

News Release
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QESBA thrilled with Superior Court ruling on Bill 40

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Montreal, August 2, 2023 – The Quebec English School Boards Association (QESBA) is thrilled with the decision rendered today by the Québec Superior Court Justice upholding QESBA’s challenge of many sections of *Bill 40, An Act to amend mainly the Education Act with regard to school organization and governance*.

QESBA challenged the legislation and was awarded a stay in 2020, which was confirmed by three judges of the Québec Court of Appeal later that year. The Québec Superior Court heard the case on its merits in 2021. It has now delivered a sweeping judgment, concluding that many provisions of Bill 40 are unconstitutional because they breach section 23 of the *Canadian Charter of Rights and Freedoms*. The judgment takes into account decades of jurisprudence regarding minority language education rights in Québec and throughout Canada.

“We still have to examine the judgment in detail, but we are extremely pleased that our rights have been recognized and respected with this decision. We truly hope that the Government will decide not to appeal this clear decision that is based on our rights to manage and control our schools,” said President Dan Lamoureux. “We will be meeting with our Board of Directors and stakeholders to discuss next steps,” he adds.

On first reading, the QESBA was successful in obtaining a declaration that a number of requirements are unconstitutional, including:

- Eligibility requirements to be elected as a member of the board of directors of an English language school service centre, including the requirement for parent representatives to also sit on the governing board, the requirement for community representatives to meet certain profile requirements and run in the entire territory of the board, etc;
- The requirement that only parent representatives can become chair or vice-chair;
- The presence of unelected staff members on the council;

- The transfer of the chair's role as spokesperson to the director general;
- The exclusion of commissioners from the development of commitment-to-success plans;
- The establishment of budgetary measures that are sent directly from the Ministry to schools, by-passing the school board; and
- The absence of a rightsholder requirement to vote in school board elections.

The QESBA was also successful in obtaining a conclusion that the Government has an obligation to take into account the needs and preoccupations of the English-speaking community, including by way of prior consultation on legislation. The Court found that adequate consultation had not taken place on Bill 40.

What is more, the Court firmly rejects the Government's argument that only parents with children presently in English schools are rightsholders pursuant to section 23 of the *Canadian Charter*. Rightsholders also include "*ceux qui ont le droit d'y inscrire leurs enfants, ou qui y ont fait inscrire leurs enfants d'âge scolaire, ou avaient le droit de le faire*".

QESBA is the voice of English public education in Québec and represents 100,000 students in over 300 elementary, high schools, and adult and vocational centres across Québec.

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