



Association des commissions scolaires anglophones du Québec  
Quebec English School Boards Association

**Brief presented by**  
**the Quebec English School Boards Association**  
**to the Culture and Education Commission on**

**Bill 86**

**An Act to modify the organization and governance of  
school boards to give schools a greater say in decision-  
making and ensure parents' presence within each  
school board's decision-making body**

**March 2016**

## **Summary**

The Quebec English School Boards Association (QESBA) has conducted an in depth study of Bill 86, analyzing its consequences, if adopted, on students, parents, taxpayers, school boards and English-language public education in Quebec. In its analysis of Bill 86 QESBA has been guided by the imperative that all legislation concerning education in Quebec must be effective and efficient in setting out the framework by which public education is delivered to ensure student success. QESBA's analysis considers the additional imperative, for the English-language minority in Quebec, that the positive obligations imposed on the government of Quebec by Section 23 of The Constitutional Charter of Rights and Freedoms (The Charter), as interpreted by the judgments of the Supreme Court of Canada, be respected. Notably, in this regard, QESBA's analysis of Bill 86 considers the Bill's impact on the English-language minority's right to the management and control of its community's school boards and schools, rights repeatedly expressed in the decisions of the Supreme Court of Canada, constitutionalized for the benefit of both the English-language minority in Quebec and the French-language minority in the rest of Canada.

The conclusions listed in this brief are made with a very heavy heart. We conclude that:

- a) Bill 86, as it will apply to the English-language public school system in Quebec, is unconstitutional, and in violation of Section 23 of The Charter;

- b) Bill 86, if adopted, will be the subject of a constitutional challenge, whether by, or together with, QESBA, students, parents of children enrolled in Quebec English-language public education, English-language school Commissioners recently elected some 18 months ago, English-language public school boards and Quebecers who pay taxes to support the English-language public school system;
- c) Bill 86 accrues to the Minister of Education the power to intervene, direct, control and impose his orders on school boards, rendering them illusory and removing from school boards their independence and autonomy as legal persons in the service of local communities;
- d) Bill 86 creates a nightmare governance structure, convoluted, confusing, complicated and difficult to implement. This structure is likely to sooner or later collapse of its own inertia. It serves no constituency;
- e) Bill 86, if adopted, will fracture and fragment every school board in Quebec, as no two school boards will necessarily have the same governance structure or be run according to the same operational rules, the Minister having the power to intervene in different ways with each school board, whether French or English;
- f) Bill 86 must be withdrawn in its entirety. The principles which underpin its content and the resulting text are gravely flawed and are not susceptible to useful modification. If anything Bill 86 stands in opposition to the legitimate

expectations and needs of students, parents, taxpayers, school boards and communities.

In coming to these conclusions we must note that, considering the seriousness of the amendments brought by Bill 86 to the public education system of Quebec, it is most disturbing that the proposed amendments have not been preceded by extensive public consultations throughout Quebec, a white paper, a dialogue between government and all interested parties and a reasonable attempt at public consensus as would be expected with all important changes to key public institutions and notably institutions dedicated to the education of the students of Quebec.

Our Association, and the nine English public school boards and one special status board it represents, are profoundly frustrated by the lack of such consultation and the unilateral position taken by the Ministre de l'Éducation et de l'Enseignement supérieur (MEES) to remove the autonomy of school boards and to seriously diminish a tier of democracy by eliminating elections by universal suffrage for school board Commissioners. Universal suffrage elections are the most legitimate democratic process. It ensures citizens' input into the management of public money. It guarantees inclusion, identity and individual and collective rights to manage and control our educational institutions.

### **Historical Background**

Since 1929, the Quebec English School Boards Association (QESBA) and its predecessors have served as a vehicle through which school boards, elected

commissioners, and parents have shared ideas and worked together to achieve our community's common goal of ensuring quality educational services. The member school boards of QESBA serve roughly 100,000 students in over 300 elementary and high schools, as well as adult education and vocational training centres across Quebec. Each Board has its unique demographics, orientations, and history. All of them share a "made-in-English-Quebec" sensibility to delivering public education services, with equal regard for the needs and wants of all students, staff and communities. Our member boards have successively proved themselves, always placing student success as the primary focus of what they do.

