

**Brief on Bill 96,
An Act respecting French, the official and common language of Quebec
Submitted by the Quebec Writers' Federation (QWF), the English Language Arts Network
(ELAN), and the Quebec Drama Federation (QDF)**

The Quebec Writers' Federation (QWF) was founded in 1998 and has over 800 members, including professional writers, translators, publishers and editors, as well as members of the general public interested in our literary events, activities and programs. We organize workshops, courses, book fairs, panel discussions and programs for youth and seniors, among others, to nurture writers of all ages, often in partnership with organizations in the community. We also hold an annual gala at which we present juried awards to writers of fiction, non-fiction, poetry, children's and young adult literature, playwriting and translation. Our constituents share a commitment to sustaining a lasting place for English literature and its practitioners on Quebec's cultural scene.

The English Language Arts Network (ELAN) connects artists, cultural workers, and arts organizations from all disciplines and regions of Quebec, fostering a strong community for members. A non-profit organization, ELAN promotes the vitality of Quebec's English-speaking artistic community, and supports its members with direct services and benefits, as well as through mobilization and representation. ELAN makes common cause with the French-speaking cultural community to champion the multifaceted benefits of culture, and the interests of cultural workers. ELAN encourages an evolving Quebec identity that includes artistic, cultural, and social diversity.

The Quebec Drama Federation (QDF) supports 80 English-language theatre companies, and nearly 300 artists in Quebec. This support manifests itself through leadership, collaborations with partners and stakeholders in the community, promotion of the artists and companies, professional development and identification of the role of theatre in the community at large. It also provides resources and means through which success and recognition of English-language theatre companies and artists in Quebec, to the rest of Canada and on the international scale, is achieved.

This submission is presented by the boards of directors of QWF, ELAN, and the QDF, inspired by our mission to enhance the vitality of Quebec's English-speaking literary and artistic community.

Executive Summary

As part of Quebec's English-speaking community, as artists, storytellers, dramatists and performers embedded in and contributing to Quebec's cultural life, we are deeply troubled by the character, spirit and content of Bill 96, and the negative impact it threatens to have on Quebec's English-language arts community.

We have five principal points in this brief.

1. Bill 96 excludes many Quebecers

The preamble statement in Bill 96 that Quebec is a nation whose only official language is French is in direct contradiction to the Canadian Charter of Rights and Freedoms, which recognizes that French and English are both official languages of Canada. Our members are first-language or first-official-language speakers of French and English, and support the English-language literary culture of Quebec. Many of us belong to the population of over one million English-speaking citizens in this province. The preamble statement excludes these people from the Quebec nation, while also pretending to cancel their minority language rights. The preamble statement is thus untrue, exclusionary, discriminatory and unacceptable.

2. “Decline of French” hypothesis unsupported by evidence

The premise upon which Bill 96 is based, that of a purported decline of French in Quebec, is unsupported by statistical evidence. In the absence of such data, and in the light of data showing robust gains for French in Quebec, we believe the “decline of French” claim to be false. The premise disregards the fact, demonstrated by census data, that 70 percent of Quebec’s English-speaking minority has learned French, and willingly conducts daily public business in French. We see this in our own members. We insist that this be recognized and cited instead of measuring only mother-tongue and language-spoken-at-home. These measures may reveal something of ethnic origin, but not linguistic ability. Home life is a private matter that has nothing to do with use of French in public. Government policy should not prescribe, or be based on, how people live in the private sphere.

3. Notwithstanding Clause unnecessary and abusive

The government’s use of Section 33, the so-called Notwithstanding Clause, to shield Bill 96 from legitimate judicial challenge and scrutiny, is undemocratic and even abusive, as it deliberately suspends human rights protections in Canada’s and Quebec’s Charters of Rights and Freedoms, including freedom of expression, which is critically important to writers.

4. Bill 96 promotes homogeneity over Quebec’s diverse reality

We believe that several provisions of Bill 96 are divisive and dismissive of the contributions to Quebec by minority cultures. Bill 96 seems intent on removing evidence of Quebec’s English-language minority from public life, much as Bill 21 earlier removed practicing religious minorities from public sector employment. Bill 96 promotes a vision of Quebec that we perceive as ethnocentric, that excludes minorities and rejects cultural diversity, instead using legal coercion to force cultural and linguistic homogeneity.

5. A threat to Quebec funding for arts groups?

We are concerned that the implicit tone of exclusion of and disregard for English-speaking Quebecers that suffuses Bill 96 will result in diminished government funding and support for our literary programs, and seek assurances in this regard.

