

Opponents of Quebec's Bill 96 prepare to challenge language law in court

ERIC ANDREW-GEE >

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Anglophone opponents of Quebec's French-language law Bill 96 protest in downtown Montreal on May 26.

CHRISTINNE MUSCHI/REUTERS

Charter of Rights and Freedoms.

And the English Montreal School Board has already hired a law firm to contest several key parts of Bill 96, hoping to build on a growing track record of defeating Premier François Legault's government in court. EMSB chair Joe Ortona said he believes the law amounts to "a form of legalized discrimination."

"History's going to judge people who stood up and did the right thing and those who didn't," he said. "I don't want to be one of those people sitting on the sidelines."

Bill 96 was adopted by Quebec's National Assembly last week after a year of heated debate. The legislation brings in new requirements for medium-sized businesses to use French in the workplace. It also imposes limits on enrollment in the English college system, and a six-month deadline after which new immigrants will receive government services in French, among other provisions.

The governing Coalition Avenir Québec party argues that the measures are needed to protect the French language in North America, but many anglophone Quebecers say they feel attacked by the legislation.

Because the government has invoked the notwithstanding clause, some of the bill's most contested elements – such as expanded powers of search and seizure for the agency charged with enforcing language legislation – probably cannot be challenged on Charter grounds. As a result, the school board is planning to base its lawsuit on elements of the Constitution that fall outside the scope of the notwithstanding clause.

Because Bill 96 will require school boards to conduct most internal communications in French, Mr. Ortona said, "Essentially we cease to have management and control of our school boards." He believes that violates Section 23 of the Charter, protecting linguistic minority education rights.

The board will also challenge the law's prohibition on courts requiring bilingual judges without the relevant minister's approval, and its requirement that those involved in legal proceedings submit French translations of English court pleadings. The board argues these measures violate the constitutional right to use either language before the courts.

The EMSB, a linchpin of anglophone Quebec that represents more than 35,000 students, feels empowered to launch legal challenges about aspects of Bill 96 that don't affect it directly, Mr. Ortona said, because "we

Mr. Ortona said.

Mr. Grey, the lawyer, also expects to challenge Bill 96 “sooner rather than later,” he said in a recent interview. He declined to name any of the other lawyers working with him.

They are currently deciding whether to launch several distinct legal actions or a single larger action. Mr. Grey said he is prepared to take the government’s preemptive use of the notwithstanding clause before the United Nations Human Rights Committee.

“The ultimate goal is to restore language peace by getting rid of a law that is gratuitous and harms everyone: anglophones, francophones, immigrants and natives,” Mr. Grey said.

It remains unclear whether the federal government will intervene against the language legislation. Last week, federal Justice Minister David Lametti told reporters his government would participate in a challenge to Bill 21 should it arrive before the Supreme Court, and left the door open to a similar intervention in a future Bill 96 case. Mr. Lametti said he will watch Bill 96’s implementation “very carefully.”

The Quebec Liberal Party is hoping to take on the law at the ballot box. Ms. Anglade said in an interview last week that, if she forms government, she would dismantle certain contentious aspects of Bill 96, such as its cap on enrollment in English CEGEPs – the level of schooling in Quebec between high school and university – and its six-month limit on English services for immigrants.

“Let me be very clear on Bill 96: We voted against it,” she said. “The Liberal Party, if we were in power, would remove the notwithstanding clause, because you have to be able to challenge laws. That’s peoples’ right.”

Some of the law’s critics are overstating its likely impacts, said Pierre Thibault, assistant dean of the civil law section of University of Ottawa’s faculty of law. For example, it is unlikely that English speakers in Montreal will have trouble finding bilingual judges, he said, or that anyone will lodge a complaint against the English Montreal School Board for holding a meeting in English.

Ultimately, the legal validity of Bill 96 can only be determined by the courts, and Quebeckers will have to live with it in the meantime, Mr. Thibault said.

“The law is constitutional until it’s declared unconstitutional.”

With a report from Kristy Kirkup

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