

Quebec Community Groups Network
Brief to the Senate Standing Committee on Official Language's Study of Matters
Relating to Minority-language Health Services
October 2023

Introduction

The Committee has been authorized to examine and report on minority-language health services, including matters related to the inclusion of language clauses in federal health transfer.

Our brief augments the brief submitted by Community Health and Social Services Network (CHSSN) on May 1st, 2023, and will focus on the inclusion of language clauses in federal health transfers.

In our opinion, the CHSSN brief does an outstanding job describing the demographics of English-speaking Quebec, and the reality we face accessing health and social services. We also draw to your attention the Committee's 2011 report, *The Vitality of Quebec's English-speaking Communities: From Myth to Reality*,¹ which remains an important and relevant piece of policy research related to your current study.

There remains a stubborn level of myth surrounding life as a member of English-speaking Quebec. One enduring and particularly troubling assumption is English-speaking Quebecers have access to health and social services in their language across Quebec through a network of 'English' institutions. As members of this Committee who participated in the 2010 study on English-speaking Quebec heard firsthand, this is simply not the case. There are heartbreaking stories of long-married couples split apart to finish their days separately in different Centres d'hébergement de soins de longue durée (CHSLD) because they could not be accommodated together in English. Or English-speaking mothers from remote regions travelling to hospitals alone to give birth in institutions who were unable to provide services in English.

This is not an indictment of the health professionals within Quebec's public health network, who like others in their profession are dedicated to providing the best possible care to their patients and clients. Nor should it be viewed as malevolent policy on the part of the Government of Quebec, who like all provinces have jurisdiction in matters of health.

¹ Canada, Standing Senate Committee of Official Languages, *The Vitality of Quebec's English-speaking Communities: From Myth to Reality*, Catalogue No YC34-0/411-2E-PDF (Ottawa: Senate of Canada, 2011) online (pdf): <publications.gc.ca/collections/collection_2011/sen/yc34-0/YC34-0-411-2-eng.pdf>.

Quebec's health system is centralizing, and as the elephant rolls, the English-speaking minority and its health and social service institutions are 'affected by every twitch and grunt'.

The Right to Health and Social Services

This Chamber recognizes a gap between the public's perception of the right to health care and the legal existence of that right.² There is no constitutional right to health care in Canada. The *Canada Health Act* is the declaration of a Canadian health policy "to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers."³ The Act also establishes the criteria provinces and territories must meet to qualify for the Canada Health Transfer.

We are familiar with the different heads of power under Canada's constitution, with health falling within the legislative power of the legislatures. Quebec is obligated to protect the constitutional jurisdiction of the province, and the integrity of its institutions.⁴ As a result, inter-governmental agreements between Canada and Quebec on the federal spending power do not impose executable transparency and accountability mechanisms. Quebec does however voluntarily contribute to the annual report to Parliament on the Canada Health Act.

Helping to ensure Canada's English and French linguistic minorities access to health and social services is also a federal policy objective, approached through the Official Languages Health Program.⁵ This program contains three components: training and retention of health professionals (through McGill University in Quebec); health networking; and health services access projects. The Community Health and Social Services Network (CHSSN) is the implementing partner in Quebec on the latter two components.

Is there a right to health care in English in Quebec?

Section 15 of Quebec's *Act respecting health services and social services* provides that:

English-speaking persons are entitled to receive health services and social services in the English language, in keeping with the organizational structure and human, material and financial resources of the institutions providing such

² Canada, Standing Senate Committee on Social Affairs, Science and Technology, *The Health of Canadians — The Federal Role Volume Six: Recommendations for Reform*, Final Report on the state of the health care system in Canada, Catalogue No YC17-0/372-8E-PDF (Ottawa: Senate of Canada, 2002) at ch 5.1 online (pdf): <publications.gc.ca/collections/Collection/YC17-372-1-01E.pdf>.

³ *Canada Health Act*, RSC 1985, c C-6, s 3.

⁴ *An Act respecting the Ministère du Conseil exécutif*, CQLR c M-30, s 3.5.