QESBA points to at least four elements to describe this "made-in-English-Quebec" sensibility:

- a) *An educational approach based on "teaching the student, not the subject",* that is to say, in the spirit of Quebec's curriculum reform, to focus on the acquisition of competencies as well as knowledge and to encourage critical thinking, citizenship, enquiry and teamwork;
- b) *Parent and community involvement:* As our school boards answer to parents and taxpayers, our schools have always been accessible to and transparent towards parents and community;
- c) *A commitment to preparing our students for a future in Quebec:* This commitment starts with the extensive concentration on French second-language acquisition. It is one of the prime missions of each of our

school boards to provide every student with the opportunity to master French. Our commitment contributes to ensuring that every student graduating from the English school system has the capacity to remain, live and work in Quebec. This commitment extends to a general approach to teaching the arts, literature and history and includes extracurricular activities – an approach that is cognizant and respectful of Quebec’s rich and unique character;

- d) *A recognition of our particular status as English-speaking institutions:* Quebec’s English-speaking community, in all its diversity, continues to contribute to the rich culture of Quebec life. English public school boards, representing the sole level of elected government answerable to that community, assume as part of their mission, the job of teaching and strengthening that fundamental contribution;
- e) *The recognition of Section 23 of The Constitutional Charter:* Quebec English-language public school boards are the manifestation of the constitutional rights of Quebec English-speaking parents and children to obtain and maintain public education instruction in English through the management and control of English-language educational institutions. Our school boards and the schools they operate reflect the commitment to the English language and culture within the context of providing our students with the tools to live, thrive and contribute to Quebec.

In implementing all of the points listed above elected commissioners are on the front lines of all decisions that will affect and ultimately benefit students. Our school boards have much to be proud of attaining an 85% success rate. Quebec English public education far exceeds all Canadian provinces when it comes to student success. WE ARE THE EXAMPLE OF WHAT TO DO.

Over the decades, there has been a serious decline in the number of English-language public school boards, students and the number of students and elected officials governing our boards. QESBA and its predecessors have gone from 129 member boards to 9 since the creation of the Ministry of Education in 1964. Our enrollment in 1975 was over 250,000 students across the province and has declined to approximately 100,000. There were as many as 172 elected Commissioners in 1975 and, as of November 2014, there are 95 Commissioners and 9 elected Chairpersons.

We registered an 85% success rate as of June 2015 and our administrative overhead costs are among the lowest of any publicly funded institutions at a 4% average.

### **School Board Elections Fall 2014**

It appears that much of the impetus for the introduction of Bill 86 is the allegedly poor voter turnout in the French and English school board elections of November 2, 2014. The voter turnout at these elections was significantly higher in the English sector. A simple analysis of voter turnout demonstrates that participation rates were negatively affected by inherent flaws in voter registration and the government

conduct of the elections. Herewith follows a simple portrait of the School Board Elections both English and French held on November 2, 2014:

- Voter participation rate 5.54%
  - French Boards: 4.87% - English Boards: 16.88% (50% registered)
- # of Chairs: 69
  - French Boards: 60 (28 acclaimed) – English Boards: 9 (3 acclaimed)
- # of Candidates for Board Chair: 123
  - French Boards: 106 – English Boards: 17
- # of Commissioners: 712
  - French Boards: 617 – English Boards: 95 (49% acclaimed)
- # of Candidates for Commissioner: 1360
  - French Boards: 1193 – English Boards: 167

Many reasons can be cited as direct contributing factors to the low voter turnout of 2014. First, the declaration of a referendum on the future of school boards made by then Minister of Education Yves Bolduc on the eve of the election, which dissuaded many voters from voting. Second, the request by the CAQ Leader François Legault for Quebecers to boycott school board elections. Third, the long-standing and well known deficiencies in the electoral list for English-language school boards.

In Quebec, there are two electoral lists for school board elections. One is the permanent list of electors of Québec, which is considered, by default, the French voters' list for French-language school board elections. The permanent electoral list

of Quebec contains the names of all persons, French, English and Allophone eligible to vote in a general election. Those voters inscribed on the permanent list are deemed to be entitled to vote only for candidates for election to French-language school boards. The only voters entitled to vote for candidates for election to English-language school boards are those persons who requested they be inscribed on the English-language school board elections electoral list. This means that a voter who chooses to vote in English-language school board elections must send a properly completed “avis de choix” to the Directeur général des élections du Québec (DGEQ). English-language school boards are not eligible to modify the English-language school board electoral list. Historically there are numerous irregularities on this list. Many parents of children in our schools and taxpayers who support our school boards are not inscribed on the English electoral list. Many parents and taxpayers are frustrated by finding that they are not on the English-language school board electoral list. Thousands of potential and willing voters wish to vote for candidates for positions on English-language school board councils cannot do so.

