



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

BRIEF BY THE
QUEBEC ENGLISH SCHOOL BOARDS ASSOCIATION (QESBA)

PRESENTED TO
THE COMMITTEE ON INSTITUTIONS
SPECIAL CONSULTATIONS AND PUBLIC HEARINGS
ON BILL N° 21
An Act respecting the laicity of the State

May 2019

The Quebec English School Boards Association (QESBA) is pleased to be one of the groups given the opportunity to appear before these Parliamentary Commission hearings on Bill 21, An Act respecting the laicity of the State.

Our Association and the English school boards it represents are profoundly disappointed that the Bill before us frames otherwise legitimate and important issues of inclusion, identity, individual and collective rights in a negative perspective that we view as unnecessarily divisive. That unfortunate perspective is one that ultimately dismisses the generosity, openness and respect that we Quebecers have consistently demonstrated on these key questions. Our member boards are a case in point, having opened the doors of their schools and centres over the years to students, support staff, professionals, teachers and administrators of different ethnic and religious backgrounds while delivering a first rate public education to millions of young and adult Quebecers.

In this brief, we propose to review briefly the scope, character and history of the English public education network we represent; set out our position; assess various the potential impact of Bill 21 on our schools, our staff and our students; describe our current pedagogical approach to religious neutrality, gender equality and issues of reasonable accommodation; and highlight a series of issues that QESBA believes legislators must fully consider before any eventual vote on this troubling piece of legislation.

QESBA and the English public-school network of Québec

The nine member Boards of QESBA serve some 100,000 students in 340 elementary and high schools, adult and vocational centres across Québec, and employ over 20,000 people. Each Board has its unique demographic character, orientation and history. All of them share a “made-in-English-Québec” sensibility to delivering public education services, with equal regard for all creeds, religions or cultures. That sensibility is vitally pertinent to the discussion of Bill 21, which, we believe, will influence how we Quebecers will live together in the future.

QESBA would point to at least four elements to describe that made-in-English-Québec sensibility:

- (i) *An educational approach based on “teaching the student, not the subject”,* that is, in the spirit of Québec’s reform, to focus on the acquisition of competencies as well as knowledge, to encourage critical judgment, citizenship, enquiry and teamwork;
- (ii) *Parent and community involvement:* as our school boards answer to the taxpayers, our schools must be accessible to and transparent towards their parents and community;
- (iii) *A commitment to preparing our students for a future in Québec:* This commitment starts with the extensive concentration on French second-language. It is the mission of each of our school boards to provide every student with the opportunity to master French. The commitment contributes to the full participation of our students in the Québec of today and tomorrow and extends to a general approach to teaching the arts, literature and history and including extra-curricular activities that is cognizant and respectful of Québec’s rich and unique character.

- (iv) *A recognition of our particular status as English-speaking institutions:* Québec's English-speaking community, in all its diversity, continues to contribute to the rich tapestry of Québec 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 about and strengthening that fundamental contribution.

Our 340 English public schools are contributing to the future strength of the French language by offering state-of-the-art intensive French second-language programs that often go far beyond the requirements of the government-prescribed curriculum. A growing percentage of English public school students are completing the French mother-tongue exams at the end of their high school studies and succeeding in many cases better than their francophone *concitoyens*.

Bill 21 and the assumptions behind it

Bill 21 seems to presuppose a major clash in Québec between competing religious and cultural values, and secularism or religious neutrality which are deemed to be common Québec values. QESBA has seen little evidence to support the necessity of legislating secularism as proposed in Bill 21. We agree that the institutions of state should be religiously neutral, in theory and in practice, including appearance. That does not mean, in our view, that individuals who work for the state themselves need to be religiously neutral in appearance.

Banning the wearing of religious symbols is contrary to the values that are taught in our schools

The progressive secularization of public schooling in Québec, fully endorsed by QESBA, has been ongoing for decades. The replacement of confessional education with an increasingly recognized study program of "Education and Religious Culture" is helping our students learn the important lesson that religious and racial diversity enrich Québec and complement rather than threaten any shared sense of Québec values.

