

BRIEF BY ANGLOPHONE COLLEGES
ON BILL 44
MODIFYING THE LAW ON GOVERNANCE
OF THE
COLLÈGES D'ENSEIGNEMENT GÉNÉRAL ET PROFESSIONNEL
(CÉGEPs)

PRESENTED
TO THE COMMISSION ON EDUCATION

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Dear Parliamentarians,

First things first, we would like to thank you for giving us this opportunity with this Parliamentary Commission on Education to express our views on this important piece of legislation, Bill 44, that proposes to modify the governance of the *Collèges d'enseignement général et professionnel* (CEGEPs).

This Bill includes measures that will have a deep and lasting impact on the colleges in the area of good governance. Therefore, it is important for the anglophone colleges of Quebec to make their voices heard in the discussion and to bring to your attention certain elements that we believe deserve careful consideration.

The views of the English-language colleges

The four colleges presenting this brief are Dawson College, Vanier College, John Abbott College and Champlain Regional. Between them, these four colleges have more than 25,000 students enrolled in full-time and part-time studies. The colleges provide a diverse student population with a rich learning experience and offer a multitude of services, giving the anglophone minority located throughout the province, from the North Shore to the Gaspé, the Eastern Townships to the Outaouais, access to postsecondary education in their own language. Close to 3,000 people work at these colleges, dedicating themselves to their tasks on a daily basis so that we may achieve our educational mission responsibly and with collegiality.

An important feature of the English language network is the prevalence of students enrolled in pre-university programs and the close links that exist between our institutions and the universities. It should also be noted that a substantial number of teachers in the anglophone network hold university graduate and postgraduate degrees, further strengthening the ties between the college and university systems and serving to increase interest in research.

In terms of the changing clientele of full-time, day programs, English-language colleges, like all colleges in the metropolitan area, are operating at full capacity, which will continue for a few more years. These institutions are entrenched in the landscape of Quebec life and represent a rich tapestry of Quebec society as they bring together students of every origin, contributing to the expansion of their horizons, and enhancing an intercultural experience that is harmonious and respectful of the differences that exist between them.

The analysis we have put forth in regard to Bill 44 is based on a careful study of the articles contained within it. This analysis was formulated in light of the recommendations in the Toulouse Report (Working Group on University Governance) which appears to have inspired the authors of Bill 44.

The analysis also takes into account the integrity shown by institutions in the way they have run their affairs over their 40-year history, demonstrating rigour and pragmatism that have resulted in a significant increase in the level of education of Quebecers throughout the province.

This review has led us to certain conclusions that we would like to share with legislators in the spirit of constructive criticism and with a view to developing models of governance that deliver compliance and accountability requirements for the modern world, as well as to ensure that these models remain compatible with the distinct nature of colleges within the framework of their educational missions.

These conclusions were submitted to the Chairpersons of our respective College Boards and they are entirely in agreement with these conclusions.

Finally, we want to state that we are fully supportive of the positions expressed by the *Fédération des cégeps* and that we agree wholeheartedly with the modifications to the Bill it has proposed. However, in our deliberations in the short time period allotted for the preparation of this brief, we have identified certain aspects of Bill 44 that we would like to draw your attention to, and indeed, present a different, but not incompatible, conclusion than that of the *Fédération*.

Bill 44 and the Toulouse Report

Bill 44 and its twin brother, Bill 38, were not borne of the thigh of Jupiter! It is common knowledge that its main provisions were inspired by the report of the Working Group on University Governance in Quebec, published in September 2007 under the auspices of the Institute on Governance of Private and Public Organizations (IGOPP).

The report, referred to as the "Toulouse Report," taking its name from the chair of the Working Group, was determined to "propose principles of good governance [...] relevant to the university sector." It presented, based on a dozen or so concerns, as many general principles to guide the universities' thinking on the matter as the practical applications of such reforms.

It is not without merit to examine what the Report proposes, from the links between the mission and governance, to the responsibilities and operation of boards, to the role of governors or directors in the process of appointing senior administrators. The Toulouse Report presents a series of reflections that has served as the foundation for the authors of Bill 44, to the extent that in some articles, the language has been taken wholly from the Report. It becomes essential, in our eyes, to take stock of the Report as it contains the essence of Bill 44.

Firstly, let us note the first anomaly: the reflections of the Working Group were centred on university governance. To apply Bill 44 to colleges is, except for rare exceptions, a "cut and paste" of Bill 38 for universities. Such a transposition is highly problematic as there are significant and substantial differences between a university and a college.