Despite QESBA’s many complaints over many years about the English-language school board electoral list, nothing has been done by the government of the day to effect timely, necessary and important democratic reform of the list to assure that everyone eligible to vote in English-language school board elections may do so.

Candidates spend half of the precious time during the election period canvassing constituents and assisting them in filling out the “avis de choix”. During the 2014 fall election, we received many reports that even both parents in the same family were

not listed on the English list. One was allowed to vote and the other, for one reason or other, was placed on the French list.

We also had subsequent problems with individuals having filled in the “avis de choix” still not being allowed to vote on November 2. Reports from our Returning Officers cite the DGEQ as not having updated the lists in a timely fashion for those individuals to maintain their democratic right to vote in an English school board election.

In the Eastern Shores School Board, covering Gaspé, Lower St-Laurence and the North Shore of Quebec, there were reports of a polling station being closed prematurely due to lack of valid ballots even while complying with the advice provided by the DGEQ. As a side note, Eastern Shores registered a 54% participation rate for the Commissioner elections on November 2.

School boards are responsible for all logistics and costs surrounding school board elections making it difficult to offer a proper amount of voting stations. Concern about taking funds out of our tight budgets resulted in attempts to reduce expenses at every corner. Our large territories make offering multiple polling stations very costly therefore requiring electors to drive long distances on a Sunday. All other elections are held on a Monday. Other polling stations had extremely long line ups and wait times resulting in many voters leaving before casting their ballot.

QESBA maintains that the process in the fall of 2014 was tainted and should not be used as an accurate marker to define the validity of school board democracy, voter interest, or any democratic rights that we, as Quebecers, maintain.

### **School Board Reform**

Bill 86 will not produce one perceptible improvement for classrooms and communities. Doing so for what is no more than appearance's sake is, in our opinion, irresponsible government. We, as elected community representatives, would never make decisions that are based principally on public appearance, while forsaking our students. QESBA has tried successively to open a healthy dialogue with proposed changes to improve our system. We have been turned away four times over the last year without consideration. We feel that we have concrete idea of how to improve our system all while maintaining universally elected councils in a different form.

### **The Flaws in Bill 86**

Bill 86 seems to be built on two central principles: First, the empowering of the Minister to guide, intervene, direct and order school boards to conform in all matters to his instructions; Second, to impose a governance structure on school boards whereby a pseudo electoral college of a restricted number of persons elects six parent school counsellors, may elect six community members, teachers elect one school counsellor, non-teaching professionals elect one school counsellor and principals elect two school counsellors. The electing bodies constitute, in numbers, less than one percent of the voters on the English-language school board electoral

list for universal suffrage elections. In fact, the teachers, non-teaching professionals and principals may not even qualify to be on the electoral list for universal suffrage elections for the English-language school board electoral list where they work or any English-language school board for that matter. In fact, none of the candidates for the positions of community, teaching, non-professionals and principals need be Anglophones. None of the school counsellors so elected serve a community wide constituency. Sooner or later the governance structure imposed by Bill 86 will likely break down in paralysis of competing interests.

The centralization of true and ultimate authority in the Minister renders school boards no longer autonomous entities in charge of the local delivery of education for the communities they serve. Bill 86 will create a top down hierarchy where the Minister effectively controls every aspect of the education process as if the Minister is in every classroom. At least thirty-five of Bill 86's two hundred and three articles give to the Minister or the government new or additional regulatory power over Quebec education, school boards and schools. These new or additional regulatory powers culminate in Bill 86's article 116, which inserts article 459.6 into the Education Act, empowering the Minister to, "...issue directives to a school board concerning its administration, organization, operation and actions. Such directives may also complement or clarify the budgetary rules during a school year period". These directives are binding on school boards once approved by the government. Different school boards may be subject to different directives as the Minister wishes.

The governance structure to be imposed by Bill 86 is not democratic. School counsellors will be selected by very small groups of electors. Parents are not empowered. Parents will be the minority on every sixteen-member school council, being six out of ten. Parent counsellors themselves will be selected by a small group of individuals, the parents committee, a committee which, has no more than one parent delegate per school in the school board system. Many school boards have a central parent committee whose members are chosen by regional governing boards, regional governing board members being chosen by the regional parent committee. For school boards with central parent committees, the central parent committee delegates are at least three levels removed from the actual parents of each school in the system. Taxpayers are unrepresented. The public is forgotten.

