

The language of communication between the State and individuals in Bill 96

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Scope of the presentation

- ♦ **Bill 96:** major reform of the Charter of the French Language, multiple domains (language in the workplace, 'francisation', etc.) – over 100 pages
- ♦ **Presentation:** focuses solely on Bill 96 provisions on communication between the 'Administration' and individuals
 - ♦ Potential impact on accessibility and quality of essential public services
 - ♦ Health and social services, education, occupational health and safety, income security...
- ♦ **Interpretation of Bill 96**
 - ♦ Analysis by two legal scholars: Peter Vipond Butler and Janet Cleveland
 - ♦ Checked by several other lawyers, legal scholars

Stages – adoption and implementation of Bill 96

- ♦ Introduction: May 13, 2021
- ♦ Public consultations: Sept-Oct 2021
- ♦ Adoption in principle: Oct 2021
- ♦ **Study by a parliamentary committee: Ongoing (resumes early February)**
 - ♦ Opposition parties (and government) submit amendments and debate the entire bill, article by article
 - ♦ Provisions on communication between the State and individuals will be discussed as soon as the committee reconvenes
- ♦ Report submitted to National Assembly for debate and vote
- ♦ Adoption
- ♦ Assent by Lieutenant-Governor

Implementation of provisions on public sector communications: 1 year after assent

- ♦ National linguistic policy: defined by the Minister of the French Language (within 6 months after assent)
- ♦ Adoption of policies by MSSS, MÉQ, other public bodies: within parameters of the national linguistic policy

Bill 96: Public sector communications with individuals

- ♦ Principle: exclusive use of French by the 'Administration', subject to exceptions
 - Prohibited to use other languages, except where explicitly permitted
 - ♦ Including use of interpreters
- ♦ 'Administration': civil service, health and social services network, schools, municipalities, etc.
- ♦ Main exceptions to exclusive use of French - services provided to:
 - ♦ People who attended school in English in Canada
 - ♦ People who communicated solely in English with a government agency before May 13, 2021, but only for subsequent communications with that agency
 - ♦ 'Aboriginal' individuals
 - ♦ Immigrants during the first 6 months after arrival in Québec
 - ♦ "Where health, public safety or the principles of natural justice so require"
- ♦ Also: recognized bilingual institutions...

Recognized bilingual institutions

- ♦ Health institutions, municipalities and school boards that have recognized bilingual status under the Charter of the French Language
- ♦ Health sector recognized bilingual institutions include:
 - ♦ CIUSSS de l'Ouest de l'Île-de-Montréal
 - ♦ CIUSSS du Centre-Ouest de l'Île-de-Montréal
 - ♦ MUHC
 - ♦ Other institutions listed at <https://www.msss.gouv.qc.ca/en/ministere/saslacc/services-a-la-population-d-expression-anglaise/>
- ♦ Retain the right to provide services in English to all English-speaking persons
- ♦ But: not permitted to provide services in languages other than English and French, unless the person comes under an exception (e.g., immigrants during first 6 months)

Independent public sector professionals

- ♦ Bill 96 provisions on communication with individuals apply to institutions and their employees
- ♦ Healthcare providers who are not employees (e.g., physicians) are probably not subject to these provisions (but this remains to be confirmed). If such is the case:
 - ♦ Free to use the language of their choice with patients
 - ♦ But: not permitted to use interpreters paid by the health institution, unless the patient is covered by an exception (e.g., immigrant who has been in Québec less than 6 months)

“Where health, public safety or the principles of natural justice so require”

- Not defined
- General principle: strict interpretation of exceptions
- Health
 - Surely: emergency situations
 - What else? Who decides?
- Public safety
 - Surely: police and fire services, public health emergencies
 - What else? Who decides?
- Principles of natural justice
 - Procedural fairness, e.g., right to a fair and impartial hearing

Proving eligibility for services in languages other than French

- ♦ Person who attended school in English in Canada
 - ♦ Official letter from the school board?
- ♦ Individual who received services solely in English from the institution before May 13, 2021
 - ♦ Institutional records?
- ♦ 'Aboriginal' individual
 - ♦ Status Indian card? What about others (e.g., Inuit)?
- ♦ Immigrants during the first 6 months after arrival in Québec
 - ♦ Date of arrival in Québec not indicated on most immigration documents
- ♦ "Where health, public safety or the principles of natural justice so require"
 - ♦ Scope not defined
- ♦ Failure to comply with Bill 96 provisions: disciplinary sanctions
 - ♦ Chilling effect?

