



A PUBLIC CONSULTATION BRIEF ON BILL 9
An Act respecting the National Student Ombudsman

Presented by:
The English Parents' Committee Association

to:
The Committee on Culture and Education
National Assembly of Québec
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English Parents' Committee Association
Association des comités de parents anglophones

Identification of the author

The English Parents' Committee Association (EPCA) is a coalition of Parents' Committees from English-language school boards across Québec, representing nearly 100,000 students in the English language youth sector. EPCA is a non-profit association funded by the Ministère de l'Éducation. EPCA advocates for English public education in Québec and lobbies on issues of concern of our Parents' Committee members. Whenever there is an educational issue, we are the voice of the parents.

Summary

EPCA has studied the details of Bill 9 (An Act respecting the National Student Ombudsman) and undertook a broad consultation with its member Parents' Committees across the province of Quebec.

EPCA wholeheartedly agrees that the student ombudsman process in Quebec has to be revamped and generally supports this important Bill. We believe that the Bill responds strongly to the requirement for transparency but only partially responds to requirements of accessibility and neutrality, which is why we are making recommendations of ways the Bill could be strengthened and made more effective and impactful for Quebec students and their families.

EPCA seeks to make sure the reform to the student ombudsman function and complaints procedure is fair and equitable, accessible and effective, for students and their families across Quebec, including English-speaking families. As this is considered an important resource for citizens in the education system in Quebec, EPCA maintains that it is imperative to ensure equal access to this resource.

The Parents' Committees were invited by EPCA to participate in a 148-question survey, which asked them for their opinion on various aspects of Bill 9. It is through the results and comments of that survey that we are presenting our concerns and recommendations today.

General presentation

EPCA would like to present its four main areas of contention:

- Access
- Selection procedure of student ombudsmen
- Process timelines and reporting
- Confidentiality, dissemination of information, and protection against reprisals

All information involved in the complaints process needs to be accessible and available to English-speaking students and families in English. We want to ensure all Quebec parents are included in this process and not excluded because of a language barrier. Further, EPCA contends that the linguistic nature of our school system be recognized with amendments to Bill 9 instituting one (or more) "regional" ombudsman which would deal exclusively with complaints emanating from English school boards and private English schools and that legislative provisions allow for the two special status school boards (Cree and Kativik) and one special status school service centre (Littoral) to opt into this proposed model if they so choose.

EPCA supports the creation of the National Student Ombudsman (NSO) and under it the creation of the Regional Student Ombudsmen (RSOs) under the proviso described above. However, the selection of the NSO and RSOs must not be a political nomination and therefore cannot be made by, or proposed by, the Minister. The current definition of ally in the Bill could, in many cases, block the candidacy of a person with all the necessary qualifications for the position, while the risk of conflict of interest would remain low. This criterion should be clarified and interpreted in such a way as to maximize the number of candidates, while eliminating as much as possible the risk of the appearance of conflicts of interest.

EPCA would like the selection process to be completed by a neutral hiring committee that ensures equal representation of different constituencies across Quebec and that includes parents from English and French educational systems in the decision-making process for NSOs.

For both the NSO and RSOs, we believe these positions should be at arm's length from educational institutions. For example, candidates should not be an employee of a school board, a member of a Parents' Committee or school Governing Board, or be a relative or ally of any of the above. However, EPCA contends that the Bill 9 restrictions on candidates for these positions is currently too restrictive; at the least, the restriction on a parent being an NSO or RSO should be removed. It should be assured that people in these positions be knowledgeable about the education system and dispute resolution mechanisms. And we agree that these should be full-time positions and that the duties be performed exclusively.

We are proposing several recommendations with respect to student ombudsmen reporting (detailed below), including disaggregating data about race/ethnic groups in reports. Fully disaggregating data helps to expose hidden trends. It can enable the identification of vulnerable populations, for instance, or it can help establish the scope of the problem and can make vulnerable groups more visible to policy makers.

EPCA is proposing that there be a limit of 30 days for the overall processing of the complaint.

We would also like to see the law strengthened around confidentiality, dissemination of information, and protection against reprisal. We agree that the NSO and RSO must ensure that the rights of students attending a school board and of children being educated at home, as well as their parents, be respected and that the services provided to them by the school board be maintained and supported.

SELECTION CRITERIA AND EXPECTATIONS OF THE NSO

In terms of the selection of the NSO, the Minister must encourage transparency and trust and ensure the position of NSO is reflective of the community. We recommend that there be a selection committee for the appointment of the NSO and not that the NSO be appointed by the government on the recommendation of the Minister of Education to ensure the NSO is seen as neutral and independent of political interference. The committee should be composed of representation from educational stakeholders and the grassroots population outside of the political sphere and include representatives from both English and French communities in Quebec.

