Translated from the original French

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| Mitchell c. Procureur général du Québec | | | | | | 2022 QCCS 2983 | |
| SUPERIOR COURT | | | | | | | |
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| CANADA | | | | | | | |
| PROVINCE of QUeBEC | | | | | | | |
| DISTRICT of | | | MONTReAL | | | | |
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| No.: | 500-17-121419-223 | | | | | | |
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| DATE: | | August 12, 2022 | | | | | |
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| presiding: | | | | THE HONOURABLE | CHANTAL CORRIVEAU, J.S.c. | |
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| **DOUG MITCHELL** | | | | | | | |
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| **MICHAEL SHORTT** | | | | | | | |
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| **SHANNON SNOW** | | | | | | | |
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| **FRÉDÉRIQUE LISSOIR** | | | | | | | |
| - and - | | | | | | | |
| **ADAM STERNTHAL** | | | | | | | |
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| **10096547 CANADA INC.** | | | | | | | |
| Applicants | | | | | | | |
| v. | | | | | | | |
| **ATTORNEY GENERAL OF QUEBEC** | | | | | | | |
| Respondent | | | | | | | |
| **BARREAU DU QUÉBEC** | | | | | | | |
| Intervener | | | | | | | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | | | | | |
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| JUDGMENT ON THE APPLICATION FOR suspension | | | | | | | |
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# OVERVIEW

1. The applicants have filed an application for judicial review that seeks to invalidate two provisions of the *Act respecting French, the official and common language of Québec*[[1]](#footnote-1)(“Bill 96”), which amend the *Charter of the French language*[[2]](#footnote-2)and are scheduled to come into force on September 1, 2022. The provisions state that in order for any English‑language pleading emanating from a legal person to be filed in court, it must be accompanied by a French version certified by a certified translator.
2. The present application is about suspending those provisions for the duration of the proceedings.
3. The applicants submit that they contravene a provision of the Constitution[[3]](#footnote-3) and create a barrier to access to the courts for legal persons whose representatives are anglophones. They argue that the additional costs and time required to obtain a certified translation create an impediment to access to justice.
4. The Attorney General of Quebec (“AGQ”) responds that Bill 96 has been enacted to promote French, and that since justice must be done in French, the impugned provisions are valid and do not impede access to justice.
5. For the reasons that follow, the Court finds that the coming into force of sections 5 and 119 of Bill 96, which amend sections 9 and 208.6 of the *Charter of the French language*, must be ordered suspended during the proceedings to consider their validity.
6. The applicants raise a serious question regarding a potential contravention of section 133 of the *Constitution Act, 1867*,[[4]](#footnote-4) which provides for access to Quebec courts in French and English.
7. The applicants have shown that there would be irreparable harm if the new provisions were to come into force during the proceedings, notably because the new provisions can make access to justice in urgent matters impossible or illusory. The requirement of a translation certified by a certified translator must be assessed based on the delays and costs that such translations engender. The requirement is likely to impede access to justice.
8. Lastly, the balance of inconvenience favours the applicants, who are asserting constitutional language rights, even though there is a presumption that Bill 96 and the contested provisions have been enacted in the public interest.
9. It is appropriate to begin by considering the conditions that must be met for an application for suspension to be granted.

# THE CONDITIONS TO BE MET IN APPLICATIONS FOR SUSPENSION

1. The criteria for granting a suspension of the application of a law were established and reaffirmed by the Supreme Court in *Metropolitan Stores*,[[5]](#footnote-5) *RJR–Macdonald*[[6]](#footnote-6)and *Harper*,[[7]](#footnote-7)and are the same as the conditions for obtaining an interlocutory injunction.[[8]](#footnote-8) Specifically, a party seeking to suspend the operation of a legislative enactment has the burden of showing:

(1) that there is a serious question to be tried;

(2) that irreparable harm will be caused if the relief is not granted; and

(3) that, on a balance of inconvenience, the harm it will suffer will be greater than the harm the other party will suffer.[[9]](#footnote-9)

1. All these criteria must be met in order for a suspension to be granted,[[10]](#footnote-10) and they must be weighed in relation to each other, not analyzed mechanically.[[11]](#footnote-11)

## SERIOUS QUESTION TO BE TRIED

## PrincipLes

1. The Court must determine whether there is a serious issue to be tried, as opposed to a frivolous or vexatious claim. This is done as part of a “preliminary and tentative assessment of the merits of the case.”[[12]](#footnote-12)
2. The serious question requirement is not a high threshold. The judge must proceed “on the basis of common sense and an extremely limited review of the case on the merits”.[[13]](#footnote-13)
3. This is equally true in Canadian *Charter* cases and “in other constitutional challenges of a law”[[14]](#footnote-14) such as this one, where the *Constitution Act, 1867* is invoked.

