

Superior Court suspends the upcoming obligation for legal persons to produce French certified translations, introduced by Bill 96, pending final adjudication of a constitutional challenge

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On August 12, 2022, the Superior Court of Québec suspended two provisions of Bill 96 regarding the usage of French in court documents, pending final adjudication by the Court of a constitutional challenge of the provisions. These provisions would have had the effect of imposing, effective September 1, upon corporations who choose to file pleadings in English, the obligation to attach a certified French translation, at the corporation's expense. The decision in *Mitchell c. Procureur général du Québec*^[1] highlights the potential adverse consequences that these new obligations could have on access to justice for legal persons and gives hope that they may ultimately be invalidated by the Court.

Background

On June 1, 2022, the *Act respecting French, the official and common language of Québec* (Bill 96)^[2] received royal assent and became law. Bill 96 introduces major changes to the *Charter of the French language* (the Charter)^[3]. Some changes and new requirements came into effect immediately, while others will come into effect at later dates. Information and analysis on the changes to Québec's French language law can be found on our [dedicated resource page](#).

One important change to the Charter introduced by Bill 96 is the requirement that a certified French translation be attached to any proceeding in English originating from a legal person (such as a corporation) before it can be filed with the Quebec Courts. The translation must be provided by a licensed translator, at the legal person's expense. This new requirement was scheduled to come into force on September 1, 2022.

The applicants in the case at bar include a consortium of lawyers. They allege that this new requirement is contrary to section 133 of the *Constitution Act, 1867*.^[4] Section 133 stipulates that any person can use either French or English in any proceeding brought before the Courts of Quebec. Moreover, this requirement creates a barrier to access to justice for corporations whose representatives are English-speaking, given the additional costs and time required to obtain a certified translation. This violates the principle of substantive equality of the two official languages of Canada.

The applicants have brought an application for judicial review to invalidate this new requirement contained within two provisions of Bill 96. They have also asked for a stay of the coming into force of the impugned provisions, pending final adjudication by the Court of their constitutional challenge, relief which the decision grants, such that legal persons will

not have to comply with the new requirements on September 1¹ as initially anticipated.

Decision

In granting the stay, Justice Corrivé found that the constitutional argument based on section 133 of the *Constitution Act, 1867* and the argument that the provisions would impose additional barriers to access to justice were serious. She also found that there was a serious risk that certain legal persons (such as small or medium-sized businesses) would not be able to assert their rights before the courts in a timely manner, due to lack of time or resources to pay for the translation costs. The Court emphasized this risk in the context of urgent proceedings, for which Bill 96 provides no accommodations. The provisions could have a particular impact on the English-speaking Kahnawàke community and on vulnerable patients in the context of urgent applications for authorization with respect to care. There is also a serious risk that certain legal persons would be forced to assert their rights in a language other than the official language which they and their lawyers master the best and which they identify as their own.

Finally, the Court found that on balance, the applicants will suffer greater harm than the government, pending a decision on the merits. The provisions are likely to create an obstacle which may be equivalent to a denial of justice, particularly in the case of urgent proceedings, given the time and cost constraints imposed.

Implications

Although the current stay is temporary, the decision indicates that the Court is sensitive to arguments about access to justice and the violation of a constitutional right to access the Quebec judicial system in both French and English, which may ultimately lead the Court to grant judicial review and declare the impugned provisions to be unconstitutional.

In our opinion, the constitutional argument raised by the applicants is significant because section 133 of the *Constitution Act, 1867* is not subject to the notwithstanding clause used by the Québec government to shield Bill 96 from potential legal challenges. It also does not apply to language rights, guaranteed by sections 16 to 23 of the *Canadian Charter of Rights and Freedoms*.^[1] For that reason, the Attorney General of Quebec is unable to rely on the notwithstanding clause to oppose this argument the same way it would for challenges that allege infringement of rights guaranteed by section 2 or sections 7 to 15 of the *Canadian Charter of Rights and Freedoms*.^[1]

Given Justice Corrivé's ruling, the two provisions implementing the requirement to provide a certified French translation of legal proceedings in English will not come into force as scheduled on September 1, 2022. They will only come into force, if at all, when a final judgment is rendered on their validity in the upcoming months. In the interim, legal persons and corporations do not have to provide French translations when filing court documents.

[1] 2022 QCCS 2983.

[2] 1st Sess, 42th Parl, Québec, 2021 (assented to on June 1, 2022), SQ 2022, c. 14.

[3] CQRL, c. 11.

[4] 30 & 31 Vict., c. 3.

[5] Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), c. 11

[6] The notwithstanding clause (section 33) applies to section 2 and sections 7 to 15.