The two may share a common mission to higher education, but they have different goals, different modes of operation and different powers. How can we justify that the same jacket can fit two different models of education, of different sizes and with organizational processes and operations that are only partially comparable.

For example, Quebec universities are characterized by the heterogeneity of their constitutional charters and a marked difference with respect to their individual legal frameworks, their academic traditions, and their organizational approaches, both practical and political.

This is certainly not the case for colleges who share a common history, adhere to the same constitutional laws, academic regulations, and strict budgetary standards and are subject to identical financing mechanisms. In addition, universities can exercise some latitude in their financial matters; this does not apply to the colleges. It should therefore follow that two distinctly different types of institution cannot conform to one model of governance.

The Toulouse Report attempts to prevent slipping into this chasm by affirming not once but twice that the principles of good governance "must be adapted to the character of each institution" and they should serve first and foremost the institutions themselves in light of their respective governance practices.

We are faced then not with just one anomaly, but two. Firstly, Bill 44 proposes a model of governance whose purpose is to redress concerns relating to the universities' governance model. Secondly, it places restraints on the colleges without taking into consideration the distinct institutional character and the delicate balance each college has achieved in practicing good governance and efficient management.

For these reasons which demonstrate the major weaknesses in Bill 44, we believe that it is necessary to revise the proposed law in some depth.

"If It ain't broke, don't fix it!"

This American idiom aptly describes our sentiments on Bill 44. While we understand the legislators' political concerns relating to recent scandals at some institutions in the university sector, and can appreciate the need for stricter controls on governance to contain the Enrons of this world and to promote accountability and transparency, we feel that Bill 44 goes too far.

In the 40 years of the CEGEPs' existence, colleges have developed effective administrative measures that have spared them major crises. They have instituted best practices in governance and management that have evolved over the years; they respect each other and balance duty and responsibility at every level of authority.

This balance has proven successful, and since the reforms of 1993, has been evaluated regularly. Of course, these measures can be improved and consolidated, which the colleges have been keen to do. The problem now is that the Bill introduces control measures that are disproportionate to the demonstrated accomplishments, realities and obligations of the college sector.

The tipping of this balance by Bill 44 will have widespread consequences. Essentially, the Bill reflects a sense of mistrust and hyper-control that is not justified in view of the accomplishment of their missions by college administrations throughout their history.

This is not the time for micro-management; it is a time to support a responsible exercise in autonomy capable of delivering innovation and institutional development. The restraints imposed by Bill 44 on the operations of colleges, a sort of "lead apron", will add a considerable bureaucratic burden and will serve only to turn administrators' attention away from what should be their primary focus: to ensure quality of education and encourage the development of research, and to provide services to its community.

Examples of overreaching provisions

Not only does Bill 44 show its imperfections when measured against the document that inspired it, the principles stemming from the Toulouse Report, but it also goes too far by applying governance models to the world of education that are used to guide Crown corporations.

Here again, it is obvious that institutions with an educational mission would find it difficult to apply rules that were formulated for organizations of a commercial nature with financial and profit interests. Colleges are not the Caisse de dépôt, or Hydro-Québec or the SAAQ or even the SAQ. The objectives of transparency and accountability as well as the control mechanisms to achieve these objectives must be carefully differentiated.

We hope that the following will serve to illustrate how far Bill 44 will force colleges to veer away from their mission if the law passes without substantial modifications:

- **Respect for the mission and governance**

The mission of a college is primarily educational. All colleges in Quebec have submitted, in some form or other over the years, an academic platform and student success plan. At the centre of the CEGEP's activities and at the heart of its mission is academic life,

that is, interaction with human beings, young and not so young, in the pursuit of exchanging knowledge and imparting the values of one generation to the next, in the context of the acquisition of skills. The very nature of any educational mission is not only cultural, but also social and historical.

The Colleges Act entrusts the Academic Dean with the mandate to ensure respect for and implementation of the mission. The Academic Dean is the “Elder” in the institution assuming the role of embodying the academic integrity of the college. When he or she stands before the Board, he or she represents the *raison-d’être* of the college.

It seems incongruous, if not unimaginable, that Bill 44 proposes in the composition of a Board (Article 8) the removal of the Academic Dean among its members. At the very least, this scenario is symptomatic of the ideological slant presented in Bill 44. More incongruous is that even though the Academic Dean would not be a member of the Board, he or she would nonetheless be subjected to the selection and evaluation processes that fall under the Board’s authority.

