



Canadian
Heritage

Patrimoine canadien

62B

8128-3-96

VOL 1 UNC

INTERGOVERNMENTAL COOPERATION -
BRITISH COLUMBIA
SCHOOL GOVERNANCE; GENERAL

COOPÉRATION INTERGOUVERNEMENTALE -
COLOMBIE-BRITANNIQUE
GESTION SCOLAIRE; GÉNÉRALITÉS

SCHOOL GOVERNANCE

GESTION SCOLAIRE



7540-CH-502-0870

[illegible]

GC 39.1 (91/10)

7540-21-904-5775

62B
VOL 1

8128-3-96

001650



Government
of Canada

Gouvernement
du Canada

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information



CLOSED VOLUME VOLUME COMPLET

DATED FROM
À COMPTER DU

95-11-25

TO
JUSQU'AU

96-06-17

AFFIX TO TOP OF FILE - À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS - NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. - DOSSIER N°

62B

8128-3-96

VOLUME

2

Department of Justice
CanadaMinistère de la Justice
Canada

230 rue Wellington

[Dossier/MSO]

FACSIMILE TRANSMISSION
TRANSMISSION PAR TÉLÉCOPIEUR

8140-6-96

SEND TO / ENVOYER À		FROM / DE	
Name / Nom: Hilaire Lemoine <i>cc P. Gaudet</i>		Name / Nom: Michel Francoeur	
Address / Adresse:		Address / Adresse:	
Fax # / No du télécopieur: 953-9853	Tel. No. / No du Tél:	Fax # / No du télécopieur:	Tel. No. / No du Tél: 941-4037
Comments / Commentaires: Tel que convenu			
SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ			
Unclassified documents only VIA clear transmission. Protected information permitted within Justice secure FAX network.		Documents non cotés à transmettre sans protection. Renseignements protégés par le réseau des télécopieurs protégés de la Justice.	
Protected documents? Documents protégés?		<input type="checkbox"/> Yes Oui	<input type="checkbox"/> No Non
Transmission			
Pages (including cover sheet) 30	Date:	Time:	

ÉBAUCHE

DRAFT
ÉBAUCHENo. A890762
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

L'ASSOCIATION DES PARENTS FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, LA FÉDÉRATION DES FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, AND PIERRETTE LARRIVÉE WOODS, DANIEL LE SCIELLER, LOUIS BRIÈRE, DEIRDRE WARD-FOGARTY, MICHEL LEROUX, DIANE DUPUIS, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS RESIDING IN THE VANCOUVER/LOWER MAINLAND AND VICTORIA REGIONS HAVING FRENCH LANGUAGE EDUCATIONAL RIGHTS PURSUANT TO S. 23 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, BEING PART I OF THE CONSTITUTION ACT, 1982, S.C. 1982

Plaintiffs

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

AND:

THE MINISTER OF EDUCATION OF THE PROVINCE OF
BRITISH COLUMBIA

AND:

THE ATTORNEY GENERAL OF THE PROVINCE OF
BRITISH COLUMBIA

Defendants

AND:

THE COMMISSIONER OF OFFICIAL LANGUAGES

AND:

THE ATTORNEY GENERAL OF CANADA

Interveners

**Memorandum of Argument of the
Attorney General of Canada**

George Thomson
Deputy Attorney General of Canada
Department of Justice
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Johannes Van Iperen
Michel Francoeur
Counsel for the
Attorney General of Canada
Vancouver Regional Office
Robson Court
900-840 Howe Street, Vancouver, BC
V6Z 2S9
Tel.: (604) 666-1340

TABLE OF CONTENTS

I.	NATURE OF ACTION	1
II.	INTERVENTION OF THE ATTORNEY GENERAL OF CANADA	3
III.	ISSUES AT BAR	4
IV.	FACTS	5
V.	LAW	6
A)	RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS	6
B)	PURPOSE OF S. 23 OF THE CHARTER	10
C)	GENERAL INTERPRETATIVE PRINCIPLES	11
D)	PROVINCIAL OBLIGATIONS	14
E)	LEGISLATIVE SCHEME OF B.C. AND ISSUES AT BAR	15
VI.	CONCLUSION	28

I. NATURE OF ACTION

1. Pursuant to sections 23 and 24(1) of the *Canadian Charter of Rights and Freedoms* (hereinafter, the "*Charter*"), the Plaintiffs ask this Honourable Court to declare that the number of Francophone students in the Vancouver/Lower Mainland and Victoria regions of the province of British Columbia is sufficient to warrant, out of public funds, the provision of primary and secondary French minority language instruction in facilities managed and controlled by the Francophone minority.

- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982, c.11, ss. 23 and 24(1).

2. In addition, pursuant to ss. 23 and 24(1) of the *Charter*, the Plaintiffs ask this Honourable Court to declare that in the regions mentioned above, they are entitled to have their children educated in facilities — and to powers of management and control thereof — at least equivalent to those of the school boards of the majority.

3. On that basis, the Plaintiffs ask this Honourable Court to declare that the *School Act* and the *Francophone Education Regulation* are inconsistent with s. 23 of the *Charter*, and therefore of no force and effect pursuant to s. 52 of the *Constitution Act*, 1982.

- *Constitution Act*, 1982, *supra*, s. 52;
- *School Act*, R.S.B.C. 1979 c-375.1;
- *Francophone Education Regulation*, made by Order-in-council 1345, B.C. Reg. 457/95, B.C. Gazette, Vol. 38, No. 23 (hereinafter, the "*Regulation*").

4. Assuming such a declaration is made by the Court, the Plaintiffs also ask this Honourable Court, pursuant to s. 24(1) of the *Charter*, to suspend temporarily the effects of its declaration or to declare that the *School Act*, its amendments, regulations, orders in council and ministerial orders will have temporary validity until an appropriate legislative scheme is adopted to ensure the effective implementation of the rights of the Plaintiffs under

- 2 -

s. 23 of the *Charter*; alternately, the Plaintiffs ask this Honourable Court to read into the *School Act* provisions which remedy the constitutional failing of the *Act*.

5. Finally, the Plaintiffs ask this Honourable Court, pursuant to s. 24(1) of the *Charter* and ss. 40, 182 and 190 of the *School Act*, to order the Defendants to create a French Language School District and a French Language School Board or Boards; to make provision for, and to transfer such human and material (moveable and immovable) resources to establish, administer and operate the French Language District and School Board(s); to appropriate public funds in an amount not less than \$1.5 million for the implementation costs of the French Language District, and a further amount of not less than \$8,633 per projected pupil per year for the basic operational costs of the French Language School District and its programs; to enact legislation guaranteeing the Francophone School District's right to mandatory funding for operating and capital expenses, equivalent to the funding provided to the public school districts; to cause an election of Trustees of the French Language School District amongst eligible parents under s. 23 of the *Charter*; and to establish matriculation requirements for the French Language School District.

- 3 -

II. INTERVENTION OF THE ATTORNEY GENERAL OF CANADA

6. On May 16, 1995, the Attorney General of Canada sought leave to intervene in this case before this Honourable Court, which was granted by the Honourable Mr. Justice MacDonald.

- Order of the Honourable Mr. Justice MacDonald, dated May 16, 1995.

7. In the affidavit supporting the motion to intervene by the Attorney General of Canada, it is stated that the Attorney General of Canada will not adduce evidence or necessarily support one party more than another. Rather, he wishes to act as an *amicus curiae* to call the attention of the Court to several important points of law that might otherwise not be considered.

- Affidavit of Michel Francoeur, April 20, 1995, at par. 10.

8. The submissions of the Attorney General of Canada in this case are consequently made to assist the Court in the interpretation of the broad principles which form the basis of s. 23 of the *Charter*, as enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839.

9. On that basis, the Attorney General of Canada does not take any concluded position with regard to the consistency or inconsistency of the *School Act* and the *Francophone Education Regulation* with s. 23 of the *Charter*, to the exception of the second issue (b) outlined in par. 10 of this Memorandum of Argument, at p. 4.

- 4 -

III. ISSUES AT BAR

10. The general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as construed by the Supreme Court of Canada. More specifically, six main issues are raised by the Plaintiffs:

- (a) Is the *Francophone Education Regulation ultra vires* the *School Act*?
- (b) If the answer to issue (a) is yes, is the legislative scheme of British Columbia regarding minority language educational rights inconsistent with s. 23 of the *Charter*?
- (c) Is the legislative scheme of British Columbia inconsistent with s. 23 of the *Charter* by virtue of being enacted by regulation rather than by primary legislation?
- (d) Is the *Regulation* inconsistent with s. 23 of the *Charter* in not providing for mandatory funding for the Francophone Education Authority?
- (e) Is the *Regulation* inconsistent with s. 23 of the *Charter* in prohibiting the Francophone Education Authority from using provincial funds for capital expenditures and in not providing a dispute resolution mechanism to ensure that the Francophone Education Authority will be able to obtain facilities and equipment?
- (f) If this Honourable Court finds the legislative scheme of British Columbia to be inconsistent with s. 23 of the *Charter*, what is the appropriate remedy pursuant to s. 24(1) of the *Charter* and s. 52 of the *Constitution Act, 1982* ?

- 5 -

IV. FACTS

11. The Attorney General of Canada does not take issue with the facts as agreed to between the Plaintiffs and the Defendants and set out in the Agreed Statement of Facts.

- 6 -

V. LAW**A) RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS**

12. The issues at bar relate to section 23 of the *Charter*, which reads as follows:

23.(1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

- 7 -

- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

23.(1) Les citoyens canadiens :

a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident,

b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province.

ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province:

- a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

- 8 -

- b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

13. The issues to be decided also relate to section 5 of the *School Act*, which reads as follows:

5.(1) Every student is entitled to receive an educational program that is provided in the English language.

(2) Students whose parents have the right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in a language other than English are entitled to receive that instruction.

(3) Subject to the approval of the minister, a board may permit an educational program to be provided in a language other than as provided under subsections (1) and (2).

(4) The Lieutenant Governor in Council may make regulations

- (a) respecting the provision of educational programs in languages other than English,
- (b) to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*, and
- (c) determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2),

and may make different regulations for different circumstances.

- 9 -

14. Finally, the issues to be decided relate to the *Francophone Education Regulation*; the key provisions of the *Regulation* (ss. 2(1), 3(1), 4(1), 7(1) to (3) and 11(1) to (4)) read as follow:

- 2.(1) There is established as a Francophone Education Authority a corporation known as the *Autorité Scolaire* with the articles set out in Schedule B.
- 3.(1) Subject to this regulation and the enactments referred to in section 17, a Francophone Education Authority has the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction.
- 4.(1) Subject to this regulation and the enactment referred to in section 17, a Francophone Education Authority must make available a Francophone educational program to all eligible students resident in its prescribed area who enrol in a Francophone educational program provided by the Francophone Education Authority.
- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
 - (a) the establishment, maintenance and operation of the Francophone Education Authority;
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- 7.(2) The minister must by grant provide to a Francophone Education Authority that portion of the money provided for the Francophone Education Authority by the federal government that is identified as being for capital expenditures of the Francophone Education Authority.
- 7.(3) A Francophone Education Authority that receives money under subsection (1) must budget, spend and account for that money in accordance with any directions of the minister provided to the Francophone Education Authority.
- 11.(1) A Francophone Education Authority may, for educational purposes, including the provision of housing accommodation for eligible students or employees, Francophone Education Authority offices and outdoor activities,

- 10 -

- (a) with the approval of the minister, lease, as lessee, land or land and improvements within or outside of its prescribed area, and
 - (b) subject to the orders of the minister and with the approval of the minister, dispose of a leasehold interest referred to in paragraph (a).
- (2) A Francophone Education Authority, with the minister's prior approval, may enter into an agreement with municipalities or regional districts that are located in or located in part of the Francophone Education Authority's prescribed area or with boards for school districts that are located in the Francophone Education Authority's prescribed area or with other persons for
- (a) the maintenance, operation or joint use of facilities, or
 - (b) contribution to the cost of the maintenance or operation of facilities for the joint use of those facilities by the Francophone Education Authority and one or more of the following that are located in or located in part of the Francophone Education Authority's prescribed area:
 - (i) a municipality;
 - (ii) a regional district;
 - (iii) a board.
- (3) A Francophone Education Authority must not use for a capital expense any money provided to it by the government, other than money identified by the minister as being money provided by the federal government for capital expenses.
- (4) A Francophone Education Authority must obtain the approval of the minister before
- (a) acquiring land or improvements with the money provided to it for capital expenses under subsection (3), and
 - (b) disposing of any land or improvements as required.

B) PURPOSE OF S. 23 OF THE CHARTER

15. In the unanimous decisions of *Mahe v. Alberta*, *supra*, and *Reference Re Public Schools Act (Man.)*, *supra*, the Supreme Court of Canada has expressed the broad principles which form the basis for the application of section 23 of the *Charter*. More specifically, the importance of section 23 in Canadian law and society was underlined as it relates to the linguistic duality of the country.

- 11 -

Section 23 is one component in Canada's constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism.

- *Mahe v. Alberta, supra*, at 350.

16. Furthermore, the general purpose of s. 23 of the *Charter* was defined by the Supreme Court of Canada as the preservation and promotion of both official languages and their respective cultures, by assuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population: to achieve this goal, s. 23 grants minority language educational rights to minority language parents throughout Canada.

- *Mahe v. Alberta, supra*, at 362;

- *Reference Re Public Schools Act (Man.), supra*, at 849.

c) GENERAL INTERPRETATIVE PRINCIPLES

17. Given the nature of s. 23 and the novel form of legal right that it provides, the Supreme Court of Canada has outlined several interpretative guidelines for the purpose of defining and giving effect to the rights guaranteed by this section. The first one is that a purposive approach should be taken by the courts when interpreting these educational rights.

Therefore, in accordance with the purpose of the right as defined in *Mahe*, the answers to the questions should ideally be guided by that which will most effectively encourage the flourishing and preservation of the French-language minority in the province.

- *Reference Re Public Schools Act (Man.), supra*, at 850.

- 12 -

18. In addition, section 23 has a remedial nature which aims at correcting a situation of previous injustices which has existed in Canada and that requires the entrenchment of protection for minority language rights.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 850;
- *Mahe v. Alberta*, *supra*, at 363-364.

19. Moreover, the historical context of language and culture remains relevant in the interpretation and application of s. 23 in various situations, in order to be sensitive to and aware of the unique blend of linguistic dynamics that have developed in each province.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 851.

20. Furthermore, the Supreme Court of Canada has indicated that s. 23 should not be given a particularly narrow construction, and that it was open to courts to breathe life into the clearly expressed purpose of s. 23; however, the Court also stressed that prudent interpretation of s. 23 was wise insofar as it places positive obligations on governments to develop major institutional structures.

- *Mahe v. Alberta*, *supra*, p. 364-5; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 851-2.

21. The Supreme Court of Canada has also ruled that s. 23 grants a right of management and control, both by virtue of the textual analysis of par. 23(3)(b) — in which the expression "minority language educational facilities" does not mean only physical structures *per se* — and by virtue of the purpose of s. 23, whereby such control is essential to the protection and promotion of the language and culture of the minority throughout Canada.

Such management and control is vital to ensure that their language and culture flourish. It is necessary because a variety of management issues in education,

- 13 -

e.g., curricula, hiring and expenditures, can effect linguistic and cultural concerns. I think it incontrovertible that the health and survival of the minority language and culture can be affected in subtle but important ways by decisions relating to these issues.

- *Mahe v. Alberta, supra*, at 372.

22. In that regard, the Supreme Court indicated that it remained difficult to spell out a detailed model of management and control for each particular province, region or district, and thus limited itself to a general description of the requirements mandated by s. 23, as effective powers of management and control by the linguistic minority group over its educational facilities will be exercised in different ways, according to local circumstances and the particular character of the education system in place. These factors will affect the methods to be applied to ensure respect for the constitutional rights of the linguistic minority groups in each particular situation.

- *Mahe v. Alberta, supra*, at 376 and 378-80;

- *Reference Re Public Schools Act (Man.), supra*, at 858-60.

23. Finally, s. 23 of the *Charter* does not entitle the linguistic minorities to a specific legislative scheme; rather, it guarantees a right to a particular type of educational system.

- *Mahe v. Alberta, supra*, at 392;

- *Reference Re Public Schools Act (Man.), supra*, at 852.

- 14 -

D) PROVINCIAL OBLIGATIONS

24. The Supreme Court of Canada has indicated that there is a positive obligation on the provinces to put in place legislative schemes which ensure the effective and meaningful exercise of — and which do not create obstacles to — the rights guaranteed by s. 23. Yet, the Court stressed that the widest degree of latitude possible must be given to the provincial authorities in designing the means by which they will respect their constitutional duties concerning minority language education rights.

- *Reference Re Public Schools Act (Man.)*, at 858.
- *Mahe v. Alberta*, *supra*, at 392-393.

25. To accomplish this, the province should have a full understanding of the needs of its linguistic minority population to be able to effect a proper implementation of its duties, and the minority language parents or their representatives should be involved in the assessment of educational needs and the setting up of structures and services which best respond to those needs.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 862.

26. The provincial authorities also have the duty to make educational services known and accessible to minority language parents, and to provide a level of education which will be on a basis of equality with, although not necessarily identical to, that of the majority.

[T]he specific form of educational system provided to the minority need not be identical to that provided to the majority. The different circumstances under which various schools find themselves, as well as the demands of a minority language education itself, make such a requirement impractical and undesirable.

- 15 -

- *Mahe v. Alberta, supra*, at 378; see also
Reference Re Public Schools Act (Man.), *supra*, at
863.

27. In addition, minority education structures and programs should benefit from public funding equivalent to that of the majority schools, with a view to ensuring the establishment of educational services also equivalent to those of the majority. In fact, different circumstances — such as start-up costs and the absence of economies of scale — may warrant a higher per capita funding for students of the linguistic minority.

- *Mahe v. Alberta, supra*, at 378; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

28. Finally, the requirements of s. 23 constitute a minimum and not a maximum in the area of management and control of minority education, and nothing precludes provincial or local authorities from providing for a greater degree of management and control than the particular circumstances may otherwise require.

- *Mahe v. Alberta, supra*, at 379;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 864.

E) LEGISLATIVE SCHEME OF B.C. AND ISSUES AT BAR

29. The *School Act* of British Columbia provides that the parents covered by s. 23 of the *Charter* are entitled to have their children receive their instruction in the official language of the minority population, and that the Lieutenant Governor in Council may make regulations to give effect to s. 23 of the *Charter*.