The NSO, him or herself, should be independent of stakeholder interests, i.e. not be an employee of a school board, a member of a Parents' Committee or school Governing Board, or be a relative or ally of any of the above.

The person hired as NSO should have knowledge of the education system in Quebec and dispute resolution mechanisms and also should have diversity, equity, and inclusion training. The mandate of the NSO should be reduced to three years from five.

The following are what EPCA expects from the NSO:

- It is imperative that the NSO be able to deal with complaints in both French and English. If a complaint comes from the English community, the NSO should be able to deal with the complainant in English and be able to resolve the issue in English, just the same as if the complaint was coming from the French community.
- The NSO should be able to promote collaboration and encourage the sharing of best practices among RSOs in the performance of their duties so that there is a fluidity of information.

We also think the NSO should provide support to the RSO when requested in order to deal with a complaint, while respecting their duties and confidentiality of information, and advise an RSO to alleviate a difficulty related to the exercise of their duties and provide solutions. The NSO should review complaints when RSOs consider it appropriate to make recommendations.

The NSO should provide advice to the Minister on any matter referred to them by the Minister.

The NSO should not designate the RSO responsible for accountability in each region and instead there should be a selection committee involved in the hiring of each RSO.

The NSO should be responsible for the proper and optimal application of the provisions relating to the complaints procedure under this Act.

Regarding reporting, EPCA agrees that the NSO should submit a report of its activities for the previous school year to the Minister by 31 December each year. The Minister should table the report of the NSO in the National Assembly within 30 days of its reception or, if the Assembly is not sitting, within 30 days of its resumption.

This should report should include:

- the actual timeframes for handling complaints;
- the number, nature, and grounds of complaints received, dealt with, refused, or discontinued by the RSO since its previous report;
- the nature of the recommendations made and the action taken on these recommendations;
- separate reporting of complaints related to bullying or violence, as well as separate reporting for sexual violence; and
- disaggregated data about race/ethnic groups.

The above information should be detailed separately for each region. Furthermore, the annual report of the NSO should include collective (national) recommendations for school board services, which would promote transparency. RSO reports must be made available in English.

SELECTION CRITERIA AND EXPECTATIONS OF THE RSO

EPCA contends that the RSOs must be able to communicate with stakeholders in their language of choice in order for them to fully understand their rights and responsibilities. The following points outline EPCA's concerns regarding equitability and ease of access in the English language:

- There are 17 MEQ administrative regions throughout Québec that must be serviced in an equitable manner;
- Even with possible Governmental assurances, we do not think that a regional territorial model will be able to guarantee regional ombudsman services in English, particularly outside the Greater Montreal area and are concerned about availability of bilingual positions. EPCA is concerned that complaints from parents in English school boards are likely to be marginalized in a regional territorial model due to their small proportion, particularly in the regions;
- The majority of English school boards cover more than one administrative region (for example Sir Wilfred Laurier School Board covers three). The proposal in Bill 9 means that school boards would be dealing with a number of different regional ombudsmen, which will increase the complexity for parents and school boards; and
- The RSO needs to be sensitive to the cultural and educational differences in our network; as such, EPCA would like assurances that all RSOs will make this a priority.

To that end, EPCA maintains that the linguistic nature of our school system be recognized with amendments to Bill 9 instituting one (or more) "regional" ombudsman which would deal exclusively with complaints emanating from English school boards and private English schools and that legislative provisions allow for the two special status school boards (Cree and Kativik) and one special status school service centre (Littoral) to opt into this proposed model if they so choose.

The RSOs should understand the realities of the regions they represent and be able to navigate the issues faced by communities in the region. They should actively seek information via an open forum/town hall once a year.

In terms of the selection of the RSOs, we do not agree with the Minister having the authority to establish, by regulation, the recruitment and selection process for RSOs. Instead, the selection process should be handled by a

selection committee, based on regional and stakeholder representation, and be neutral and arms-length from political influence.

We believe that the term of office of an RSO should not exceed three years; a term of five years is too long. EPCA agrees that the recommendations of candidates made by organizations representing the following groups should be considered by the selection committee: parents, teachers, Directors General of school boards, and more - representing both the English and French sectors. We support unpaid members on the selection committee in order to bring diverse representation from the community, including those who want to volunteer for a position on the committee. We believe that the selection committee should be able to select the Chair amongst themselves; not necessarily will it be the NSO.

EPCA expects that there must be made available at least one RSO who will be able to hear complaints in English and offer mediation and conflict resolution in English.

