

**Bill 86:**

Notes taken on a presentation by:

Attorney

**Michael Bergman**

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## Michael N. Bergman, B.C.L., LL.B.

*"... a distinguished and dedicated Montreal lawyer..."* Lead Editorial The Gazette, 2010

*"... a tenacious lawyer..."* Montreal Gazette, 2003, Don MacPherson, commentator.

Michael N. Bergman is the founder and principal of Bergman & Associates, lawyers.

He is a veteran legal strategist, a tenacious negotiator, and a seasoned litigator. In his 37 years of law practice, he has pleaded before the trial and appellate Courts of Québec, Ontario, the trial and appellate Federal Courts, the Supreme Court of Canada, the United States District Court and diverse administrative bodies. Mr. Bergman has represented clients before official committees of the Parliament of Canada and the National Assembly of Québec. He has steered and coordinated international litigation between several countries.

**According to Me Bergman:**

*Bill 86 is about Management and Control*

Some believe that those against the bill (many, elected Commissioners) are only trying to save their job.

If that is true, then let us IMAGINE that we (the Anglophone community) succeed at keeping our elected Commissioners; what else does this bill bring about?

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**Even if the democratic issue (of electing Councils by universal suffrage) is resolved, the following would STILL be problematic under Bill 86?**

School boards would still become under the complete control and management of the Minister of Education.

The Councils of Commissioners, even if maintained as is, would have very little control and management over their school boards. Article 459.6 states that the Minister may give directives to school boards about their organization, finances, management, operations and actions.

The Minister would be able to do what he wants in any and all boards. And there would not need to be any uniformity or conformity between boards.

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The Councils would no longer have control over their DG.

The Minister would have the right to fire, suspend or discipline the DG of the board.

Moreover, DG's would have the *obligation* to report 'issues and problems' at the board to the Minister directly.

The Minister would have full control over the Human Resources policies and practices of the board, the Academic and Pedagogy policies and programs of the board and the Organization and reporting lines (Organigram) of the board.

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The Minister would be able to require mergers between boards, school closures and make changes to the territories of the boards.

The Minister has written into the Bill that he will *consult* the new Councils but he has no obligation to follow the recommendations of the community.

Under Bill 86, the Minister would have the power to take over all of the control and management of the boards - the control and management that the present elected Councils have.

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Under Bill 86, Bergman stated, the Minister of Education would have full VETO rights over any decisions made by the board Council.

**According to Me. Bergman, Bill 86 effectively renders school boards a cipher while allowing the façade of school boards to exist ... but ultimately, it's just wallpaper!**

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## **Bill 86 – Anglophone vs. Francophone boards**

The Minister can do as he pleases with the Francophone majority.

But the Anglophone minority communities of Quebec have Federal / Constitutional rights that the French majority in Quebec does not have.

But the way that Bill 86 is written, makes no distinction between English and French boards.

The Bill requires boards to share resources with other boards AND with municipalities.

And if the Minister does not think that we are sharing enough, he can order us to share / give up more.

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**According to Me Bergman, Bill 86 is being ‘sold’ to the public and parents with the sales pitch:**

**‘The Parents Will Be In Charge’**

But in reality, the parents will be in charge of nothing. Because all of the real control lies with the Minister.

And these parent representatives will have no official ties to any existing parents groups or committees.

Bergman says: It’s all a façade!

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## **SIX parents will be on the school board Council**

### CONSIDER:

- In many schools across the province, only a handful of parents show up at the AGM's to vote for the GB parents and Regional Rep.
  - Some schools don't even have enough parent participation to form a GB.
  - Smaller boards and boards with vast territories have limited potential for parent involvement.
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## Eligibility:

- Bill 86 says that these six parents must NOT currently be a member of any school or school board parents' committee.
  - So only parents who have no direct association or connection with any elected parent body can be on the new Council. They must however have been former members of the parents' committee or governing body or a committee thereof.
  - Which in essence means that these six parents are not responsible or accountable to any parent group.
  - By extension, they do not have to act and/or vote as a representatives of the larger parent group.
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## Election / Nomination Process:

- If more than six eligible parents propose their candidacy for the school board Council, an election will take place. The parent reps will be elected by the parents' committee of the school board.
  - If only six eligible parents propose their candidacy, they will be acclaimed.
  - In boards where fewer than six eligible parents can be found, the Minister will name someone to the position.
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## **Six COMMUNITY members be on the new Council**

Phase 1:

The Secretary General will be told by the Minister how and when to poll the parents on whether to have an election or not.

Requires a minimal percentage of agreement.

Bergman points out that there is nothing in Bill 86 that states clearly how many parents have to be in agreement for a full election to take place. Fifteen percent (15%) is being bantered around as the magic number. But nothing is written in the Bill.

Phase 2:

If the minimum percentage (say 15%) is not achieved, then the CPC will choose the Community reps on Council.