- *School Act, supra*, ss. 5(2) and (4)(a), (b) (c) and *in fine*.

- 16 -

30. On that basis, *the Francophone Education Regulation* establishes the Francophone Education Authority (hereinafter, the "Authority"), which is described as having "the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction."

Regulation, supra, ss. 2(1) and 3(1).

31. As mentioned earlier, the general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as developed by the Supreme Court of Canada, while the specific issues are those set out above in paragraph 10.

32. In turning to those issues, the Attorney General of Canada submits that the implementation of s. 23 of the *Charter* and the analysis of any provincial legislative scheme regarding minority language educational rights should be accomplished with a view to providing the linguistic minority with an education system equivalent to that of the majority.

(a) Is the *Francophone Education Regulation ultra vires* the *School Act*?

33. The Attorney General of Canada takes no position with regard to this question, as it does not relate *per se* to the principles of minority language educational rights under s. 23 of the *Charter*.

- 17 -

- (b) If the answer to issue (a) is yes, is the legislative scheme of British Columbia regarding minority language educational rights inconsistent with s. 23 of the *Charter*?

34. If this Honourable Court concludes that the *Regulation* is *ultra vires* the *School Act*, it is the position of the Attorney General of Canada that the current legislative scheme of British Columbia regarding minority language educational rights is necessarily inconsistent with s. 23 of the *Charter*, in that it alone does not provide a precise legislative scheme for a minority educational system equivalent to that of the linguistic majority.

- *School Act*, s. 5;

- (c) Is the legislative scheme of British Columbia inconsistent with s. 23 of the *Charter* by virtue of being enacted by regulation rather than by primary legislation?

35. The Supreme Court of Canada has indicated that s. 23 does not guarantee a particular legislative scheme - but rather a type of educational system - and that provincial authorities have a wide discretion in the selection of the means to implement s. 23.

[T]he right which the appellants possess under s. 23 is not a right to any particular legislative scheme, it is a right to a certain type of educational system. What is significant under s. 23 is that the appellants receive the appropriate services and powers; how they receive these services and powers is not directly at issue in determining if the appellants have been accorded their s. 23 rights.

[...]

[T]he government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met; the courts

- 18 -

should be loath to interfere and impose what will be necessarily procrustean standards, unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right.

- *Mahe v. Alberta, supra*, at 392;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 852.

36. At the same time, provincial authorities must put into place a scheme which in its essential attributes has force of law and prescribes with sufficient precision the measures of implementation of s. 23 to ensure that minority language parents and children can exercise their rights effectively. On that point, the Supreme Court of Canada stated that "[s]ection 23 of the *Charter* imposes on provincial legislatures the positive obligation of enacting precise legislative schemes providing for minority language instruction and educational facilities where numbers warrant" (*Mahe, supra*, at 392-3, emphasis added) and that "[t]he province must enact legislation (and regulations if necessary) that are in all respects consistent with the provisions of section 23 of the *Charter*" (*Mahe v. Alberta, supra*, at 389, emphasis added).

37. These statements of the Court support the argument that the implementation of s. 23 of the *Charter* imposes upon provincial authorities the duty to enact primary legislation that gives precision to minority language educational rights. In fact, this is the interpretation which seems to prevail in several provinces, including those where minority school rights were the object of rulings by the Supreme Court of Canada.

- *Public Schools (Francophone Schools Governance) Act* S.M. 1993, c. 33;
- *School Amendment Act* S.A. 1993, c. 24;
- See also *Education Amendment Act*, S.S. 1993, c. 55.

38. On the other hand, while speaking of the need for a statutory scheme in *Mahe*, the Court also noted that the then-existing framework legislation in Alberta - which left the implementation of s. 23 essentially to regulations - was not inherently bad:

- 19 -

[I]t is not clear that the existing legislation in Alberta is a bar to the realization of the appellants' rights. The real obstacle is the inaction of the public authorities. The government could implement a scheme within the existing legislation to ensure that these s. 23 parents and other s. 23 parents in the province receive what is due to them. The problem is that they have not done so.

- *Mahe v. Alberta*, *supra*, at 392;
- See also *Reference Re Public Schools Act (Man.)*, *supra*, at 859.

39. It is submitted that the real issue for the Court here is what legislative scheme best establishes a proper balance between the need for security and stability in the exercise of section 23 rights identified by the Plaintiffs and the need for a measure of flexibility contended for by the Defendants.

40. Where the flexibility of the legislative scheme leads to insecurity and imprecision of the minority rights, then the scheme will not likely ensure the effective enjoyment of the constitutional rights, which is the paramount objective of s. 23.

- (d) Is the *Regulation* inconsistent with s. 23 of the *Charter* in not providing for mandatory funding for the Francophone Education Authority ?

41. The Supreme Court of Canada has stated that s. 23 of the *Charter* imposes upon provincial authorities the duty to ensure that "funds allocated for the minority language schools [are] at least equivalent on a per student basis to the funds allocated to the majority schools," while "special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools."

- *Mahe v. Alberta*, *supra*, at 378 and 391-2.
- *Reference Re Public Schools Act*, *supra*, at 862;

- 20 -

- See also, by analogy, *Reference Re Education Act*, *supra*, at 566-7, 590.

42. The issue at bar is whether the fact that s. 7(1) of the *Regulation* states that the Minister of Education of British Columbia "may" provide a grant to the Francophone Authority, for "one or more" of the operations of the Authority enumerated in s. 7(1)(a), (b) and (c), without indicating the full or per capita amount of the grant or whether the grant must be at least equivalent to those of the school boards of the majority, constitutes a violation of s. 23 of the *Charter*. Section 7(1) reads as follows:

- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
- (a) the establishment maintenance and operation of the Francophone Education Authority;
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- [Emphasis added]

43. The term "may" (and "or") generally conveys a discretionary or optional power upon the concerned authority, both on the basis of its usual meaning and pursuant to legislation relating to interpretation. However, the object or context of a legislative instrument can also suggest that its authorizing or permissive provisions are more than purely discretionary, in particular when the power is granted for the enforcement of a right or because of the possible negative consequences of the exercise of discretion.

- *Interpretation Act*, RSBC, Chap. 206, s. 29 (definition of "may") and s. 8;
- Côté, P.A., *The Interpretation of Legislation in Canada*, Yvon Blais Ed., Cowansville, 1991 (2nd ed.), at 199-202;
- *Fisheries Act Reference* [1928] S.C.R. 457, at 462-4 and 475-7, Aff. [1930] 1 D.L.R. 194 at 200-1 (p.c.);
- *Bridge v. The Queen* [1953] 1 S.C.R. 8, at 12-3.

- 21 -

44. In the case at bar, it might be said that the discretionary power found in s. 7(1) must be construed in harmony with the mandatory requirements of s. 23 relating to funding, and that this is a case where this Honourable Court should declare that "may" means "must". It may also be argued that s. 23 of the *Charter* would be infringed only if the public authorities (i.e., the Minister of Education) are indeed "inactive" or refuse to exercise their discretionary funding power in accordance with s. 23.

45. However, it is important to underline that any issue relating to funding should be dealt with in light of the principle of funding equivalence stated by the Supreme Court of Canada (*Mahe v. Alberta, supra*, at 378). In that context, it may well be that the provincial authorities (i.e., the Lieutenant Governor in Council) have taken inadequate action to secure funding for minority education — a discretionary power granted to a Minister —, in particular because of the wording of ss. 7(2) of the *Regulation* and 124(1) of the *School Act*, which, in comparison, respectively state that the Minister "must" transfer certain federal monies to the Francophone Authority and that the Minister "shall" establish a block of funds to be paid to majority school boards.

- *School Act, supra*, s. 124(1).

46. As a consequence, s. 7(1) of the *Regulation* might objectively be viewed as a bar to the principle of independence of linguistic minorities and to the effective implementation of s. 23 rights, in particular if there is uncertainty — real or perceived — surrounding the intention of a given Minister of Education to exercise the power found in s. 7(1). Since discretionary funding is incompatible with the effective exercise of s. 23 rights, and since minority school funding must be provided on a basis of equivalence with that for the majority schools, it is essential that no doubt be left about the constitutional obligation of the province to provide these funds.

- 22 -

- (e) Is the *Regulation* inconsistent with s. 23 of the *Charter* in prohibiting the Francophone Education Authority from using provincial funds for capital expenditures and in not providing a dispute resolution mechanism to ensure that the Francophone Education Authority will be able to obtain facilities and equipment?

47. While s. 135 of the *School Act* states that the majority school boards of British Columbia have access to capital funding, s. 11(3) of the *Regulation* prohibits the Francophone Education Authority from using provincial funds for capital expenses.

- *School Act*, s. 135;
- *Regulation*, s. 11(3).

48. In that regard, in light of the principle of funding equivalence between the minority and majority school systems, it is certainly questionable whether the s. 23 rights can be realized by denying access to capital expenditures funds by the minority boards or authorities while the linguistic majority has access to such funds.

- *Mahe v. Alberta*, *supra*, at 378;
- *School Act*, s. 135;
- See, by analogy, *Reference Re Education Act*, *supra*, at 566.

49. That being said, the Supreme Court of Canada has not yet expressly ruled whether s. 23 of the *Charter* guarantees a genuine right to property acquisitions or capital expenditures; the Court did, however, indicate that minority language educational facilities must "belong to" the minority.

The underlined phrase in the French text — which utilizes the possessive "de la" — is more strongly suggestive than the English text that the facilities belong to the minority and hence that a measure of management and control should go to the linguistic minority in respect of educational facilities.

- 23 -

- *Mahe v. Alberta, supra*, at 370.
- *Reference Re Public Schools Act (Man.)*, *supra*, at 854 and 865-6.
- See also, by analogy, *Reference Re Education Act, supra*, at 579.

50. Although this statement of the Court was meant to cover a variety of management and control situations along the sliding scale criteria developed by the Supreme Court of Canada — from proportional representation on majority school boards to independent school boards (or authorities) — the use of the term "belong to" by the Supreme Court of Canada lends support to the argument that s. 23 guarantees a right to property or capital expenditures, in particular to ensure that linguistic minorities have exclusive control and management over minority education systems and facilities on a basis of equivalence with the majority system.

- *Mahe v. Alberta, supra*, at 376;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 860.

51. On the other hand, the Supreme Court of Canada has also stated that it was up to provincial authorities to satisfy the general requirements of s. 23 of the *Charter*, and that "[w]here there are alternative ways of satisfying the requirements, the public authorities may choose the means of fulfilling their duties" (*Mahe v. Alberta, supra* at 376, and *Reference Re Public Schools Act (Man.)*, *supra*, at 860), a statement which may be viewed as lending support to the argument that the right to capital expenditures is not a *sine qua non* requirement of s. 23 of the *Charter*.

52. If this Honourable Court were to conclude in favor of this latter argument, it is important to stress that any alternative measures contemplated by the provincial authorities ought to generally comply with this other statement of the Supreme Court of Canada:

Arrangement and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which

JUN 17 '96 14:31 FR HRLS/SDP

613 952 4137 TO 9539353

- 24 -

encourage the development and use of minority language facilities should be considered and implemented.

- *Reference Re Public Schools Act (Man.)*, *supra*. at 963.
- See, by analogy, *Reference Re Education Act*, *supra*, at 579.

53. In the case at bar, s. 11(1)(a) of the *Regulation* states that the Francophone Authority can lease land or land and improvements for educational purposes, while s. 11(2) states that the Authority can enter into agreements with municipalities, regional districts, boards or other persons for the maintenance, operation or joint use of facilities.

54. The independence of the linguistic minority and its right to exclusive management and control could be hampered by such leasing agreements, more particularly if the negotiations leading to them and their terms and conditions are prejudicial to the linguistic minority. In the particular context of educational facilities, the risk of impediments may be high as the lessee will generally be limited in the choice of possible facilities — and lessors — which are adapted to educational activities and situated in the region or area where the minority student population is located: as a result, the minority school board or authority will generally have to lease its facilities and equipment from the existing majority school board(s) of a given region or area, a situation which could lead to serious obstacles to the independence of the minority organisation, especially if there are no dispute resolution mechanisms available. The following comments of the Supreme Court of Canada on the general issue of management and control are relevant *mutatis mutandis*:

[M]inority language groups cannot always rely upon the majority to take account of all of their linguistic and cultural concerns. Such neglect is not necessarily intentional: the majority cannot be expected to understand and appreciate all of the diverse ways in which educational practices may influence the language and culture of the minority.

JUN 17 '96 14:32 FR HRLS/SDP

- 25 -

- *Mahe v. Alberta*, *supra*, at 372; by analogy, see *Reference Re Education*, *supra*, at 582-90.

55. It is consequently submitted that in the event that schemes falling short of a genuine right to capital expenditures are deemed consistent with s. 23 of the *Charter* by this Honourable Court, any duty imposed upon the linguistic minority boards or authorities to lease facilities and equipment should at a minimum have some corollary guarantees from provincial authorities as to the conduct of negotiations, the resolution of disputes and the terms and conditions of leases, to ensure the effective implementation of the management and control rights of the linguistic minority — and its independence —, as guaranteed by s. 23 of the *Charter*.

56. Finally, the fact that s. 11 of the *Regulation* prohibits the use of provincial funds for capital expenses by the Francophone Authority — while indicating that money provided by the federal government can be used for such purposes — is certainly ambiguous. In particular, if this is meant to suggest that provincial authorities acknowledge that in some circumstances capital expenses may be necessary or envisaged under s. 23, but that provincial funds nevertheless cannot be used for such purposes, this would clearly raise concerns as to the consistency of the *Regulation* with s. 23 of the *Charter*.

JUN 17 '96 14:32 FR HRLS/SDP

613 952 4137 TO 9539353

- 26 -

(f) If this Honourable Court finds that the legislative scheme of British Columbia regarding minority language educational rights is inconsistent with s. 23 of the *Charter*, what is the appropriate remedy pursuant to s. 24(1) of the *Charter* and s. 52 of the *Constitution Act, 1982* ?

57. In *Mahe v. Alberta*, the Supreme Court of Canada acknowledged that a declaration of invalidity of impugned legislation or regulation will generally create a legislative vacuum which can be prejudicial to minority language educational rights.

- *Mahe v. Alberta, supra*, at 392.

58. On that basis, it is the position of the Attorney General of Canada that in the event that this Honourable Court finds any part of the *School Act* or *Regulation* to be inconsistent with s. 23, then the appropriate remedy would be a declaration of invalidity, combined with a declaration of temporary validity until the provincial authorities of British Columbia put into place a legislative scheme which complies fully with s. 23 of the *Charter*.

JUN 17 1996 14:32 FR HRLS/SDP

613 952 4137 TO 9539353

P.30/30

- 27 -

VI. CONCLUSION

59. The Attorney General of Canada respectfully submits that the issues at bar should be answered on the basis of the principles enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839, more particularly the existence of a legislative scheme which ensures the adequate implementation of s. 23 rights, the independence of the linguistic minority school organisations and their exclusive control and management over the minority educational programs, the funding equivalence between minority and majority school systems, and the equality of the level of education provided to the linguistic minority and majority.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Vancouver, this __ day of June 1996.

Johannes Van Iperen
Michel Francoeur
Counsel for the Intervener,
the Attorney General of Canada

8140 - 6 - 96

Auteur : Ginette Montreuil à VANCOUVER

Date : 96/06/17 12:35

Priorité : Normale

pour : Orest Kruhlak

pour : Bob Robertson

pour : Janet Jones à VICTORIA

pour : Roger Farley à JLS7-HULL

pour : Michele Blais-Chauvin à JLS7-HULL

Objet : Court case - Association des parents.

classe

----- Contenu du message -----

Hi,

Martine Galibois-Barss phoned me today to give me an update of the latest development in the court case, she is very upset of Justice Canada's position, what she says is this:



- After receiving the "Factum" from Justice, she had to inform all the players and organize a conference call with Tardif, Acker, Therrien, Lorieau from the Commissioner of Official Languages Office, Justice representatives: Thomson, Croft?, and Francoeur, Intergovernmental Affairs rep, Fred Gordon, the Parents' lawyers: Gawn and Cosley, herself and Marc Gignac. Justice reps agreed to revise their !Factum! . Martine is worried that Justice's position might weaken their case and might request that Justice withdraw from the case.

- She also indicated to me that the Association spent about \$6,000. in phone calls, fax and time surrounding this latest episode.

Ginette

RÉSUMÉ

du RAPPORT

Groupe de travail
sur la culture francophone
en Colombie-Britannique

L'école française Un habitat de culture

PRIN
COMMUNICATIONS

L'école française Un habitat de culture

Cette étude, commandée par le ministère de l'Éducation à PRIN Communications, présente des principes et des modèles de renforcement culturel destinés à l'école française qui s'inspirent à la fois des résultats de la consultation menée auprès des francophones de la province, et de récents travaux de recherche sur l'éducation française en milieu minoritaire au Canada.

Nous y abordons les sujets suivants:

Le portrait social et culturel des francophones de Colombie-Britannique

La mission de l'école française

L'animation culturelle, une stratégie pour l'école française

La programmation de l'école

Les ressources pédagogiques

Le centre scolaire-communautaire

Les stratégies d'intervention auprès des partenaires

Le cadre opérationnel

Ce rapport fait le pari d'une école française à réinventer qui saura répondre aux aspirations de la population francophone de Colombie-Britannique.

Dans ce document, l'usage du masculin inclut le genre féminin.