BRIEF

1. Bill 96 excludes one million Quebec citizens

The preamble of Bill 96 says that “the only official language of Quebec is French” and that “it is also the common language of the Quebec nation.” This is problematic for us. A majority of

Quebec's population is French-speaking, but certainly not all of it. Our members are Quebecers, most of them English-speaking, part of a community of over one million English-speaking Quebecers, more than any Maritime province. Virtually all of QWF's, ELAN's and QDF's programs and activities are conducted in English. This preamble statement excludes and deliberately ignores our existence. It constitutes discrimination against English-speaking Quebecers, that is, most of our members. It is not necessary to deny our existence to protect and promote French. We are allies of the French language, of French-language arts and culture in Quebec, and support the promotion of French.

2. Decline of French hypothesis unsupported by evidence

Bill 96 arises from the widely-repeated contention that French is “in decline” in Quebec. Results of a November 2020 Léger survey show that this perception is widespread.¹ Indeed, its repetition by political leaders and certain media has given the “decline thesis” the status of a received truth. Nonetheless, the “decline of French” hypothesis must be challenged, as it is not supported by evidence. It is based on two observations drawn from census data:

- A slight drop in the percentage of Quebecers who speak French at home;
- A slight drop in the percentage of Quebecers whose mother tongue is French.

By themselves, these observations might concern those who want to see French preserve its vitality in Quebec and Canada. However, these data have been cited, for the most part, without the context needed to explain them. Other findings in the same censuses tell a different story about French in Quebec.

Among these is the proportion of Quebecers who speak French at work; between 2006 and 2016 it rose slightly from 86.5 to 87.4 percent.² Also, while it is true that the proportions reporting mother-tongue as French or French as language spoken at home dropped, respectively, from 79 to 77 percent, and from 81 to 78.9 percent between 2006 and 2016, this is not due to an increase in English-speaking households. The latter actually declined slightly, from 10 to 9.8 percent, during the same period.³

Declines on these two measures are due, rather, to the relative growth of multilingualism. As elsewhere in Canada, immigrants to Quebec whose mother tongue is neither French nor English account for a growing proportion of households.⁴ Even if these relatively new arrivals—along with many quite established new Quebecers—have learned French and speak it fluently at work or at school, they still speak their mother tongue at home. It is the same for mother-tongue Anglophones, who use French in public as needed, but speak English at home.

¹ Journal de Québec, Nov. 9, 2020, <https://www.journaldequebec.com/2020/11/09/les-quebecois-inquiets-pour-lavenir>

² Arsenault Morin, Alex and Geloso, Vincent, “Multilingualism and the Decline of French in Quebec,” (September 18, 2019). *Journal of Multilingual and Multicultural Development* (forthcoming), 17. SSRN: <https://ssrn.com/abstract=2875788> or <http://dx.doi.org/10.2139/ssrn.2875788>

³ Émilie Lavoie, en collaboration avec Alejandro Paez Silva, *Indicateurs de suivi de la situation linguistique au Québec, Rapport 1 Portrait démolinguistique (1996-2016)*, (Montréal), Office québécois de la Langue française, 2019.

⁴ Arsenault Morin and Geloso, 17.

Meanwhile, a quiet revolution has occurred among English-speaking Quebecers. Those who cite census data on mother-tongue and language-spoken-at-home to defend the “decline of French” hypothesis ignore other results showing dramatic growth in bilingualism among English-speaking Quebecers. It has almost doubled, from 37 percent in 1991 to 69.8 percent in 2016, and is now *twice* the rate of self-reported bilingualism among francophone Quebecers.⁵ Among young Quebec Anglophones, 86.9 percent speak French.⁶ Among Quebecers whose mother tongue is neither French nor English, 75 percent reported in 2006 that they were able to speak French fluently.⁷ These gains contributed to the result that 94.5 percent of Quebecers reported having “knowledge of French” in 2016, the same level as in 1996.⁸ In other words, there is no statistical evidence of a decline in French. There is, however, persuasive evidence that English-speaking Quebecers have learned French in large numbers.

In Bill 96, the Government of Quebec is making significant language policy changes without considering these data. In the absence of evidence that further restrictions on English are justified, Bill 96 is an unnecessary provocation that risks triggering unpleasant social tension and costly court challenges. One cannot legislate the language citizens speak in private life. Meantime, on the measure that really counts, that is, French as Quebec’s public language, the data show that the battle has been won.

