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A voice for anglos: School boards prepare for more battles with Legault

"Boards are the last instance of government that belongs to the English-speaking community," yet the CAQ government has "demonstrated a complete disregard for our rights," Joe Ortona says.

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"School boards are the last instance of government that belongs to the English-speaking community and we must encourage people to run" in November elections, English Montreal School Board chair Joe Ortona says. PHOTO BY PIERRE OBENDRAUF /Montreal Gazette

There's no love lost between the Coalition Avenir Québec government and the people who oversee the anglophone community's schools.

Premier François Legault once suggested the province's largest anglophone school system — the English Montreal School Board — was becoming a "radical group."

And for years his government has been trying to replace elected English boards with provincially controlled "school service centres."

On that issue and two others — religious symbols and French-language rules — English boards are battling the Legault government in court.

2024 promises to be another tumultuous year.

The EMSB is about to ask a judge to suspend parts of Bill 96, a CAQ government law that toughened French language rules. A court decision on the board's religious symbols lawsuit is expected in the coming weeks. And, in the fall, English school board elections are on tap.

At the forefront will be EMSB chair Joe Ortona. A lawyer who hasn't shied away from battling the government in court and the media, he recently took over as president of the Quebec English School Boards Association (QESBA).

The Montreal Gazette spoke with Ortona ahead of a meeting, scheduled for next month between English boards and Education Minister Bernard Drainville.

Relations with the CAQ government



Education Minister Bernard Drainville listens as Quebec Premier François Legault speaks to reporters on Oct. 10, 2023.

Common ground has been rare between the Quebec government and English boards.

That's in large part because Legault has been "hostile toward the English-speaking community" since coming to power in 2018, Ortona said.

"The government believes, I guess, that protecting French and having a vibrant English-speaking community are contradictory. But they are not. You can protect and promote the French language very successfully and still have a strong English-speaking community."

For most of its time in office, the CAQ government "demonstrated a complete disregard for our rights as an English-language institution," refusing to "acknowledge we have any autonomy whatsoever in terms of management and control of our school boards," Ortona said.

Over much of the past five years, the government told English boards they must "do whatever the government and the ministry tells (them) to do," he said. "There isn't going to be a middle ground when their starting point is a non-starter."

English boards insist the anglophone community has the right to "control and manage" their school systems thanks to Supreme Court decisions regarding Article 23 of the Canadian Charter of Rights and Freedoms. The article grants parents belonging to a province's linguistic minority the right to education in their language.



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There is some hope for a thaw in relations after Drainville, in November, exempted English boards from new governance rules in Bill 23 after English school boards threatened a constitutional challenge. The minister promised to consult the community before enacting the provisions at a later date.

That means, for now, unlike with French school service centres, the government cannot unilaterally name the directors general of English school boards, nor will it have the power to annul decisions by English boards.

Ortona said the reversal is a tacit admission that the anglophone community has the right to control its school system.

"We identified 12 or 13 sections of the law — we said, this is unconstitutional because it violates Section 23" of the Charter of Rights, Ortona said. "And they (exempted English boards from) the very sections that we identified as unconstitutional. I mean, anybody can read between the lines there."

The CAQ retreat was "a victory" for Quebec anglophones, he said.

"We got that without going to court. It's a change in what the government has done in all other cases. So we moved the needle as far as I'm concerned. It's a win. Now, are we going to be able to get the government to do that again? Who knows. We always have to try."

"Whatever the issue is, whether it has to do with education or language policy, we're going to use our voice to advocate for the community. And when we're successful, that's great. And when we're not, well, we're going to continue to use other avenues."

Bill 96 battle looming



People gather at Dawson College for a rally to oppose Bill 96 on May 14, 2022.

The language used by English school employees and commissioners is the latest flashpoint.

In February or March, the EMSB expects to be in court to ask a judge to temporarily suspend French-language rules until the board's lawsuit against Bill 96 can be heard. The EMSB argues the law is unconstitutional because it infringes on the anglophone community's right to manage and control its schools.

Bill 96, denounced as excessive by anglophone groups, strengthened several Quebec laws, including Bill 101, known officially as the Charter of the French Language.

"Any written communication between more than two people has to be in French," Ortona said.

"So if we're writing an email to more than one parent, that email must be in French," he said. "School board commissioners writing to each other must do so in French, communication with commissioners from other English school boards must be in French."

English versions of correspondence are also allowed.

But it would be unrealistic to expect an EMSB employee or commissioner to spend 30 minutes writing a long email and then take another 30 minutes translating it, Ortona said. That means if French is legally required, that's the language people will end up using, he added.

In short, Ortona said, the rules are a "veiled way of removing the use of English in an English school board."

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The OQLF has dismissed EMSB's concerns.

“The requirements set out in (Bill 101) concerning the internal and external communications of an English-speaking school board were not modified” by Bill 96, spokesperson Chantal Bouchard told the Montreal Gazette in November. “The OQLF’s interpretation of these requirements has also not changed.”

Ortona, for his part, said Bill 96 did indeed change some rules. But the lawsuit is also based on OQLF responses to EMSB queries regarding previously enacted parts of Bill 101.