Portrait social et culturel

- La Colombie-Britannique est la province anglophone qui a connu la plus forte augmentation de sa population francophone au cours des 15 dernières années (15 000 personnes). On estime qu'elle dépasse maintenant les 60 000 personnes. Un taux de croissance de deux pour cent par année constitue un avantage démographique pour la communauté.
- La présence du fait français en Colombie-Britannique remonte à deux cents ans, alors que les «voyageurs», venus de l'est du Canada, accompagnaient l'explorateur Alexander Mackenzie jusqu'aux côtes du Pacifique (juillet 1793). Depuis, les francophones ont marqué la vie de la province de leur contribution. Plusieurs villes voient leur origine associée à leur présence. Aujourd'hui, on retrouve des hommes et des femmes francophones dans tous les domaines d'activité professionnelle et dans toutes les régions.
- Les francophones de Colombie-Britannique ne forment pas un groupe culturel homogène. Si les francophones d'origine québécoise dominent en nombre, de nombreux francophones proviennent du reste du pays et de plusieurs autres pays francophones. Sous le drapeau d'une langue commune, ils sont dépositaires des valeurs et des traditions rattachées à leur culture d'origine et à la civilisation française universelle.
- Attachés à leur histoire et leurs origines, ils se voient comme des résidents prospères de la Colombie-Britannique dont ils épousent les traits sociaux découlant de son mode de vie et de sa situation géographique. Ils s'identifient également à une francophonie nationale et internationale et à ses réalisations. Il faut y voir les caractéristiques d'une communauté jeune, en croissance et en renouvellement constant.
- Les francophones sont les héritiers d'une culture prestigieuse et vivante mais ils évoluent dans un milieu culturel minoritaire faible. Ils font preuve de détermination et ont le goût de la réussite. Chez eux, on retrouve à la fois un individualisme élevé et un sens prononcé de la collectivité. Si la culture française est une culture de réflexion et d'organisation sociale, elle est aussi une culture de célébration; les francophones ont le sens de la fête, du partage et de la découverte. La culture française se vit avec les sens; c'est une culture «empirique» qui se révèle largement dans l'expression artistique.
- Les francophones de Colombie-Britannique sont bilingues (98%). Ce qui représente une intégration réussie pour certains, constitue une assimilation irréversible pour plusieurs. La plus grande préoccupation des parents francophones est d'offrir à leurs enfants une éducation qui fera d'eux des citoyens à part entière de la Colombie-Britannique, bilingues et prospères, tout en étant confortables dans leur langue et leur culture française.
- Les francophones jouissent de réseaux communautaire et éducatif. Cependant, les efforts de développement n'ont pas encore réussi à produire une communauté culturelle francophone régionale forte. Les jeunes sont particulièrement vulnérables. Ils ne retrouvent pas toujours autour d'eux l'utilité de la langue française, les références culturelles, les services et activités qui les motiveraient à s'affirmer comme francophones.
- En Colombie-Britannique, les dossiers communautaires et éducatifs semblent avoir évolué en parallèle, alors que dans d'autres provinces (Ontario, Nouveau-Brunswick), ils font déjà l'objet d'une politique de développement intégrée. C'est donc avec un grand intérêt que la plupart des organismes francophones de Colombie-Britannique entrevoient et souhaitent un nouveau partenariat culturel et communautaire avec l'école.

La mission de l'école française

UNE MISSION SPÉCIFIQUE

En plus d'instruire, l'école française a une mission particulière qui la distingue de l'école anglaise et qui la place au service des besoins culturels de la communauté francophone.

La mission de l'école française en Colombie-Britannique est d'assurer la transmission de la langue et de la culture française et de participer au renforcement culturel de la communauté francophone en développant chez les jeunes francophones, leur identité leur sentiment d'appartenance, des compétences et un sens critique qui les rendront aptes à contribuer au renouvellement de leur communauté.

L'HABITAT D'UNE CULTURE VIVANTE

En milieu minoritaire, la pédagogie de l'école française doit reposer sur le vécu de l'enfant, et ensuite de sa communauté et des francophonies canadiennes et internationales. La culture ne saurait exister et survivre sans les manifestations de la créativité personnelle. Elle nourrit chez l'individu des sentiments d'appartenance, de fierté et de sécurité. En retour, elle se nourrit de l'expression qu'il en donne. En mettant à profit l'histoire, les dimensions culturelles du groupe et la créativité de l'enfant, l'école devient un lieu de cristallisation culturelle.

UN LIEU D'EXCELLENCE

L'école doit développer des «cerveaux bien faits» qui démontreront une compétence intellectuelle et une adhésion aux valeurs de la culture francophone. Elle doit miser sur l'importance et la qualité de chaque individu pour qu'il puisse contribuer au renforcement du groupe. L'excellence implique aussi l'enseignement d'une langue de qualité. L'école française doit viser des standards élevés pour obtenir l'adhésion des parents francophones.

UNE PARTENAIRE DE LA COMMUNAUTÉ

L'école n'est pas seulement celle de l'élève, elle est aussi celle de la famille et de la communauté. Elle doit s'affirmer comme un lieu d'échange à travers sa programmation et ses activités. Par ses ressources, elle doit être un milieu nourricier d'inspiration, de création et de communication. De plus, les interactions qu'elle propose ne doivent pas se limiter à la communauté francophone; l'élève doit découvrir que sa culture ne vit pas en vase clos.

L'animation culturelle

UNE STRATÉGIE POUR L'ÉCOLE FRANÇAISE

L'animation culturelle est une stratégie d'acculturation conçue pour l'école française en milieu minoritaire qui vise à intégrer une dimension culturelle et sociale dans l'enseignement et la vie de l'école. Le développement de l'identité, la maîtrise de la langue et la culture sont intégrés à tous les champs d'études obligatoires ainsi qu'aux autres activités para-scolaires et extra-scolaires. L'animation culturelle est une «opération de séduction des jeunes» qui doit les engager à nouer des liens émotifs avec la culture francophone, à une façon de vivre et de penser, et à trouver dans leur milieu un plaisir et une satisfaction à vivre en français.

LES OBJECTIFS DE L'ANIMATION CULTURELLE

- Le développement de l'identité culturelle de l'élève
- Le développement de la créativité de l'élève
- Le rayonnement et le partage de la culture

LES RÈGLES DE L'ANIMATION CULTURELLE

L'engagement	L'intégration	Le partenariat
Engagement total et responsable de tous les partenaires éducatifs.	Intégration de la culture dans les politiques, les actions et le programme de l'école. (Curriculum, para-scolaire, extra-scolaire, pré-scolaire).	Renforcement des rapports entre l'école, la famille et la communauté. (Agents culturels de l'élève)

LES MOYENS DE L'ANIMATION CULTURELLE

La politique d'animation culturelle devra employer les moyens et les méthodes nécessaires à son application. Ce sont: le choix des orientations en consultation avec les partenaires; l'élaboration d'une programmation de cours et d'activités; la coordination des politiques et des programmes; la préparation et la diffusion des ressources pédagogiques; l'identification et l'aménagement de l'école; la formation et l'information auprès des partenaires; ainsi que l'évaluation et la révision des actions administratives et éducatives.

La programmation de l'école

LES PRINCIPES D'ÉLABORATION DU CURRICULUM

Le curriculum s'appuie sur la mission de l'école et sa politique d'animation culturelle. Son élaboration et son enseignement doivent réunir en une seule intervention les objectifs pédagogiques et culturels du programme d'étude de l'école. Il doit présenter une vision actuelle et stimulante du fait français dans toutes ses dimensions et apporter adhésion et identification aux éléments francophones régionaux, nationaux et internationaux. Les deux principales qualités du curriculum sont la pertinence et la diversité.

Pertinence

La conception du curriculum doit reposer sur le vécu de l'enfant, c'est-à-dire une réalité quotidienne et locale dans laquelle il se reconnaît, et servir ses besoins particuliers de renforcement et de transmission culturels dans son milieu.

Diversité

L'enfant doit aussi découvrir un univers de réalités, de modèles et de compétences francophones et apprécier, dans sa langue, la diversité du monde qui l'entoure. La culture doit s'exprimer au-delà des cours de langue, d'histoire et de géographie.

Trop souvent l'enseignant, laissé à lui même, modèle ses interventions en fonction de ses propres références culturelles. L'enseignement doit donc reposer sur un cadre de référence curriculaire qui présente l'ensemble de la vision culturelle proposée à l'élève dans toutes les matières et à tous les niveaux d'enseignement. De ce plan de programmation, mis à jour régulièrement, découle le curriculum, les exercices et les activités qui l'accompagne, ainsi qu'un guide programme-ressources destiné aux enseignants.

L'insertion des thèmes culturels dans le curriculum comporte l'identification des objectifs d'apprentissage et la préparation du matériel curriculaire. Cette responsabilité est partagée par les concepteurs de programmes et les enseignants, en consultation avec la communauté. Le Groupe de travail recommande que la formulation détaillée des éléments culturels dans le curriculum prenne place au sein d'un comité (élargi) du curriculum comprenant des directeurs d'écoles, des enseignants, des spécialistes de l'éducation française en milieu minoritaire et des représentants de la communauté.

NB: *Éléments du curriculum en annexe.*

La programmation de l'école

LE PARA-SCOLAIRE

La qualité et la diversité des activités para-scolaires contribuent à la réputation d'excellence de l'école. Ces facteurs amèneront des parents encore hésitants à confier leurs enfants à l'école française. Des activités comme le théâtre ou les sports permettent à l'élève de s'affirmer, de jouer et d'avoir une interaction en français.

Les clubs et les activités para-scolaires donnent une résonance accrue à la culture et mettent en évidence les talents des étudiants dans un environnement élargi. Ex: journal étudiant, chorale, club d'ordinateur, troupe de théâtre, équipes sportives...

La communauté est une source de modèles. On les retrouve parmi les leaders de la communauté, des professionnels d'occupations diverses ou des artistes francophones. L'école doit leur faire une place dans sa programmation.

L'EXTRA-SCOLAIRE

Les activités extra-scolaires élargissent l'horizon francophone de l'élève. Elles s'avèrent un moyen de lutte contre le décrochage culturel, surtout à l'âge de l'adolescence. Parmi ces activités, on retrouve les échanges inter-scolaires ou inter-régionaux, en Colombie-Britannique, au Canada et dans le monde ainsi que des sorties de groupe, des stages et des activités thématiques ou de plein air.

Les associations et clubs de jeunes qui existent à l'extérieur de l'école offrent des occasions de regroupement et de loisir en français en dehors du contexte familial et scolaire. Les administrations scolaires devraient apporter leur soutien à ces organisations, en mettant à leur disposition dans chaque école, des locaux et des ressources.

LE PRÉ-SCOLAIRE

En ayant accès à des bases linguistiques et culturelles pré-scolaires solides, l'enfant francophone sera mieux préparé à s'intégrer à l'école française. Ses années de scolarité seront plus productives. En étant associé ou intégré à l'école, le pré-scolaire profitera aussi de son animation culturelle, cela élargirait la famille sociale de l'enfant. Cette association ou cette présence à l'école peut-être un facteur d'enrôlement et faciliterait la planification à long terme des effectifs et des clientèles scolaires.

Les ressources pédagogiques

Les enseignants, les directeurs d'école, les parents et les élèves déplorent l'insuffisance des ressources pédagogiques et culturelles et l'absence de coordination dans ces domaines. Ils réclament un matériel conçu en fonction des besoins de l'élève francophone de Colombie-Britannique, qui présente une vision actuelle de l'expérience francophone. Ce problème est encore plus sérieux au secondaire et loin des grands centres où on rencontre de sérieuses lacunes au plan de la sélection et de la distribution. L'école française doit se doter de moyens qui l'aideront à réaliser sa mission éducative et culturelle:

UN CENTRE DE RESSOURCES PÉDAGOGIQUES

Ce centre est responsable de l'acquisition, de l'adaptation, de la production, de l'évaluation et de la diffusion du matériel. Ce centre – et ses entités régionales – devrait être situé dans une institution d'enseignement francophone. Ses qualités sont l'accessibilité, l'efficacité, la variété et le dynamisme.

UN RÉSEAU TÉLÉMATIQUE DE COMMUNICATION

Ce réseau de communication par ordinateur relierait les partenaires de l'école (administration, enseignants, parents, élèves, communauté) dans une interaction utile et productive. On y retrouverait un service de courrier électronique, des programmes interactifs et des banques de données.

DES CENTRES DE CRÉATION

Ces centres multidisciplinaires pourraient desservir les écoles de leur région et offrir à l'ensemble des étudiants l'occasion d'explorer leur créativité. Ces centres spécialisés pourraient être situés à l'intérieur d'une école ou d'un centre-scolaire communautaire.

UN ANIMATEUR CULTUREL

Personne qui organise des activités et des événements culturels pour compléter la programmation de l'école. Cette tâche revient à un enseignant car l'intégration culturelle fait partie de sa mission quotidienne. Il assistera les autres enseignants.

COLLABORATEURS DE L'ANIMATION CULTURELLE

D'autres personnes ou groupes peuvent être invitées à participer aux activités éducatives: troupes de théâtre, animateurs de disciplines diverses. Les organismes francophones peuvent fournir des ressources et des événements culturels et communautaires.

Vers un centre scolaire-communautaire

L'école française est en quête d'une scène communautaire élargie qui fera écho à ses efforts d'animation culturelle. De leur côté, les organismes communautaires sont à la recherche de plus de stabilité et de nouvelles clientèles. L'école et les organismes servent une même communauté. Cette communauté cherche à accroître ses efforts de rassemblement. Plusieurs voient dans une intégration des fonctions communautaires et éducatives la réalisation de ces aspirations..

Le groupe de travail a étudié, et propose dans son rapport, l'établissement de centres scolaire-communautaires. Cette option intègre sous le même toit, dans un complexe à la fois scolaire et communautaire, l'école, différents organismes, entreprises, personnes et services de la communauté qui partagent des ressources à l'intérieur d'un mandat commun: celui de proposer à l'étudiant et à la communauté un lieu de formation, de création de ressourcement et de divertissement, un espace culturel visible et animé, un lieu d'événements et de rassemblement.

Il faut distinguer centre scolaire communautaire et l'école dite communautaire. L'école communautaire prévoit certaines activités communautaires, mais elle ne profite pas comme le centre scolaire-communautaire d'une intégration de corps et d'esprit des dimensions éducatives et communautaires.

CENTRE SCOLAIRE-COMMUNAUTAIRE

École
Bibliothèque
Centre de ressources
Centre de création
Salle de spectacle multidisciplinaire
Salles de réunion
Centre sportif
Garderie
Pré-scolaire
Clubs pour jeunes
Organismes communautaires
services professionnels
Commerces
Restaurants

Stratégies d'intervention auprès des partenaires

LES ENSEIGNANTS

L'enseignement en milieu minoritaire francophone doit être considéré comme une spécialité. Les enseignants de l'école française ont une responsabilité unique de valorisation, de transmission et de renforcement de la culture chez l'élève. À l'embauche, la plupart d'entre eux n'ont ni l'expérience ni la formation préalable qui les prépare au milieu minoritaire. Il est donc essentiel qu'ils reçoivent une formation spécialisée et les outils qui leur permettront de réaliser les objectifs de l'animation culturelle.

À l'embauche, l'enseignant doit être informé du contexte culturel et des conditions générales de son travail.

Dans l'exercice de sa tâche particulière, l'enseignant de l'école française doit avoir accès à des ressources pédagogiques adéquates, des services professionnels et des facilités d'échange et de communication. Ces moyens permettraient aussi de limiter le roulement du personnel qui découle d'un sentiment d'isolement courant chez les enseignants, particulièrement ceux des régions.

LES PARENTS

L'école doit aider les parents à jouer un rôle plus efficace et à devenir des partenaires actifs en éducation.

Elle doit faire la promotion de l'école française pour élargir sa clientèle. Elle doit sensibiliser les parents à la dimension culturelle spécifique de l'école française et au rôle qu'ils peuvent y jouer. Elle peut offrir des services rattachés à l'école, tel une garderie. Elle doit enfin appuyer l'APFCB dans ses activités de soutien et d'information.

LA COMMUNAUTÉ ET LES JEUNES

L'école doit inviter les organisations francophones à participer à sa mission et à sa programmation.

L'école doit soutenir les organismes (Conseil Jeunesse, Scouts et Guides, etc.) qui sont déjà engagés dans l'animation des jeunes.

Les sciences humaines	La croissance personnelle (Learning for Living)	L'art du langage
<ul style="list-style-type: none"> ■ Les francophones en C.-B., au Canada et dans le monde. Démographie et composantes multiculturelles francophones. Spécificités culturelles économiques et associée aux régions. ■ Présence et contribution historique des francophones dans différents domaines d'activité. Les institutions politiques, communautaires, économiques, culturelles en C.-B. (<i>rôle local et rayonnement national</i>). ■ Histoire des francophones <ul style="list-style-type: none"> . Régionale, nationale, international . En milieu minoritaire, majoritaire . Connaissance des aînés . Les héros et leaders francophones . La vie quotidienne des francophones . La présence et la contribution des femmes . Les grandes institutions et réalisations . Politique et économie canadiennes ■ La place et l'influence du français dans le monde, ... dans les pays de la région Asie-Pacifique. ■ Le français dans les institutions et la vie quotidienne, dans la vie politique et l'administration publique. Le bilinguisme et le multiculturalisme. La Charte canadienne des droits et libertés et les minorités de langues officielles. ■ Relations historiques avec d'autres peuples et cultures. Leur influence sur la francophonie. Connaissance de l'histoire et des modes de vie des autres cultures francophones. Échanges. ■ La place de l'école française dans la communauté. La place de la famille dans la communauté. ■ Les valeurs véhiculées par la culture française: droits humains, humanisme, démocratie ... ■ Mode de vie, cuisine, alimentation, mets régionaux; mode, habillement, architecture - urbanisme; loisirs, vie de famille, fêtes, traditions, et folklores francophones; vie spirituelle, les métiers et professions, les inventions et innovations, etc... 	<ul style="list-style-type: none"> ■ Expression des valeurs véhiculées par la culture française ■ Le français, langue internationale de communication. ■ Expression des traditions, fêtes et folklore francophones ■ Expression intellectuelle et artistique: littérature, romans, poésie, contes et légendes, fables, bandes dessinées, arts visuels, cinéma, théâtre, musique, etc... (<i>Appréciation de l'art d'un point de vue francophone et appréciation de l'art francophone</i>). ■ Consommation: consommer et choisir. Reconnaître la diversité des produits francophones. ■ Sciences économiques, entrepreneuriat, modèles coopératifs. ■ Sciences sociales, relations humaines, résolution de conflits... ■ Communication et médias: <ul style="list-style-type: none"> . reconnaître la présence et la diversité des médias francophones . Cours de communications: . Développement des habiletés de communication inter-personnelle (<i>transmission des messages, partenariat, travail coopératif, collaboration, résolution de conflit, etc.</i>). . Décodage des messages médiatiques. . Techniques publicitaires et de communication différentes selon les cultures. . Communication inter-culturelle. ■ Techniques professionnelles: exposer les étudiants à un univers d'activités techniques et professionnelles en français (Ex.: ordinateurs) 	<ul style="list-style-type: none"> ■ Présenter une littérature <u>diversifiée</u> au service d'une langue vivante et créatrice (<i>enrichir le programme de base et le matériel disponible</i>): les romans, les essais, la poésie, les légendes, les fables. ■ L'usage de la langue au service de la communication personnelle ■ Évolution et diversité linguistique de la langue française: accents, les argots, les dialectes, les emprunts, les anglicismes, etc ...

