

## NB shouldn't have turned to courts over bilingual buses: Former Supreme Court Judge

### Description

" Former New Brunswick Supreme Court justice Michel Bastarache says the provincial government shouldn't have turned to the courts with a question on the constitutionality of bilingual school buses, stating it wasn't the province's responsibility to do so.

In an interview with the Telegraph-Journal, the longtime protector of minority rights also says that he didn't see any real problem with how school districts were busing students, believing "the system has been working."

Bastarache's comments come after the Gallant government withdrew last week its reference question about whether linguistic duality must exist in the province's school bus system, leaving the issue of student transportation in the hands of district education councils.

The top court judge from New Brunswick suggests that's where it should have been all along. "I didn't think it was a good idea for the government to be in charge of determining that issue," Bastarache said. He later added: "I was surprised it came to court."

"Under the constitution, the interpretation of Section 23 of the Charter, it's the representatives of the community that are suppose to make decisions that affect in any way the culture and language of the children.

"So it's better that the school boards determine that issue, taking into account their responsibilities under Section 23."

That section of the Canadian Charter of Rights and Freedoms guarantees minority language educational rights to French-speaking communities outside Quebec.

Bastarache said the charter doesn't clearly state that New Brunswick is obligated to provide separate school busing services for francophone children.

"With regard to the minority, the guarantee is only education and everything that supports education culturally," he said.

Whether that extends to buses, and to what extent bilingual buses would impact francophone students, remains to be seen.

"It's not resolved," Bastarache said. "It has never been determined by the courts."

“When it’s uncertain like that, it’s hard to know exactly what would happen, but the test is really ‘would bilingual busing be something that would affect the cultural experience of the francophone children?’ Because they’re the ones protected by Section 23.”

He added: “It would really depend on the factual context.”

Bastarache suggested the impact would have to be assessed on a case-by-case basis that factors in the number of children, how far they travel by bus, or if they are forced to speak English because the driver is unilingual, among other factors.

He then questioned why the government moved forward the question, believing there was no issue with how school districts were dealing with busing.

“I think the system has been working,” he said. “I don’t know if there are any real problems.

“If there are any problems that occur because they [francophone school districts] have to serve a few anglophone children in remote areas, it shouldn’t pose a problem unless it is really affecting the group entirely which is not something that I presume would happen.”

He added: “If anybody is not happy, then they can take it court. But I think it’s better to put it in the hands of those who have the primary responsibility.”

The provincial government did not answer a request on Monday for comment on Bastarache’s words.

The New Brunswick government turned to the New Brunswick Court of Appeal last year, after it was discovered that a few school buses in Kent County were carrying both French and English students. But Education Minister Brian Kenny said last week that he believed the province’s top court was hesitant to rule on whether the province has a constitutional obligation to offer separate French and English school buses.

In turn, the government pulled the question and is bringing in a new policy clarifying that it’s up to the elected education councils to decide.

The policy to be implemented by the province will state that district education councils have the ability to operate their own pupil transportation services, to share services with other districts or to engage private transportation providers.

Bastarache doesn’t expect the move will result in more shared buses, noting that the francophone community is concentrated to a few regions of the province and that districts will continue to find solutions where needed.

“I think anglophone school boards have their buses and francophone school boards have their buses and I don’t know that there is any kind of urgent need to provide a single system,” he said. “All this idea that it’s cheaper to have one system has never proven itself very much.

“You’re going to need buses anyway.”

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