We agree that the RSO, on expiry of his/her term of office, should remain in office until replaced or reappointed. We do not, however, believe there should be a renewable term for an RSO although an existing RSO can be appointed for a subsequent term after going through the selection process again.

We don't support the idea that an RSO who works part-time can be assigned to more than one region as we do not believe that the RSOs should work only part-time. Instead RSOs should be focussed full-time on the region or regions they are responsible for.

The complainant should have access to the RSO from the beginning of the process, regardless of the process being followed.

EPCA agrees that the RSOs be subject to the orders and directives of the NSO. They should deal with any complaint made by a student attending an educational institution in the area to which the student is assigned or by the student's parents, or any complaint made by a child who is home schooled and resides in the area in which he or she is assigned or by the parents of the child. RSOs should advise on any matter referred to it by the Council of Commissioners of a school board in relation to the services provided by the school board, or give their opinion on any matter referred to them by a Parents' Committee, students' committee, or Governing Board.

EPCA believes that mediation should be systematically implemented as the primary tool for addressing complaints at the RSO level.

Regarding reporting, EPCA supports the requirement for the reporting RSO to submit a report of its activities for the previous school year to the NSO by 31 October each year. This report should include the number, nature, and reasons for complaints received, handled, refused, or discontinued by the RSO since its previous report. We agree that this report should include the time frame for handling complaints. The reports must contain the nature of the recommendations made in the course of handling a complaint and the actions taken on them. As with the NSO's report, we believe that the report should include disaggregated data and include separate reporting for bullying, violence, and sexual violence. We support the RSO attaching the reports of the school board student ombudsman to its own report.

We request that the RSO decision and its reasons be transmitted by email.

EPCA maintains that Councils of Commissioners or Service Centres cannot have veto power over the decisions made by student ombudsmen.

EXPECTATIONS OF THE SCHOOL BOARD STUDENT OMBUDSMAN

EPCA supports the idea that each school board has a person responsible for handling complaints and that this person be easily identified and accessed.

After receiving a complaint, the school board student ombudsman must give its opinion on the merits of the complaint and indicate, if necessary, the corrective measures they deems appropriate. The information should be provided to the plaintiff and others. When the complaint is about the follow-up to a report of bullying or violence, we believe that notice *also* be given to parents.

We think all information should remain confidential, not be provided to the Council of Commissioners, but be given to the plaintiff and the person directly concerned by the complaint.

Regarding reporting, we support the requirement that the student ombudsman of a school board submit a report of its activities for the previous school year by 30 September each year. This report should include the number and nature of complaints received by the school board, the time frame for reviewing complaints, the nature of the recommended corrective measures, and the follow-up to these measures. Data should be disaggregated and include separate reporting for bullying, violence, and sexual violence.

PROCESS

EPCA is in favour of having the same complaints handling process throughout Quebec. It is fundamental that any and all proceedings can take place in English from the moment of the initial complaint to the final resolution and all steps in between – either verbal or documented. There should not be a time limit to for an individual to submit a complaint.

In terms of timelines, there should be a 30-day (and not a 60-day) time limit for the processing of an admissible complaint.

There should be access to the student ombudsman from the beginning of the process. The complainant should be able to count on an open line of communication throughout the process.

We support the three-step complaint process. This involves the person directly concerned or his/her immediate supervisor, the student ombudsman of the school board, and the RSO (and NSO, when the RSO deems it necessary).

EPCA agrees that in the case of a report of bullying or violence, the complainant should be able to make a complaint directly to the student ombudsman of the school board. In other words, complainants should have options for certain cases despite the fact that the complaint process recommends that complaints be made first to the institution and then to the student ombudsman. There may be instances where this process is untenable and there should be flexibility for the RSO to be the entry point for the process. We agree that the RSO can review a complaint even though the steps in the complaint procedure have not been followed.

We support the idea that the RSO shall assist any person who requests it in formulating a complaint or in taking any action relating to it. As the complaint should be in writing, a designated person should be made available to help parents/students in writing the complaint. No plaintiff should not be able to exercise their rights due to their inability to express themselves in writing. Assistance should be provided to anyone who wishes to make a complaint to the student ombudsman.

If the circumstances are appropriate and the complainant and others consent in writing, EPCA supports the ability of the RSO to meet with the plaintiff and others in an attempt to bring the parties together in a mediation process, if the RSO deems it appropriate. In fact, EPCA advocates for mediation to be the primary tool at this level.

We also support the idea that if the RSO considers it appropriate to make recommendations, they should forward their findings and recommendations, as well as the information it has on the complaint, to the NSO. We think it is important that notices and recommendations be submitted to the plaintiff and other parties involved in writing by the student ombudsman, RSO, and NSO.

We don't agree that the Council of Commissioners of the school board can overturn all or part of a decision covered by findings or recommendations.