Le cadre opérationnel

La mise en oeuvre du projet éducatif de l'école française et la protection de son caractère particulier est la responsabilité de toutes les instances du système d'éducation.

RESPONSABILITÉS: MINISTÈRE, COMMISSION SCOLAIRE, ÉCOLE

Le ministère de l'Éducation devrait se doter d'un Bureau de l'éducation française, relevant d'un sous-ministre adjoint à l'éducation française et dont l'éducation française (programme cadre) est la seule responsabilité.

Les fonds destinés à l'école française doivent être à la mesure de son mandat et de ses besoins.

La formulation des orientations pédagogiques et culturelles devrait être confiée à un Conseil consultatif de l'éducation française en Colombie-Britannique, organisme permanent, doté de moyens de recherche, qui conseille le ministre, et au sein duquel on retrouve les partenaires du projet scolaire francophone ainsi que des experts en éducation minoritaire.

Plus d'attention doit être accordée aux besoins des écoles françaises situées dans les régions plus isolées, ou de celles où le programme français est moins présent.

Nous recommandons la réalisation d'une étude qui suggérera des moyens de revitaliser l'école secondaire française, afin de répondre aux besoins particuliers de l'adolescent et d'arrêter le décrochage qui s'effectue au profit de l'école anglaise.

Le ministère doit accorder une place importante à la recherche en éducation française en milieu minoritaire, dans le but de développer une expertise locale.

Le caractère francophone de l'école française doit être affirmé et protégé.

L'école française doit fonctionner dans un environnement homogène qui lui est propre. Elle doit être dotée d'une direction et d'un fonctionnement entièrement francophone. Le nom de l'école doit être français, même en situation de cohabitation avec des programmes anglophones. Il est proposé de changer le titre «programme cadre de français» pour l'emploi plus approprié d'école française.

Nous recommandons la création, dans chaque établissement scolaire, d'un Conseil d'orientation de l'école, formé des partenaires, qui avisera la direction dans la formulation d'objectifs et de moyens qui lui permettront de réaliser sa mission.

Points saillants

■ Le renforcement culturel fait partie de la responsabilité éducative de l'école française en milieu minoritaire dans tous les aspect de son fonctionnement et de sa programmation.

■ Le programme scolaire doit présenter à l'élève francophone une réalité basée sur son vécu, et sur la richesse et la diversité du monde francophone.

■ Le ministère doit fournir à l'enseignant:

Un guide programme-ressources basé sur un cadre de référence curriculaire précis.

Une formation et un soutien reliés à l'enseignement en milieu minoritaire.

Des ressources adéquates.

■ L'école doit développer des stratégies de partenariat avec les parents et la communauté.

■ Le ministère doit mettre en place des mécanismes de planification et de consultation pour appuyer la mission de l'école française:

Bureau de l'éducation française.

Sous-ministre adjoint à l'éducation française.

Conseil consultatif de l'éducation française en Colombie-Britannique.

Comité du curriculum (élargi).

Conseil d'orientation de l'école.



ASSOCIATION DES PARENTS FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE

1555, 7e avenue Ouest, Suite 223
Vancouver, (C.-B.)
V6J 1S1
Téléphone : (604) 736-5056
Télécopieur : (604) 736-1259

8140-6-96

classe

TÉLÉCOPIE

DATE:

14 Juin 1996

À / TO:

Hélène Kermine

DE / FROM:

Martine Galbois-Barss

PAGES:

COMMENTAIRES:

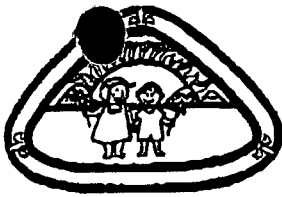
Pour votre info.
L'envoi est parvenu aux bureaux de:

- Stéphane Dion
- Jocelyne Bourson
- Jean Pelletier

Pour une

éducation

de qualité!



Association des parents francophones de la Colombie-Britannique

13 juin 1996

Madame Suzanne Poirier
Secrétaire adjointe au Cabinet
Bureau du Conseil Privé
Télécopieur : (613) 957-5032

OBJET : Cause juridique : parents francophones de la C.-B. contre le Procureur général de la C.B.

Madame Poirier,

Suite à notre conversation, veuillez trouver ci-après une mise en situation en ce qui concerne la revendication des droits conférés par l'Article 23 de la Charte canadienne des droits et libertés, aux parents francophones de la Colombie-Britannique.

La lutte pour la reconnaissance de ces droits a débuté lors de l'adoption de la Charte en 1982. Devant le refus du gouvernement provincial de reconnaître ces droits, une action juridique a été intentée en 1989.

Le demandeur principal dans cette action est l'Association des parents francophones de la C.-B.. Il y a également 7 co-demandeurs : la Fédération des francophones de la C.-B. ainsi que 6 parents.

Nous sommes appuyés par une très bonne équipe d'avocats et de conseillers. Le Commissaire aux langues officielles, monsieur Victor Goldbloom, a le statut d'intervenant dans cette cause ainsi que le Procureur général du Canada.

Depuis le début de l'action judiciaire, le gouvernement provincial a tout fait pour nous mettre des bâtons dans les roues, afin de retarder la tenue du procès.

Après le jugement de la Cour Suprême dans l'affaire Mahé, au printemps 1990, le gouvernement a demandé un ajournement de la cause. En retour, il a mis sur pied un comité spécial, présidé par monsieur Edgar Gallant. Ce comité avait comme mandat d'identifier les meilleurs façons de répondre aux exigences de l'Article 23.

Suite au rapport du comité spécial, le gouvernement a procédé à une consultation publique, au printemps 1992. En décembre, le gouvernement annonçait par voie de communiqué de presse, son intention de mettre en

*Pour une
éducation
de qualité!*

Suzanne Poirier
13 juin 1996
page 2

place, pour septembre 1995, une commission scolaire francophone provinciale.

Au printemps 1993, le gouvernement fédéral annonçait qu'une enveloppe de 112\$millions était réservée pour l'implantation de la gestion scolaire francophone à travers le pays.

Cependant, à l'automne 1993, le gouvernement provincial reculait sur sa position et décidait de refaire un processus de consultation afin d'identifier le modèle de gestion qui serait le plus «cost efficient».

Devant la mauvaise volonté du gouvernement, les parents francophones ont décidé de réactiver la cause juridique au printemps 1994.

Après avoir préparé la preuve, les parents se préparaient à aller en Cour au début de l'été 1995. Le gouvernement a alors décidé d'agir et a annoncé, en juillet 1995, son intention de créer une autorité scolaire francophone, et ce par voie de réglementation.

La cause juridique devait être entendue par le tribunal au début décembre 1996. Le gouvernement a alors décidé de donner suite à son intention et a adopté par «Arrêté en Conseil», le 2 novembre 1995, une réglementation créant une autorité scolaire francophone.

La réglementation étant jugée non-constitutionnelle par nos avocats, les avocats du Commissaire aux langues officielles ainsi qu'une firme d'avocats indépendante, les parents ont révisé la preuve afin d'attaquer directement la réglementation.

Au mois de mai 1996, le gouvernement provincial a demandé un ajournement. Lors de la rencontre préparatoire devant l'adjoint du juge en Chef de la Cour Suprême de la Colombie-Britannique, la province s'est vue refuser sa demande d'ajournement et le juge a ordonné que la cause soit entendue du 8 au 12 juillet 1996.

Après 7 années de tergiversations, nous avons finalement réussi à contrecarrer les manoeuvres du gouvernement provincial pour retarder la tenue du procès. La cause des parents francophones sera finalement entendue par le tribunal.

A un moment où nous avons besoin de tous les appuis possibles afin d'affronter le gouvernement de la Colombie-Britannique devant le tribunal,

Suzanne Poirier
13 juin 1996
page 3

nous avons reçu hier l'ébauche du mémoire que le Procureur Général du Canada s'apprête à déposer à la Cour Suprême de la C.-B.

Ce mémoire est une dissertation juridique qui n'est même pas digne d'un étudiant en droit. L'auteur fait de la dichotomie et la position prise dans ce document va à l'encontre de l'esprit de l'Article 23 tel qu'interprété à deux reprises par la Cour Suprême du Canada et des principes de l'Article 41 de la loi sur les langues officielles, qui visent le développement et l'épanouissement des communautés de langues officielles minoritaires.

Le Procureur Général du Canada a demandé le statut d'intervenant dans cette cause sans qu'on l'y invite. Nous avions malgré tout pris pour acquis qu'il appuierait notre cause. Nous avons donc été surpris pour ne pas dire scandalisés suite à la lecture de l'ébauche de son mémoire.

Il est vital que les deux intervenants dans cette cause juridique défendent l'esprit de l'Article 23 de la Charte et de l'Article 41 de la Loi sur les langues officielles avec la même énergie que le ministère du Patrimoine canadien, qui quant à lui, s'assure de l'application de la section (7) de l'Article 41 dans toutes ses actions.

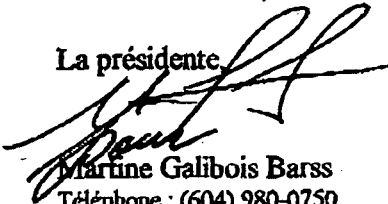
C'est pourquoi nous avons besoin de votre support pour faire en sorte que le Procureur général du Canada intervienne dans la cause juridique en supportant les parents et non pas en prenant la partie de la province.

Une décision négative du tribunal dans cette affaire, aurait un impact national vraisemblablement désastreux.

Si vous désirez de plus amples renseignements, n'hésitez pas à communiquer avec moi.

Veuillez recevoir, madame Poirier, mes salutations les plus cordiales.

La présidente


Martine Galibois Barss
Téléphone : (604) 980-0750
Télécopieur : (604) 980-6379

pj Historique du dossier de la gestion scolaire

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

MAI 1991	DÉPÔT DU RAPPORT DU COMITÉ SPÉCIAL
AUTOMNE 1991	ÉLECTION DU NOUVEAU PARTI DÉMOCRATIQUE EN COLOMBIE-BRITANNIQUE
FÉVRIER 1992	LE RAPPORT DU COMITÉ SPÉCIAL EST RENDU PUBLIC
JUIN 1992	CONSULTATION DU PUBLIC
17 AOÛT 1992	RENCONTRE DES HAUTS FONCTIONNAIRES DU MINISTÈRE DE L'ÉDUCATION SUITE À LAQUELLE UNE ENTENTE EST CONCLUE POUR LA CRÉATION D'UNE SEULE COMMISSION SCOLAIRE FRANCOPHONE PROVINCIALE
22 DÉCEMBRE 1992	COMMUNIQUÉ DE PRESSE DE LA MINISTRE DE L'ÉDUCATION A.HAGEN, ANNONÇANT OFFICIELLEMENT L'INTENTION DU GOUVERNEMENT DE CRÉER UNE COMMISSION SCOLAIRE FRANCOPHONE PROVINCIALE OPÉRATIONNELLE POUR LA RENTRÉE SCOLAIRE 1995 SOUS CONDITION D'UNE PARTICIPATION FINANCIÈRE DU GOUVERNEMENT FÉDÉRAL
17 MARS 1993	RENCONTRE AVEC LA SOUS-MINISTRE DE L'ÉDUCATION, AU COURS DE LAQUELLE CELLE-CI DÉCLARE QUE RIEN NE SERA FAIT TANT QUE LE GOUVERNEMENT FÉDÉRAL N'AURA PAS SIGNÉ D'ENTENTE FINANCIÈRE. L'A.P.F.C.B. DÉPLORE LE MANQUE DE LEADERSHIP DANS CE DOSSIER
20 MAI 1993	ANNONCE DU GOUVERNEMENT FÉDÉRAL DE LA DISPONIBILITÉ D'UNE SOMME DE 112 MILLIONS POUR SOUTENIR L'IMPLANTATION DE LA GESTION SCOLAIRE FRANCOPHONE À TRAVERS LE CANADA
8 JUILLET 1993	RENCONTRE AVEC LA MINISTRE DE L'ÉDUCATION, ANITA HAGEN ET DES HAUTS FONCTIONNAIRES. LE GOUVERNEMENT INVOQUE DES «POLICY ISSUES- BAD TIMING - NECESSITY OF A BROADER COMMUNITY CONSULTATION» ET LE DÉSAPOINTEMENT FACE À L'OFFRE FINANCIÈRE DU GOUVERNEMENT FÉDÉRAL, POUR RETARDER LA MISE EN PLACE DE LA COMMISSION SCOLAIRE FRANCOPHONE.

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

PAGE 2

MI-SEPTEMBRE 1993	REMANIEMENT MINISTÉRIEL PROVINCIAL : NOUVEAU MINISTRE DE L'ÉDUCATION, ART CHARBONNEAU
22 OCTOBRE 1993	RENCONTRE AVEC LE MINISTÈRE DE L'ÉDUCATION, POUR UNE MISE À JOUR SUR L'ENTENTE FINANCIÈRE DE PRINCIPÉ AVEC LE GOUVERNEMENT FÉDÉRAL POUR L'IMPLANTATION D'UNE COMMISSION SCOLAIRE
5 NOVEMBRE 1993	RENCONTRE OSCAR BÉDARD, SOUS-MINISTRE ADJOINT «EDUCATIONAL PROGRAMS DEPARTMENT», MINISTÈRE DE L'ÉDUCATION QUI DEMANDE DE TROUVER UN AUTRE MODÈLE DE GESTION
23 NOVEMBRE 1993	RENCONTRE ART CHARBONNEAU QUI DEMANDE QUE L'ON PENSE À TOUS LES MODÈLES POSSIBLES AFIN DE TROUVER LE PLUS «COST EFFICIENT»
3 DÉCEMBRE 1993	RENCONTRE CYNTHIA MORTON, (NOUVELLE SOUS-MINISTRE DE L'ÉDUCATION) ET HAUTS FONCTIONNAIRES QUI PRÉSENTENT L'ÉBAUCHE D'UN SYSTÈME DE GESTION BASÉE SUR DES COMITÉS CONSEILS DE PARENTS LOCAUX AVEC DES LE POUVOIR DE DONNER DES DIRECTIVES AUX DISTRICTS SCOLAIRES SUR DES SUJETS RELIÉS AU PROGRAMME FRANCOPHONE.
16 DÉCEMBRE 1993	RENCONTRE AVEC LES SOUS-MINISTRE DE L'ÉDUCATION ET LES HAUTS FONCTIONNAIRES POUR DES DISCUSSIONS PLUS ÉLABORÉES SUR LE MODÈLE PROPOSÉ
7 JANVIER 1994	RÉPONSE A.P.F.C.B. AU MINISTÈRE DE L'ÉDUCATION : MODÈLE INACCEPTABLE
14 JANVIER 1994	RENCONTRE A OTTAWA DES COLLABORATEURS DU MINISTRE DU PATRIMOINE CANADIEN, MICHEL DUPUY, POUR DEMANDER LE SUPPORT DU MINISTÈRE DU PATRIMOINE CANADIEN
JANVIER 1994	CAMPAGNE DE LOBBYING
18 FÉVRIER 1994	RENCONTRE AVEC LA SOUS-MINISTRE DE L'ÉDUCATION QUI PROPOSE DE TRAVAILLER SUR LE MODÈLE DES ÉCOLES INDÉPENDANTES.

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

PAGE 3

16 MARS 1994

LA SOUS-MINISTRE DE L'ÉDUCATION CONFIRME QU'AUCUN AMENDEMENT À LA LOI SCOLAIRE NE SERA ADOPTÉ POUR PERMETTRE LA GESTION SCOLAIRE FRANCOPHONE. CEPENDANT, ELLE VEUT BIEN DISCUTER DES MOYENS À PRENDRE POUR OFFRIR UNE MEILLEURE QUALITÉ D'ÉDUCATION AU PROGRAMME FRANCOPHONE.

2 SEPTEMBRE 1994

RÉACTIVATION DE LA CAUSE JURIDIQUE INITIÉE EN 1989, AVEC AMENDEMENT À LA CAUSE ORIGINALE, POUR DEMANDER UNE COMMISSION SCOLAIRE QUI COUVRE LE TERRITOIRE SUIVANT : VALLÉE DU FRASER, VANCOUVER, VANCOUVER-MÉTROPOLITAIN, VICTORIA, VICTORIA-MÉTROPOLITAIN

28 JUILLET 1995

COMMUNIQUÉ DE PRESSE DU MINISTÈRE DE L'ÉDUCATION QUI ANNONCE L'INTENTION DU GOUVERNEMENT DE COLOMBIE-BRITANNIQUE DE CRÉER, PAR VOIE DE RÉGLEMENTATION, UN CONSEIL SCOLAIRE FRANCOPHONE POUR LES RÉGIONS IDENTIFIÉES DANS LA CAUSE JURIDIQUE DE L'A.P.F.C.B.

AOÛT 1995

NÉGOCIATIONS SUR LA RÉGLEMENTATION PROPOSÉE

2 NOVEMBRE 1995

LA RÉGLEMENTATION EST ADOPTÉE PAR ARRÊTÉ EN CONSEIL, TEL QU'ANNONCÉ EN JUILLET 1995.

14 DÉCEMBRE 1995

NOMINATION PAR ARRÊTÉ EN CONSEIL DES 5 PREMIERS CONSEILLERS SCOLAIRE.

JANVIER/FÉVRIER 1996

PROCESSUS POUR AMENDER LA CAUSE JURIDIQUE COMPTE-TENU DE L'ADOPTION DE LA RÉGLEMENTATION :

LA RÉGLEMENTATION ADOPTÉE LE 2 NOVEMBRE EST INCONSTITUTIONNELLE PUISQU'ELLE NE RESPECTE PAS L'ARTICLE 23 DE LA CHARTE CANADIENNE DES DROITS ET LIBERTÉS



Association des parents francophones de la Colombie-Britannique

13 juin 1996

PROJET DE LETTRE

Le Très Honorable Jean Chrétien
Premier Ministre
Blackburn Building
85, rue Sparks
Ottawa (Ontario)
K1A 0K2

OBJET : Cause juridique des parents francophones de Colombie-Britannique

Monsieur le Premier Ministre,

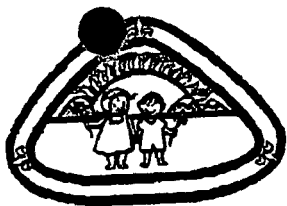
A la lecture du projet de mémoire que le Procureur général du Canada s'appête à déposer à la Cour Suprême de la C.-B., dans l'Affaire de l'Association des parents francophones de la C.-B. contre le Procureur général et le ministre de l'Éducation de la Colombie-Britannique, nous constatons les faits suivants :

- ▶ Le Procureur général du Canada ne prend pas de position ferme supportant la reconnaissance des droits conférés par l'Article 23 de la Charte canadienne des droits et libertés.
- ▶ Le Procureur général du Canada ne prend pas de position à savoir si la Loi scolaire de la Colombie-Britannique ainsi que la réglementation qui crée l'autorité scolaire francophone sont constitutionnelles ou non.
- ▶ Le Procureur général du Canada ne prend pas de position sur les inégalités qui existent entre le système scolaire de la majorité et celui de la minorité francophone.