## 1.2 Application TO THE CASE AT BAR

1. In the case at bar, the applicants argue that the serious questions are evident from the grounds of their application for judicial review. Those grounds make two overall assertions.
2. Firstly, the applicants assert that the impugned provisions are in [translation] “flagrant conflict” (“*contradiction flagrante*”) with section 133 of the *Constitution Act*, *1867*. They cite *Attorney General of Quebec v.* *Blaikie*[[15]](#footnote-15) and *MacDonald* *v.* *City of Montreal*[[16]](#footnote-16)in this regard.
3. Secondly, they assert that the practical effects of the impugned provisions are a violation of the “substantive equality” of the two official languages which section 133 seeks to protect, in that equal access to the courts is compromised. In so doing, they rely on *R.* *v. Beaulac*[[17]](#footnote-17) and *Mazraani* *v.* *Industrial Alliance Insurance and Financial Services Inc.*[[18]](#footnote-18)
4. The AGQ concedes that these arguments raise serious questions,[[19]](#footnote-19) though he disagrees with the applicants’ interpretation of the principles.
5. The Court finds that the applicants’ arguments are not frivolous or dilatory, and are sufficiently serious to satisfy this criterion.
6. The first paragraph of section 133 of the *Constitution Act, 1867* provides:

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| **133.** … either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec … | **133.** … dans toute plaidoirie ou pièce de procédure par devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l’autorité de la présente loi, et par devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l’une ou de l’autre de ces langues. |

1. Sections 9 and 208.6 of the *Charter of the French language*, as amended by sections 5 and 119 of Bill 96 which are the subject of the constitutional challenge, state as follows:

**9**. A French translation certified by a certified translator shall be attached to any pleading drawn up in English that emanates from a legal person.

The legal person shall bear the translation costs.

208.6. A pleading to which, in contravention of section 9, no translation certified by a certified translator is attached cannot be filed at a court office or at the secretariat of an agency of the civil administration that exercises an adjudicative function or within which a person appointed by the Government or by a minister exercises such a function.

The court clerk or the secretary shall notify the legal person concerned without delay of the reason for which the pleading cannot be filed.

1. Despite the applicants’ first argument, it seems to the Court that these two provisions differ from those struck down in *Blaikie*, *supra*. There, it was held that section 133 allows litigants to use French or English in their pleadings or arguments before the courts in Quebec[[20]](#footnote-20) and that the parties to a proceeding have the choice to use either language.[[21]](#footnote-21)
2. The argument that the impugned provisions infringe the principle of substantive equality of French and English because additional barriers to access to the courts would be imposed on English-language legal persons and their lawyers also seems sufficiently serious to satisfy the criterion.

**2 IRREPARABLE HARM IF THE APPLICATION FOR SUSPENSION IS NOT GRANTED**

## 2.1 PrincipLes

1. It is the nature, not the magnitude, of the harm that is important in this second step of the analysis. Irreparable harm is harm which “cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.”[[22]](#footnote-22)
2. In addition, it is the harm that would result from refusing to grant the application for suspension that must be assessed, not the harm [translation] “likely to result from enforcing the orders in council in issue on a permanent basis.”[[23]](#footnote-23) Thus, one must consider the consequences of the decision during the period prior to the ruling on the merits that grants or does not grant the application for judicial review.
3. In the case at bar, the applicants argue that the violation of a fundamental right is, in itself and at all times, an irreparable harm.[[24]](#footnote-24)
4. The AGQ disagrees, stressing the applicants’ burden [translation] “of showing an irreparable harm to the public interest.”[[25]](#footnote-25)
5. The recent constitutional case law generally requires applicants to provide rather specific evidence in their applications that irreparable harm exists or is likely to occur.[[26]](#footnote-26)
6. However, it is at the balance of inconvenience stage that an adverse impact on the public interest must be shown.[[27]](#footnote-27) The criterion we are considering here requires the applicants to prove irreparable harm to their own interests, and, having regard to the nature of the rights involved in the application, they are entitled to use evidence of harm suffered by third parties who are not participants in the proceedings.[[28]](#footnote-28)

## 2.2 Application to the case at bar

1. The applicants claim that the enforcement of the contested provisions would affect access to the courts by legal persons. They submit that this would constitute irreparable harm, notably because of (a) the financial burden of translation costs; (b) the added delay in urgent proceedings; (c) the lack of resources in the form of certified translators in some regions; and (d) the disproportionate costs that would be incurred in comparison with the value of the relief sought in the proceedings.
2. The evidence in support of the foregoing is set out in the sworn statements of applicants Doug Mitchell and Michael Shortt, who are lawyers, and of Tonya Perron, a Chief on the Mohawk Council of Kahnawà:ke (“the MCK”). According to those statements:

* The Quebec court system generally operates in both official languages.[[29]](#footnote-29)
* Certain lawyers prefer to address the courts in English for various reasons,[[30]](#footnote-30) notably when English is their first language or their client’s first language.[[31]](#footnote-31)
* Drawing up pleadings in English can facilitate the client’s participation in the process[[32]](#footnote-32) or improve the quality and efficiency of the lawyer’s work.[[33]](#footnote-33)
* The MCK brings together members of the Kahnawà:ke community, where English is the language ordinarily used.[[34]](#footnote-34)
* According to data from the Registraire des entreprises du Québec as at April 1, 2022:

14% of legal persons registered in the province are non-profits.[[35]](#footnote-35)

Most registered legal persons are small entities (entities with 10 or fewer employees).[[36]](#footnote-36)