Impacts – examples in schools

SITUATION	IMPACTS
Informed consent impossible for certain parents	<p>Barriers to accessing essential services (e.g., complementary educational services), limiting children's right to education</p> <p>Failure to respect legal obligations to which certain professionals are subject (e.g., speech therapists, special education professionals).</p>
Disciplinary measures may be imposed on school personnel who speak a language other than French with parents; no access to interpreters paid by the State	Jeopardizes communications and alliance between schools and parents who are not fluent in French
Limited fluency in French = limited access to information concerning children's education, especially more complex topics	<p>Lack of equity in parents' ability to participate in their children's education, depending on their fluency in French</p> <p>Barrier to parents' ability to participate effectively in their children's schooling, e.g., intervention plan</p>
Feelings of exclusion experienced by certain parents	Accentuates the vulnerability of families who already have difficulty developing links to their children's school
No access to interpreters when assessing students	Errors in identification of difficulties, e.g., distinguishing between language difficulties vs the normal process of learning a second language (impacts on educational progress in the short and possibly long term)

Impacts – examples in health and social services

- ♦ Already (in Québec and elsewhere): language barriers, failure to use interpreters leading to errors that contribute to aggravating physical and mental health problems
 - ♦ Example: francophones outside of Québec

Examples of the potential impact of Bill 96

- ♦ Afghan refugee mother with a newborn baby who meets a CLSC nurse for a postnatal follow-up
 - ♦ If the mother has been in Québec for more than 6 months: prohibited to use an interpreter
 - ♦ Risk of not being able to adequately explain the importance of vaccinations and other care
- ♦ Iraqi woman, sponsored by her husband
 - ♦ Severe depression following separation from her husband
 - ♦ Assessment of parental abilities without the presence of an interpreter – determined to be unfit to care for her daughter – loses custody
 - ♦ Assessment with an interpreter, one year later: found to be entirely fit to care for her daughter

Impacts – other sectors

- ◆ Occupational health and safety and workers' rights
 - ◆ Information on risks and prevention of accidents and illness (e.g., precautions in the COVID context for health sector workers, prevention of accidents in slaughterhouses and factories, etc.)
 - ◆ Information on workers' rights
 - ◆ Communication with CNESST inspectors
 - ◆ Applications for compensation
- ◆ Income security
 - ◆ Welfare, pension, family benefits and other income security programs: essential to survival in many cases
 - ◆ Eligibility requirements and procedures: often complex

Advocacy efforts to date

- ♦ Brief - National Assembly public hearings - IU SHERPA (Oct. 2021)
- ♦ Brief and expert testimony - National Assembly public hearings - TCRI (Oct. 2021)
- ♦ Open letter – Le Devoir – AQAADI, SHERPA, TCRI - Oct. 7, 2021
- ♦ Meetings with MNAs of the Québec Liberal Party and Québec Solidaire (Nov. and Dec.)
- ♦ Press release, Collective led by IU SHERPA, Nov. 18 (covered by Le Devoir and CBC)
- ♦ Brief detailing potential consequences in essential sectors (education, health and social services, occupational health and safety, income security) and proposing amendments to exempt essential public services – Collective, submitted directly to Minister (Nov. 17) and to all members of the parliamentary Commission studying Bill 96 (Dec. 6)
- ♦ Open letter (by the collective) asking that essential public services be exempted from Bill 96, signed by close to 1000 healthcare professionals, teachers, researchers, etc. – published in La Presse+ on Nov. 27, shared with members of the Commission on Dec. 6
- Letters sent by other groups to the Minister and the Commission

Proposed amendments

- ♦ **Exempt essential public services**
 - ♦ Essential public services include the health and social services system, schools, legal aid offices, the CNESST, welfare offices and others
- ♦ **In other public organizations: substantially lengthen the period during which immigrants and refugees can receive services in languages other than French (or English, in bilingual institutions)**

Advocating for changes to Bill 96

- Once adopted, little likelihood of successfully challenging the law - 'notwithstanding' clause
- Committee deliberations on Bill 96
 - Resume in early February with debate on provisions concerning communications with individuals
 - Last realistic chance of obtaining amendments to the Bill
- Encourage your professional association, order or community group to send a letter
 - Concerns regarding Bill 96
 - Potential impact on clients and our ability to comply with good practices and professional ethics requirements
 - Ask that essential public services be exempted
- Sending a letter
 - Addressed to the Minister of Justice, Simon Jolin-Barrette ministre@justice.gouv.qc.ca
 - Copy to MNAs who are members of the Parliamentary Commission on Bill 96: cce@assnat.qc.ca
 - Other possibilities: the minister responsible for your sector:
 - Health and social services: Minister of Health and Social Services Christian Dubé at ministre@msss.gouv.qc.ca and Associate Minister Lionel Carmant at ministre.delegue@msss.gouv.qc.ca
 - Education: Minister Jean-Francois Roberge at ministre@education.gouv.qc.ca

Other advocacy initiatives

- Joint press release by the groups that have submitted letters regarding Bill 96 provisions on communications between the State and individuals
 - Just before Commission hearings resume (end of January/early February)
 - Coordination: Janet Cleveland janet.cleveland@affiliate.mcgill.ca
- Contacts with opposition party spokespersons
 - Hélène David and David Birnbaum, Québec Liberal Party
 - Ruba Ghazal, Québec Solidaire
 - Pascal Bérubé, Parti Québécois
- Signature campaign – open letter
- Participate in the steering committee
- Other initiatives....