

QUEBEC NEWS

Quebec says education minister would not control English schools under Bill 40 reform

By Andy Riga

Updated January 28, 2025 9:57 AM | 44



Video: Assemblée nationale du Québec

By @montrealgazette

The province's school reform respects the Constitution because anglophone parents would have significant control over decision-making once English school boards are replaced with service centres, a government lawyer told the Quebec Court of Appeal on Monday.

That interpretation is in sharp contrast to that of a Quebec Superior Court judge who in 2023 overturned part of the school board reform, agreeing with anglophone boards that Bill 40's application to the English system was unconstitutional and would strip community control of schools.

Quebec government lawyer Samuel Chayer told the court that "it's the school service centres that (would) have the power and the responsibility to organize educational services. The minister doesn't have that power."

He said the province's education minister would have a "supervisory" role and would provide "orientation" on management practices, for example, but would "not take decisions regarding" schools. "It's not him who (would) manage the budget and the human resources."

Adopted in 2020, [Bill 40](#) sought to abolish all elected school boards in Quebec, replacing them with service centres. While French school boards were dissolved, English boards were exempt as they challenged the law in court.

The Court of Appeal is reviewing Bill 40 after the Quebec government challenged the Superior Court ruling that found the plan unconstitutional. That decision backed many of the anglophone boards' arguments.

Chayer said the planned school board reform would change governance rules, but he argued that service centres' powers would be similar to current school boards. Service centres would control educational services, services to the community, human resources and school transportation, for example, he said.

In his August 2023 decision, Superior Court Justice Sylvain Lussier invalidated many of Bill 40's articles, finding the law violated anglophone community rights enshrined in the Canadian Charter of Rights and Freedoms.

[Section 23 of the charter](#) grants parents belonging to a province's linguistic minority the right to have their children educated in their language anywhere in Canada, with some conditions.

Chayer argued Section 23 pertains specifically to parents, rejecting English school boards' contention that it applies to the entire English-speaking community.

He noted that under Bill 40, English and French school systems would continue to be separate, and parents on the English side would be elected to school governing boards and service centre boards of directors.

On Tuesday, the three Court of Appeal judges — Christine Baudouin, Judith Harvie and Robert Mainville — will hear from the Quebec English School Boards Association (QESBA), whose nine boards serve about 100,000 students.

In an interview, QESBA president Joe Ortona said the association's lawyers will argue that by "greatly altering governance," Bill 40 would "severely restrict the rights of the English community to manage and control our schools."

Ortona, who is also chair of the English Montreal School Board, said Bill 40 would significantly restrict who can run for parent and community positions in the new service centres.

"A core principle of democracy is that any voter should be allowed to run," he told *The Gazette*.

But only parents already elected to a school governing board could run for a seat on a service centre's board of directors, Ortona said. And "community representatives" would be required to have expertise in certain areas, such as governance, finance or sports.

Ortona said Bill 40 would also remove powers from school boards and hand them to the minister.

In one "blatant violation of Section 23," for example, Quebec's education minister would have the ability to override decisions of service centres, he said.

School service centres would "essentially be governed by the ministry and the administrators," Ortona said. "The boards would essentially just be there symbolically — to rubber-stamp decisions."

He said Premier François Legault's Coalition Avenir Québec government is pushing to eliminate English boards because it wants to "weaken the autonomy of the boards and the power that we have."

Being elected gives current school commissioners "a certain legitimacy because you represent the population that you serve."

"The government doesn't want commissioners standing up when the minister is doing something wrong," Ortona said. "They don't want us to have the autonomy to say, for example, that Bill 21 and Bill 96 violate our right to manage and control our school systems so we're going to fight them in court."

The EMSB is challenging both Bill 21 (Quebec's secularism law) and Bill 96 (a reinforcement of French language rules) in court.

Last week, the Supreme Court of Canada [agreed to hear the EMSB's Bill 21 challenge](#). The Bill 96 and Bill 40 cases could also reach the Supreme Court.

In his [125-page judgment](#), Lussier rejected the limitations Quebec wants to impose on who may be elected to positions in service centres.

Under Bill 40, “the vision of the majority is imposed on the minority as to who can represent it, whereas for more than 200 years, all members of the community have been eligible to deal with school management,” Lussier wrote.

He added: “Limiting, directly or indirectly, as (Bill 40) does, the right of representatives to stand for school elections restricts the right of the minority to the management and control of its educational institutions.”

Lussier found that “the sum of the restrictions and requirements formulated in (Bill 40) leads to the conclusion that the English-speaking community will lose control and management of its institutions to the benefit of either the ministry or a small group of people who will have the time and, above all, the means to deal with school governance, while those who are currently interested in it will be discouraged or even prevented from continuing to serve.”

Legault promised to abolish school boards in the 2018 election.

The CAQ government said the changes would reduce bureaucracy, increase services to students, “depoliticize” the school system and do away with elections in which few Quebecers participated.

Turnout has traditionally been higher in elections for English boards. Voter participation averaged about four per cent in French boards. In November’s EMSB election, 23 per cent of eligible voters cast ballots.

Bill 40 affects only elementary and high schools.

Saying it wants to protect the French language, the Legault government has [targeted other parts of the English school system](#). Via [Bill 96](#), enrolment was capped in English CEGEPs. More recently, [tuition was hiked](#) for students from the rest of Canada who study at English universities in Quebec.

This story was originally published January 27, 2025, 4:33 PM.