* The use of translators engenders additional costs[[37]](#footnote-37) that could be excessive for certain businesses of modest means.[[38]](#footnote-38)
* English-language legal persons are often involved in expedited or urgent proceedings (injunctions, applications for judicial review, seizures before judgment, claims regarding rights soon to be prescribed, etc.).[[39]](#footnote-39)
* This is specifically the case for the MCK and other legal persons connected to the Kahnawà:ke community.[[40]](#footnote-40)
* In some of those matters, the tight timelines would make it impossible to translate a pleading quickly enough to be of use.[[41]](#footnote-41)
* According to estimates given by certain legal translators, the turnaround times for translation can range as high as
* 2 to 5 business days for a six-page originating application in a contractual matter;
* 4 to 6 business days for an 11-page application for case management measures in a highly contested civil case; and
* 12 or 13 business days for a 44-page appellate factum pertaining to language rights.[[42]](#footnote-42)
* According to information obtained from the directory of the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ), only 412 members are qualified to translate “official documents” from English to French, 46 of whom declare a specialization in “civil law.”[[43]](#footnote-43)
* Some lawyers anticipate being forced in some cases to draft their pleadings only in French.[[44]](#footnote-44)
* Some lawyers personally anticipate or foresee advising English‑language legal persons to seek relief from courts outside Quebec, which could cause disadvantages for those clients.[[45]](#footnote-45)

1. The AGQ has submitted evidence concerning the number and availability of certified translators in Quebec. The sworn statement of OTTIAQ president Donald Barabé provides evidence to the following effect:

* 2,637 OTTIAQ members are certified translators, 2,115 of whom are certified in the English to French language combination.[[46]](#footnote-46)
* OTTIAQ anticipates a roughly 1% increase in translation requests submitted to its members because of the coming into force of the impugned provisions.[[47]](#footnote-47)
* OTTIAQ anticipates a significant increase in applications for licences to practise the profession of certified translator.[[48]](#footnote-48)
* According to Statistics Canada, there were 8,625 certified or non‑certified translators, terminologists and interpreters in Quebec in 2016.[[49]](#footnote-49)
* Generally, certified translators translate at least 1,500 words of [translation] “general”, [translation] “specialized” or [translation] “highly specialized” text per day.[[50]](#footnote-50)
* The Société québécoise d’information juridique (SOQUIJ) has seven (7) translators on staff and handles 1,000 to 1,500 translation requests per year, totalling nearly 3 million words.[[51]](#footnote-51)
* Certified translators often work in teams to ensure that deadlines are met.[[52]](#footnote-52)
* The cost of a certified translator’s services averages from $0.20 to $0.40 per word, with urgency being a factor.[[53]](#footnote-53)
* This means that the translation of a pleading equal in length to the originating application in the case at bar would cost $1,100 to $2,200.[[54]](#footnote-54)
* Certain certified translators are willing to take on *pro bono* work.[[55]](#footnote-55)