The notion of a Quebec nation whose only language is French constitutes a public erasure of English in Quebec. The statistical data show this is unnecessary and it is, in our opinion, divisive. This bill fails to celebrate, or even recognize that English-speaking Quebecers have made the effort to learn French to the point that they are fully capable of operating in French. Our members’ mother tongues or what they speak at home is not a legitimate area for government intervention, and certainly not grounds for a suspension of Charter rights.

3. Use of the Notwithstanding Clause

In the past, Section 33 has been invoked only rarely by provincial governments, and often in contentious contexts. Québec was the first province to seek to use the Notwithstanding Clause. An *Act Respecting the Constitution Act, 1982*, re-enacted all Quebec legislation that had been adopted before the *Charter* came into force, with a standard override clause being added to each statute. The Supreme Court of Canada held in *Ford v AG Quebec* [1988], that while Section 33 could be relied on in relation to several *Charter* rights in multiple laws, it could not be used retroactively (backdated).⁹ Québec subsequently passed Bill 178, which used the

⁵ Arsenault Morin and Geloso, 8.

⁶ Martin Turcotte, *Résultats du recensement de 2016 : Le bilinguisme français-anglais chez les enfants et les jeunes au Canada, Tableau 1*, (Statistique Canada, 3 octobre 2019). <https://www150.statcan.gc.ca/n1/pub/75-006-x/2019001/article/00014-fra.htm>

⁷ Arsenault Morin et Geloso, 9.

⁸ Statistique Canada, *Le français, l’anglais et les minorités de langue officielle au Canada* (2 août 2017) <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016011/98-200-x2016011-fra.cfm>

⁹ Linda McKay-Panos, Effect of the Notwithstanding Clause on Human Rights, *LawNow – Relating law to life in Canada*, Centre for Public Legal Education (Alberta), Nov. 2, 2018. <https://www.lawnow.org/effects-of-the-notwithstanding-clause-on-human-rights/>

Notwithstanding Clause to restrict commercial signs in languages other than French. This law was referred to the United Nations Human Rights Committee, which found it “to be in violation of accepted global standards of freedom of expression, and unnecessary for the protection of French in North America.”¹⁰ Then-Premier Bourassa instructed the National Assembly to rewrite the law to conform to the *Charter*, and the Notwithstanding Clause was not renewed.

In the absence of statistical evidence that the public or common use of French in Quebec has declined—indeed the data show the opposite—and in the absence of evidence that English-speaking Quebecers and allophones have resisted francization (again, the opposite is true), there is no justification for the extreme and undemocratic suspension of Charter protections. It constitutes an abuse of Section 33, in that this section of the Charter was never intended to be invoked in such an all-encompassing manner, or with such frequency. That the Government of Quebec has resorted to it in both Bill 96 and Bill 21 is disturbing to us, as it does not reflect the respect for democratic values that defines our society. These are Québécois values, Canadian values, and universal values recognized since 1948 in the United Nations Declaration of Human Rights, whose author was a distinguished English-speaking Quebecer, John Humphrey. We therefore object as a matter of principle to the government’s use of the Notwithstanding Clause.

As writers and artists, we depend on the recognition of human rights, notably the right to freedom of speech and freedom of expression, both of which are protected in Canada by the Charter of Rights and Freedoms. By invoking the Notwithstanding Clause in Bill 96, the Government of Quebec suspends the application of the Charter in unspecified ways and without explanation or justification. We are deeply troubled by this suspension of human rights. It is an aberration for the government of a democratic state to block the constitutional protection of its citizens’ rights. Such wide and frequent use of the Notwithstanding Clause places the laws on which it relies in jeopardy and disrepute as their application depends on the Clause’s renewal every five years, and on a continuing suspension of fundamental rights. We therefore demand that the Quebec government abandon its recourse to the Notwithstanding Clause, remove it from Bill 96, and renounce its use in all cases as a matter of principle and constitutional legality.

4. Diversity does not threaten French; homogeneity will not protect it

Bill 96, like Bill 21 before it, promotes a “chilling effect” on cultural and linguistic diversity. By explicitly denying the existence of an English-language community and its language rights, and denying this community the possibility of invoking the Charter to defend these rights, it promotes a homogeneity in Quebec that will make the province less attractive to minorities, and less free, while also risking diminishment of the creative energy that attends cross-cultural encounters. We address Bill 96 and Bill 21 together here, because both reflect a way of thinking that is, in our shared opinion, averse to those who are not of the majority culture and/or language group.