We don't support the Minister establishing, by regulation, any other terms and conditions for filing a complaint or for the processing of complaints by the student ombudsman.

We don't support the Minister determining, by regulation, the terms and conditions of a written complaint to the RSO nor the information to be used in reviewing complaints.

EPCA agrees that a person should not be prosecuted for making a complaint in good faith or for cooperating with a school board's complaint handler, an NSO, or the RSO in handling a complaint. We support a statutory prohibition against retaliation against a person who has made a complaint or cooperated with a school board student ombudsman, an RSO, or the NSO in the handling of a complaint. We agree that a person who believes he or she has been the victim of reprisal should be able to make a complaint to an RSO.

We are in favour of implementing a process that clearly establishes the accountability obligations of each level of the complaints procedure.

We think the requirement for the NSO to report to the Minister on the implementation of the Act should be between two and three years as five years is too long to provide feedback on this important new Act.

Regarding cases under review:

- EPCA feels strongly that the current complaints under review be included in the revamped process and that no one has to start a case over again.
- We support the idea that a complaint that was made, but not forwarded to the current student ombudsman, should be forwarded to the newly designated student ombudsman or RSO who has 30 days to conclude the complaint.
- We agree that a current request for review should be forwarded to the RSO.

ACCESS

We seek to ensure that the people assuming the roles of RSOs are accessible to all Quebec families and that there are no obstacles – such as language of communications – to any student or family who needs to make use of this resource. The result of creating insurmountable obstacles, like the language of documents, could have serious impacts on families, ranging from significant out-of-pocket costs for hiring translators or lawyers to the system being too cumbersome and children dropping out of school. No one should be marginalized in the student complaints management system.

Also, EPCA wants to make sure that all stakeholders across Quebec have access to English versions of year-end reports, such as the one the NSO has to provide to the Minister for tabling at the National Assembly each year, as well as documents outlining best practices or national strategies. We want to keep aware of trends and systemic

issues affecting all education constituents in Quebec. There should be nothing barring accessing and understanding of any documentation, especially language.

INFORMATION DISSEMINATION

We agree that the RSOs should disseminate information about the complaints procedure under this Act, and that the NSO needs to promote its role and that of the RSOs.

EPCA believes that information on the rights of students and homeschooled children, as well as their parents, should be disseminated in order to improve awareness of the public. We agree that the school board or institution be required to inform all students and their parents of the possibility of making a complaint and the procedure for doing so. There are several ways we believe that this could be accomplished. Information could be:

- Included in the school welcome package given to every parent;
- Sent electronically at a minimum three times a year via multiple media (e.g. school agenda, flyers, school messenger, school newsletters, emails, websites, through social media, etc.). This must be the same for all schools;
- Disseminated by Parents' Committees or school Governing Boards; and/or
- Through provincial training sessions.

We believe all levels involved in the student ombudsman function should promote and refer to the same source of information. The information has to be translated into English and released in English at the same time as in French.

Conclusion

To summarize, EPCA is very much in support of Bill 9. However, we would like to see some of its positions strengthened. We want to ensure access for English-speaking students and their families. Access ranges from the ability to communicate with the student ombudsmen from the beginning to the end of the complaints process, to being able to work within the complaints process in the language of their choice, to being able to access information on their file in the language of their choice at any time during the process. We feel strongly that there be a time limit of 30 days for the overall processing of the complaint.

Also, we want to ensure representation on the selection committees that selects the NSO and RSOs to ensure that the interests and needs of the English-speaking and other diverse populations are met and that the process remains fair, equitable, and outside of political influence.

EPCA believes that reporting must be timely and must include disaggregated data. Information on bullying, violence, and sexual violence must be reported separately. Provincial reports must be available in English.

Finally, confidentiality of complaints and other information is crucial to protect students and their families during the process.

The student ombudsman system is a critical resource for students and their parents. Many aren't familiar with it but need a clear and identifiable way to access it and make best use of it when they are looking to resolve a complaint. We believe that our recommendations will make Bill 9 an accessible and impactful law that will benefit all families in Quebec.

We appreciate the opportunity to present our recommendations on Bill 9.

Addendum

Regarding Bill 394 (An Act to prevent and fight sexual violence in educational institutions that provide preschool education services, elementary school instructional services, or secondary school instructional services in general and vocational education, including adult education services), EPCA requests that Bill 394 be studied in the National Assembly. We believe this law will provide NSOs and RSOs with a strengthened ability to respond to complaints and help protect children. Nevertheless, there should still be specific measures related to sexual violence included in Bill 9, including a requirement for complaints of sexual violence to be reported separately on student ombudsman reports.