Inclusion, inquiry and fairness are basic principles that guide the teaching we do in all nine English school boards across Québec

Then-Education Pauline Marois spoke eloquently to these principles in the Policy Statement on Educational Integration and Intercultural Education, published in 1998:

"...(L'égalité des chances) va de pair avec ceux de l'équité et de la non-discrimination et renvoie à l'acceptation et au respect de l'altérité ainsi qu'au rejet de l'intolérance, de l'ethnocentrisme et de toute manifestation raciste ou discriminatoire. Cela exige que le milieu scolaire reconnaisse les élèves pour ce qu'ils et elles sont, avec leurs ressemblances et leurs différences, leurs particularismes et leurs caractéristiques communes. On admet ainsi que la diversité ethnoculturelle, linguistique et religieuse imprègne la société québécoise et a droit d'expression. À cet égard, l'école permet de cultiver chez les élèves l'estime de soi, le sentiment

de leur identité et le sentiment d'appartenance à la société québécoise, au-delà des origines et des références identitaires.”¹

That over-all message of inclusion takes on additional significance with the determined approach of our English school boards to include as fully as possible students of every spectrum of potential and capability in every aspect of school life. This is done with a distinct and, again, complementary approach to our unique position as minority-language educators committed to preparing students for a future in a place where the common language is French.

Bill 21 is Unnecessary

QESBA supports the separation of church and state. Our school boards and schools ensure, by virtue of Québec’s Education Act and the philosophy under which they operate, the separation of church and state. We support the ability of our teachers and administrators to convey that respect within all of our institutions. We feel that Bill 21 is unnecessary and divisive as all of these discussions have been over the last number of years.

Relying on the professionalism of school administrators and teachers and the existence of clear guidelines in the Basic School Regulation which are reinforced by current policies at each of our member school boards, the QESBA can confidently state that our schools are secular. Proselytizing in our network is not accepted. This message was long ago received and understood.

Furthermore, proponents and supporters of Bill 21 have not, to our knowledge, presented any empirical evidence that wearing a religious symbol in and of itself influences the way in which anyone teaches in the Québec school system.

In our experience, our system has never needed legislation to balance the rights to our administrators, teachers, professionals and support staff with those of our student population on any matter let alone religious neutrality. Freedom of religion in Canada is a constitutionally protected right, allowing believers the freedom to assemble, worship and to live their lives without undue limitation or interference.

QESBA wishes to advise this Commission that it has been unable to identify over the last 20 years a **single** unresolved employee grievance relating to a request for absence from work on religious grounds. Our nine school boards, in concert with their affiliated unions representing their employees, have made “voluntary adjustments” in numerous such cases that have successfully addressed such matters without undue disruption, hardship or controversy caused to either the individual or the school population. This bill, incorrectly in our view, confuses the necessity for the state to be religiously neutral institutionally with a personal requirement to be religiously neutral in appearance.

¹ Une école d’avenir : Politique d’intégration scolaire et d’éducation interculturelle, Gouvernement du Québec, 1998, pp 6-7

Furthermore, the Québec Charter of Human Rights already provides Québec with a solid, resilient and appropriate framework for living together. A human rights charter is a most fundamental pillar of any society; its amendment should not be undertaken lightly and without a broad consensus in the legislature.

Bill 21 is Impractical

The restrictions in Bill 21 will prevent people for whom wearing a religious symbol (such as a kippah, turban or hijab) is an article of their faith from becoming a public school teacher. As our colleagues with the Quebec Provincial Association Teachers have pointed out, at a time when there is a teacher shortage, rejecting anyone who has the qualifications, passion and devotion to becoming a teacher makes no sense. We need more educators and administrators from diverse communities, not fewer.

Furthermore, many aspects of Bill 21 would be very impractical to enforce. As proposed, there would be a number of categories of people, including teachers, in the same building, some of whom would be allowed to wear religious symbols and some of whom would not.

School daycare educators and monitors, current teachers and principals and vice-principals and professional and support staff can wear religious symbols. New teachers and principals and vice-principals hired as of precisely March 28, 2019 could not. Differentiating among these people in the halls and classrooms of schools and centres would not be as easy as it seems.

Our colleagues at the Association of Administrators of English Schools of Quebec, who represent some 400 in-school and in-centre administrators and 100 board level administrators in all nine English school boards, have indicated that they do not believe that they should be called upon to monitor the law, calling its application “distasteful”.