1. Mr. Barabé’s statement does not contradict Mtre Mitchell’s assertion that there are few certified legal translators in Quebec.
2. The AGQ has tendered an interpretation bulletin from the Canada Revenue Agency explaining that the “legal expenses” (“*frais judiciaires ou extrajudiciaires*”) that qualify for an income tax deduction under sections 8(1)(b) and 60(o.1) of the *Income Tax Act*[[56]](#footnote-56) are not necessarily limited to lawyers’ fees.[[57]](#footnote-57) The bulletin suggests that translation expenses can be included in these income tax deduction categories.[[58]](#footnote-58).
3. The AGQ notes that no tangible evidence has been adduced to show that the translation requirement would impose major or prohibitive costs on the legal persons concerned. He adds that legal persons must generally be represented by lawyers in civil matters,[[59]](#footnote-59) which means that significant expenditures are already a given,[[60]](#footnote-60) albeit not in all cases.[[61]](#footnote-61)
4. With regard to the issue of delays and urgent proceedings, the AGQ submits that the applicants have not met their burden either, because (1) according to Mr. Barabé’s statement, there will not be a shortage of qualified translators, and (2) in civil matters, judges will have the discretion to extend any time limit[[62]](#footnote-62) or make appropriate orders to preserve the parties’ rights.
5. Lastly, the AGQ cites an excerpt from the British Columbia Court of Appeal’s decision in *Conseil scolaire francophone*,[[63]](#footnote-63) which was affirmed by the Supreme Court[[64]](#footnote-64) and which, in his submission, stands for the proposition that an obligation to translate pleadings from French to English is not a barrier to access to justice in that province.[[65]](#footnote-65) It should be specified at the outset that, in the Court’s opinion, that excerpt does not have the significance and scope ascribed to it. First of all, the British Columbia courts are not bound by section 133 of the *Constitution Act, 1867.*[[66]](#footnote-66) Also, the decision does not address the question of irreparable harm in the context of an application for a stay or an interlocutory injunction.
6. In the Court’s opinion, the applicants’ evidence casts doubt on whether qualified translators exist in sufficient number and have sufficient availability for legal pleadings to be translated rapidly and efficiently. The resulting costs and delays raise concerns about access to the courts.
7. The applicants’ evidence constitutes a sufficient basis for a finding that irreparable harm is probable, at least with respect to urgent or expedited proceedings. This is not, as the AGQ argues, a hypothetical situation. Indeed, with respect to safeguard orders, temporary or interlocutory injunctions, seizures before judgment and Anton Piller orders—to name just those forms of relief—the Court can take judicial notice of the fact that the applications are urgent and may require rapid appearances before the courts to prevent irreparable harm.
8. The AGQ responds that the interested party need only ask a judge for an order accommodating it so the right is not lost. It argues that a party faced with an urgent situation can simply ask a judge to extend the timelines so it can obtain a certified translation of the pleadings and thereby move forward. It is true that this solution can be envisaged in cases where a recourse would be lost due to imminent prescription. But this would not prevent the party being sued beyond the time limits from contesting the request.
9. Similarly, if leave is granted to file a pleading in English at first and then later in certified French translation, this could be challenged as well. The *Act* as currently drafted does not authorize any accommodation.
10. Thus, with certain urgent applications, access to the courts for the purpose of asserting rights is rendered illusory. By way of example, consider an application for the seizure of certain property before judgment, brought to prevent the property from disappearing. If such an application were in English only and were not accompanied by a certified translation from a certified translator, it would not be eligible for filing. It would not be possible to seize the court of the application; a court file could not even be opened. The same applies to applications for temporary injunctions.
11. The submission by counsel for the AGQ that it would suffice to appear before a judge in chambers with a sworn statement and make oral arguments in view of the insufficient time to obtain a French translation of the application for seizure or injunction cannot be used as a basis for arguing that no irreparable harm would result from Bill 96 coming into force. A court action must be based on a pleading that sets out the relief sought, and on supporting evidence. A sworn statement that can be drafted in English serves only as evidence and is not the same as a pleading setting out the claim.
12. The translation requirement involves time limits that begin to run once the pleading is finalized. The translation would need to be a translation of the final and complete version of the pleading.
13. The alleged challenge for access to justice is not obviated if section 208.6 of the *Charter of the French language* comes into force because, if the pleading is submitted for filing without the certified French version, it is automatically rejected and sent back. Thus, the sanction prevents the opening of the court file and, as a result, an application to a judge for an extension of the time limits would not appear to be an option, as there is no way to access it.
14. In addition to that question, there is the question of the additional costs required of all legal persons that come before the courts, be they plaintiffs, applicants, defendants or respondents, throughout each step of readying the case for trial.
15. As the AGQ notes, it is possible that major corporations, such as multinationals or large corporate landlords, will have easy access to certified translators—sometimes even on staff—to translate any pleading that must be filed in court.
16. However, for other legal persons, such as small or medium-sized businesses or closely held corporations, this obligation to submit a translation by a certified translator gives rise not only to additional delays but also additional costs.
17. In the Court’s opinion, the evidence in this case evinces a serious risk that, in such instances, some legal persons will be unable to assert their rights before the courts in a timely manner or will be forced to do so in a language other than the official language in which they and their lawyers are more conversant and which they identify as their own.
18. The special impact that this could have on the Kahnawà:ke community is worth considering. So is the impact of the measures on applications for authorization of care brought by hospitals in connection with anglophone patients. Such applications are urgent and pertain to vulnerable persons.
19. In urgent matters, if the proceedings are not instituted due to a shortage of time or of resources to cover translation costs, it will be very difficult to document and identify cases where a party has been prevented from asserting its claims or its rights before the courts.
20. Furthermore, to avoid the translation requirement, a legal person with English‑speaking representatives could instruct its counsel to draft the pleading in French, even though it must be supported by a sworn statement attesting to the veracity of the facts set out in the pleading. This could lead to additional difficulties for the party attesting to the veracity of the facts set out in a pleading that has been drawn up in French, considering that the sworn statement is in English because that is the party’s language of communication.
21. Thus, the Court is of the opinion that the provisions attacked by the application will cause irreparable harm to certain legal persons and their English-speaking representatives.

## 3 The balance of convenience

### 3.1 Principles

1. The balance of convenience is often the decisive test in constitutional cases, given that the applicant’s burden in the first two steps is relatively light.[[67]](#footnote-67)
2. In examining the balance of convenience in the context of a debate about the validity of a law, the following factors must be weighed:

[5] … On the one hand stands the benefit flowing from the law. On the other stand the rights that the law is alleged to infringe. An interlocutory injunction may have the effect of depriving the public of the benefit of a statute which has been duly enacted and which may in the end be held valid, and of granting effective victory to the applicant before the case has been judicially decided. Conversely, denying or staying the injunction may deprive plaintiffs of constitutional rights simply because the courts cannot move quickly enough....[[68]](#footnote-68)

1. Thus, the concept of public interest must necessarily be considered in analyzing the balance of convenience[[69]](#footnote-69) and when the suspension of a statute such as the one in issue here is being sought.[[70]](#footnote-70)
2. The government does not have to show that the contested enactment is in the public interest. There is a presumption that it is, and the court does not have to determine whether the effect of the law is genuinely beneficial to society in general:

[9] … It follows that in assessing the balance of convenience, the motions judge must proceed on the assumption that the law … is directed to the public good and serves a valid public purpose.[[71]](#footnote-71)

1. The legislation “benefits from what is commonly, but erroneously, referred to as the presumption of constitutional validity”:[[72]](#footnote-72)

[28] … This presumption [of constitutional validity] is rather a rule of procedure whereby the onus of establishing that legislation violates the Constitution lies with those who challenge it. By definition, this rule is essentially directed to the merits of the case. It is therefore rare for the constitutional validity of legislation to be determined within the framework of a provisional or interlocutory proceeding, and courts will not lightly decide that a law that Parliament or a provincial legislature has duly enacted for the public good is inoperative before a complete constitutional review has been completed.[[73]](#footnote-73)

[Citations omitted.]

