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English Montreal School Board files lawsuit challenging Bill 96

"These provisions infringe the right to management and control over the language of communications within English language school boards."

Paul Cherry • Montreal Gazette

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Hundreds of Montrealers gathered at Place Du Canada on May 26, 2022 to protest against Bill 96. PHOTO BY DAVE SIDAWAY /Montreal Gazette

The English Montreal School Board has wasted little time in its [pledge to contest the validity of Bill 96](#).

A 47-page lawsuit has been filed at the Montreal courthouse, one week after the school board held a special council meeting and voted in favour of hiring a law firm to contest the legislation that changes the charter of the French language. It is the first court challenge of the bill adopted by the Quebec government on May 24.

The EMSB and chairperson Joe Ortona are taking on Quebec's attorney general. The lawsuit argues Bill 96 "violates the constitution in at least three ways," including how the amended language charter "impermissibly infringes on the right to management and control of minority language education exercised by the EMSB under Section 23 of the Canadian Charter of Rights and Freedoms."

Section 23 of the charter covers minority language educational rights in Canada, and cannot be overridden using the

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“Decisions pertaining to the use of the language of the minority and other languages by and within a minority language school board, go to the heart of the protection conferred by (the Charter). Minority language school boards have the exclusive authority to make such decisions, including the right to create and maintain an environment in which staff, students, families and community members can interact and thrive in the language of the minority.”

The EMSB argues the amended charter of the French language will require it and other English school boards use French or both languages together “in a wide range of internal written communications and documents, including all documents that are not connected to teaching,” and all documents between the employer and staff members.

According to the EMSB’s legal challenge, the amendments include “all internal written communication communication involving more than two people and documents, that are not connected to teaching.” Offers of employment or promotion, individual employment contracts and employment application forms would have to be made available either in French, or in both languages, according to the lawsuit.

“The provision of education requires far more than teaching; it requires that a variety of non-pedagogical services be offered, such as food and nutrition services, physical and mental health services (school nurse, psychological counselling, etc.) and various support services for special needs students that promote equal access to education for all students,” the board states in the document.

The amendments, EMSB argues, “create disincentives to using the language of the minority, English, within the very institutions intended to protect and promote its use under the charter of the French language by imposing the burden of translation on the school or staff who wish to use English.”

The board also interprets the changes as requiring its council of commissioners to adopt regulations and similar acts in French or in both languages. As an example, the EMSB says, the changes will require “written communication from the chair to the commissioners be drafted in French or in English and French together.”

The same would go for notices of meetings, agendas and minutes of council meetings as well as contracts and agreements with other English-language school boards. The changes would also mean the Office québécois de la langue française will have the mandate to investigate the school board to monitor whether the use of the French language is compliant.

“These provisions infringe the right to management and control over the language of communications within English-language school boards,” the lawsuit states.

The EMSB is the largest English-language school board in Quebec. It represents about 44,000 students in schools from the Rivière-des-Prairies–Pointe-aux-Trembles borough in the east end of Montreal to the St-Laurent borough in the west.

Some of the changes to the charter of the French language come into effect in three months and others in one year.

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