Ces questions sont d'une importance vitale pour la viabilité du système d'éducation francophone de Colombie-Britannique et malgré tout, le Procureur général a choisi de ne pas se prononcer à savoir si le système d'éducation francophone mis en place par le gouvernement de la Colombie-Britannique sera en mesure d'offrir une qualité d'éducation équivalente à celle offerte à la majorité.

Le projet de mémoire du Procureur général du Canada est tellement ambivalent face aux droits des parents francophones et est tellement en contraste absolu avec le mémoire du Commissaire aux langues officielles, qu'il semble supporter la position du gouvernement de la Colombie-Britannique qui prétend que sa législation rencontre les exigences de l'Article 23.

*Pour une
éducation
de qualité!*



Le Très Honorable Jean Chrétien
13 juin 1996
page 2

Nous comprenons que le Procureur général du Canada désire rester neutre dans ce débat. Cependant, nous croyons qu'il y a une différence entre ambivalence et neutralité; ce projet de mémoire n'est pas neutre.

Les positions prises par le Procureur général du Canada dans son projet de mémoire sont en flagrantes contradictions avec les positions politiques et constitutionnelles du gouvernement du Canada notamment en ce qui concerne les Articles 16 à 23 de la Charte et l'Article 41 de la Loi sur les langues officielles de 1988. Ce faisant, le Procureur Général du Canada, représentant le gouvernement fédéral dans cette affaire, ne favorise pas l'épanouissement des communautés francophones minoritaires mais favorise plutôt leur disparition.

Par conséquent, ce projet de mémoire doit absolument être modifié avant d'être déposé à la Cour Suprême de la Colombie-Britannique. C'est pourquoi nous vous demandons d'intervenir personnellement afin de corriger cette situation, et ce dans les plus brefs délais.

Nous vous prions d'agréer, Monsieur le Premier Ministre, l'assurance de notre plus haute considération.

La présidente,

Martine Galibois Barss

*Pour une
éducation
de qualité!*

06/14/96 15:34 81 604 736 1259 A P F C B
06-14-96 01:50PM FROM G. BRENT GAWNE & ASOC TO 16047361259

P002/004

G. Brent Gawne & Associates

G. Brent Gawne
(also of the B.C. Bar)
Peggy Kobly
Janet E. Morck (Student at Law)

2300, Centennial Building
10015 - 103 Avenue
Edmonton, Alberta T5J 0H1

Barristers & Solicitors

Telephone: (403) 421-1132
Facsimile: (403) 429-1440

Our File: 2549 GBG

Your File:

DRAFT

June 14th, 1996

SENT VIA FACSIMILE (613) 941-1971

Ministère de la Justice du Canada
Department of Justice Canada
Mr. John Scratch, Q.C.
Senior General Counsel/Advocate général principal

**Re: L'association des parents francophones de la Colombie-Britannique
et al v. H.M.Q. in Right of Alberta of British Columbia et al**

We are writing to follow up our conference call held today. During that call you noted that it was your intention as a representative of the Attorney General of Canada to listen to the concerns expressed by the parents, their counsel and counsel for the commissioner of Official Languages in regards to the draft brief prepared by the AG of Canada in this matter.

During the course of the conversation we outlined the points, in our opinion, where the draft brief departed from the AG Canada's purported position of neutrality.

During the conference call we made the point that in many instances the draft brief addressed issues that had not been raised by either the Plaintiff or the Defendant, or appeared to reformulate issues in a manner that did not respond directly to the positions of either the Plaintiff or the Defendant. We outlined what we saw as the four major issues in dispute:

1. Is the Act constitutional?

Page 2
June 14, 1996
Mr. John Scratch, Q.C.

2. Is the Regulations *ultra vires* the *School Act*?
3. Is the Regulation sufficient to meet the requirements of s.23 of the *Charter*, in particular as it relates to issues of:
 - a) mandatory funding;
 - b) capital financing from the Province;
 - c) the absence of a dispute resolution mechanism;
 - d) the subordinate nature of the regulation creating the authority in contrast to the primary legislative nature empowering the School Boards?
4. Remedy.

You noted that our concerns focused on the issues of equivalence of the quality of education between the minority and majority school systems, and the absence in the brief regarding the *vires* of the Regulation and the constitutionality of the *School Act* itself. Further you took our point that we have never asserted s.23 requires an identical system to the majority.

You also noted that of particular concern to the AG of Canada was the question of whether a regulation, rather than legislation, was sufficient to meet the requirements of s.23. On the other hand, we noted that our concern about the subordinate nature of the scheme was in relation to the principles of the equivalent quality of education and equality with majority education system, as defined by the Supreme Court of Canada in *Mahe* and the *Manitoba Reference*. We also noted that, notwithstanding the *vires* issue, in our opinion the British Columbia legislation is very different from the legislation in question in *Mahe*.

We also pointed out the historical context and the Courts' requirement that there be a precise legislative scheme.

We discussed our concerns that the draft brief made the question of "whether numbers warrant" an issue, when neither the Plaintiffs nor the Defendants raised it. You noted that it was not your intention to make "numbers warrant" an issue, and would be examining that portion of the brief.

06/14/96 15:35

61 604 736 1259

A P F C B

→→ LEMOINE HILAIRE

012

Page 3
June 14, 1996
Mr. John Scratch, Q.C.

We concluded the conference call with your assurance that you would consider our concerns and get back to us before you file a final version of the brief.

Yours truly,

G. BRENT GAWNE
PK/sma

Les premiers jalons

1976?

1996-97

RAPPORT ANNUEL

Conseil scolaire francophone
de la Colombie-Britannique



**Conseil scolaire francophone
de la Colombie-Britannique**

1555, 7^e Avenue Ouest, bureau 229

Vancouver (C.-B.) V6J 1S1

Téléphone: (604) 736-5030

Télécopieur: (604) 736-5028

Numéro sans frais: 1-888-715-2200

Site internet (web): <http://www.csf.bc.ca>

Adresse électronique: info@csf.bc.ca

Mot du Président

Après plus de 15 ans de lutte, la communauté francophone de la Colombie-Britannique a accueilli avec un enthousiasme retentissant un système d'éducation de langue française.



M. Vincent Pigeon, président
fondateur du CSF.

Élèves de l'école La Vérendrye,
à Chilliwack.



C'est avec une vigueur renouvelée qu'elle s'est ensuite approprié ce projet collectif et qu'elle a mis en œuvre les mécanismes de gestion concédés par le gouvernement provincial. Toutefois, la lutte pour une réglementation scolaire conforme à l'article 23 de la *Charte canadienne des droits et des libertés* n'est pas terminée. Le jugement Vickers nous laisse entrevoir le contrôle complet de nos institutions en éducation dans un avenir rapproché.

La naissance du Conseil scolaire, le 2 novembre 1995, a provoqué un déferlement d'événements historiques pour la communauté francophone: la nomination des premiers conseillers et conseillères le 14 décembre 1995, suivi de leur assermentation le 19 janvier 1996 devant un juge francophone; les campagnes de recrutement de membres et l'embauche d'une équipe professionnelle au service du Conseil scolaire francophone (CSF). La première rentrée scolaire sous l'égide du Conseil a coïncidé avec la tenue d'une série de consultations à travers la province qui ont produit le rapport sur «La création du programme francophone idéal» dont s'inspire le plan quinquennal qui mènera le CSF au tournant du siècle. Le tout fut couronné par les premières élections du CSF. Pour leur part, les jeunes étaient invités à mettre leur imagination au profit de la création du logo du CSF, dévoilé durant la Semaine nationale de la francophonie.

La clientèle actuellement desservie par le programme francophone, avec environ 2 300 élèves inscrits, est encore faible par rapport à la population admissible en vertu de l'article 23 de la Charte. Il reste à espérer que la gestion

s'étendra à l'ensemble de la province et que toutes et tous auront accès à ce service qui leur revient de droit. Sur une période de cinq à dix ans, si nous arrivons à attirer de nouveaux écoliers et à récupérer de 10 à 15 pour cent des enfants qui ont perdu leur langue maternelle, notre effectif scolaire pourrait atteindre 5 500 élèves.

Je tiens à souligner l'importance des contributions de chacune et de chacun. Le personnel administratif, les enseignantes et les enseignants, les parents ainsi que les élèves ont accepté d'assumer le rôle de pionnier. Leurs contributions composent la genèse de l'histoire de la gestion scolaire des francophones de la Colombie-Britannique en compagnie de celles des conseillères et des conseillers scolaires fondateurs: Marc-André Ouellette, Louise Côté Madill, Nicole Hennessey et Martine Galibois Bars.

L'école francophone de la Colombie-Britannique prend déjà les allures de ses bâtisseuses et bâtisseurs. Elle se nourrit des éléments culturels ambiants, fait preuve de créativité et de ténacité dans sa quête de solutions, s'approprie les outils de communication efficaces qui facilitent les rapports et l'établissement de partenariats avec son entourage francophone. L'école francophone est unique. Elle est à l'image de celles et de ceux qui depuis plus de 15 ans l'ont imaginée.

Le président
Vincent Pigeon

Les premiers jalons

Introduction

Le 2 novembre 1995, le gouvernement de la Colombie-Britannique accordait à sa communauté francophone la gestion scolaire partielle en établissant la «Francophone Education Authority» dont le mandat consiste à mettre sur pied et à gérer un Conseil scolaire francophone couvrant les 18 districts scolaires des régions de la vallée du Fraser, du grand Vancouver et du Sud de l'île de Vancouver. Cette autorité, qui a pris le nom de Conseil scolaire francophone (CSF), assume à peu près les mêmes responsabilités, devoirs et pouvoirs que les commissions scolaires de la province et a

le droit exclusif de livrer un programme éducatif francophone à tous les élèves admissibles, résidant sur le territoire sous sa juridiction.

Le ministère de l'Éducation a nommé cinq conseillères et conseillers chargés de superviser l'établissement du CSF. Elles et ils ont travaillé assidûment depuis janvier 1996 afin que le CSF soit en mesure d'assumer ses responsabilités. Le 1^{er} juillet 1996 marquait la prise en charge officielle l'éducation francophone dans le territoire sous la juridiction du CSF. Ce rapport annuel est le premier du CSF et présente exceptionnellement les activités réalisées sur une période de quinze mois s'étendant du 15 janvier 1996 au 15 mars 1997.

Aussitôt en poste, les conseillères et conseillers ont formulé un énoncé de vision ainsi qu'un énoncé de mission afin de guider la tâche du Conseil.

Vision du Conseil

LES FRANCOPHONES DE LA
COLOMBIE-BRITANNIQUE
REÇOIVENT UNE ÉDUCATION EN
FRANÇAIS RECONNUE POUR SON
EXCELLENCE ET SA CONTRIBUTION
À L'ÉPANOUISSEMENT DE LA CULTURE
FRANCOPHONE.

Mission du Conseil

LE CONSEIL SCOLAIRE FRANCOPHONE
DE LA COLOMBIE-BRITANNIQUE
S'ENGAGE À OFFRIR DES SERVICES
ÉDUCATIFS VALORISANT LE PLEIN
ÉPANOUISSEMENT ET L'IDENTITÉ
CULTURELLE DES APPRENANTS
FRANCOPHONES.



Dès le 19 janvier 1996, un communiqué de presse annonçait la cérémonie d'assermentation des premières dirigeantes et des premiers dirigeants du Conseil scolaire francophone par le juge Raymond Paris de la Cour suprême de la Colombie Britannique. Les cinq conseillères et conseillers sont les suivants:

Vincent Pigeon, de la région du Grand Vancouver (président)
Marc-André Ouellette, de la région Sud de l'île de Vancouver (vice-président)
Nicole Hennessey, de la région Nord de l'île de Vancouver (conseillère)
Louise Côté Madill, de la région Okanagan-Columbia-Nord
de la Colombie-Britannique (conseillère)
Martine Galibois Barss, de la région du Grand Vancouver (conseillère)



Le 17 février 1997, plus d'une trentaine de parents, enseignantes et enseignants et d'administratrices et administrateurs d'école formant le comité de liaison se réunissaient au Richmond Inn afin de discuter des derniers développements au CSF.

La transition vers un système francophone

Deux comités ont été mis en place afin de faciliter la transition vers un nouveau système de gestion tout en permettant de préserver un contact direct avec l'ensemble des acteurs concernés. D'abord, le «comité de gestion», constitué des administratrices et des administrateurs des écoles offrant le programme francophone, a apporté son aide au niveau des décisions ayant trait à l'établissement du Conseil et a étudié plusieurs des considérations administratives relatives à la prise en charge de l'éducation par le CSF.

D'autre part, le «comité de liaison», a permis d'établir un réseau d'échange avec la communauté scolaire tout en discutant de multiples préoccupations soulevées par la transition. Le comité de liaison est composé de parents, de membres du corps enseignant et du personnel de soutien des commissions scolaires visées. Ce comité a

pour mandat de communiquer les questions soulevées par la population de leur milieu ainsi que leurs préoccupations. Il s'est réuni afin de faciliter le transfert des écoles francophones des dix commissions visées sous la tutelle du CSF. Ajoutons que le Conseil a consulté ce comité au sujet de questions importantes telles le plan de communication global du CSF et l'organisation d'événements spéciaux.

L'embauche du premier employé à l'intérieur d'une école, le premier janvier 1997, marquait une étape importante dans la prise de contrôle de la gestion scolaire et la fin de la période de transition. C'est avec fierté que le Conseil annonçait l'entrée en fonctions de monsieur Éric Leclerc, directeur de l'école La Vérendrye, à Chilliwack.

Calendrier des rencontres du Conseil d'administration 1996-1997

- 15 janvier 1996 - réunion d'affaires - Victoria
- 21 janvier 1996 - réunion d'affaires - Vancouver
- 25 janvier 1996 - conférence téléphonique
- 2-4 février 1996 - réunion d'affaires - Victoria
- 24 février 1996 - réunion d'affaires - Vancouver
- 4 mars 1996 - conférence téléphonique
- 15 mars 1996 - réunion d'affaires - Vancouver
- 4 avril 1996 - conférence téléphonique
- 12-13 avril 1996 - réunion d'affaires - Vancouver
- 26-27 avril 1996 - réunion d'affaires - Vancouver
- 10-11 mai 1996 - réunion d'affaires - Vancouver
- 31 mai 1996 - réunion d'affaires - Victoria
- 1-2 juin 1996 - session de formation - Victoria
- 14-15 juin 1996 - réunion d'affaires - Vancouver
- 5-6 juillet 1996 - réunion d'affaires - Vancouver
- 14 juillet 1996 - réunion d'affaires - Vancouver
- 27-28 juillet 1996 - réunion d'affaires - Vancouver
- 3 septembre 1996 - conférence téléphonique
- 27-29 septembre 1996 - réunion d'affaires - Vancouver
- 25-27 octobre 1996 - réunion publique et réunion d'affaires - Abbotsford
- 29-30 novembre 1996 - réunion publique et réunion d'affaires - Victoria
- 10-12 janvier 1997 - réunion publique et réunion d'affaires - Nanaimo
- 7-9 février 1997 - réunion publique et réunion d'affaires - Victoria
- 10 février 1997 - conférence téléphonique
- 28 février, 1-2 mars 1997 - réunion publique et réunion d'affaires - Prince George

De plus, les membres du conseil participent régulièrement aux réunions de quatre comités internes: le Comité des finances, le Comité de planification stratégique, le Comité des ressources humaines et le Comité des services et programmes.



Le 15 novembre 1996, se tenait une réunion du comité de gestion à l'hôtel Richmond Inn. Nous reconnaissons à la table Sylvie Boutonné, agente de recherche au CSF; Jack Fleming, consultant; Raymond Ouimet, directeur par intérim du Bureau des programmes de langue française du ministère de l'Éducation de la C.-B.; Marc Godbout, consultant à la planification; au micro, Martine Galibois Barss, conseillère pour le Grand Vancouver.

Projets de développement d'écoles



Bien que le Conseil soit à l'étape de la planification pour la livraison de l'éducation en français en C.-B., il demeure réceptif aux besoins immédiats exprimés par les parents francophones. Le CSF a participé activement aux rencontres organisées en collaboration avec l'Association des parents francophones de la C.-B. (APFCB) et plusieurs parents qui explorent la possibilité d'ouvrir une école primaire francophone dans la région Ouest de la ville de Vancouver. Ce projet a soulevé beaucoup d'intérêt et une session de pré-inscription tenue le 15 janvier 1997, à Vancouver, a permis de produire une liste comptant 95 élèves potentiels. Par ailleurs, le Conseil participait aux réunions sur le projet d'implantation d'une école secondaire francophone à Vancouver, initié aussi par un groupe de parents intéressés.

Il a été remarqué que le concept de «centre scolaire/communautaire», un complexe regroupant des facilités scolaires et communautaires, jouit d'une popularité grandissante auprès des communautés francophones de la Colombie-Britannique et d'ailleurs. Le Conseil s'y est évidemment beaucoup intéressé que ce soit pour la communauté de Powell River, qui gère déjà ce modèle d'école, ou celles de Victoria, Prince George, Kelowna ou Coquitlam qui étudient la faisabilité d'un tel projet au sein de leur communauté.

Consultation, planification et priorités de développement du CSF

Dès la publication de son premier bulletin d'information, en mars 1996, le CSF annonçait clairement sa volonté de consulter la communauté francophone afin d'orienter son travail.

On y décrivait déjà les réunions avec les parents de chacune des dix régions au mois d'avril et on y annonçait le premier événement public d'envergure soit le «Forum à l'intention des parents et des enseignants» qui s'est tenu à l'École Anne Hébert, à Vancouver, le 25 mai 1996. Les quelques 150 personnes présentes au forum ont su dégager les priorités, lancer le processus de résolution de problèmes, avancer des idées et proposer des stratégies pour la prochaine année scolaire. Ce n'était que le début d'un dialogue ouvert qui a débouché sur une consultation provinciale l'automne suivant.