Asking the police to enforce provisions of Bill 21, has, thankfully, been ruled out.

The Legality of Bill 21

Along with many other groups, it is our belief that this bill clearly infringes on a number of individual Charter rights. By invoking the notwithstanding clauses in both the Canadian Charter of Rights and Freedoms and the Québec Charter of Human Rights, even the government appears to concede that Bill 21 could not, in its current form, resist a court challenge, which in and of itself is very disturbing to our network.

There is another significant legal issue which seems to have been overlooked by the drafters of Bill 21 that we wish to bring to the attention of the members of this Commission, the Government of Québec and to the population at large. It our view that not only do certain aspects of Bill 21 infringe on fundamental individual rights but that certain sections are also a clear infringement on the English minority community’s Constitutional right to control and manage our educational institutions. (It is quite telling that both the Cree School Board and the Kativik Ilisarniliriniq in Nunavik are completely exempted from the legislation as are private schools).

Bill 21 prohibits principals, vice-principals and teachers in public schools from wearing “religious symbols” in the exercise of their functions (section 6 and Schedule II) with current employees exempted as long as they remain in the same position.

Section 23 of the Canadian Charter of Rights and Freedoms, as interpreted in numerous Supreme Court of Canada decisions, guarantees the minority language community in each province and territory the right to control and manage our educational institutions.

The landmark 1990 Supreme Court of Canada *Mahé v. Alberta*², identifies “**the recruitment and assignment of teachers and other personnel**” as the “**exclusive authority**” of the **minority language representatives**.

Here is the full excerpt from the *Mahé v. Alberta* decision:

(3) 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 agreements for education and services for minority language pupils.

Since, in Québec, the minority language representatives are, in fact and in practice, the democratically elected Council of Commissioners of English school boards, we contend that section 6 of Bill 21 which prohibits new principals, vice-principals and teachers from wearing religious symbols in the exercise of their functions infringes on the Constitutional right of the English-speaking community to recruit and assign teachers and other personnel.

Therefore, by virtue of the constitutional rights of Québec’s English minority community, as interpreted by various Supreme Court decisions and in particular *Mahé v. Alberta*, Québec cannot impose a prohibition of religious symbols worn by teachers and principals in the English public school network.

We acknowledge that this Constitutional right can be circumscribed by the Government of Québec in the area of the professional qualifications necessary for teachers and other personnel. However, we contend that dictating how school board personnel dress is not part of the professional qualifications nor is it a reasonable limit on our section 23 rights. In fact, by overriding individual rights with the use of the two notwithstanding clauses, the Government of Québec implicitly recognizes that the measures contained in Bill 21 are not reasonable limits. This infringement of individual rights is certainly not a valid exercise of the Government’s general authority over educational policy.

² *Mahé v. Alberta* [1990] 1 SCR at page 377.

We also wish to remind all concerned that Section 23 of the Canadian Charter of Rights and Freedoms is not subject to the notwithstanding clause of the Charter³

Conclusion

The above opinions are only the most pressing ones that are prompted by our analysis and discussion of Bill 21. They have not been satisfactorily answered to date. QESBA would submit that the English public schools of Québec, like most public establishments in Québec, are finding their own fair, inclusive and forward-looking answers to living and learning together in a spirit that is respectful of our shared and evolving heritage and the collective values that define the distinct and wonderful place where we live.

It is our view that Bill 21 is unnecessary, needlessly divisive, does not reflect the values we teach our pupils and infringes on the Constitutional rights of the English-speaking community.

While this brief is the position of the QESBA alone, the major associations and organizations of the English school network, including the

- Association of Administrators of English Schools of Quebec
- Association of Directors General of English School Boards of Quebec
- English Parents Committee Association
- Quebec English School Boards Association
- Quebec Federation of Home and School Associations
- Quebec Provincial Association of Teachers

have all endorsed a common statement in opposition to Bill 21. The joint statement is appended to this brief.

Consequently, the QESBA believes that the Québec National Assembly should not adopt Bill 21.

³ The notwithstanding clause of the Canadian Charter of Rights and Freedoms (section 33) reads: (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter