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Hanes: 'Alarm bells are ringing' at English school boards over new Bill 40 threat

Premier François Legault's plan to appoint the directors general of school service centres has them on guard.

Allison Hanes • Montreal Gazette

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Russell Copeman, head of the Quebec English School Boards Association, in 2020, spearheaded a court challenge on the constitutionality of Bill 40. The boards obtained an injunction against the Quebec government's effort to transform them into service centres like their French counterparts. PHOTO BY PIERRE OBENDRAUF /Montreal Gazette

More than two years have elapsed since Quebec's English school boards went to court to challenge the constitutionality of Bill 40 and obtained an injunction against the Legault government's effort to transform them into service centres like their French counterparts.

But while they continue to wait patiently — or perhaps a little impatiently, at this point — for a final ruling on their fate, there is a new threat on the horizon to the English-speaking minority's enshrined rights to “manage and control” their own schools.

Premier François Legault recently announced his intention to give the education minister the power to appoint the directors general of the province's service centres.

The news came like a bolt out of the blue in a sit-down [interview with La Presse](#) at the beginning of March when some Quebecers were wrapping up their Spring Break and others were just beginning — hardly an apt moment to share a major change in education policy.

Currently, naming the DG is the purview of the governing bodies of French-language service centres created under Bill 40. And thanks to the interim stay, the so-far-still-intact councils of commissioners have this authority at English school boards.

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Removing this choice from French school boards would run counter to the supposed *raison-d'être* of Bill 40, which, in theory, was to empower local decision-making. In practice, however, the law has resulted in more centralization on the French side.

But it would be a major bone of contention for English boards, where the choice of DG is recognized by the Supreme Court of Canada as an important aspect of [minority language communities' rights under Section 23](#) of the Canadian Charter of Rights and Freedoms.

"This would be an infringement of our control and management rights," said Russell Copeman, head of the Quebec English School Boards Association. "It's clear in our view. It's crystal clear."

Of course, it's all theoretical until legislation has been tabled — and the government is tight-lipped.

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Education Minister Bernard Drainville's press attaché responded to inquiries from the Montreal Gazette by flagging the La Presse interview. Florence Plourde declined to provide any details, like whether English schools would be affected, or even a timeline for action.

But Copeman noted that there is a line item in last month's Quebec budget for education spending setting aside funds for governance reform.

Nevertheless, "alarm bells are ringing," he said. English school boards have been discussing this unexpected development with each other and with their French counterparts, who were also caught off guard.

Even if it's unclear whether the government intends to assume control of naming DGs in the English system, Copeman said QESBA has written a letter to both Drainville and Legault's office warning them that this would be taken as an infringement of their rights.

"They cannot claim ignorance," Copeman said. "If at this point they try to capture the English network, or by omission or wording they capture the English network, then in our view it's deliberate. They've been told."

Judy Kelley, chair of the Lester B. Pearson School Board, said it is essential for the council of commissioners to choose the director general who will implement their vision and carry out their mission. If the minister or ministry is in charge of hiring or firing this top administrator, then the DG would be accountable to the government, not the elected council.

"We are meant to have a very strong working relationship with our DG," said Kelley. "As soon as you lose that connectedness, as soon as the DG would be reporting to the ministry and not the council of commissioners, in the English system, we would see our control and management be completely diminished. It would take decision making out of their hands and place it at the ministry level. If we lose that, we would lose a lot."

Julien Feldman, a commissioner for the English Montreal School Board and chair of its governance committee, said it could also be a recipe for conflict.

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But when the trustee Marlene Jennings sought to install a new director general at the EMSB at the end of her mandate, there was significant pushback from the English-speaking community that she was usurping the rights of the council of commissioners. She eventually relented.

This, Feldman said, may offer a clue as to the Legault government's intentions regarding English schools.

"When the government had an opening through the trustee, the government tried to impose a director general on the Section 23 board," he said. "The CAQ government represents an ongoing challenge to our Section 23 rights."

Legault's reasons for centralizing control over DGs appear to be frustration that some service centres aren't adhering to his government's priorities. For instance, the Centre de services scolaire Pays-des-Bleuets in the Saguenay cancelled some K4 classes due to the teacher shortage. Meanwhile, the Centre de services scolaire de Montréal, the biggest in Quebec, was paralyzed by infighting at the governing board level and put under trusteeship.

Amid all the question marks, the precarious legal status of English school boards makes matters even more complicated.

In the absence of a ruling from Quebec Superior Court — which could be appealed by either side, anyhow — would the injunction maintaining the status quo at the councils of commissioners apply to the choosing of the DG? Would the English community have to go back to court again to fight the removal of this power as a new and specific violation? Would fresh legislation undermine the court challenge entirely?

The fate of English schools under Bill 40 isn't even settled, and already the community is girding for battle over Bill 40 2.0.

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