One of the benefits of the existing universal suffrage elected school commissioners is that the commissioners represent the public's concern for the importance of education in society at large. Existing commissioners answer to the electorate, which consists of parents, taxpayers and anyone interested in English-language public education.

Section 23 of The Charter requires that English-language school boards be under the direct management and control of the English-language minority in Quebec which it serves. In decision after decision of the Supreme Court of Canada, Francophones outside Quebec have successfully litigated their rights under Section 23 to have unique and autonomous schools and school boards serving the French language and

culture outside Quebec. These decisions apply with equal force to the English-language public schools of Quebec and their parents and students. These cases establish general principles which cannot be ignored by the government of Quebec.

The important Supreme Court case of *MAHE vs. ALBERTA (MAHE)*, [1990] 1 SCR 342 instructively says, “that purpose, [Section 23]... is to preserve and promote minority language and culture throughout Canada...it is essential, ...that...minority language...possess a measure of management and control over the educational facilities in which their children are taught...it is necessary because a variety of management issues in education, e.g., curricula, hiring, expenditures, can affect linguistic and cultural concerns...minority language groups cannot always rely upon the majority to take account of all of their linguistic and cultural concerns....Section 23 clearly encompasses a right to management and control...in some circumstances an independent school board is necessary to meet the purpose of Section 23.”

The *MAHE* Supreme Court case notes that even where official language minority numbers do not warrant an independent school board, and English-language independent school boards are manifestly warranted in Quebec, minimally, “the minority language representatives should have exclusive authority to make decisions relating to the minority language instruction and facilities, including:

- a) Expenditures of funds provided for such instruction and facilities;

- b) Appointment and direction of those responsible for the administration of such instruction and facilities;
- c) Establishment of programs of instruction;
- d) Recruitment and assignment of teachers and other personnel; and
- e) Making of arrangements for education and services for minority language students.”

The above-quoted enumeration, which applies, in the Supreme Court’s judgment to situation where official language minority members do not warrant independent school boards, indicates that where independent school boards are warranted, which they are in Quebec, the power of the Quebec English-language minority to the management and control of its school boards is that much more greater and expansive.

Recommendations:

- 1) Giving Parents Commissioners full voting rights. This is something that QESBA has been advocating since 1998, with only one exception in 2012.
- 2) Adding a teacher and an administrator to internal standing committees of the Council of Commissioners where the in depth discussion and debate are held and from where the recommendations to the full Council of Commissioners emanate.

This is a practice already in place in some of our English boards. It would also alleviate the issue of conflict of interest by having employees playing the role of employer in the formal public meetings of the Council. It also allows employees to take positions that truly reflect their colleagues without being part of the decision of the Council. Administrators have also expressed concern about the availability and willingness of Principals to participate in another volunteer commitment, taking even more time from their prime task of pedagogical leaders.

- 3) Maintaining coopted member seats but allow each Council of Commissioners to decide on what community or specialized input may be required.
- 4) Making training for Chairpersons, Commissioners, and Governing Board member's mandatory.
- 5) Give Governing Boards some mandated input into budgeting, program, and other community issues but leave the evaluation of professionals (teachers and administrators) to be done by professionals.
- 6) Making voting easier for the general public. That could be in the form of twinning the voting with municipal elections, as is done in 8 of the 9 other provinces in Canada. Allowing the current universally elected Commissioners to complete their term is a must, however, we suggest the next election be twinned with municipal elections in 2017, effectively cutting one year off the current legislated term. This system would improve voter turnout, reduces the impact on the community in terms of voter apathy, it would combine resources, and make voting stations more accessible. Merging of elections

should be implemented at least once to determine success before moving onto alternate methods of elections.

QESBA has also experienced positive results with online elections. Should the twinning of municipal and school board elections prove to not be efficient, we suggest moving to an online elections model. It will take time to develop a fully inclusive and secure online voting system in the subsequent election period.

It would be necessary for the government to pay all costs of the election to preserve, as much as possible, funds available for our programs and student and staff support. That said, each network, French and English working together, should be required to develop plans to promote, advertise, and encourage voters to know the candidates and vote at the appropriate time.

### **Conclusion**

The Québec English School Boards Association reiterates and reaffirms our absolute constitutional right to have universally elected representatives in Education.

English School Boards should be the primary institutions ensuring the vitality of Québec's English Minority Communities, but also that this school governance system will not benefit from any addition of new governance structures imposed under the guise of improving service delivery to English Minority students.

Judged by student results, English school boards are a success story. Focus should be on how to make them better. The government should work with school boards to strengthen the current system to keep improving.