¹⁰ Ballantyne, Davidson, McIntyre v. Canada, Communications Nos. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993), Human Rights Committee, Forty-seventh session, 5 May 1993. <http://hrlibrary.umn.edu/undocs/html/v359385.htm>

As noted earlier in our brief, we share a concern to protect the vitality of French in Quebec. The French fact is the province's predominant distinctive and attractive feature. Our respect, even love, for the French language and the Québécois community is among the reasons we choose to make Quebec our home, whether we are from long-established English-speaking families, recently arrived from elsewhere, or of the First Nations and peoples of this land.

Most English-speaking Quebecers and “allophones” have gotten the message that French is the language of work in Quebec, and learned it. This is in their interest, as a knowledge of French is essential to gain access to economic and job opportunities. But there's more. The presence in Quebec of a strong majority of Anglophones and allophones who speak French not only contributes to Quebec's development as a French-speaking space, but reinforces efforts to promote French in other provinces. History has shown that English-speaking Quebecers have been valuable allies in promoting French across Canada, which Bill 96 claims as an objective.

This is demonstrated by census data showing 478,000 students registered in French immersion programs across Canada, a 69 percent increase since 2003.¹¹ French immersion was an idea launched in 1965 by three English-speaking Quebecers, Murielle Parkes, Olga Melikoff and Valerie Neale. Since their pilot program at a St-Lambert school, millions of English-speaking Canadians have learned French this way. This is evidence that Quebec's Anglophones—Canada's most bilingual community—have been champions of French in Quebec and Canada.

Unfortunately, this story is rarely told in Quebec, where many political leaders and media have promoted, without supporting evidence, the notion that French is in decline, and implied that English-speaking Quebecers and allophone minorities are responsible. It is unfair and unfortunate, as undermining the language rights of English-speaking Quebecers who have proved themselves allies in defending French risks destroying a social solidarity that has actually helped *prevent* the so-called decline of French that is so widely—and without proof—decried. By the same token, Bill 21's denial of public sector employment opportunities to practicing Muslim women, as well as Jewish and Sikh men, threatens existing social solidarity in support of French. By suspending the human rights of its allies, Quebec risks losing their solidarity.

5. Logic of Bill 96 disregards English-speaking Quebecers' cultural contributions and threatens their future

Quebec Writers' Federation (QWF)

As a private, non-profit organization supporting English-language literary culture, the QWF is concerned that interpretation of the preamble claim in Bill 96 that “Quebec is a nation whose only language is French” could result in discrimination against English-speaking writers. This is critically important to our work, as QWF, and indeed individual writers, have received funding for artistic activities from various levels of government in Quebec. In recent years, for example,

¹¹ Statistique Canada, *Nombre d'élèves dans les programmes de langue officielle, écoles primaires et secondaires publiques, selon le type de programme, l'année d'études et le sexe*. Tableau 37-10-0009-01, (2018-19). https://www150.statcan.gc.ca/t1/tbl1/fr/tv.action?pid=3710000901&pickMembers%5B0%5D=2.2&pickMembers%5B1%5D=3.1&pickMembers%5B2%5D=4.1&cubeTimeFrame.startYear=2003+%2F+2004&cubeTimeFrame.endYear=2018+%2F+2019&referencePeriods=20030101%2C20180101&request_locale=fr

QWF has received \$65,000 a year to fund its programs from the *Conseil des arts et des lettres du Québec (CALQ)*.

The CALQ has demonstrated a commitment to equity in the distribution of its annual grants, which reached over \$200 million in 2020, achieving targets it set in its Action Plan for Cultural Diversity ([Plan d'action sur la diversité culturelle](#)). The CALQ recognizes that Quebec's population is composed of Francophones (about 78%), Anglophones (9%), Indigenous people (1.2%) and visible minorities (12.6%). In its Strategic Plan for 2018-2022 ([Plan stratégique 2018-2022](#)), the CALQ observes that, "Quebec benefits from the contributions of these groups in our society. Quebec's cultural landscape is enriched by this larger diversity." These demographic considerations are fairly reflected in the distribution of CALQ's grants to the arts, including literary arts.

QWF is concerned that the orientation and direction indicated in Bill 96, that is, that the government should set an example for the promotion of French, "the only official and common language," will put at risk the fair and admirable equity principle applied by the CALQ in its funding decisions.

Again, the mindset behind Bill 96 that perceives English as posing a threat to French overlooks the reality that English-speaking Quebecers are more often allies supporting French. Many English-speaking Quebec writers, for example, produce English-language translations of literary works by their fellow French-speaking Quebec writers. Their work, often published by English-language Quebec houses, enables francophone Quebec novelists, poets, journalists and essayists to reach English-speaking audiences in Quebec, Canada, the U.S. and around the world. The QWF recognizes these efforts, and those of French translators of English Quebecers' work, every year with an award for translated works. The threat to French comes from the U.S. media and entertainment industries, not from Quebec's English-speaking community, which has itself declined since the 1970s.

