

Brief to the Committee on Culture and Education

Quebec and the Minority Language Educational Rights and Canada's English Linguistic Minority Communities: A New Partnership

**Presented by the
Quebec Community Groups Network**

February 2016

Summary

Voting in elections is an intrinsic right for all Quebecers. It is beyond democratic tradition for government to capriciously remove these rights without a pressing and substantial reason.

Quebec's English public school system is a key institution of the English-speaking community of Quebec, a linguistic minority community. The management and control of these institutions is a matter of governance subject to minority language educational rights contained in the Canadian Charter of Rights and Freedoms, and Quebec's democratic tradition, expressed in the political rights guaranteed by the Quebec Charter of Human Rights and Freedoms.

The Government of Quebec has a duty to recognize and work in partnership with its linguistic minority community to ensure the effective management and control of the English public school system.

The English-speaking community of Quebec recognizes the need for reforms to the governance of its educational institutions. The community conducted a wide-ranging consultation, and prepared recommendations to the Minister of Education and Higher Education in 2015 on the matter.

Bill 86 is bad law. Others within the English-speaking Quebec will address the Bill's content. This brief deals with the process by which the legislation was conceived and delivered to the National Assembly, and makes recommendations on how to move forward.

We make four key observations and recommendations:

Democratic Rights

The Government of Quebec must protect and advance, not restrict and obfuscate, the rights of Quebecers. In our democratic tradition, government acts with the delegated authority of the people. It does not unilaterally dictate to Quebecers how individual rights will be enjoyed, nor without meaningful consultation restrict or remove those rights from citizens. Every legally capable Quebecer has the right to be a candidate and to vote at an election; universal suffrage in relation to school board governance currently is a guaranteed political right.

The Minority Language Education Rights of Quebecers

Quebec's English public schools – in addition to providing excellent education to students – exist to preserve and promote the language and unique culture of English-speaking Quebec. Schools are key and central institutions of the English-speaking community of Quebec; and in many communities the last self-governed institution. The Government of Quebec must recognize and support the linguistic and cultural rights of English-speaking community of Quebec; and that, “a school is the single most important institution for the survival of... [our] official language minority.”¹ Minority Language Educational Rights are collective, not individual in nature. Management and control our educational institutions cannot be unilaterally and capriciously restricted or dictated by government.

¹ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3

Government is not Hearing the Voice of English-speaking Quebec

The English-speaking community of Quebec is not equitably represented within the Province's civil service or Quebec's political parties. Public discourse and policy development reflects a profound gap between the popular myth of English-speaking Quebecers, and our minority's reality. As a result, English-speaking Quebec is not being heard in the public space, and our goals and concerns are unknown or misunderstood. Government policies and practices put in place to suit everyone, and which appear to be non-discriminatory, do not address the specific needs of English-speaking Quebec, and are indirectly discriminatory. This is the very definition of systemic discrimination.

English-speaking Quebec: Partner not Adversary

The Government of Quebec must recognize and consult with the English-speaking community of Quebec, which is not an adversary, but a willing partner in Quebec's success. It is time for the Government of Quebec to engage the English-speaking community of Quebec constructively and substantively in policy development on issues that affect all Quebec citizens.

Bill 86: Departing from Quebec's democratic tradition

On December 4, 2015, the Government of Quebec introduced *Bill 86: An Act to modify the organization and governance of school boards to give schools a greater say in decision-making and ensure parents' presence within each school board's decision-making body*. The purpose of the Bill is administrative. It makes no claim either to directly improve the scholastic performance of Quebec's students or improve or maintain existing educational services. Rather, at its core, Bill 86 seeks to give the Ministère de l'Éducation, du Loisir et du Sport (the Minister), "...power to issue directives to school boards", and to tighten "...oversight powers governing school boards".

Put simply, Bill 86 seeks to increase the executive authority of the Minister in the Quebec's public school system.²

Why the proposed reforms contained in Bill 86 are required remains unclear. The Government of Quebec chose neither to conduct public consultations nor to produce a white paper prior to introducing this legislation. Moreover, this Committee has chosen the more restrictive special consultation (consultations particulières) process to gather feedback on the Bill, rather than the more open general consultation process, which addresses the population as a whole. This seems extraordinary, given not only the scope of the proposed reforms, but their nature. It is unacceptable for any level of government to capriciously effect democratic rights. We do not live in a society where the government is empowered to dictate how people will govern their institutions, or exercise their rights.

Our mature democracy demands the voice of all Quebec citizens be constantly sought out, heard and reflected in government policy and legislation, and not just during election campaigns. A government that dictates fundamental changes to the governance of institutions that historically have been intimately tied to their communities demonstrates arrogance and disrespect for the democratic process. Developing policy remotely without input from interested and invested citizens and then foisting these ideas on these same communities is reprehensible and contrary to the finest of Quebec's political traditions.