1. Thus, only in “clear cases”[[74]](#footnote-74) will the court suspend the operation of a legislative enactment before deciding on its validity.
2. Although the State does not have a monopoly on public interest in constitutional cases,[[75]](#footnote-75) it is up to the party seeking the suspension to demonstrate that “the suspension of the legislation would itself provide a public benefit.”[[76]](#footnote-76) As the Court of Appeal has stated, “the public interest is not solely that of society generally, but may also involve the particular interests of identifiable groups.”[[77]](#footnote-77)

### 3.2 Application to the case at bar

1. The Court must determine whether the applicants have succeeded in rebutting the presumption that the operation of the contested provisions until the hearing of the substantive application would serve the public interest better than their suspension. The applicants provide several reasons why the case at bar is, in their view, a “clear case” as defined by the jurisprudence:

* The aforementioned argument, which relies on the decisions in *Blaikie* and *MacDonald*, that there is a “flagrant” conflict with section 133 of the *Constitution Act, 1867*.
* In light of excerpts from legislative debates, the Minister of Justice neglected the problem of access to civil justice in developing Bill 96.
* The impugned provisions run counter to the [translation] “required culture shift within the civil justice system”[[78]](#footnote-78) that the courts have frequently discussed, notably in *Hryniak v. Mauldin*.[[79]](#footnote-79)
* The suspension itself is in the public interest due to the collective aspect of the language rights guaranteed by the Constitution.[[80]](#footnote-80) When properly weighed, the public interest favours the protection of the anglophone minority pending the hearing on the merits of the application.
* There is a significant connection between language rights and the right to dignity.

1. The AGQ cites the presumption that the contested legislation serves the public interest:

* The contested provisions are part of a wide-ranging law aimed at affirming Quebec’s French character.
* Certain Court of Appeal and Supreme Court decisions have confirmed the importance or legitimacy of the goal of protecting the French language in Quebec.[[81]](#footnote-81)
* The contested provisions themselves serve access to justice objectives for francophone litigants. The examples given[[82]](#footnote-82) include the right of a tenant who is the subject of an eviction application brought by a real estate company, and the right of an employee whose workers’ compensation claim is contested by his multinational corporate employer before the Administrative Labour Tribunal.

1. The AGQ also refers to other provisions of the *Charter of the French language* and the *Charter of human rights and freedoms*[[83]](#footnote-83)that complement or will complement the contested provisions:

* Section 4 of the *Charter of the French language*, in force and unaltered by Bill 96:

**4.** Workers have a right to carry on their activities in French.

* The new section 6.2 of the *Charter of the French language*, in force since June 1, 2022:[[84]](#footnote-84)

**6.2.** Every person has a right to justice and legislation in French.

* The new section 3.1 of the *Charter of human rights and freedoms*, also in force since June 1, 2022:[[85]](#footnote-85)

**3.1.** Every person has a right to live in French to the extent provided for in the Charter of the French language (chapter C‑11).

1. The AGQ argues that a suspension should be granted only in the clearest cases,[[86]](#footnote-86) and that the grounds of the application must be considered with great caution and must be supported by the evidence and be sufficient to rebut the presumption that the application of the contested provisions serves the public interest.
2. If the Bill 96 suspension is granted, this will suspend, for the duration of the proceedings, the obligation of anglophone legal persons to obtain a version, translated by a certified translator, of all pleadings they wish to file with the court and thereby gain access to the court. Another effect will be to deprive francophone litigants of a French version of any of the pleadings to which they may be a party.
3. The Court finds upon its examination of the provisions in question above that the provision declaring the right to justice in French under section 6.2 of the *Charter of the French language* supports the AGQ’s argument. It is important to bear in mind that the validity of this provision is not under attack. In fact, the applicants acknowledge its importance or even its necessity in their application.
4. On the other hand, while the impugned provisions preserve the primacy of French as an objective even before the courts, it appears that they also compromise access to the courts.
5. Since the *Constitution Act, 1872*, individuals and legal persons in Quebec have had the right to address the courts in the language of their choice. If the impugned provisions come into force, this will remain the case, except that in order for a pleading to be eligible for filing with the registry, it will need to be accompanied simultaneously by a certified translation from a certified translator. Failure to attach a translated version to the legal person’s pleading will immediately result in its rejection, without any examination of the nature or circumstances of the case.
6. As worded, Bill 96 prevents the filing of an English-only pleading even if all the parties to the case are using English. The absence of a certified true translation bars access to the courts by legal persons exercising recourses.
7. It should be emphasized that the current debate is not part of a challenge by the legislator that relies on a derogation clause overriding the fundamental rights protected by the *Charter of human rights and freedoms*. The recourse in the case at bar contests what is alleged to be a derogation from a provision of the *Constitution Act, 1867*.[[87]](#footnote-87)
8. The Court acknowledges that it remains possible, under the provisions in question, for legal persons to draft their pleadings in English. Despite this, we must consider the effect of the new requirements to ascertain whether it is appropriate to suspend them during the proceedings.
9. The provisions challenged by the litigation risk creating an obstacle that could prove insurmountable and equivalent to a denial of justice, notably, as discussed earlier, in the event of urgent proceedings. The effect on the timelines when undertaking an urgent proceeding to preserve rights is concerning; it makes the recourse so inefficient that it might not be undertaken. Similarly, the issue of translation costs throughout the proceedings merits an assessment of the resulting effect on access to justice.
10. Based on the fact that no measure has been enacted to offset what has been noted, the Court is inclined to conclude that, at this stage in the proceedings, the balance of convenience favours the applicants.
11. Lastly, Bill 96, which significantly changes many spheres of activity in Quebec, contains various coming into force dates for the different measures it contains. Some provisions are already in force.[[88]](#footnote-88) Those attacked in these proceedings are scheduled to come into force on September 1, 2022.[[89]](#footnote-89) Other elements of Bill 96 will come into force between 2023 and 2025.[[90]](#footnote-90) Thus, the complete rollout of the legislation over a period of a few months to a few years suggests it might be appropriate to temper the negative impact on the public interest that results from temporarily suspending certain provisions while the parties submit their arguments on the merits of the constitutional challenge.
12. The applicants have demonstrated not merely a private interest but a public interest that can be served by suspending the application of the two provisions under consideration. This interest is rooted in the collective dimension of the language rights protected by section 133 of the *Constitution Act, 1867*, and in the harm caused to an identified group, namely, Quebec anglophones.
13. Consequently, the applicants have succeeded in rebutting the presumption that the implementation of the specific provisions of Bill 96 that are under consideration serves the public interest.
14. Accordingly, the Court is of the opinion that the balance of convenience for English‑language legal persons favours temporarily suspending the application of the new sections 9 and 208.6 of the *Charter of the French language* until the questions raised by the present debate are examined on the merits.

## conclusions sought

1. The conclusions of the application for judicial review are presently drafted as follows:

[translation]

DECLARE sections 9 and 208.6 of Bill 96 to be of no force or effect by virtue of section 133 of the Constitution Act, 1867 and section 52 of the Constitution Act, 1982, notwithstanding appeal.

SUSPEND the operation of sections 9 and 208.6 of Bill 96 until final judgment, notwithstanding appeal.

THE WHOLE with legal costs.

1. As discussed at the hearing, all the parties, including the AGQ, agree that the provisions contested by the applicants are in fact sections 9 and 208.6 of the *Charter of the French language* as amended by sections 5 and 119 of Bill 96.[[91]](#footnote-91) The wording of the relief sought needs to be revised. The AGQ agreed at the hearing that, if an order granting suspension is issued, the relief in question should be granted without further formality.
2. Also, it appears the applicants are seeking provisional execution of the judgment, which requires a showing that “bringing an appeal is likely to cause serious or irreparable prejudice to one of the parties.”[[92]](#footnote-92)
3. In the Court’s opinion, given the showing of irreparable harm and the coming into force scheduled for September 1, 2022, the suspension must be declared notwithstanding appeal.

# CONCLUSION

1. The Court grants the requested suspension for the duration of the proceedings, that is to say, until the final judgment of the Superior Court is rendered. Furthermore, the Court intends to proceed as soon as the parties are ready and has even proposed a final hearing as early as November 2022. It will be up to the parties to decide on a timeline for readying the case for trial on the merits.

# FOR THESE REASONS, THE COURT:

1. **GRANTS** the applicants’ application for suspension;
2. **SUSPENDS** the coming into force of sections 5 and 119 of the *Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, which amend the *Charter of the French language,* CQLR, c. C-11 by adding sections 9 and 208.6 thereto, while the proceedings are pending before the Superior Court of Quebec, notwithstanding appeal;
3. **THE WHOLE** with legal costs.

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| Mtre Kamy Pelletier-Khamphinith | | |
| Labrecque Doyon Avocats | | |
| Counsel for the applicants | | |
|  | | |
| Mtre François-Alexandre Gagné | | |
| Mtre Manuel Klein | | |
| Mtre Maxence Duchesneau | | |
| Bernard, Roy (Justice-Québec) | | |
| Counsel for the respondent | | |
| Mtre André-Philippe Malette | | |
| Mtre Roxanne Blanchette | | |
| Counsel for the Barreau du Québec | | |
|  | | |
| Date of hearing: | August 5, 2022 | |

1. S.Q. 2022, c. 14. [↑](#footnote-ref-1)
2. At issue are ss. 9 and 208.6 of the *Charter of the French language*, CQLR c. C-11, as amended by ss.  5 and 119 of Bill 96. The text of the two provisions is reproduced at paragraph 21 of this judgment. [↑](#footnote-ref-2)
3. Specifically, s. 133 of the *Constitution Act, 1867*, 30 & 31 Vict., c. 3. [↑](#footnote-ref-3)
4. *Ibid.* [↑](#footnote-ref-4)
5. *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110. [↑](#footnote-ref-5)
6. *RJR–Macdonald Inc.* *v.* *Canada (Attorney General)*, [1994] 1 S.C.R. 311. [↑](#footnote-ref-6)
7. *Harper* *v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764. [↑](#footnote-ref-7)
8. Article 511 C.C.P. [↑](#footnote-ref-8)
9. *Procureur général du Québec* *c.* *Quebec English School Board Association*, 2020 QCCA 1171 at para. 10; *Hak* *c.* *Procureure générale du Québec*, 2019 QCCA 2145 at para. 103. [↑](#footnote-ref-9)
10. Apart from certain exceptional cases; *Groupe CRH Canada inc*. *c*. *Beauregard*, 2018 QCCA 1063 at para. 77. [↑](#footnote-ref-10)
11. *FLS Transportation Services Limited* *c.* *Fuze Logistics Services Inc.*, 2020 QCCA 1637 at para. 28; *Conseil des juifs hassidiques du Québec* *c.* *Procureur général du Québec*, 2021 QCCS 281 at para. 108. [↑](#footnote-ref-11)
12. *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 127. [↑](#footnote-ref-12)
13. *RJR–Macdonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311at348; *Karounis* *c.* *Procureur général du Québec*, 2020 QCCS 2817 at para. 13. [↑](#footnote-ref-13)
14. *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 133. [↑](#footnote-ref-14)
15. [1979] 2 S.C.R. 1016. [↑](#footnote-ref-15)
16. [1986] 1 S.C.R. 460. [↑](#footnote-ref-16)
17. [1999] 1 S.C.R. 768. [↑](#footnote-ref-17)
18. 2018 SCC 50. [↑](#footnote-ref-18)
19. Respondent’s argumentation plan at para. 26. [↑](#footnote-ref-19)
20. *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016 at 1022. [↑](#footnote-ref-20)
21. *Ibid*. at 1030. [↑](#footnote-ref-21)
22. *RJR–Macdonald Inc.* *v.* *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341; *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 128. [↑](#footnote-ref-22)
23. *English Montreal School Board* *c.* *Procureure générale du Québec*, 2019 QCCS 2682 at para. 43. [↑](#footnote-ref-23)
24. Originating application at para. 48. [↑](#footnote-ref-24)
25. Respondent’s argumentation plan at para. 36. [↑](#footnote-ref-25)
26. *Hak* *c.* *Procureure générale du Québec*, 2019 QCCA 2145 at paras. 109, 110 and 115, leave to appeal to S.C.C. refused, 39016 (9 April 2020); *Karounis* *c.* *Procureur général du Québec*, 2020 QCCS 2817 at para. 31. [↑](#footnote-ref-26)
27. See *Harper v. Canada (Attorney General),* 2000 SCC 57 at paras. 9 and 11; *Karounis c. Procureur général du Québec*, 2020 QCCS 2817 at para. 30. [↑](#footnote-ref-27)
28. See also *Hak c. Procureure générale du Québec*, 2019 QCCA 2145 at para. 108, *Karounis c. Procureur Général du Québec,* 2020 QCCS 2817 at para. 29. [↑](#footnote-ref-28)
29. Sworn statement of Doug Mitchell at paras. 9, 11 and 12; First sworn statement of Michael Shortt at paras. 22–23; Sworn statement of Tonya Perron at para. 30. [↑](#footnote-ref-29)
30. First sworn statement of Michael Shortt at para. 23. [↑](#footnote-ref-30)
31. Sworn statement of Doug Mitchell at paras. 10–13; First sworn statement of Michael Shortt at paras. 23, 31 and 40–42; Sworn statement of Tonya Perron at paras. 29 and 76. [↑](#footnote-ref-31)
32. Sworn statement of Doug Mitchell at paras. 13 and 29–31. [↑](#footnote-ref-32)
33. First sworn statement of Michael Shortt at paras. 31 and 40. [↑](#footnote-ref-33)
34. Sworn statement of Tonya Perron at paras. 20–29. [↑](#footnote-ref-34)
35. Second sworn statement of Michael Shortt at para. 23. [↑](#footnote-ref-35)
36. *Ibid.* at paras. 29–37. [↑](#footnote-ref-36)
37. First sworn statement of Michael Shortt at para. 30. [↑](#footnote-ref-37)
38. Sworn statement of Doug Mitchell at para. 28. [↑](#footnote-ref-38)
39. *Ibid.* at paras. 18–23; First sworn statement of Michael Shortt at para. 32. [↑](#footnote-ref-39)
40. Sworn statement of Tonya Perron at paras. 44–46, 48–51 and 56–57. [↑](#footnote-ref-40)
41. Sworn statement of Doug Mitchell at paras. 18 and 22; First sworn statement of Michael Shortt at para. 32; Sworn statement of Tonya Perron at paras. 47, 51 and 58. [↑](#footnote-ref-41)
42. First sworn statement of Michael Shortt at paras. 27–29. [↑](#footnote-ref-42)
43. Sworn statement of Doug Mitchell at paras. 24–25. [↑](#footnote-ref-43)
44. *Ibid.* at paras. 23 and 27; Sworn statement of Tonya Perron at para. 60. [↑](#footnote-ref-44)
45. Sworn statement of Doug Mitchell at para. 32; First sworn statement of Michael Shortt at paras. 34–39. [↑](#footnote-ref-45)
46. Sworn statement of Donald Barabé at para. 5. [↑](#footnote-ref-46)
47. *Ibid.* at para. 7. [↑](#footnote-ref-47)
48. *Ibid.* at para. 9. [↑](#footnote-ref-48)
49. *Ibid.* at para. 10. [↑](#footnote-ref-49)
50. *Ibid.* at para. 12. [↑](#footnote-ref-50)
51. *Ibid.* at paras. 12–14. [↑](#footnote-ref-51)
52. *Ibid.* at paras. 15–16. [↑](#footnote-ref-52)
53. *Ibid.* at para. 17. [↑](#footnote-ref-53)
54. Applicant’s argumentation plan at para. 44. [↑](#footnote-ref-54)
55. Sworn statement of Donald Barabé at para. 18. [↑](#footnote-ref-55)
56. R.S.C. 1985, c. 1 (5th Supp.). [↑](#footnote-ref-56)
57. Canada Revenue Agency, Interpretation Bulletin IT–99R5, “Legal and Accounting Fees” (December 5, 2000) at para. 28 (tab 24 of the respondent’s book of authorities). [↑](#footnote-ref-57)
58. Respondent’s argumentation plan at para. 44. [↑](#footnote-ref-58)
59. Article 87(3) C.C.P. [↑](#footnote-ref-59)
60. Respondent’s submissions plan at para. 47. [↑](#footnote-ref-60)
61. For example, legal persons can be represented by individuals other than lawyers in small claims cases (art. 88, para. 1 and art. 542, para. 2 C.C.P.) and before certain administrative tribunals (*Act respecting the Barreau du Québec*, CQLR, c. B-1, s. 129(c); *Ville de Sherbrooke* c. *Laboratoires Charles River Services précliniques Montréal*, 2022 QCCA 263). This is also possible in provincial penal cases (*Code of Penal Procedure*, CQLR, c. C-25.1, art. 192). [↑](#footnote-ref-61)
62. Article 84 C.C.P. [↑](#footnote-ref-62)
63. *Conseil scolaire francophone de la Colombie-Britannique* *v.* *British Columbia*, 2012 BCCA 282 at paras. 46–52, aff’d 2013 SCC 42. [↑](#footnote-ref-63)
64. *Conseil scolaire francophone de la Colombie‑Britannique* *v*. *British Columbia*, 2013 SCC 42. [↑](#footnote-ref-64)
65. Respondent’s argumentation plan at para. 55. [↑](#footnote-ref-65)
66. Nor are they bound by s. 19 of the *Canadian Charter of Rights and Freedoms.* See *Conseil scolaire francophone de la Colombie‑Britannique v.* *British Columbia*, 2013 SCC 42 at paras. 55–57. [↑](#footnote-ref-66)
67. *RJR–Macdonald Inc.* *v.* *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 342. [↑](#footnote-ref-67)
68. *Harper* *v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764 at para. 5. [↑](#footnote-ref-68)
69. *RJR–Macdonald Inc.* *v.* *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 343; *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 135 and 149. [↑](#footnote-ref-69)
70. *Hak* *c.* *Procureure générale du Québec*, 2019 QCCA 2145 at para. 154, leave to appeal to S.C.C. refused, 39016 (9 April 2020). [↑](#footnote-ref-70)
71. *Harper* *v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764 at para. 9. In addition, see *Hak* *c*. *Procureure générale du Québec*, 2019 QCCA 2145 at para. 91, leave to appeal to S.C.C. refused, 39016 (9 April 2020); *Montréal (Ville de) c.* *Lours*, 2016 QCCA 1931 at para. 21. [↑](#footnote-ref-71)
72. *Québec (Procureure générale)* *c*. *D’Amico*, 2015 QCCA 2138 at para. 28. [↑](#footnote-ref-72)
73. *Ibid.*, citing *Manitoba (A.G.)* *v.* *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 124–125, and *Harper v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764 at para. 9. [↑](#footnote-ref-73)
74. *Harper* *v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764 at para. 9, cited in *Hak* *c.* *Procureure générale du Québec*, 2019 QCCA 2145 at para. 92, leave to appeal to S.C.C. refused, 39016 (9 April 2020). [↑](#footnote-ref-74)
75. *RJR–Macdonald Inc. v.* *Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 343. [↑](#footnote-ref-75)
76. *Ibid.* at 348–349, cited in *Harper* *v.* *Canada (Attorney General)*, [2000] 2 S.C.R. 764 at para. 9. [↑](#footnote-ref-76)
77. *Procureur général du Québec* *c*. *Quebec English School Board Association*, 2020 QCCA 1171 at para. 59. [↑](#footnote-ref-77)
78. Originating application at para. 67. [↑](#footnote-ref-78)
79. 2014 SCC 7. [↑](#footnote-ref-79)
80. See *Procureur général du Québec* *c*. *Quebec English School Board Association*, 2020 QCCA 1171 at para. 59 *in fine*. [↑](#footnote-ref-80)
81. *Solski (Tutor of) v*. *Quebec (Attorney General)*, 2005 SCC 14 (concerning s. 23 of the *Canadian* *Charter of Rights and Freedoms*); *Entreprises W.F.H. ltée c.* *Québec (Procureure générale)*, [2001] R.J.Q. 2557 (C.A.), leave to appeal to S.C.C. refused, 28978 (12 December 2002); *156158 Canada Inc.* *v.* *Attorney General of Quebec*, 2017 QCCA 2055, leave to appeal to S.C.C. refused, 37967 (4 October 2018) (with respect to s. 1 of the *Canadian Charter of Rights and Freedoms*). [↑](#footnote-ref-81)
82. Respondent’s argumentation plan at para. 68. [↑](#footnote-ref-82)
83. CQLR, c. C-12. [↑](#footnote-ref-83)
84. Sections 4 and 218 of Bill 96. [↑](#footnote-ref-84)
85. Sections 138 and 218 of Bill 96. [↑](#footnote-ref-85)
86. *Harper* *v.* *Canada (Attorney General)*, 2000 SCC 57 at para. 9. [↑](#footnote-ref-86)
87. See ss. 216 and 217 of Bill 96. [↑](#footnote-ref-87)
88. See s. 218, para. 1 of Bill 96, which sets out the subject matter that came into force on May 1, 2022. [↑](#footnote-ref-88)
89. See s. 218, para. 2 of Bill 96. [↑](#footnote-ref-89)
90. See ss. 218.3 to 218.9 of Bill 96. [↑](#footnote-ref-90)
91. The actual s. 9 of Bill 96 amends s. 18 of the *Charter of the French language* and pertains to the language of communication within the government, government departments, and other agencies of the civil administration. There is no s. 208.6 of Bill 96. [↑](#footnote-ref-91)
92. Article 661, para. 1 C.C.P. [↑](#footnote-ref-92)