

SCC rules on French language education at school in Vancouver – children not provided education guaranteed by the Charter

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On April 24, 2015, the Supreme Court of Canada reinstated a lower court declaration stating that parents of children attending a French language school in Vancouver were not being provided with educational facilities equivalent to majority language schools, as guaranteed by section 23 of the *Canadian Charter of Rights and Freedoms* (the *Charter*).

Section 23 imposes a constitutional duty on the provinces and territories to provide minority language education to children of s. 23 rights holders where numbers warrant. The Supreme Court has previously explained in *Mahe v. Alberta*, [1990], that section 23 guarantees a “sliding scale” of minority language education rights. At the upper limit of the sliding scale, numbers will warrant the provision of the highest level of services to the minority language community. In such cases, rights holders are entitled to full educational facilities that are distinct from, and equivalent to, those found in the schools of the majority language group. These facilities must be accessible and, where possible, located in the community where the children reside. The upper threshold of the sliding scale can include separate minority language school boards.

While previous section 23 decisions focused on determining the level of services to which rights holders were entitled, this question was not before the Court in [Association des parents de l'école Rose-des-vents v. British Columbia \(Education\)](#), as the parties agreed that they were entitled to the highest level of services. Rather, the main issue before the Supreme Court of Canada was the proper approach for determining whether rights holders were provided the educational equivalence guaranteed by the *Charter*.

The Supreme Court stated that this determination hinged on whether parents would be deterred from sending their children to the minority language school because it was meaningfully inferior to an available neighbouring majority language school. If parents were deterred in this way, then their section 23 rights would be breached, and assimilation would result.

By way of background, the Rose-des-vents elementary school is the only publicly-funded French language elementary school for children living west of Main Street in Vancouver. The school is very small and overcrowded with undersized classrooms, lack of storage space, a very small library and inadequate washrooms. Approximately 85% of the students are transported to school by bus, and most of those have rides longer than thirty minutes per bus trip.

In 2010, the school's parents association challenged the province and the school board by seeking a declaration from the court that the educational facilities made available to their children were not

equivalent to those provided in English schools in the area and as a result, their section 23 *Charter* rights had been breached. The parents were successful at the trial level but the declaration was set aside on appeal.

The Supreme Court found that the trial judge correctly applied the test set out above. The Supreme Court commented that the comparative exercise in assessing equivalence is contextual and holistic, taking into consideration not only, for example, physical facilities, but also quality of instruction, educational outcomes, extracurricular activities and travel times. The Court found that it was not appropriate for provincial or territorial governments to invoke issues of practicality or cost as part of the inquiry into equivalence. The Court accepted the trial judge's conclusion that although the school had a high quality of instruction and good academic outcomes, these did not offset the school's inadequate facilities, the overcrowding, and the long travel times. When compared to the neighbouring English language schools, which the Supreme Court stated were the appropriate comparative group, the resulting disparities would operate to limit enrolment. Parents would opt for the English language alternatives and the result would be interference with the realization of section 23 rights and ultimately contribute to assimilation.

The Supreme Court therefore reinstated the trial judge's declaration that the parents' section 23 rights were breached. The matter was remitted to the Supreme Court of British Columbia for the next phase of the litigation, if necessary, which intends on determining who, between the school board or the province, was responsible for the breach.

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