⁵ Health Canada, "Official Languages Health Program" (26 October 2022), online: <canada.ca/en/health-canada/services/health-canada-official-languages-health-contribution-program.html>.

services and to the extent provided by an access program referred to in section 348 [emphasis added].⁶

Section 348 of the Act reads:

Each agency, in collaboration with institutions, must develop a program of access to health services and social services in the English language for the English-speaking population of its area in the centres operated by the institutions of its region that it indicates or, as the case may be, develop jointly, with other agencies, such a program in centres operated by the institutions of another region.

Such an access program must take into account the human, financial and material resources of institutions and include any institution in the region designated under section 508.

The program must be approved by the Government and revised at least every three years.⁷

There are carve outs in the recently amended *Charter of the French Language*, which permit agencies of the civil administration to use languages other than French in signage, written and other communications. The conditions on these exceptions range from matters effecting public health and safety, health or ‘the principles of natural justice’, conditions which are bounded by several conditions including whether a person is declared eligible to receive instruction in English.⁸ And section 22.5(8) of the *Charter of the French Language*⁹ does not prevent the use of a language other than French for the purposes of section 15 of the *Act respecting health services and social services*.¹⁰

There is therefore a right to access health and social services in Quebec in English. However, it is important to note the internal limits of that right. First, services in English are not available in all institutions. What services an individual has a right to receive and where are contained in access plans, developed regionally by board appointed by the Minister. These access programmes recently approved by the Government of Quebec are not easily accessible to the public, nor are they understandable to the average citizen. There are no posters or signs in institutions that tell patients what their rights are; it is a

⁶ *Act respecting health services and social services*, CQLR c S-4.2, s 15;

The right to services in English as expressed by the current Act is being incorporated into new legislation reforming the health system currently in legislative review (see Bill 15, *An Act to make the health and social services system more effective*). A central authority called Santé Québec will prepare one access program for the English-speaking population.

⁷ *Ibid*, s 348.

⁸ *Charter of the French Language*, CQLR c C-11, ss 22.2 – 22.3.

⁹ *Ibid*, s 22.5(8).

¹⁰ *Supra* note 6.

voyage of discovery to find them. For example, the [Santé Montérégie Portal](#)¹¹ has a page dedicated to English-language services, and a link to the [access plan](#),¹² which is available in French only. Moreover, services in English are limited by “the organizational structure and human, material and financial resources of the institutions providing such services.” Health and social services is at its core dependent on communications between the caregiver and the patient. If they do not speak a common language, or if there no obligation on the part of the caregiver to speak another language, the right is meaningless.

And finally, Section 508 states:

The Government shall designate from among the institutions recognized under of section 29.1 of the Charter of the French language (chapter C-11) those which are required to make health services and social services accessible in the English language to English-speaking persons [emphasis added].¹³

There are 12 such designated institutions, which can be found on the website of l'Office québécois de la langue française.¹⁴ These institutions are often mislabelled as ‘English’ institutions. In fact, they are bilingual institutions, providing services in English and French. The management of these institutions is becoming increasingly centralized, through reforms introduced by Bill 10, *An Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*,¹⁵ and most recently by Bill 15, *An Act to make the health and social services system more effective*.¹⁶

This is not the place to discuss English-speaking Quebec’s concerns over legislative efforts to centralize health and social services in the province. Suffice to say that the doctrine of *par et pour* in terms of management and control of the 12 designated institutions has been significantly eroded and is in danger of disappearing.

¹¹ Santé Montérégie, “Santé Montérégie Portal: English-language services”, online:

<santemonteregie.qc.ca/en/informations-organisationnelles/english-language-services>.

¹² Santé Montérégie, “Mise à jour 2016 du programme d’accès aux services de santé et aux services sociaux 2011-2014 de la Montérégie” (31 March 2016), online (pdf):

<santemonteregie.qc.ca/sites/default/files/2018/10/programmeacces_monteregie_2016.pdf>.

¹³ *Supra* note 6, s 508.

¹⁴ Office québécois de langue française, “Organismes reconnus” (19 December 2022), online:

<oqlf.gouv.qc.ca/francisation/admin_publ/organismes-reconnus.aspx>.

¹⁵ *An Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*, SQ 2015 c 1.

¹⁶ Bill 15, *An Act to make the health and social services system more effective*, 1st Sess, 43rd Leg, Quebec, 2023 (consideration in committee 24 October 2023).