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## **Eligibility – to be one of the SIX Community Reps**

Four (4) do not have to come from the EMSB community

- they must work within the EMSB territory
- but they do not have to live in the territory of the board
  - one from a Municipality
  - one from the Culture or Communication sector
  - one from the Employment sector
  - one from the Health or Sports sector

Bergman stated that, with all of those constraints and specifications, it will be unlikely that some boards, especially small ones in rural areas, will be able to find eligible candidates.

That fact, will allow the Minister to appoint delegates to these community positions when none can be found.

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**Me Bergman asked the question:**

**If appointed by the Minister, who will these Community reps likely to be beholden to?**

→ Not to the parents

→ Not to their sector  
(Arts & Culture, Municipal, Employ. or Sports)

→ Not to the Anglophone community  
(especially if they are from the Francophone sector)

And, if a Francophone is appointed to the Council of an English board, they could insist that meetings be conducted (and all documentation be provided) *in French*.

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## **The other TWO Community members?**

- They do not have to be parents
- They do not have to be Anglos
- But they must reside in EMSB territory

Who is their constituency?

Who do they represent?

Who are they beholden to?

No one, Me. Bergman suggests.

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## **Bergman compares the present situation with that which is being proposed in Bill 86**

At present, Commissioners are elected by EMSB parents and other tax payers who have registered on the English election list.

At present, Commissioners are accountable to their constituencies.

To remain in good standing, Commissioners must be accountable to the community of people (parents and non-parent tax payers) who elected them.

And if the voters become disenchanted with or lose trust in the elected Commissioner representative, the electors (parents and other tax payers) can vote them out of office in the next election.

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**The New Councils will be made up of:**

6 Parents

6 Community Members

2 Principals

1 Teacher

1 Professional

(0 Support Staff / 0 Caretaking Staff)

Bergman points out that while the new Council is supposed to favor Parent control, parents do not have majority.

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Staff Members may end up holding the balance of power.

Bergman also points out that the four ‘Staff Members’ might be put in awkward situations – maybe even in conflict of interest.

The four ‘Staff Members’ can express views but cannot vote on issues concerning a collective agreement or employment which affects them personally or the constituency they represent.

Especially where staff discipline and dismissal, school closures and mergers, allocations of human resources, etc. are involved.

This conflict may facilitate the Minister’s interventions.

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**But ultimately, even if the Council votes and passes a resolution, the Minister can overrule that decision on any subject.**

Bergman stated that it is this lack of real control and management that makes Bill 86 a **Constitutional issue** for the Anglophone Community of Quebec.

Any elections would be subject to the regulation of the Minister but at the cost of the school board. And there are no modalities in the Bill regarding how the election would take place. So every school board could, in theory, operate their election and board operations differently.

This lack of uniformity will have a fracturing effect of the Anglophone community of Quebec across the nine Anglo boards.

At present, the QESBA speaks for the entire Anglophone school community and the English boards have one strong voice.

This will be greatly diminished!

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## **Bergman reminds us: No taxation without representation!**

The Canadian Constitution – Section 23

Ensures that minority communities have the right to manage and control their schools.

It does not specifically speak about School Boards.

The Supreme Court has interpreted Section 23 of The Charter in the Canadian Constitution to require that official minority language communities have management and control over education where the numbers warrant, the school board being the ultimate form of vehicle for that management and control.

But it does provide for the right to minority linguistic education.

And it does speak of minority language parents' having the right to send their children to (English) schools.



**It is the Supreme Court of Canada that adopted the words: “*Management and Control*” and afforded that right to minority communities.**

In contrast, Bill 86 gives the actual management and control of English schools and boards to the Minister of Education.

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**Bergman referenced the outcome of legal case:**

**Mahe vs. the province of Alberta, 1990**

School boards should be guaranteed where there is a sufficient critical mass.

Minority language representatives must have exclusive authority to make decisions, establish programs of instruction, etc.

This judgment provides for more extensive management and control than even our present Councils have.

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## **Bergman asks: Why fight the Liberals on Bill 86?**

If the Anglophone community of Quebec does not assert its Constitutional rights now, it will be impossible to re-claim those rights later. The system would be too broken to repair.

It is not democratic for one level of government (Provincial Liberals) to remove another level of government.

- Present Commissioners were elected for a three year term. They have a reasonable expectation (Promissory Estoppel) to complete their term.

It is not democratic to have one group of citizens decide if another group of citizens can vote.

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## **Me. Bergman - IN CONCLUSION**

The Quebec government has the right to ask the Quebec Court of Appeals for an opinion on this Bill. But they have not done – Bergman says, because the Liberals know that Bill 86 is unconstitutional.

The Anglophone School Boards have an 87% success rate overall. We are doing very well. And nothing in Bill 86 does anything to improve our results and/or functioning.

Bill 86 is simply a power grab on behalf of the Minister of Ed.

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Bill 86 removes the management and control of English boards from the larger Anglophone community.

Parents may think that they will be in-charge, but it's just a façade.

Make no mistake, the purpose of this Bill is deliberate. So is the language.

The deliberate removal of the Council's right to manage and control the board is woven carefully into many part of the Bill's language. Hence, making meaningful amendments to this Bill will be all but impossible.

As such, the Bill must be completely rejected, Bergman stated.

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