Meanwhile, teachers, duly nominated by their peers, would be considered full members of the Board and would therefore drive the main academic agenda – without the person who is responsible for it present at the table!

It would be a grave mistake to exclude the administrator who upholds the integrity of the college’s educational mission from the responsibility of governing it. Is this respect for the mission and good governance? We believe this is an excellent example of how Bill 44 in its present form would divert a Board from its primary responsibilities.

• Implementation of the mission and composition of the Board (Article 8)

Bill 44 sets out *in full* the powers and operating procedures of the Board. Before considering these powers and procedures, however, a word about the rules of composition: Bill 44 proposes that the Minister appoint eight of the 11 members considered to be independent. We believe, for reasons of efficiency and representation, that this provision should be reconsidered.

To ensure efficiency, institutions should be permitted more autonomy in the designation of its independent members. If the past can teach us something for the future, it is that ministerial appointments can be slow in coming and sometimes produce unpredictable results that can be detrimental to the smooth operation of the Board. It is an impractical process due to its complexity. To give colleges more latitude in this regard would actually promote a greater sense of responsibility and effectiveness. Furthermore, because the college is in close contact with its community, which is particularly true of anglophone colleges in a minority setting, representation would be stronger.

Many studies have shown that institutions that serve minorities are important points of convergence for maintaining the viability of these communities and act both as an engine for community development and as a tool for integration within that community. A lack of institutional control over the process of selecting members of its Board could lead to repercussions within the community as the link between it and the institution risks being broken, especially if the selection process does not take into account the value system of that particular community.

The most telling analogy would be to imagine a regional college being stripped of its ability to select members who share a common vision and understanding of regional issues and interests. The same holds true for linguistic and cultural communities. The links forged between our institutions and the communities they have served over the years are at risk if its Board members are selected through some random process or based on factors that do not include competence, cultural and institutional affinity.

• Implementation of the mission, responsibilities and functioning of the Board (articles 16.5 and following)

Bill 44 elaborates in great detail the 18 areas of responsibility that college Boards would assume. This attention to detail seems somewhat overbearing as it implies that college administrators are incapable of determining the roles within the Board. We believe Bill 44 should state these roles more simply. Let us remember that the Toulouse Report delimited the responsibilities of the Board to six main functions. Can we not maintain this frugality of structure?

For example, the functions related to the evaluation of members should be fundamentally rethought. How can a Board chairperson sit in judgment of the members appointed by the Minister? Not only is this an awkward scenario and a delicate situation, the resources required to undertake a well-conducted evaluation are substantial.

How should we regard the provision that stipulates that the Board should “establish policies that focus on risk management” (article 16.10, paragraph 1)? Is this a by-product of the concerns raised after the UQAM and Caisse de dépôt turmoil? Let us remember that nearly 90% of college budgets are normalized.

To understand the ill-effects that the provisions in Bill 44 are likely to have on the smooth operation of the Board, one needs look no further than the structure of proposed committees (articles 16.25 and following), and their mandates. The inordinate number of situations in which these volunteers are expected to sit on committees will do little to encourage membership, particularly among those who are already fully engaged in their communities or in their work life.

Not to diminish the value of retired persons who have chosen to invest considerable time in the management of a college, but where will we find suitable candidates presently working or involved in their communities with this kind of time to spare for such intensive volunteer activities? This question applies even more pertinently in the recruitment of a Board chairperson. These considerations must be carefully reformulated so that the responsibilities of the Board do not become unnecessarily burdensome.

Take as an example the Human Resources Committee (article 16.30). There appears to be a provision that places the responsibility of selecting management staff who report to the Director General in the hands of the Board. The system presently in place works well, is relatively simple and is transparent. The Bill proposes that the Board be involved in the selection of senior managers, which would bog down the process considerably without imparting any heightened sense of efficiency or impartiality.

This issue clearly illustrates one of the fundamental concerns of this group of colleges. The proposed bill on governance seems excessive and unjustified when one considers the impeccable record of the colleges' management since their inception. The current guidelines that exist and the control mechanisms for accountability are such that it seems to us that provisions in Bill 44 are at odds with the reality we have lived.

What was the basis for the recommendations in the proposed bill to merit such draconian modifications that fall so far from our day-to-day reality? Throughout the process leading to the drafting of this bill, which elements were grounded in reality versus those that emerged from a summary review with very little understanding of the reality of the CEGEP network?

