people in the first group in languages other than French. For members of the two other groups, there will be obstacles to communicating in English with the civil administration, although communication in English will continue to exist and be available to those who are eligible. This may lead to some paradoxical outcomes.

For written communication, the prohibition will apply even though English versions of commonly-used written materials will continue to be produced and sent to those who are eligible for them. For instance, Emploi-Québec will still have English versions of form letters requesting specific documents for Social Assistance applicants on hand, but will be prohibited from sending them out to non-English-eligible applicants. Revenu Québec will still produce English versions of its Notices of Assessment, but will not be allowed to send them to anglophone Quebecers who lack English eligibility or to allophones who understand English better than French. There is therefore no efficiency argument to be made for these restrictions, as the necessary translation work will continue to be done.

For oral communication too, English-speaking telephone and in-person agents will continue to be employed by government agencies to serve the English-eligible population. But they will be prohibited from speaking in English or other languages with non-English-eligible service users, even if the agents themselves wish to do so in order to facilitate communication, under pain of disciplinary sanctions (Bill 96 s.114, new CFL s.204.30). This is a significant threat to the rights of public-sector workers.

Agents will also be authorized to speak in English with a person in order to verify whether that person is eligible for English services under one of the exceptions enumerated above in this Section (Bill 96 s.6, new CFL s.13.2(2)(b)). But if it is determined that the person is not eligible, the agent will have to switch to speaking French.

It is easy to imagine the psychological effect this may have on vulnerable people seeking income support in times of crisis, both anglophones and allophones who communicate more effectively in English than in French. Such a person might, for instance, arrive at an Emploi-Québec office and ask an agent in English for information about Social Assistance. The agent would then proceed to ask a series of complex questions in English about where the person went to school, where their parents went to school, their citizenship status, and how long they have lived in Quebec. But once it is determined that the client is not English-eligible, the agent would abruptly stop this fluent English conversation and switch to a language that the client does not understand. The client might see this as a sign of rejection or exclusion, and it will likely discourage them even more from seeking the assistance they need and to which they are entitled.

Paradoxically, then, services in English will *not* be available to those who may need them the most (such as refugees who arrived in Quebec seven months before and are still negotiating completely unfamiliar income support services). But they *will* continue to be available to those who need them the least (such as those who grew up in Quebec, completed 11 years of French classes as children and are dealing with the same government agencies they have dealt with for decades).

Conclusion of Section II

The new restrictions on communication between the State and individuals in languages other than French risk exacerbating the already formidable barriers that keep vulnerable people from accessing the income support measures and other social services to which they are entitled. This can have potentially very serious negative consequences not only on financial security and social inclusion but on physical and mental health, as poverty and ill health are so closely linked. And these restrictions will affect not only allophones and non-English-eligible anglophones, but also anglophones who will remain eligible for English services in theory but face formidable bureaucratic hurdles in practice.

In the following section we will make specific recommendations for modifications to Bill 96 that will minimize the infringement of rights while continuing to fulfill its purpose of affirming French as Quebec's common language.

Section III: Recommendations

For all of these reasons, we recommend:

<u>the withdrawal of sections 6, 7 and 15 of Bill 96.</u>
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This would have the effect of:

- removing the obligation in new CFL s. 13.1 and 13.2 for the administration to use exclusively French in its dealings with natural persons;
- accordingly, removing the exceptions to that policy contained in new CFL s. 22.2-22.5;
- maintaining s.15 of the current CFL, which allows the government to communicate in writing in a language other than French with natural persons if they so request;
- preserving the existing situation for oral communication as under the current CFL, which does not regulate oral communication between the administration and natural persons.

This would reaffirm the wisdom of the natural/moral person distinction in the current CFL. This distinction is not mere happenstance, but rather was a deliberate policy choice made by the original architect of Bill 101, Camille Laurin.

In his *Livre blanc* (1977) introduced along with Bill 101, Laurin clearly separated the “langue des individus” (p. 49) from the sections dealing with internal government administration, corporations, and the workplace. He explained this distinction by noting that moral persons (corporations) are not human beings possessing human rights – they are merely “des entités juridiques créées par la loi” (p. 50).

Requiring moral persons to use French was therefore a measure to *affirm* the right of francophone natural persons (individuals) to use French in their own dealings with the state and state-created entities. And this was accomplished without infringing on the possibility for non-francophone individuals to use other languages in their own dealings with the state: “rien n’empêchera l’utilisation d’une autre langue lorsque tous les intéressés en conviendront” (Laurin, 1977, p. 50-51).

This is what led Laurin to include s. 15 in Bill 101 and the current CFL. And by removing this natural/moral person distinction with Bill 96, the current government is breaking from Laurin's essentially humanist vision of a common language within a plural society. A Bill 96 which incorporated our proposed change, on the other hand, would be consistent with Laurin's vision while still respecting the current government's desire to significantly strengthen the protection of French.

Conclusion

Learning French is vital in Quebec, and Bill 96's new right to French-language instruction for all Quebecers is an extremely positive step. But access to fundamental economic, social and healthcare rights should not require a prior knowledge of French. On the contrary, good health and adequate economic and social security are necessary preconditions to learning a new language and integrating into a host society.

The provisions in Bill 96 which limit communication by the state with natural persons in languages other than French therefore risk hindering the integration of new arrivals and working against the goal of making French the common language of a diverse society. By making access to essential health, social service and income security programs more difficult, these provisions risk harming the real social, cultural and economic integration of new Quebecers and linguistic minorities.

In order to guarantee equitable access to public services for everyone without distinction based on language, we believe that it is essential to preserve the current provisions of the *Charter of the French Language* allowing the administration to communicate with natural persons in languages other than French. This is entirely consistent with the desire to make French the "only official language of Québec" and the "common language of the Québec nation."

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