The Government of Quebec is a democratic institution in service to its citizens. The right to vote is the right to govern. Governments do not have a right to govern, they are delegated the authority to do so by the electorate. As Quebecers we are dismayed at the spate of recent and intended government reforms that discourage, neuter or remove the authority for the management and control of public institutions from regional and minority communities. We are still trying to mitigate the effects of imposed reforms in the health and social services sector; here we go again. Policy shifts towards centralization have not been accompanied by any evidence of improved services, increased accountability, or reduced costs. In the minds of the Government of Quebec, when did devolution, the transfer or delegation of power to regional administrations where local challenges and solutions are best identified and addressed, become the enemy of effective and efficient governance?

The political rights of Quebecers are clear, "every person legally capable and qualified has the right to be a candidate and to vote at an election." These rights are intrinsic, designed for our individual and collective protection, development, and common well-being, and guaranteed by the collective will.³ School boards - chosen through universal suffrage - are duly constituted entities established under provincial authority. And whereas the Quebec legislature has the exclusive power to make laws in relation

² In this brief, the term 'public school system' includes schools to which the act applies, public and semi-private.

³ [Quebec Charter of Human Rights and Freedoms](#).

to education, this power is not absolute, but bounded first by law, and certainly by a moral obligation to citizens.⁴

While presenting its case haphazardly in the media in a series of ad hoc and superficial meetings with selected stakeholders, the government points to low turnouts as the principle motivation for school governance reform. Its argument hinges on a reductionist evaluation of voter participation in school board elections that it feels is low, assuming to possess the authority to make such a judgment. What prevents this reasoning from being applied to municipal elections? Will the government over time presume to usurp all local democratic control of our institutions, concentrating power within itself? Are citizens expected to relinquish their rights to, “be a candidate and to vote at an election”? And if the government is concerned with low voter turnout during school board elections, why is it deaf to solid, evidenced-based recommendations on how to improve electoral participation? By what right does the Government of Quebec threaten and scold schoolboard electorates for exercising their right – or not – to stand for and vote in an election?

QCGN believes that Bill 86 proposes legislation that is bad, unnecessary, and unwanted. We certainly have issues with the bill’s substance. However, it is the cavalier way the legislation was conceived and has arrived at the National Assembly for consideration that causes us – as Quebecers – great concern.

At the heart of every community is a school, which along with places of worship, are the first institutions the world over that communities build. Schools do far more than instruct our children, they define, protect and communicate who we are and what we value. They are places where we meet and celebrate significant events and milestones in the lives of our children and our families. They are institutions which communities, not societies, build. Collectively and individually we give of our expertise, our time, and our money to our local schools. Schools reflect their communities; and so with good reason, schools are and have been locally governed and managed, within the bounds of broad societal policy objectives for generations in Quebec.

We cannot but reject changes to the way schools are governed that are crafted without our voices being heard. We cannot but reject envisioned reforms that strip Quebecers of their right to be candidates and to vote in elections. If the government is confident in the measures contained in Bill 86, then let it bring education governance reform to the people. Let it hold a referendum among school board electors. Let it refer the legislation to the Quebec Court of Appeal for an opinion on its legality and constitutionality.

Bill 86 is untenable. Community leaders believe that reforms to the public school system – its governance included – are necessary. In the summer of 2015, four leading English-speaking civil society groups sponsored the *Election Systems Study Panel*; an independent ad hoc body led by the Honourable Marlene Jennings. The Panel was mandated to review the current practice of school board governance and propose options for improving the elections system. Following a broad community consultation, the Panel made 13 recommendations, which included specific, evidence-based suggestions on how to improve voter turnout, and increase community participation in the management and control of English public schools. These recommendations were rejected outright, a contemptuous and inexcusable reaction that highlights the arrogance of this government, and its stubborn refusal to work with civil society on this matter, and our linguistic minority community in particular.

We appeal to the Government of Quebec to start acting as a government by the people and for the people; a societal institution that protects and expands the rights of citizens.

⁴ s.93, Constitution Act 1867.

Bill 86 and the English-speaking community of Quebec

The English-speaking community of Quebec, and minority language educational rights holders under s. 23 of the Canadian Charter of Rights and Freedoms have clearly expressed dismay with Bill 86.⁵ In summary, concerns have been expressed related to:

- the constitutionality of the legislation, especially how it could infringe upon s. 23 rights related to the management and control of English public schools;
- the government's unilateral decision to strip Quebecers of the right to stand as a candidates and to vote in school board elections;
- the failure of the Government of Quebec to formally and comprehensively present objective evidence that the reforms are necessary, i.e. how they will improve the efficiency and effectiveness of school governance and improve student achievement; and,
- the refusal of the Government of Quebec to conduct broad-based public consultations on Bill 86, which if enacted will adversely affect the political and human rights of Quebecers.

Minority Language Education Rights

Confessional school boards, one Catholic, the other Protestant, were guaranteed in Quebec under the terms of Confederation in 1867. Changes to Quebec society, and late 20th Century constitutional reform allowed for the establishment of school boards organized along linguistic lines, the current English and French boards.⁶

Section 23 of the Canadian Charter of Rights and Freedoms established minority language education rights for eligible Canadians in 1982. The nature and extent of these rights continues to evolve, and structural tension exists between governments' duties to ensure the full enjoyment of these expanding rights, and the right holders.⁷

The purpose of all schools is to provide the best educational experience possible for its students. English schools – institutions of our linguistic minority community – have the added responsibility of preserving and promoting the unique culture of English-speaking Quebec.⁸ These are institutions of English-speaking Quebec, not institutions that provide services in English.

Caring for these institutions, ensuring our children receive an excellent education, and reinforcing the school's role as the centre of community life are responsibilities shared between the English-speaking community of Quebec and the Minister.

⁵ Canada has two legally recognized official language minority communities, also known as the English and French linguistic minority communities in Canada. These communities comprise Canadians whose first official language spoken (FOLS) is a minority language in a given province or territory: French FOLS outside of Quebec, and English FOLS within Quebec. For the purposes of this brief, Canada's English linguistic minority communities are referred to in a collective sense as the English-speaking Community of Quebec, and its members as English-speaking Quebecers.

⁶ Pigeon, Mathieu. *Education in Québec, before and after the Parent reform*, McCord Museum, online. (undated)

⁷ In legal cases addressing minority language education rights in which Quebec is not a principle litigant, governments attempt to limit the extent of their liability reasons related to resource allocation. Quebec's reticence towards section 23 appears to be motivated to limiting the effects of minority language education rights on the application of the Charter of the French Language.

⁸ *Mahe v. Alberta*, [1990] 1 S.C.R. 342

As a minimum, section 23 eligible parents have a right, “...to management and control the educational facilities in which their children are taught. Such management and control is vital to ensure that their language and culture flourish.”⁹

Parental management and control is not unlimited:

“Within the parameters of s. 23, regulation [by the Minister, *ed*] of the board’s powers is permissible. The government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met. The province has a legitimate interest in the content and qualitative standards of educational programs for the official language communities and it can impose appropriate programs in so far as they do not interfere with the legitimate linguistic and cultural concerns of the minority.”¹⁰

Minority education language rights, although expressed as individual rights, have been interpreted by the Supreme Court of Canada as collective in nature. The purpose of these rights is to provide, “...the official language minority with equal access to high quality education in its own language, in circumstances where community development will be enhanced.”¹¹ The Supreme Court found that, “Focussing on the individual right to instruction at the expense of the linguistic and cultural rights of the minority community effectively restricts the collective rights of the minority community.”¹² And in *Mahe v. Alberta*, the Supreme Court of Canada found that in order for the purpose of section 23 rights to be satisfied, “...the minority language group have control over those aspects of education which pertain to or have an effect upon their language and culture.”

*The Waning English School System*¹³

Quebec is not subject to the full provisions of section 23 of the Canadian Charter of Rights and Freedoms; specifically section 23 (1) (a), which extends the parental right to have children receive primary and secondary school instruction in the minority language to citizens of Canada, “...whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside.” In general, this prevents the children of parents who have not received their own elementary instruction in English in Canada from attending English schools; a clear policy decision contained within the Charter of the French Language to ensure immigrant children attend French schools.

Quebec’s English mother tongue population is in decline, variably in terms of absolute numbers, and consistently as a percentage of Quebec’s population. From a high of 13.1 per cent of Quebec in 1971 (788 833 people), the English mother tongue population dropped to 647 659 people, or 8.3 per cent in 2011.¹⁴ However, the population of the English-speaking community of Quebec – which includes not only people

⁹ *Mahe v. Alberta*, [1990] 1 S.C.R. 342

¹⁰ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3

¹¹ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3

¹² *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3

¹³ Unless otherwise cited, data quoted in this section is from, *Indicateurs Linguistiques: Secteur de l’éducation, Ed. 2013*, Quebec, 2013.