If problems of governance exist in postsecondary education in Quebec, it seems important to be informed and involved in the development of corrective measures, so that together we can achieve consensus and sustainable solutions for our institutions.

We are also short on answers regarding the creation of three committees of the Board and the elimination of a single Executive Committee to help colleges achieve their mission. The colleges uphold a tradition that confers upon the Executive Committee a number of current operational tasks which has demonstrated its usefulness in terms of transparency, accountability and efficiency.

The existence of an Executive Committee, accountable to the Board on certain specific mandates, has never posed a problem from the perspective of good governance. On the contrary, it has facilitated links between governance and management and has served to ensure the implementation of a number of decisions. Why would Bill 44 be formulated to restrict the scope of this work? It is unfathomable, especially since the Working Group did not draw any conclusions to this effect, demonstrating deep disagreement about the relevance of keeping it or not.

Once again, let us be cautious and not destroy what works well.

- **The mission and accountability mechanisms**

The anglophone colleges strongly support the positions put forth by the Fédération des Cégeps in the matter of accountability and verification mechanisms proposed in Bill 44, which aim to simplify them and ensure greater efficiency. We especially support the call to adjust the mandate of the *Commission d'évaluation de l'enseignement collégiale* (CEECE) to conform to the new legislation.

Also, provisions on the content of the strategic plan should be reviewed so as not to trap colleges into a model or an ideological framework. The elaboration of strategic plans has seen a remarkable evolution over the past few years. It should be left up to the colleges to formulate their strategic directions according to their own knowledge and awareness. We believe they have attained a level of maturity that would free them from writing down every detail of their operations in such a plan! Similarly, we were quite taken aback by the recommendation of an internal auditor considering the highly regulated and normalized budgetary context in which the colleges have evolved. Does this auditor present an added value to the colleges? Certainly not, but most certainly an added expense for our institutions.

Conclusion

The various questions raised by reading the proposed Bill 44, the concerns about the potential effects of its application to the administrative procedures in place in our institutions and the additional weight the Bill would impose upon us compels the representatives of the anglophone colleges **to ask for a withdrawal of Bill 44** unless it is completely overhauled.

This group of anglophone colleges is concerned by the lack of attention that the Bill pays to the real issues we face which centre on the academic component of our mission. Just the removal of the Academic Dean from a seat at the Board's table seems to be a complete reversal if the real objective of the Bill is to give Boards access to information that allows them to make informed decisions. It should be noted that many of the dossiers and resources affected by decisions taken by the Board are linked to the academic sector. By what logic can we conclude that the elimination of a key element at the table, the Academic Dean, will serve to improve the access of information the Board needs to carry out its decision-making responsibilities?

We are extremely perplexed by the potential effects of Bill 44 on the Board's capacity to exercise its duties once they are rendered burdensome and bureaucratic.

We share the view of Dr. Heather Munroe-Blum, Principal and Vice-Chancellor of McGill University, in an article published in the *McGill News* last winter, when she advised us to

choose the path we take wisely: “One leading to individuality and excellence (with accountability), the other to homogenization and bureaucracy that will hinder growth.”

We share her desire to preserve the balance between autonomy and accountability.

We deeply regret that the proposals for change made by the Fédération des cégeps during the discussions of the now-defunct Bill 110, older brother of Bill 44, have been for all practical purposes ignored.

We believe we have shed light on a sufficient number of imperfections, incongruities and inconsistencies in the proposed bill to justify asking for a process of consultation, bringing together relevant stakeholders and providing the opportunity to reflect on how best to steer governance in the right direction. Such a process should be based on listening and should be put in place in the coming months so that we might agree on the provisions that are most relevant and most respectful of our institutions.

We reiterate the vital importance of involving stakeholders in defining the standards of good governance for our educational institutions. This, we believe, is a necessary process to ensure greater accountability, collegiality and efficiency.

If the legislators accept to engage in a discussion in this way, we, the anglophone colleges, will be happy to participate.

Thank you for your kind attention.

For the Anglophone Colleges of Québec:

Dawson: Linda August Board Chairperson	Vanier: Nathalie Cooke Board Chairperson	Champlain Regional: François Paradis Board Chairperson	John Abbott: Judy Kelley Board Chairperson
Richard Fillion Director General	Gilbert Héroux Director General	Ken Robertson Director General	Ginette Sheehy Director General