

English school boards should be allowed to hold a referendum on Bill 40

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Submitted to the National Assembly Committee studying Bill 40

It seems the CAQ government's commitment to eliminate school boards with their current election process increases the prospect of litigation if English School Boards Association Executive Director Russell Copeman and others' threats to invoke Canadian charter rights are to be believed.

Yet there are precedents for eliminating school boards within the English-speaking world. The McKenna Liberal government opted to abolish boards in our neighboring bilingual—yet mostly English-speaking—province of New Brunswick in 1996. Similarly, school boards have been steadily scaled back more recently in the provinces of PEI and Nova Scotia.

Internationally, there have been efforts in the UK and the United States to replace boards with other models employing mayoral control or even making state schools independent academies. So minority anglophones shouldn't have to assume that education can only be effectively delivered through the bureaucracy of school boards.

In Quebec though, English boards also exist within a distinct cultural context (i.e., involving Bill 101-accelerated school closures) that has seen parents take a board to court for some heavy-handed behavior. (Case in point: the loss by the English Montreal School Board (EMSB) in Quebec Superior Court in 1999 and 2003 for repeated attempts to close down St. Patrick Elementary School in the plateau Mont Royal area without proper consultation with the parents affected.)

The St. Patrick case came to influence jurisprudence in other cases as well, and showed that boards are not devoid of their own self-interest that may or may not always completely coincide with the local parents of the communities they purport to serve.

Nevertheless, in the case of the CAQ government's proposed new law, they are likely to be viewed against concerns about the legitimacy of the government itself that is implementing them. If the CAQ had handily won a plurality of Quebec's majority non-francophone ridings last year, Mr. Copeman's association and others would have probably been more likely to defer, but they haven't.

So the possibility of Québécois "unilateralism" (whereby a francophone-dominated government legislates a change without a corresponding agreement by a majority of members of the anglophone minority affected) looms over the debate. This prospect is reminiscent of 42 years ago with the passage of Bill 101, when all MNAs from the majority anglophone ridings voted against the new law. The subsequent bitterness has lasted for decades.

One way to offset these concerns this time would be for the government to allow the English-speaking school boards to hold a referendum on Bill 40. In this scenario, the school board could negotiate an acceptable threshold (for example: at least 30% turnout) with the government. The referendum process could be held using the same procedures by which school board commissioners are elected.

At a minimum, the new government would be able to claim credit for having shown respect for the autonomy of the community. And this development would represent real progress regarding minority-majority relations.

To summarize:

- Bill 40 is an honest attempt to find a compromise with the English community.
- The government's desire to restructure education is legitimate, even if the government's own credibility within the English-speaking community has been questioned.
- Bill 40 should be subject to approval by the English-speaking community through a referendum held in a way consistent with how school board commissioners are currently elected. This referendum need only be held within the English sector.