QWF is also concerned that the cap imposed by Bill 96 on francophone enrolment in English-language CEGEPs interferes with young adult Quebecers' freedom of educational choice. It will reduce their options to achieve a higher level of bilingualism, along with the salutary opportunity CEGEP has offered for exchange and mutual awareness-raising between young French- and English-speaking Quebecers. For English-speaking Quebec writers and artists of all disciplines, some of whom teach in CEGEPs, and some of whose work is studied in CEGEPs, this cap would, in the short term, limit income, and over the long term, reduce these opportunities for cultural exchange and mutual understanding.

English-Language Arts Network (ELAN)

As a private, non-profit organization supporting English-speaking artists and arts organizations across disciplines and throughout the province, ELAN shares the Quebec Writers' Federation's concern that interpretation of Bill 96's claim that "Quebec is a nation whose only language is French" could negatively impact artists' access to the sources of public funding which are fundamental to their professional practices. Moreover, it risks undermining the important work carried out by funders such as the *Conseil des arts et des lettres du Québec (CALQ)* in recent years to engage with the English-speaking community with the help of stakeholders like ELAN

to create an open and welcoming environment. It is essential that English-speaking applicants feel confident in the belief that their applications will be considered in good faith regardless of the language of their artistic work.

This belief is already a fragile one in certain segments of the community. Through our own independent research and consultations with ELAN members, we have found that, despite the laudable efforts of *CALQ* and other provincial funding bodies, a significant portion of English-speaking artists in Quebec remain reticent to apply for provincial funding—they often feel English-language art and artists will not be considered favorably. It is therefore clear that continued effort is necessary to combat these perceptions and to promote engagement with provincial funders; community stakeholders like ELAN are enthusiastic about playing our part. For example, ELAN's own Québec Relations project, which is supported by the Government of Quebec's Secretariat for Relations with English-speaking Quebecers, came into existence in direct response to these kinds of perceptions as a way of strengthening communication and relationships between the English-speaking arts community and provincial funders. Our initial work through Québec Relations has already been extremely well received by the English-speaking community, who value this new channel of communication with the Government of Quebec and the opportunity for greater engagement and productive dialogue in the future. The divisive language of Bill 96 risks undermining this important opportunity for improved communication and the collective efforts of *CALQ*, ELAN, and countless others by weakening the English-speaking artists' confidence in the fair consideration of their work by funders, and by creating reasons to doubt the Government's good faith engagement in ongoing dialogues with the English-speaking arts community.

Similarly, arts organizations who already submit their grant applications in French may be given the unfortunate impression that funders are not willing to support English cultural content regardless of the language in which they apply. For many of these organizations, such funding is crucial to their continued survival.

Beyond the above-mentioned economic concerns which are particular to Quebec's English-speaking community in general, the arts community faces even greater risk. Artists already live an increasingly precarious existence within the broader 'gig economy,' a situation which has only been exacerbated by the Covid-19 pandemic. Consequently, any unintentional negative impact of Bill 96 on the English-language arts community's access to employment opportunities and sources of funding within the provincial government could have a considerable knock-on effect on the community's economic stability. These impacts extend to individual artists' and cultural workers' mental health and consequently place the overall vitality of the English-speaking arts community in peril; particularly in light of the current sectoral conditions as we seek to stabilize and re-emerge during the ongoing pandemic.

Moreover, we cannot overlook the contribution that the English-speaking arts community makes to Quebec's cultural exports and its overall image as a place where arts and culture are valued and supported. We need only look at Arcade Fire's 2011 Grammy acceptance speech and their heartfelt thank you to their adopted home of Quebec for one clear example of English-speaking artists promoting the status of Quebec in front of a global audience. Any detrimental impact of Bill 96 on English-speaking artists' ability to produce dynamic and engaging work both within

the province and on the international stage, only serves to limit the opportunities for cultural exchange.

In the face of such potential for considerable damage, if Bill 96 is allowed to undermine the English-speaking arts community's confidence in fair access to funding in keeping with its 9% demographic share of the population, we ask what potential safeguards the Government of Quebec and its arts funders will put in place to ensure that the principles of representation are maintained and that English-speaking artists and organizations can continue to access public funding.

Submitted on September 14, 2021 to the Quebec Community Groups Network's Commission on Bill 96 by Christopher Neal and Julie Barlow of QWF, and Guy Rodgers and Nick Maturo of ELAN, on behalf of these organizations as well as QDF.