New obligations under Part VII of the Official Languages Act

The *Official Languages Act* (OLA)¹⁷ was recently modernized by C-13 *An Act for the Substantive Equality of Canada's Official Languages*.¹⁸ There are four Government of Canada commitments to advance the equality and status and use of English and French laid out in Part VII of the Act:

1. The enhancement of the vitality of the English and French linguistic minority communities in Canada and fostering the full recognition and use of both English and French in Canadian society;
2. The protection and promotion of French;
3. Advancing formal, non-formal and informal opportunities for members of English and French linguistic minority communities to pursue quality learning in their own language throughout their lives, including from early childhood to post-secondary education; and,
4. The estimation of the number of children of s.23 right holders.¹⁹

These are not competing commitments, nor should one commitment be understood as invalidating another. The underlying policy scheme addressed by these commitments remains the achievement of the principle of linguistic duality within a multicultural society. Federal support for example to the English linguistic minority in Quebec does not exist in competition with the goal of protecting and promoting French. English-speaking Quebec is after all Canada's most bilingual English cohort, and there is no evidence that support to this official language minority community threatens the use of French in Quebec.

Despite reassurances from Parliamentarians during C-13's legislative process that the rights and interest of English-speaking Quebec would not be adversely affected, we remain concerned about s.45.1(1)(b) of the Act, "Quebec's *Charter of the French language* provides that French is the official language of Quebec."²⁰ We expect the federal partner to fully live up to its commitment to our community under section 41 of the Act.²¹

The recently modernized *Official Languages Act* contains new obligations on federal institutions when negotiating agreements with the provinces and territories. Institutions must "take the necessary measures to promote, when negotiating agreements with the provincial and territorial governments, including funding agreements, that may contribute to the implementation of the commitments"²² to amongst other things enhance the vitality of the English and French linguistic minority communities.²³ Moreover, there are additional

¹⁷ *Official Languages Act*, RSC 1985, c 31 (4th Supp).

¹⁸ *An Act for the Substantive Equality of Canada's Official Languages*, SC 2023, c 15.

¹⁹ *Supra* note 17, ss 41(1)-(4).

²⁰ *Ibid*, s 45.1(1)(b).

²¹ *Ibid*, s 41.

²² *Ibid*, s (7)(a.1).

²³ *Ibid*, ss 41(1)(a).

and clearer duties to consult with official language minority communities in the development of these agreements.²⁴

Finally, there is a new evaluation and monitoring provision contained in the Act, which require institutions to establish mechanisms to track positive measures taken within intergovernmental agreements.

This is seen as an opportunity. First, the Government of Canada has a duty to consult with English-speaking Quebec during the process of negotiating inter-governmental agreements to identify positive measures. The agreements themselves must contain positive measures, which are now subject to evaluation and monitoring.

And to be clear, the new obligations under Part VII are imposed on the federal partner when entering into intergovernmental agreements. However, as we saw in the Federal Court of Appeal's remedy in *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*,²⁵ the consequences of not meeting these obligations, risks a court ordered termination of an agreement.

Conclusion

The federal government's commitments, duties and obligations contained in Part VII of the Act are "inspired by the principle of the protection of minorities and the advancement of the equality of status and use of English and French set out in subsection 16(3) of the [*Canadian Charter of Rights and Freedoms*]."²⁶

English-speaking Quebec has an established consultation mechanism with Health Canada and the Government of Quebec to communicate our health priorities. CHSSN – a trusted community partner – is a key part of this process. The opportunity now exists to ensure that these priorities are reflected in the text of the Canada Health Transfer agreement. Moreover, the positive measures that enhance our community's vitality within this sector must now be transparent and accountable.

The Government of Canada must avoid or at least mitigate the negative impacts of its actions on the vitality of English-speaking Quebec. However, the English-speaking Quebec sees no conflict between the Government of Canada's obligation to enhance the vitality of our community and the commitment to protect and promote French. There is no case to be made that ensuring health and social services are made available to people in need in English in Quebec in anyway threatens the French language.

²⁴ *Ibid*, s 9.1.

²⁵ *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*, 2022 FCA 14, at para 195.

²⁶ *Ibid* at para 127.