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Robert Libman: CAQ should back off rather than appealing Bill 40 ruling

If there is one suit of armour that Quebec anglophones can rely on, it's the protection of Section 23 of the Canadian Charter of Rights and Freedoms.

Robert Libman • Special to Montreal Gazette

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54 Comments



A mother and children enter the EMSB offices in Montreal. Adopted in 2020, Bill 40 wasn't necessarily designed to target the anglophone community. PHOTO BY ALLEN MCINNIS /Montreal Gazette files

Politicians will spin a narrative or try to creatively stretch an argument to justify a point of view. Lawyers can prey on slight contradictions or grey areas to cast doubt and win an otherwise unwinnable case. But there are few things that are as black and white in politics and law as the constitutional protection of minority language education rights in this country.

Last week, Quebec Superior Court Judge Sylvain Lussier struck down portions of the Coalition avenir Québec government's Bill 40, which would replace English school boards with so-called service centres, administrative bodies that would be more directly controlled by the government.

If there is one suit of armour that Quebec anglophones can rely on, it's the protection of Section 23 of the Canadian Charter of Rights and Freedoms — a section for which the notwithstanding clause cannot apply. Courts at all levels have consistently upheld protections for minorities to manage and control their minority language education system.

Adopted in 2020, Bill 40 wasn't necessarily designed to target the anglophone community. For years, the CAQ and parties before them had spoken about streamlining the costs and bureaucracy of the education system by eliminating the 60 francophone and nine anglophone school boards with the promise of delivering more autonomy to schools. To many, the overall concept seemed to have merit. Other than from the school boards themselves, there wasn't much pushback from francophones or even among anglophones. The English Montreal School Board had been going through one embarrassing crisis or scandal after another, with accusations of nepotism and mismanagement under then-chair Angela Mancini and were even put under trusteeship for a time.

Few anglophones seemed supportive or overly concerned about their school boards.

But with more and more rights being peeled away in subsequent years by this CAQ government, such as with Bill 96 and Bill 21, more of a united front developed and the community has become more aware and protective about our remaining institutions. Also, since then, the EMSB has veered back on track under new chairman Joe Ortona and have themselves been playing an active role as a community voice and vehicle challenging the other laws as well.

With those court cases pending, albeit more complicated because of the notwithstanding clause, it was very heartening to read the powerful words about the rights of the anglophone minority, written by a francophone judge. His decision on Bill 40 seems irrefutable.

The question now is whether the CAQ government will appeal it anyway. Quebec Conservative Party Leader Eric Duhaime said this week that the judgment is clear and an appeal would be a waste of time and money, and a breach of confidence with the anglo-Quebec community. He has very little to gain politically by saying what he did, but he believes it and many Quebecers would likely agree with him. The Liberals have also since jumped on the bandwagon.

It's high time for Finance Minister Eric Girard to put on his other hat as minister for relations with the English-speaking community and tell his colleagues to back off. Girard knows what signal it would send to investors, potential newcomers, tech companies, etc., if the government were to continue the fight against the community's inalienable right to maintain a viable English school system, a fight that they are almost certain to lose on appeal.

This issue is not about protecting French. The only likely motivation for appealing would be purely political — nationalist posturing to outflank the Parti Québécois, who are currently polling second.

By not appealing the judgment, the CAQ could show not only political maturity but some decency toward the minority community. Or they could continue down a path of antagonism for the sake of it. Which path will they choose?

Robert Libman is an architect and building planning consultant who has served as Equality Party leader and MNA, as mayor of Côte-St-Luc and as a member of the Montreal executive committee. He was a Conservative candidate in the 2015 federal election.

twitter.com/robertlibman