



FORUM

Bill 96: A Violation of English-speaking Rights in Québec

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In Canada there are multiple pieces of legislation that protect the rights of citizens to live their lives in one of the two official languages, English or French. The earliest, the British North America Act in 1867, implemented French and English as official languages of the parliament, followed by the Official Languages Act in 1969, and the Canadian Charter of Rights and Freedoms. Section 23 of the Canadian Charter of Rights and Freedoms specifically pertains to education and holds that Canadian citizens have a right to be educated in either English or French. In June 2022, Bill 96 was passed in the Canadian Province of Québec. The bill states that its purpose is “to affirm that the only official language of Québec is French.” It also affirms that French is the common language of the Québec nation.” However, I argue that Bill 96 is unconstitutional under Section 23 of the Canadian Charter of Rights and Freedoms, due to enrollment caps placed on English language schools.

The bill also targets Quebec’s English language educational system, placing caps on the amounts of students permitted in each of the “English-language institutions providing college instruction” at the Minister of Higher Education, Research, Science and Technology’s discretion. The Bill further states that the total number of English-language students cannot exceed 17.5% of the French-language student population, and that the proportion of English and French students must stay the same from year to year.

Immediately after the passage of Bill 96, the English Montreal School Board (EMSB) voted to challenge the bill, with spokesperson Joe Ortona for the EMSB saying that “I’m ready to stand up and fight as an English-language school board

and an English-language institution and to stand up for these rights that the government has decided they can throw out the window.”

The EMSB challenge to Bill 96 specifically cited Section 23 of the Canadian Charter of Rights and Freedoms. Section 23 of the Canadian Charter is as follows:

1. Citizens of Canada **(a)** whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or **(b)** who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.

In other words, Section 23 of the Charter of Rights and Freedoms guarantees that if a parent is educating one child in their family in either English or French, they have the right to have all their children receive their instruction in that language. However, what happens if one child is enrolled in an English language school, but due to enrollment caps, their sibling is unable to enroll? Such a scenario would directly violate section 23 subsection 2 of the Charter, which states that “the right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.”

Association des Parents ayants droit de Yellowknife et al. v Attorney General of the Northwest Territories et al., a 2012 case in Canadian Supreme Court of the Northwest Territories, is particularly pertinent as it dealt with the number of students in Yellowknife that had the right to attend Francophone schools. The court looked at census data, determined that there were around 500 eligible students that could attend francophone schools, and concluded that “the capacity of the minority school had to be increased to take into account the number of students it may have to accommodate in the future. The capacity of the school had to be between that number and the existing demand.”

This decision was decided under section 23 of the Charter, due to the fact that all children who had the right to minority-language education needed to be able to have a place in the French schools if they so wished. Yet the court’s ruling quite clearly contradicts the recent cap on English Language student enrollment in Quebec under Bill 96. If minority language schools must “take into account the number

of students it may have to accommodate,” the action of capping enrollment for minority language institutions is directly contradictory.

The Case of Bill 96 is an interesting inversion of the usual fight for language rights within Canada, wherein French is most often the minority language. However, the reversal of the roles of English and French does not mean that they can be treated differently under the constitution, which aims to protect the rights of English and French speakers equally. Just as all children who have the right to be educated in French must be afforded the right to attend school, all children who have the right to an English language education must be treated the same.

Directly looking at the rights entrenched in the Charter of Rights and Freedoms, it is evident that the proposed enrollment caps on English language institutions and instruction in Quebec is unconstitutional. If all citizens have the right to receive an education in their first language, the idea that one can cap the enrollment in certain language schools will force students to abandon their charter rights to receive an education. If there are more students who qualify for English education than there are spots for enrollment, the constitutional rights of these students to receive an English language education, if they so desire, are being violated.