Au mois de septembre 1996, les conseillers et conseillères invitaient la communauté francophone à contribuer à l'élaboration du programme francophone idéal. Un groupe de travail était alors mis en place afin de recueillir les

suggestions et les recommandations des parents, des enseignantes et enseignants, des étudiantes et étudiants, des cadres des commissions scolaires ainsi que des représentantes et représentants du ministère de l'Éducation, des différentes associations francophones, des syndicats et du grand public. Ce processus a permis à toutes les intervenantes et tous les intervenants en éducation de présenter leur point de vue sur l'organisation permanente la plus souhaitable pour l'année 1997-1998 et les années subséquentes. Le processus comportait des activités formelles et informelles dont les consultations publiques, les rencontres de groupes plus restreints, la diffusion d'un questionnaire et les discussions.

Détails de cette consultation:

- onze réunions publiques qui se sont déroulées de Prince George à Victoria;
- un forum auquel 50 étudiantes et étudiants de la 6^e à la 12^e années ont participé;
- des réunions informelles avec les groupes partenaires y compris la Fédération des enseignantes et enseignants de la Colombie-Britannique, le British Columbia Public School Employer's Association et le Syndicat canadien de la fonction publique;

- des réunions avec les enseignantes et les enseignants de 22 écoles;
- des rencontres avec les administratrices et administrateurs d'écoles;
- trois réunions publiques du conseil d'administration du Conseil scolaire francophone; et
- cinquante contributions écrites de particuliers et de groupes.

Par ailleurs, les membres du personnel enseignant du programme francophone des dix commissions scolaires formant le territoire du CSF ont reçu le questionnaire qui a permis de sonder leurs besoins et leurs attentes. Les enseignantes et enseignants ainsi que les membres du personnel de soutien ont également eu la possibilité de rencontrer un membre du comité de gestion de la transition pour discuter des perspectives de placement, d'assignation des tâches ou de toute autre question relative à la transition. Un feuillet d'information dédié à ce processus appelé «Mise à jour en planification» a été créé et inséré au «Bulletin d'information» du Conseil à trois reprises afin d'expliquer l'évolution du processus de consultation et d'en donner les résultats.

En janvier 1997, le rapport des consultations «La création du programme francophone idéal» était distribué à plus de 600 exemplaires. Les prochains travaux des conseillères et des conseillers consistent à élaborer une planification globale d'après les lignes directrices émanant des consultations. Il s'agira d'identifier les priorités de développement pour les cinq prochaines années (1997-2001) afin d'orienter l'essor des programmes, du Conseil scolaire.



Près de 150 personnes se sont rencontrées à l'école Anne Hébert le 25 mai 1996 pour participer au «Forum à l'intention des parents et des enseignants», une session de planification organisée par le CSF.

Négociations des ententes

Dès la première instance, les dirigeantes et les dirigeants du Conseil scolaire francophone ont abordé les surintendants des commissions scolaires des régions où le programme francophone est reconnu. Des rencontres ont eu lieu afin de leur présenter la position du CSF et de négocier des ententes en matière de personnel, de locaux et de ressources pédagogiques.

Avant le début de l'année scolaire 1996-1997, le conseil a tenté de formaliser:

- des contrats pour la continuation de tous les services éducatifs présentement offerts aux élèves du Programme francophone. Ces contrats tentent d'offrir aux membres du personnel oeuvrant actuellement au sein du Programme francophone, à temps complet ou partiel, une garantie quant à leur salaire, leurs avantages sociaux et l'ancienneté dans leur propre commission scolaire.

- des contrats couvrant les services offerts par les enseignantes et les enseignants ainsi que les membres du personnel de soutien qui travaillent en partie dans le Programme francophone et en partie dans d'autres programmes des commissions scolaires.

- des contrats pour l'usage continu des ressources et des locaux présentement utilisés par le Programme francophone, à moins que de nouvelles options se révèlent plus avantageuses pour les élèves, le personnel et les parents.

Des négociations plus spécifiques à chacune des 10 commissions scolaires du territoire sous la juridiction du CSF ont été entreprises sur la question du corps enseignant. Ces ententes veulent assurer une éventuelle transition des contrats des enseignantes et des enseignants au CSF tout en respectant les ententes existantes. Les pourparlers avec la Fédération des enseignantes et enseignants de la Colombie-Britannique (FECB), le Syndicat canadien de la fonction publique et le British Columbia Public School Employers' Association (BCPSEA) ont permis d'explorer une nouvelle formule qui permettrait au Conseil d'exercer un contrôle plus complet sur l'éducation en français.

Les relations entre les syndicats et le CSF sont primordiales. Grâce à ces ententes, le Conseil peut exercer un contrôle sur l'enseignement ainsi que sur la gestion de l'éducation jusque dans la salle de classe. Elles représentent un facteur déterminant dans la réussite de la mise en œuvre du Programme francophone. Ces négociations se poursuivent dans le but d'en arriver à une convention collective provinciale.

44 North Vancouver (DS 44)
37 Delta (DS 37)
75 Mission (DS 75)
43 Coquitlam (DS 43)
39 Vancouver (DS 39)
36 Surrey/White Rock (DS 36)
34 Abbotsford (DS 34)
33 Sardis (DS 33)
63 Saanich (DS 63)
61 Victoria (DS 61)

Services éducatifs

Ateliers offerts par le CSF

Les 25 et 26 février 1997, le premier atelier de formation professionnel du CSF était offert aux enseignantes et enseignants responsables des mesures d'accueil au sein du programme francophone. On y a abordé les phases d'accueil, de francisation, et de re-francisation des enfants. Le Conseil a fourni la trousse pédagogique «Paul et Suzanne, un modèle de francisation» à chacune et chacun des participants afin de les appuyer dans leur travail.



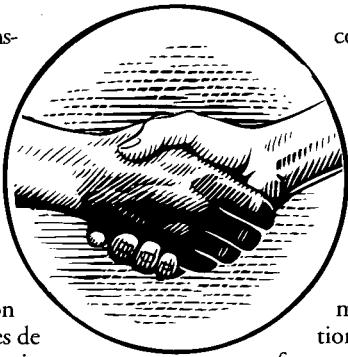
Atelier sur les mesures d'accueil les
25 et 26 février 1997, au Richmond Inn.
(De g. à d.) France Felder (école Anne Hébert);
Mireille Houle (école André Piolat);
Lara Sigurdson (école Collettville, Merritt);
Frédérique Grenouillat (APFCB);
Paola Winkler (école Keating, Saanich);
Nathalie McGraw Ferron
(école Westview, Prince Rupert).

Centre de ressources du CSF

Les consultations sur «La création d'un programme francophone idéal» menées par le CSF ont souligné le besoin de mettre en place un centre de ressources pédagogiques et culturelles. Le CSF a débuté l'étude pour la réalisation de ce projet. L'objectif fondamental de ce centre est de mettre les ressources et le matériel didactique à la disposition de tous les enseignants et enseignantes du programme francophone de la Colombie-Britannique afin de faciliter leur travail et de permettre le partage des ressources entre les écoles francophones. L'accent sera mis sur la technologie pour que ce centre soit accessible au plus grand nombre de personnes possible (Internet, banque de données informatisées, etc.). Il servira aussi de centre pour le perfectionnement professionnel des enseignantes et des enseignants.

Les partenaires du CSF

Le Conseil est en constante interaction avec la communauté francophone et considère que les associations francophones à travers la province sont des partenaires en éducation. Une concertation soutenue lie l'Association des parents francophones de la Colombie-Britannique (APFCB) et le Conseil qui travaillent tous deux en étroite collaboration avec les parents. Par ailleurs, la Fédération des francophones de la Colombie-Britannique (FFCB) ainsi que l'APFCB continuent à exercer des pressions politiques et participent conjointement à la poursuite légale contre le gouvernement de la province, à la Cour Suprême de la C.-B. dans le but d'obtenir la gestion



complète de l'éducation francophone en Colombie-Britannique.

Éducacentre collabore de manière spéciale en offrant des programmes et des services spécialisés. L'organisme a participé à la semaine en orientation offerte aux enseignantes et enseignants et offre présentement des séances sur l'orientation dans les écoles du programme francophone.

Le Bureau des programmes de langue française du ministère de l'Éducation de la Colombie-Britannique figure aussi au rang des partenaires du CSF. Des rencontres régulières ont lieu avec les experts en éducation pour discuter de budget, de formation professionnelle, de développement technologique, de cours d'été, de programmes d'accueil, de services spécialisés ainsi que de l'élabora-

tion des programmes d'études.

D'autre part, plusieurs liens de collaboration ont été tissés avec les conseils scolaires francophones du pays, notamment lors de la réunion fondatrice d'Éducation franco-ouest. Dix-huit représentantes et représentants des milieux éducatifs francophones de l'Ouest et du Nord-Ouest du Canada se sont réunis à Regina, en janvier 1997, dans le but de répondre aux besoins communs en éducation française de ces régions aux niveaux secondaire et post secondaire. À l'issue de cette première rencontre, les participantes et participants ont accepté la mise en œuvre de plusieurs projets et certains se sont engagés à assumer le rôle de leader. Le CSF a la responsabilité du projet intitulé «la définition de l'école francophone en milieu minoritaire».

Technologie et développement

La technologie fait certainement partie des éléments essentiels au succès de la mise en œuvre de la gestion scolaire pour les francophones. Le CSF détient un lien internet haute capacité, ce qui facilite la communication et permet la consultation du site web qui affiche toutes les informations pertinentes. L'un des objectifs est de développer un site d'information et de ressources avec des liens télématiques joignant les écoles francophones.

Au mois de janvier 1997, le directeur des services éducatifs, accompagné du responsable de la technologie et de l'enseignement médiatisé, ont fait une visite exploratoire au Québec afin d'établir des contacts avec des organismes et des institutions francophones oeuvrant dans le domaine de l'éducation. Cette visite leur a permis d'étudier l'intégration de la technologie dans l'enseignement aux niveaux primaire et secondaire. Ils ont visité des écoles informatisées et ont étudié différentes installations de réseaux télématiques qui servent à la formation à distance, aux services pédagogiques et à l'administration scolaire.

D'autre part, le CSF a commencé à développer un plan technologique pour les cinq prochaines années en collabora-



tion avec le «Provincial Learning Network (PLN)», l'organisme gouvernemental responsable de la gestion du développement technologique au sein des commissions scolaires de la province. Un

comité appelé le «Comité techno», composé d'enseignantes et enseignants ainsi que d'administratrices et d'administrateurs des écoles intéressées au sujet, a été mis en place afin d'amorcer le travail d'évaluation des besoins technologiques des écoles francophones. Ce comité veut également organiser des activités d'apprentissage utilisant les nouvelles technologies pour les élèves.

Le Conseil scolaire mise également sur la technologie pour pallier au problème de dispersion de sa clientèle scolaire à travers la province. La formation à distance fait partie des moyens privilégiés par le CSF pour offrir notamment aux étudiants du niveau post secondaire, l'accès à un programme de cours en français complet. Une première rencontre de déblayage a eu lieu avec le ministère de l'Éducation et le «Open Learning Agency» (OLA) afin d'étudier le fonctionnement du système d'enseignement à distance actuellement en place connu sous le nom de Télécolumbia.

Effectifs du CSF



- Le Conseil scolaire francophone est responsable de la gestion de 23 programmes francophones dont le personnel représente environ 130 personnes.
- On dénombre environ 1 700 élèves, un nombre comparable aux commissions scolaires anglophones de petite taille.
- Il existe 28 programmes francophones offerts dans 15 commissions scolaires situées en dehors du territoire du CSF.
- Trois programmes élémentaires comptent entre 200 et 340 élèves, cinq ont entre 100 et 200 élèves, six comptent en moyenne 65 élèves, huit ont entre 35 et 50 élèves tandis que cinq ont moins de 25 élèves.

Les programmes élémentaires francophones

*Les programmes francophones du niveau secondaire

ABBOTSFORD

North Poplar Elementary

* W.J. Mouat Secondary

COQUITLAM

Millside Elementary

* Como Lake Jr. Secondary

* Centennial Sr. Secondary

DELTA

Richardson Elementary

* Burnsvie Jr. Secondary

* North Delta Sr. Secondary

MISSION

Mission Central Elementary

* Mission Secondary

NORTH VANCOUVER

École André Piolat

* Balmoral Jr. Secondary

* Handsworth Secondary

SAANICH

Keating Elementary

SARDIS/CHILLIWACK

École La Vérendrye

* Vedder Jr. Secondary

* Sardis Sr. Secondary

SURREY/WHITE ROCK

K.B. Woodward Elementary

White Rock Elementary

VANCOUVER

École Anne Hébert

* Kitsilano Secondary

VICTORIA

École Brodeur

* École Brodeur

- Les huit programmes secondaires de premier cycle comptent de 7 à 45 élèves chacun.
- Trois programmes secondaires comptent une centaine d'élèves chacun; sept ont une moyenne de 20 élèves et six en comptent entre 5 et 15.

Autres

- En 1995-1996, plus de 2 500 élèves francophones étaient inscrits au Programme francophone dans 25 commissions scolaires de la province.
- La plupart des élèves de la C.-B. admissibles au programme d'éducation francophone viennent de familles où seul un des parents est d'origine francophone, 98 pour cent de ces élèves sont bilingues.
- En Colombie-Britannique, environ 300 personnes travaillent dans le programme francophone, y compris les écoles qui font partie du CSF.

Recrutement des membres du CSF

La Réglementation oblige les personnes intéressées à devenir membre du CSF afin d'avoir le droit de vote aux élections des quinze déléguées et délégués et des cinq conseillères et conseillers qui participent l'Assemblée générale annuelle du Conseil scolaire. On doit également être membre du CSF pour inscrire ses enfants au programme francophone dans les régions du Fraser, du grand Vancouver et du Sud de l'Île de Vancouver. Les personnes intéressées de l'extérieur du territoire prescrit peuvent également devenir membre et participer aux élections en vue de l'expansion du CSF à l'ensemble de la province.

Au printemps 1996, le CSF menait sa première campagne de recrutement de membres en collaboration avec les responsables des Comités de parents et les associations francophones. Ces derniers assuraient la distribution et la collecte des formulaires et veillaient à ce que l'attestation des membres soit approuvée par une ou un commissaire à l'assermentation. Lors de cette première initiative provinciale, 1 200 inscriptions ont été cumulées. Une deuxième lancée, en septembre 1996, a fait grimper ce nombre à 1 700 membres.

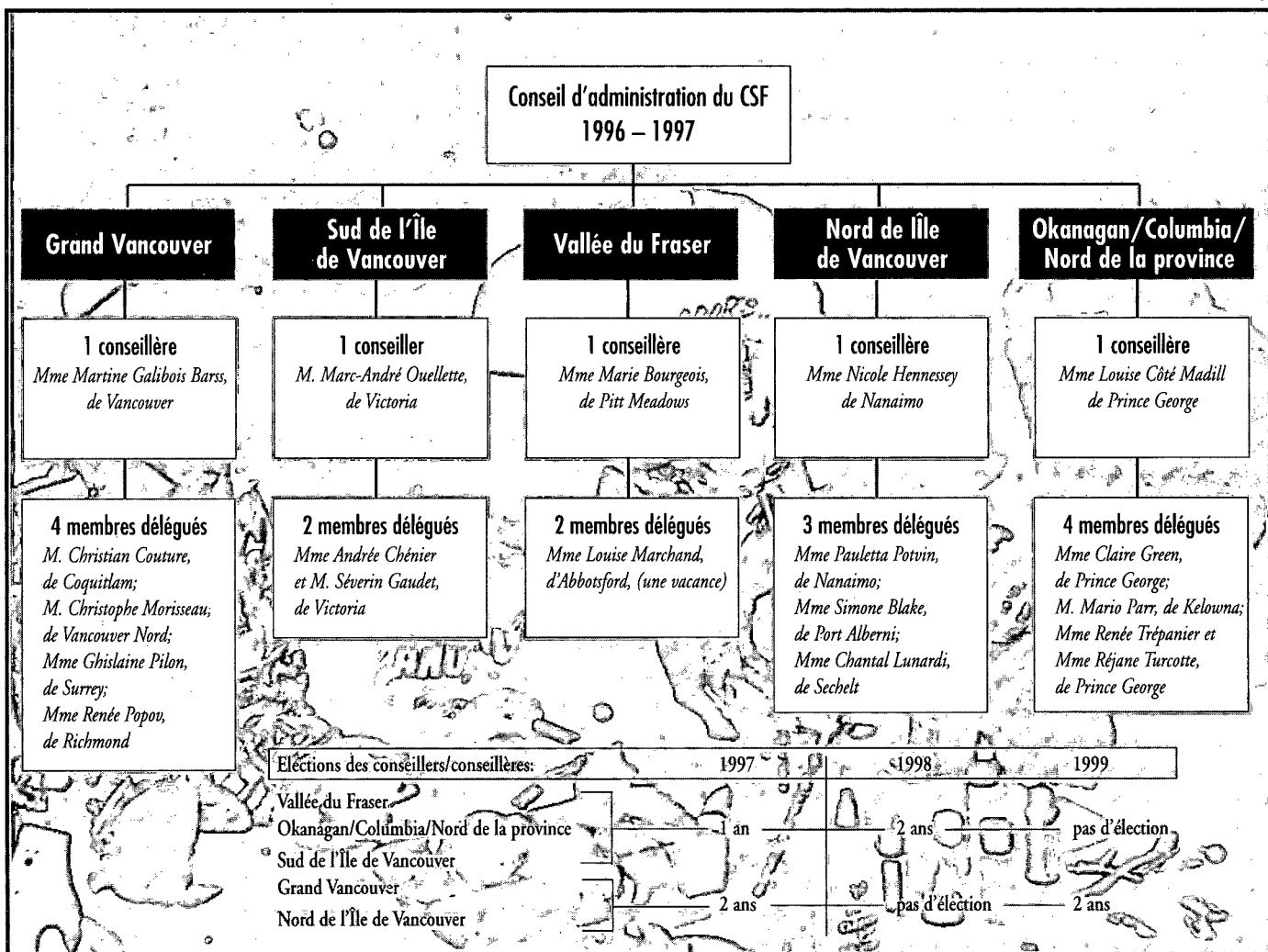
Afin d'atténuer certaines difficultés entourant le processus de recrutement des membres, plus spécifiquement l'obligation de faire attester de l'admissibilité des signataires par un ou une commissaire à l'assermentation (notaire, juge, avocat ou avocate, etc), le conseil d'administration présentait au ministère de l'Éducation un projet d'amendement de la réglementation scolaire. En décembre 1996, le CSF recevait une réponse favorable et relançait du même coup une troisième vague de recrutement. Cette fois-ci, le formulaire simplifié était diffusé avec les 5 000 copies du «Bulletin» et via le Soleil de Colombie-Britannique.