That exchange with the provincial language watchdog made the EMSB “more aware of what’s actually in the Charter and how it needs to be applied,” he said.

“The OQLF got back to us and said in all of these circumstances, communication must be in French and the French must be predominant over English. That’s their interpretation, and we find that unacceptable.”

Bill 96 is being challenged in several other lawsuits. One is by a crowd-funded anglo-rights organization. Another was launched by 23 municipalities with large English-speaking populations.

Other legal challenges pending



Westmount High School teacher Furheen Ahmed speaks to the media about Bill 21 with EMSB chair Joe Ortona on April 20, 2021.

The Quebec Court of Appeal is expected to soon hand down a decision on Bill 21, which bars some government workers, including teachers, from wearing religious symbols such as the Muslim hijab. Whatever the decision, observers expect it to be appealed to the Supreme Court.

In 2021, a Quebec Superior Court judge ruled parts of Bill 21 do not apply to the EMSB because they would violate Charter protections of minority language educational rights. However, the judge rejected the EMSB's contention that the law violates gender equality rights in the Charter.

Both the Quebec government and the EMSB appealed the ruling. Pending that appeal, the EMSB must comply with the law, meaning it is not allowed to hire teachers who wear religious symbols.

The other legal fight is over Bill 40, CAQ legislation passed in 2020 that sought to scrap elected school boards. English boards went to court to plead for an exemption.

In August 2023, a Quebec Superior Court just ruled Bill 40 provisions related to English-language boards were unconstitutional.

The Quebec government is appealing the decision. The two sides are currently preparing their arguments. The case is expected to drag on for years, including a probable Supreme Court challenge.

Court challenges take time, money



Costly, time-consuming lawsuits aren't taking away from the EMSB's primary mission: educating children, EMSB chair Joe Ortona says.

The 36,000-student EMSB has spent considerable time and money on lawsuits against the government, but that is not taking away from children's education, Ortona said.

“Teachers are not being taken from the classroom to do this,” he said. “We’re still dedicated to our primary mission of education.

“But at the same time, the long-term survival of our education system is dependent upon winning these court cases and making sure we’re recognized as an institution that can manage and control its school system without unreasonable interference from the Quebec government.”

Court challenges are costly. The board has already spent almost \$1 million fighting Bill 21, the CAQ government’s secularism law, and the case has yet to reach the Supreme Court of Canada, Ortona said.

“We know it costs money. Unfortunately, though, it is an expense that we must incur because the cost of not fighting the government and challenging the government on these bills is far greater. It’s about the autonomy of school boards and our very existence as the last English-language institutions in Quebec.”

Seven of the eight other English boards have joined the EMSB’s Bill 96 legal challenge.

“Some boards did the analysis and realized the cost of joining in the legal challenge would be less than the cost of translations in the long term,” Ortona said.

The exception is the Lester B. Pearson School Board, which cited financial concerns when it opted not to take part in the court case.

To finance the legal challenge against Bill 40, English boards are asking for the public’s financial help.

“School boards have largely borne the cost of the legal challenge to this power grab,” the QESBA says on its website. “With a complete appeal of Bill 40 by the government underway, we need your support to ensure that the constitutional rights of English-speaking Quebecers are respected and that school boards continue to exist.”

Board elections in November



English school board elections traditionally attracted more voters than those in now-abolished French boards.

English school boards will hold elections on Nov. 3, with Elections Quebec offering online information about who can vote.

The boards were created in 1998 when Quebec replaced Catholic and Protestant boards with linguistic ones. That historic reform, which required a constitutional amendment, gave the anglophone community greater oversight of its schools.

“We are fighting to preserve school boards and school boards have democratically elected commissioners, so the elections are important,” said Ortona, who has not announced whether he will run again.

“School boards are the last instance of government that belongs to the English-speaking community and we must encourage people to run. People should be informed about the candidates who are running, what they stand for, what they’ve done, what they’ve accomplished, what they plan to do. And obviously, I encourage everybody to vote.”

Low voter turnouts were among the reasons cited by the CAQ government as it moved to abolish school boards.

In the last elections, in 2021, the vast majority of positions — including Ortona’s — were filled by acclamation. Ortona blamed several factors, including confusion over who could run and pandemic restrictions and delays.

English boards traditionally had much higher voter turnout rates compared with the now-abolished French boards. In 2014, for example, 21 per cent of eligible voters cast ballots in the EMSB election, compared with 4.9 per cent for French boards.

“Our numbers are close to what you would get in a municipal byelection and nobody questions the legitimacy of municipal elections,” he said.

Just under 30 per cent of voters turned up to vote in the last Montreal municipal byelection. In one provincial byelection last year, the participation rate was 31 per cent.

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Ortona said more should be done to boost the voter turnout in board elections. But the province has brushed aside suggestions from the English community, including the idea of holding school elections in conjunction with municipal ones. That's how provinces such as Ontario do it.

“The Quebec government doesn't think we should exist, they want to abolish us. So they're not going to put in place measures that boost voter participation,” Ortona said. “They want the turnout to be low.”

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