¹⁴ 2011 Census of Canada, and Jean-Pierre Corbeil, Brigitte Chavez and Daniel Pereira, *Portrait of Official-Language Minorities in Canada - Anglophones in Quebec*, Statistics Canada, 2010.

whose mother tongue is English, but also those whose main home language is English – is increasing.¹⁵ Like the French majority, the English community is supplemented by people whose mother tongue is neither English nor French. Unlike the majority however, the English-speaking community is unable to gather the children of these people, nor the immigrants whose mother tongue is English, into the English public school system.¹⁶

Quebec's policy decisions, made to protect the French language and ensure the linguistic integration of immigrants and their children, are profoundly affecting the English school system whose student population has declined 60 per cent since 1971; compared to a 36 per cent drop in the French system. This is not just a story about English parents sending their children to French schools to affect biliteracy; the number of students eligible to attend the English system between 1983/84 and 2012/13 has declined 22 per cent.

English schools are depopulating at an alarming rate, and in the process are radically changing. In 1971, French mother tongue children represented 11 per cent of the students attending English schools. In 2012/13 French speaking students were 19.3 per cent of the total. In the regions outside of Montreal, the percentage of English mother tongue children enrolled in English schools dropped from 77 per cent in 1971 to 58 per cent in 2012.¹⁷

Recalling that the purpose of the English school system is to preserve and promote the language and unique culture of English Quebecers, and the central role schools play in the life and existence of communities, it is time to have a serious existential discussion with the people of Quebec on their English-speaking community.

The QCGN strongly recommends the creation by the government of Quebec of a widespread consultation, in the form of an estates general or other, on the educational needs of its English-speaking linguistic minority. A comprehensive and in-depth analysis of current and future needs and an evidence-based debate and consideration of options within this community is necessary. The last five decades have seen dramatic changes to the educational services and programs provided by the public school system to this population. In spite of the many negative impacts endured and challenges faced by their educational institutions, English-speaking students have continued to perform very well on a wide range of variables and scales thanks in large measure to the dedication of staffs and community volunteers. However, there is a limit to flexibility and creativity. We are at the limit.

¹⁵ English FOLS population in the 2011 Census was 1 058 250 people. (See footnote 6 for a discussion on FOLS, and here for a full explanation: <http://www.statcan.gc.ca/eng/concepts/definitions/language05>)

¹⁶ This does not imply that the English school system is, or has historically been populated solely by English mother tongue children. Under Quebec's confessional school regime, no matter their mother tongue, all non-Catholic immigrants were sent to the English Protestant system. Prior to the Charter of the French language, French Quebecers had a choice of sending their children to English schools, conferring the right for generations of French mother tongue parents to do the same. The 'English' school system - like the English-speaking Community it serves - is therefore very ethno-culturally and linguistically diverse.

¹⁷ Likely as a result of urban flight, there has been a 72% decline in the number of French-speaking children attending English schools in Montreal since 1971.

Conclusion

Subject to Constitutional limitations, Quebec's legislature has exclusive authority to make law in relation to education. One such limit is the duty to provide – where numbers warrant - official minority language instruction. Quebec is granted, "...the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met," and, "... has a legitimate interest in the content and qualitative standards of educational programs for the official language communities." Representatives of the official language community have the exclusive right to management of English-language instruction and facilities.¹⁸

These responsibilities should not be seen as a competition. Maintaining Quebec's English public school system is a partnership between our minority language community and the Government of Quebec. Together, we should be striving to achieve substantive equality between our minority school system and that of the majority. The, "educational experience" of children attending English schools must be of "meaningfully similar quality to the educational experience of majority language students." Moreover, parents cannot be deterred from sending their children to an English school because it is "meaningfully inferior to an available majority language school." These are the real challenges English-speaking Quebec should be addressing with the government, not the distracting and easily addressed annoyances with school governance.

Schools are not simply places where children are instructed. They are the cornerstone of communities, and their management and control is there best effected. Centralizing the power to manage and control these institutions – separating them from their communities – reduces, and will eventually remove schools as community institutions. What region in Quebec is prepared to lose its English schools and communities?

The Government of Quebec must stop mistaking equal with equality. Applying the same rules to everyone ensures that great sections of society will be disadvantaged. The principle of substantive equality is well founded in law, and has been proven time and again the best policy approach for achieving societal objectives. One size does not fit all.

Finally, it is time for the Government of Quebec to recognize and constructively engage the English-speaking Community of Quebec in policy discussions. We are here today expressing our dismay over Bill 86 and its attendant reforms to the education system. It is quite possible this legislation if passed will be the subject of a court challenge, that will likely wind up in front of the Supreme Court of Canada. Last year, we were here addressing the egregious effects Bill 10 would have had on our health and social services institutions. We do not want to be adversaries with our government, but constructive partners.

¹⁸ Arsenault-Cameron v. Prince Edward Island, [2000] 1 S.C.R. 3

Appendices

1. Bergman Impact Study
2. Election System Study Panel Report
3. Statistical tables related to public school enrolment, 1971 – 2012.