Le processus électoral du Conseil scolaire francophone de la C.-B.



Le 15 octobre 1996 sonnait la mise en marche du premier processus électoral du Conseil débutant par la période de mise en candidature pour les cinq postes de conseillères et conseillers et les 15 postes de déléguées et délégués des cinq régions électorales de la province.

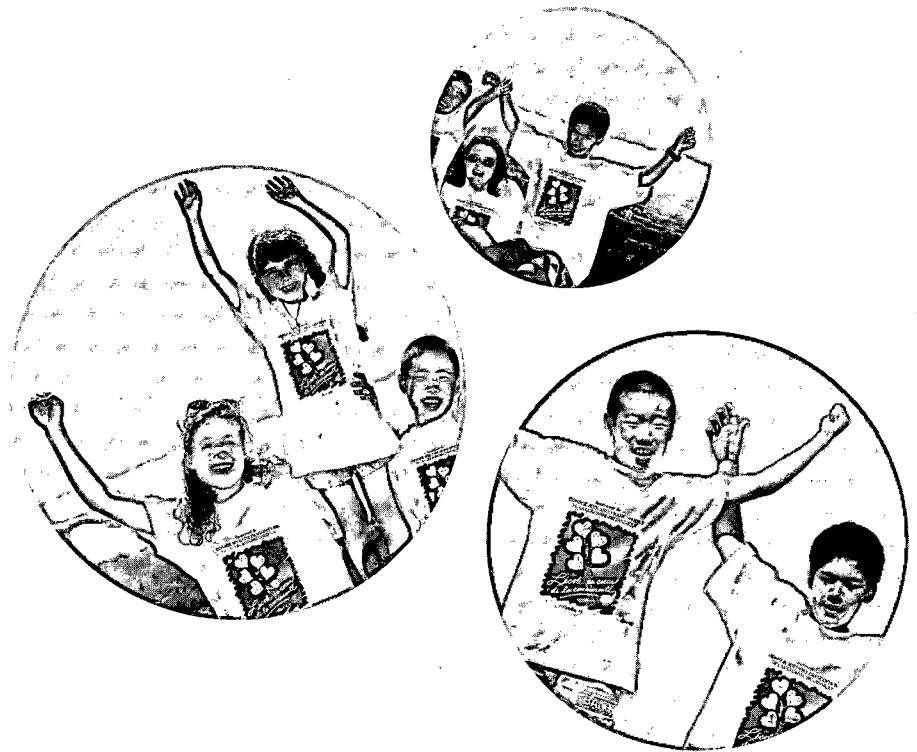
Résultats des premières élections du CSF.



À la fermeture de cette période, le 14 novembre suivant, 34 candidatures dont 12 pour les postes de conseillères et conseillers et 22 pour les postes de déléguées et délégués étaient admises.

La campagne électorale a pris la forme de rencontres publiques ou d'envois de littérature par la poste. En fait, tout ce processus a été réalisé, suivant la Réglementation, par voie postale alors que le CSF procédait à l'envoi des bulletins à chacun de ses membres et que ceux-ci retournaient l'enveloppe affranchie contenant le ballot dans des délais ne dépassant pas le 13 janvier 1997.

Sur un total de 1 699 membres, 649 ont exercé leur droit de vote. Les nouveaux élus entrent en fonctions le 15 mars 1997, soit lors de l'Assemblée générale annuelle du CSF. Dans un communiqué de presse émis le 14 janvier, pour annoncer les personnes élues, le directeur général, Jean-Guy Vienneau, affirmait:



«La tenue des premières élections des cinq conseillères et conseillers et des quinze déléguées et délégués marque une étape importante dans le processus d'implantation du Conseil scolaire francophone (CSF). De plus, le taux de participation à l'élection se chiffrant à 38 pour cent et les nombreux candidats et candidates ont fait de cette activité un succès...».

VOICI LES RÉSULTATS PAR RÉGION ÉLECTORALE POUR LES CONSEILLÈRES ET CONSEILLERS SCOLAIRES ET POUR LES DÉLÉGUÉES ET DÉLÉGUÉS.

ÉLECTIONS 96/97

	RÉGION ÉLECTORALE TOTAL / MEMBRES	VOTES REÇUS	% PARTICIPATION
10 - Grand Vancouver	803	289	36 %
20 - Vallée du Fraser	198	64	32 %
30 - Nord Île de Vancouver	151	69	46 %
40 - Sud Île de Vancouver	325	131	40 %
50 - Okanagan/Columbia/ Nord de la province	222	96	43 %
TOTAL	1699	649	38 %

La promotion du programme francophone



Le Conseil scolaire s'est doté d'un plan de communication global afin de faire connaître le Programme francophone et de recruter de nouveaux élèves.

Parmi les moyens de communication

qui figurent à ce plan, on retrouve une campagne publicitaire dans les journaux communautaires anglophones au printemps et vers la fin de la période estivale, la distribution d'un dépliant faisant la promotion des écoles offrant le programme cadre et bien sûr, la publication régulière du «Bulletin» d'information du CSF. Ce «bulletin», d'abord connu sous le nom de «Transition» a été instauré en mars 1996 et compte déjà 7 numéros à son actif. Il est publié tous les deux mois approximativement, dans les deux langues officielles, et est distribué à 6 000 exemplaires.

Le Conseil a également jugé utile de mettre en place un feuillet d'information bref rapportant les décisions majeures suite à chacune des réunions. Ce feuillet est distribué aux déléguées et délégués, aux enseignantes et enseignants, aux écoles, aux comités de parents et aux membres du CSF.



Lors de la rentrée 1996, le CSF a distribué un calendrier scolaire 1996-1997 à l'intention de tous les élèves, enseignantes et enseignants et des parents. Ce document renfermait une foule d'information au sujet du CSF allant des procédures d'élection, à la liste complète des écoles offrant le programme francophone en Colombie-Britannique. Un signet affichant la vision et la mission du CSF a également été distribué à la rentrée en afin d'en souligner l'inauguration officielle.

En terme de télécommunications, le Conseil fait la promotion d'une ligne téléphonique sans frais (1-888) établie depuis le mois d'avril 1996 afin de répondre aux nombreuses interrogations, d'une adresse électronique ainsi que d'un site internet, tous deux en vigueur depuis le mois de janvier 1997. Tous ces moyens de promotion jouent un rôle déterminant au plan de l'accessibilité du CSF et de la renommée du Programme francophone.

Concours du logo du CSF

Un concours a été lancé auprès des élèves de la première à la douzième année inscrits au programme francophone. Des affiches promotionnelles, les règlements ainsi que les formulaires de participation ont été expédiés à chaque école afin de les inviter à soumettre des œuvres avant le 1^{er} mars 1997. Plusieurs prix offerts grâce à la générosité d'une dizaine de commanditaires ont récompensé les participants. Le gagnant a mérité un ordinateur haute performance «Motorola Power Macintosh». Le dévoilement du dessin gagnant s'est fait lors d'une conférence de presse en plein cœur de la Semaine de la francophonie en C.-B.

Bien entendu, le logo est désormais mis en vedette sur tous les éléments de papeterie et sur tous les outils promotionnels du CSF.

L'école et la communauté: des vases culturels communicants

Dans un milieu minoritaire, l'école joue un rôle culturel d'importance. Elle devient souvent le point de convergence de la communauté. Elle fournit aux apprenants, grâce à des partenariats avec son milieu, les références, les activités et les services culturels qui les encouragent à s'identifier. Pour les francophones de la Colombie-Britannique et le CSF, l'établissement de partenariats avec les organismes francophones qui animent la vie communautaire est une priorité. D'ailleurs, les consultations menées par le CSF de septembre à décembre 1996 ont nettement démontré que les activités offertes aux élèves francophones détermineront leur adhésion à la communauté francophone, leur sens d'identité et d'appartenance et auront des effets positifs quant à leur développement académique et social. Voici les projets de partenariats développés par le Conseil scolaire francophone dans le cadre de différentes activités de la communauté francophone:

- la production d'un vidéo présenté dans le cadre du Forum sur la culture organisé par le Consortium en Éducation (Conseil jeunesse francophone de la C.-B., Éducacentre et l'Association des parents francophones de la C.-B. et leurs partenaires) du 21 au 23 février 1997;
- les matinées scolaires des Rendez-vous du cinéma québécois, février 1997.
- le Festival du Bois pendant lequel près de 1 000 élèves du programme francophone de français ont participé à la journée école le 5 mars 1997;
- la Semaine nationale de la francophonie, du 9 au 15 mars 1997;

Une grande fête familiale pour célébrer la création du Conseil scolaire francophone rassemble les membres du personnel, les parents, les enseignants, les enfants et la communauté francophone sur les berges de Spanish Banks le 28 septembre 1996.



Des invités spéciaux au «Forum sur la culture» visionnent un vidéo d'introduction à la fin de semaine de discussions à Vancouver, du 21 au 23 février 1997. (De g. à d.) Mme. Dominique Pilon, agente au ministère du Patrimoine canadien; M. Marc-André Ouellette, conseiller pour la région Sud de l'Île de Vancouver au CSF; Mme. Nicole Hennessey, conseillère pour la région Nord de l'Île de Vancouver au CSF; M. Jean-Guy Vienneau, directeur général du CSF; Mme Marie Bourgeois, nouvelle élue au CSF pour la région de la Vallée du Fraser et Mme Diane Côté, Présidente de la Fédération des francophones de la Colombie-Britannique



* L'avenir et les priorités du CSF

Le Conseil scolaire francophone doit faire face à de nombreux défis dans les mois et les années à venir. À cet égard, le CSF prépare actuellement un plan stratégique qui verra à tracer son cheminement jusqu'à l'année 2001. Il y aura une consultation des partenaires avant la publication finale de ce plan directeur.

D'ici la fin de ce processus, le CSF orientera ses actions sur les dossiers suivants:

- intégration du personnel enseignant et contrôle complet de la gestion scolaire en français;
- mise sur pied d'écoles secondaires régionales et d'écoles homogènes où c'est possible;
- changements à la réglementation donnant le pouvoir complet au CSF et à l'échelle de la province dans son entier;
- mise en place de services spécialisés dans l'ensemble des écoles du Programme francophone;
- promotion du programme et recrutement d'élèves (ayants droits);
- création de mécanismes permanents de consultation.

L'équipe du personnel:

Jean-Guy Vienneau
directeur général

Nick Ardanaz
directeur des services éducatifs

Carole Toscano
directrice des communications

Odette Lemieux
gestionnaire

Hélène Adl
secrétaire de direction
et du conseil

Marie-Andrée Mathieu
secrétaire-réceptionniste

Francine Benoit
relationiste communautaire

Sylvie Boutonné
agente de recherche éducative

Denis Deschênes
responsable de la technologie
et de l'enseignement médiatisé

États Financiers et rapport du vérificateur

Rapport du vérificateur

Présenté au Conseil d'administration

Conseil scolaire francophone

Nous avons examiné les états financiers du Conseil scolaire francophone au 30 juin 1996 et pour le semestre clos à cette date.

Nous avons effectué notre vérification conformément aux normes de vérification généralement reconnues.

À notre avis, ces états financiers présentent raisonnablement, selon la forme prescrite et à tous égards importants, la situation financière du Conseil scolaire francophone au 30 juin 1996 et les résultats de ses opérations pour la période de six mois terminée à cette date conformément aux principes comptables divulgués à la note 1 annexée aux états financiers.

Doane Raymond

Comptables agréés
Richmond (Canada)
Le 5 septembre 1996

Fonds de fonctionnement – Bilan

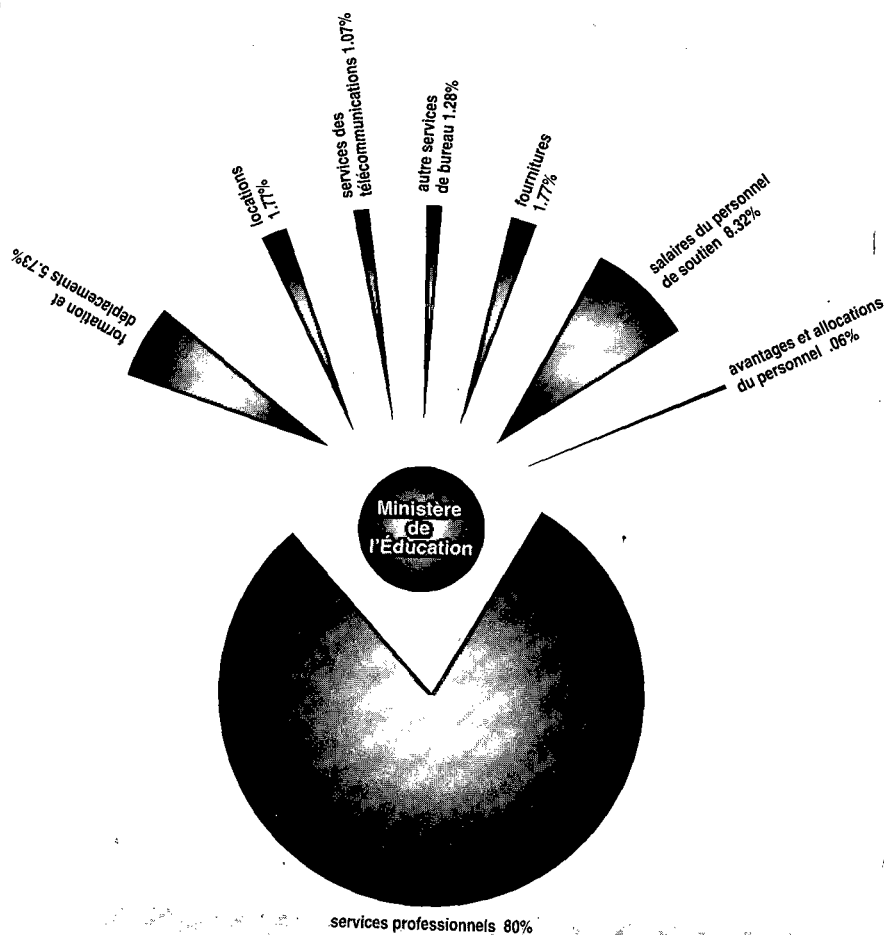
1^{er} janvier au 30 juin 1996

Revenus	776, 750
	155, 000
	<hr/>
	931, 750

Dépenses	564, 676
Surplus	212, 074
Fond Capital	155, 000
	<hr/>
	931, 750

Fonds de fonctionnement – Distribution des dépenses

1^{er} janvier au 30 juin 1996



Laying the Foundation

1996-97

ANNUAL REPORT

Francophone Education Authority
of British Columbia



**Francophone Education Authority
of British Columbia**

1555, West 7th Avenue, Suite 229

Vancouver, B.C. V6J 1S1

Telephone: (604) 736-5030

Facsimile: (604) 736-5028

Toll Free Number: 1-888-715-2200

Web Site: <http://www.csf.bc.ca>

E-mail: info@csf.bc.ca

From the President

The Francophone community of British Columbia welcomed a French language education system with heartfelt enthusiasm after fighting for more than 15 years.



Mr. Vincent Pigeon, founding
President of the CSF

Students of La Vérendrye school,
in Chilliwack.



With renewed energy Francophones have taken this community initiative to heart and set up the mechanisms for school governance as granted by the provincial government. Although, the fight for an educational system that complies with Section 23 of the *Charter of Rights and Freedoms* is not over yet, Judge Vickers decision (August 1996) means that we can hope to have full control of our educational institutions in the near future.

The birth of the *Conseil scolaire francophone* (CSF) – the Francophone Education Authority – on November 2, 1995 began a chain of historic events for the Francophone community which included the appointment of the first Directors on December 14, 1995 followed by their swearing in on January 19, 1996 before a Francophone judge. This was followed by membership drives and the hiring of a professional team to administer the CSF. The beginning of the first academic year under the auspices of the CSF coincided with a series of consultations being held across the province which resulted in the report "Creating the Ideal Francophone Education Program". This report forms the basis of the five-year plan that will take the CSF into the 21st century. The first ever CSF elections were the crowning moment in this chain of events. Young people were encouraged to put their imagination to work in designing a logo for the CSF and the winning entry was unveiled during *la Semaine nationale de la francophonie*.

The student population currently enrolled in the Francophone Program sits at approximately 2,300, which is low in comparison to the numbers eligible under

Section 23 of the Charter. We remain hopeful that governance will extend to the province as a whole and that everyone will have access to the services to which they are legally entitled. If we can attract new students over a period of five to ten years and recover the 10-15 per cent of children who have lost their mother tongue, our student body could reach as high as 5,500 students.

I would like to highlight the contributions that have been made by everyone over the past 15 months. Administrators, teachers, parents and students have willingly broken new ground. Their contributions have written the first chapter in the history of Francophone school governance in British Columbia along with those of the founding CSF Directors: Marc-André Ouellette, Louise Côté Madill, Nicole Hennessey and Martine Galibois Barss.

The Francophone education system is already starting to take the shape envisaged by its architects. It draws strength from the culture around it, has proved its creativity and determination in problem-solving, and has adopted efficient means of communication that encourage networking and the development of partnerships within the Francophone community. The Francophone school is unique. It is a reflection of all those people who have been envisioning it for over 15 years.

A handwritten signature in dark ink, appearing to read 'Vincent Pigeon'.

President
Vincent Pigeon

Laying the Foundation

Introduction

On November 2, 1995, the Government of British Columbia granted partial school governance to the Francophone community by establishing the Francophone Education Authority. The mandate of the Authority is to implement and administer a Francophone school board covering the regions of the Fraser Valley, Greater Vancouver and Southern Vancouver Island. This Authority, which has been named the *Conseil scolaire francophone* (CSF), has approximately the same responsibilities, rights and powers as provincial school boards and has the exclusive right to deliver Francophone programs to all eligible students who live in areas under its jurisdiction.

The Ministry of Education appointed five Directors to oversee the establishment of the CSF. They have been working hard since January 1996 to ensure that the CSF is capable of assuming its responsibilities. July 1, 1996 marked the official take-over of Francophone education in areas under CSF jurisdiction. This is the CSF's first Annual Report and as such covers activities taking place over a longer period than normal - the fifteen months between January 15, 1996 and March 15, 1997. Upon taking up their positions, the Directors developed a vision statement and mission statement to guide the *Conseil's* focus.

Vision

FRANCOPHONES OF BRITISH COLUMBIA RECEIVE AN EDUCATION IN FRENCH RECOGNIZED FOR ITS EXCELLENCE AND ITS CONTRIBUTION TO THE FULFILLMENT OF FRANCOPHONE CULTURE.

Mission

THE FRANCOPHONE EDUCATION AUTHORITY COMMITS ITSELF TO OFFER EDUCATION SERVICES WHICH VALUE THE FULL DEVELOPMENT AND THE CULTURAL IDENTITY OF FRANCOPHONE LEARNERS IN THE PROVINCE.



On January 19, 1996 a press release announced the swearing-in ceremony of the first Directors of the *Conseil scolaire francophone* by Justice Raymond Paris of the Supreme Court of British Columbia. The five Directors are:

Vincent Pigeon, Greater Vancouver Ward (President)
Marc-André Ouellette, Vancouver Island South Ward (Vice-President)
Nicole Hennessey, Vancouver Island North Ward (Director)
Louise Côté Madill, Okanagan-Columbia-Northern British Columbia Ward (Director)
Martine Galibois Barss, Greater Vancouver Ward (Director)



The more than 30 parents, teachers and school administrators that make up the Liaison Team met at the Richmond Inn on February 17, 1997 to discuss the latest developments at the CSF.

Transition to a Francophone System

Two committees were established to ease transition to a new management system while maintaining direct contact with all of the players involved. First, a "management team" made up of administrators from schools offering the Francophone Program was involved in making decisions about how the *Conseil* should be set up. It also looked into a number of administrative issues regarding the hand-over of education responsibility to the CSF.

Second, the "Transition Monitoring Team" - now called the Communications Liaison Team - made it possible to exchange information with the school community while the many concerns raised by the transition were being discussed. The Liaison Team is made up of parents, teaching staff and support staff in the affected school districts. This team's

mandate is to communicate issues and concerns being raised by people in their respective areas to the Board of Directors. This team was formed to ease the transfer of Francophone Program schools within the 10 school districts to CSF control. In addition, the CSF consulted with this team on important issues such as the CSF's comprehensive communication strategy and the organization of special events.

An important step towards governance and ending the transition period was taken with the hiring of the first school employee on January 1, 1997. The CSF was proud to announce that Mr. Éric Leclerc was taking over his position as principal at L'École La Vérendrye in Chilliwack.

Schedule of Board of Directors Meetings 1996-1997

January 15, 1996 - Business meeting - Victoria
January 21, 1996 - Business meeting - Vancouver
January 25, 1996 - Telephone conference
February 2 - 4, 1996 - Business meeting - Victoria
February 24, 1996 - Business meeting - Vancouver
March 4, 1996 - Telephone conference
March 15, 1996 - Business meeting - Vancouver
April 4, 1996 - Telephone conference
April 12 - 13, 1996 - Business meeting - Vancouver
April 26 - 27, 1996 - Business meeting - Vancouver
May 10 - 11, 1996 - Business meeting - Vancouver
May 31, 1996 - Business meeting - Victoria
June 1 - 2, 1996 - Training session - Victoria
June 14 - 15, 1996 - Business meeting - Vancouver
July 5 - 6, 1996 - Business meeting - Vancouver
July 14, 1996 - Business meeting - Vancouver
July 27 - 28, 1996 - Business meeting - Vancouver
September 3, 1996 - Telephone conference
September 27 - 29, 1996 - Business meeting - Vancouver
October 25 - 27, 1996 - Public hearing and business meeting - Abbotsford
November 29 - 30, 1996 - Public hearing and business meeting - Victoria
January 10 - 12, 1997 - Public hearing and business meeting - Nanaimo
February 7 - 9, 1997 - Public hearing and business meeting - Victoria
February 10, 1997 - Telephone conference
February 28, March 1 - 2, 1997 - Public hearing and business meeting - Prince George

Board members also regularly attend the meetings of four internal committees: the Finance Committee, Strategic Planning Committee, Human Resources Committee and the Services and Programs Committee.



The Management Team met on November 15, 1996 at the Richmond Inn Hotel. Around the table were Sylvie Boutonné, the CSF's Research Officer; Jack Fleming, Consultant; Raymond Ouimet, Acting Director, French Programs Branch, Ministry of Education of B.C.; Marc Godbout, planning advisor; at the microphone, Martine Galibois Barss, Director for the Greater Vancouver Ward.

School Development Strategies



Although the *Conseil* is still in the planning stages of delivering Francophone education in British Columbia, it is sensitive to the immediate needs being expressed by Francophone parents. The CSF actively participated in meetings jointly organized with the *Association des parents Francophones de la C.-B.* (APFCB) and a number of parents who are exploring the option of opening a Francophone elementary school on Vancouver's West Side. This initiative has generated a great deal of interest and a pre-registration session held on January 15, 1997 in Vancouver produced a list of 95 potential students. In addition, the *Conseil* took part in meetings initiated by interested parents to discuss the possibility of opening a Francophone secondary school in Vancouver.

The concept of a "school/community centre" – a complex where school and community facilities are co-located – is gaining in popularity within Francophone communities in British Columbia and elsewhere. The *Conseil* is obviously very interested in these types of facilities, whether for the community of Powell River, where this school model is already being implemented, or for Victoria, Prince George, Kelowna or Coquitlam which are looking into the feasibility of such a project within their community.

Consultation, Planning and Development

Within the CSF

In its first information newsletter in March of 1996, the CSF clearly stated its willingness to consult with the Francophone community as to the direction in which the *Conseil* should be moving.

The newsletter reported on parent meetings taking place in April in the 10 school districts and also announced the first major public event, the "Forum for Parents and Teachers" which was held at l'École Anne Hébert in Vancouver on May 25th. The approximately 150 people who attended the forum were able to set priorities, initiate the problem-solving process, and put forth ideas and strategies for the upcoming school year. This was just the beginning of an open dialogue that developed into a provincial consultative process the following Fall.

In September of 1996, CSF Directors invited the Francophone community to participate in developing the ideal Francophone education program. A working group was set up to gather suggestions and recommendations from parents, teachers, students and school board officials as well as from representa-

tives of the Ministry of Education, various Francophone associations, unions and the general public. Through this process, everyone involved in education was able to express what they thought would be the best organization for the 1997-98 year and beyond.

The consultative process took the following form:

- eleven public meetings from Prince George to Victoria;
- a Student Forum involving 50 students from Grade 6 to 12;
- informal meetings with partner groups including the British Columbia Teachers' Federation, the British Columbia Public School Employers' Association and the Canadian Union of Public Employees;
- meetings with teachers from 22 schools;

Francophone Program staff within the ten school boards that are now covered by the CSF received a questionnaire to query their needs and expectations. Teachers and support staff also had the opportunity to meet with a member of the transition management team to discuss approaches to staff placement, job descriptions, and any other issues arising from the transition. An information leaflet about this process entitled "Planning Update" was included with the *Conseils* newsletter on three occasions in order to explain how the consultative process is progressing and to publish its findings.

In January of 1997, "The Creation of the Ideal Francophone Program" - a report based on the consultations - was distributed to more than 600 people. The next challenge for the Directors is to develop a comprehensive strategy based on the guidelines that came out of this process. Development priorities for the next five years (1997 - 2001) will have to be identified in order to guide CSF program growth.



- meetings with school-based administrators;
- three public meetings of the Board of Directors of the *Conseil scolaire francophone*; and
- fifty written submissions from individuals and groups.

Nearly 150 people took part in a CSF strategic planning forum for parents and teachers at l'École Anne Hébert on May 25, 1996.

Agreements Negotiations

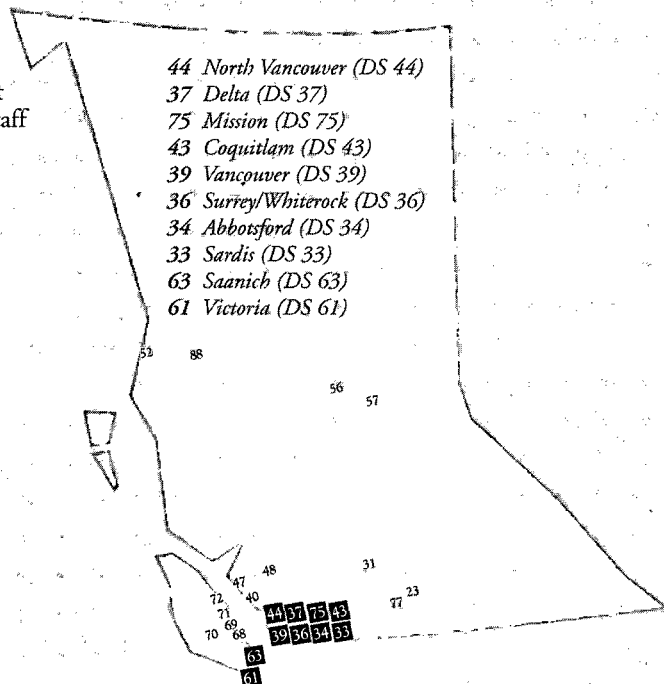
From the outset, *Conseil scolaire francophone* Directors approached School Board Superintendents in regions where there is a recognized Francophone Program and meetings were set up in order to present the CSF position and to negotiate agreements regarding staffing, facilities and educational materials.

Before school opened for the 1996-97 year, the *Conseil* attempted to formalize:

- contracts to continue all educational services currently being offered to Programme cadre students. These contracts are an effort to provide staff who are currently working either full-time or part-time in the Francophone Program with guaranteed salaries, benefits and seniority within their own school board;
- contracts covering teachers and support staff whose services are shared by the Francophone Program and other school board programs;
- contracts to cover the continued use of resources and facilities currently being used by the Francophone Program, unless other options of greater benefit to students, staff and parents should arise.

Negotiations specific to each of the 10 school boards within the CSF area took place on the issue of teaching staff. These agreements are intended to ensure a future transfer of teachers' contracts to the CSF while still complying with current agreements. Discussions with the British Columbia Teachers Federation (BCTF), the Canadian Union of Public Employees (CUPE) and the British Columbia Public Schools Employers' Association (BCPSEA) have provided us with the opportunity to explore a new formula that would give the *Conseil* more comprehensive control over Francophone education.

The relationship between the unions and the CSF is of utmost importance. With these agreements, the *Conseil* will have an impact on teaching right at the classroom level as well as having governance. The agreements are key to the success of implementing the Francophone Program. Negotiations are ongoing in an effort to reach a provincial collective agreement.



Educational Services

Workshops Offered by the CSF

The CSF's first professional development workshop was held on February 25 and 26 1997 for teachers responsible for "mesures d'accueil" into the French Education Program. The workshop covered the various steps of "mesures d'accueil" and of developing and regaining a Francophone identity. The *Conseil* provided a training package called "*Paul et Suzanne, un modèle de francisation*" as a teaching tool to each of the participants.



Workshop on "mesures d'accueil" on February 25 and 26, 1997 at the Richmond Inn.

(from l. to r.)

France Felder (Anne Hébert School);

Mireille Houle (André Piolat School);

Lara Sigurdsson (Collettville School, Merritt);

Frédérique Grenouillat (APFCB);

Paola Winkler (Keating School, Saanich);

Nathalie McGraw Ferron

(Westview School, Prince Rupert).

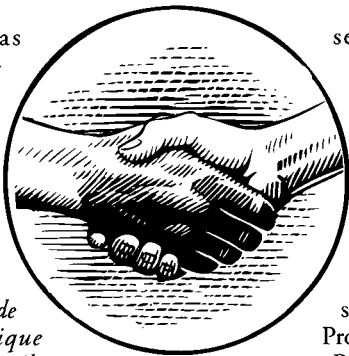
CSF Resource Centre

The CSF consultative process "Creating the Ideal Francophone Education Program" made it clear that there is a need to set up a teaching and cultural resource centre. The CSF has begun looking into how this goal can be reached. The primary objective of this centre would be to make teaching materials and resources available to all teachers in BC's Francophone Program. Such accessibility would facilitate teaching and would allow for resource sharing amongst Francophone schools. The emphasis will be on technology so that the centre can be available to the greatest number of people (Internet, computerized data bases, etc.). It will also be the primary location for teachers' professional development.

CSF Partners

The *Conseil* has continuous contact with the Francophone community and believes that Francophone associations throughout the province are partners in education. The *Association des parents Francophones de la Colombie-Britannique* (APFCB) and the *Conseil* are linked through their ongoing dialogue and both organizations work closely with parents.

In addition, the *Fédération des francophones de la Colombie-Britannique* (FFCB) and the APFCB continue to exert political pressure and are co-petitioners in a law suit against the provincial government in BC's Supreme Court. The suit was launched in order to



secure full governance over Francophone Programs in British Columbia.

Educacentre's participation is unique in that it offers specialized programs and services. This agency was involved in the teachers' orientation week and is currently offering orientation sessions in Francophone Program schools.

BC's Ministry of Education French Programs Branch is also a CSF partner. We meet regularly with education specialists to discuss budgets, training, technological developments, summer courses, entry programs, specialized services and the development of curriculums.

A number of connections were also made with other Canadian Francophone education authorities, particularly during

the founding meeting of *Éducation francophone*. Eighteen Francophone education representatives from Canada's West and North West met in Regina in January 1997 in an effort to find solutions to shared Francophone education requirements within these regions at the secondary and post-secondary levels. At the close of this first meeting, participants agreed to implement a number of initiatives and some agreed to take leadership roles. The CSF is responsible for the initiative entitled "Defining the Francophone School in a Minority Environment".

Technology and Development

There is no question that technology is one of the key elements for success in implementing Francophone school governance. The CSF has a high speed Internet connection which improves communication and enables users to consult the web site where all relevant information is posted. One of the CSF goals is to develop an information and resource site with communication links creating a network of Francophone schools.

In January of 1997, the Director of Educational Services, and the head of technology and mediated teaching, made a fact-finding visit to Quebec in order to set up contacts with Francophone organizations and institutions in the field of education. They were able to see how technology is integrated into teaching at the primary and secondary levels there and had the opportunity of visiting computerized schools and examining the various information networks being used for distance education, educational services and school administration.

The CSF has also begun developing a five-year technology strategy in conjunction with the Provincial Learning Network (PLN) which is the govern-



ment agency responsible for overseeing technical development within provincial school boards. A "Techno Committee" comprising teachers and senior school administrators who are interested in this field has been struck to begin evaluating the technological requirements of Francophone schools. This committee also hopes to organize courses for students using these new technologies.

The *Conseil scolaire* is relying on technology to help solve the problems of a school population widely scattered throughout the province. The CSF supports distance education as a means of providing students with a complete program in French, particularly for those at the post-secondary level. An initial groundbreaking meeting with the Ministry of Education and the Open Learning Agency (OLA) examined how the current distance education system – known as *Télécolombie* – is working.

ment agency responsible for overseeing technical development within provincial school boards. A "Techno Committee" comprising teachers and senior school administrators who are interested in this

The CSF Population

- The *Conseil scolaire francophone* oversees 23 Francophone programs and a staff of approximately 130 people.
- There are approximately 1,700 students, which is about equivalent to a smaller English-language school board.
- Twenty-eight Francophone programs are currently being offered by 15 school boards outside of the CSF's jurisdiction.
- Three of the elementary programs have a student body of between 200 and 340 students, five have between 100 and 200 students, six have an average of 65 each, eight have between 35 and 50, while five have fewer than 25 students.



Francophone Elementary and Intermediate programs

*Francophone Programs at the Secondary Level

ABBOTSFORD

North Poplar Elementary

* W.J. Mouat Secondary

COQUITLAM

Millside Elementary

* Como Lake Jr. Secondary

* Centennial Sr. Secondary

DELTA

Richardson Elementary

* Burnsvie Jr. Secondary

* North Delta Sr. Secondary

MISSION

Mission Central Elementary

* Mission Secondary

NORTH VANCOUVER

École André Piolat

* Balmoral Jr. Secondary

* Handsworth Secondary

SAANICH

Keating Elementary

SARDIS/CHILLIWACK

École La Vérendrye

* Vedder Jr. Secondary

* Sardis Sr. Secondary

SURREY/WHITE ROCK

K.B. Woodward Elementary

White Rock Elementary

VANCOUVER

École Anne Hébert

* Kitsilano Secondary

VICTORIA

École Brodeur

* École Brodeur

- Eight junior high programs have between 7 and 45 students each.
- Three secondary programs have around 100 students each, seven have an average of 20 each, and six have between 5 and 15.

Other

- In the 1995-1996 year, more than 2,500 Francophone students were registered in the Francophone Program in 25 provincial school districts.
- Most of the students in BC who are eligible for the Francophone Program come from families where only one parent is Francophone, and 98 per cent of these students are bilingual.
- Approximately 300 people work in the Francophone program in the province of British Columbia, including those schools governed by the CSF.

Recruitment of CSF Members

The Francophone Education Regulation require prospective users of the CSF to become members in order to be eligible to vote for the 15 Delegate Members and for the five Directors at the Annual General Meeting of the *Conseil scolaire*. Membership in the CSF is also required if you wish to register a child in the Francophone Program in the Fraser Valley, Greater Vancouver, or Southern Vancouver Island Wards. Anyone from outside the area covered by the CSF may also become a member and take part in elections in anticipation of the CSF expanding to all regions of the province.

The CSF conducted its first membership drive in the Spring of 1996 in conjunction with representatives from parent committees and Francophone associations. The associations distributed and collected forms and ensured that Affirmation documents were certified by a commissioner for taking affidavits. Twelve hundred memberships were taken out during this first provincial initiative. A second campaign in September of 1996 increased the membership to 1,700.

In an effort to overcome some of the problems in the membership registration process – specifically the requirement that applicants' Affirmation documents be certified by a commissioner for taking affidavits (notary public, judge, lawyer, etc.) – the Board of Directors submitted to the Ministry of Education a proposed amendment to the Regulations. The CSF received a positive response to their submission in December 1996 and immediately launched a third membership drive. In this campaign, a simplified form was distributed with 5,000 copies of the CSF newsletter and through the *Soleil de Colombie-Britannique* newspaper.

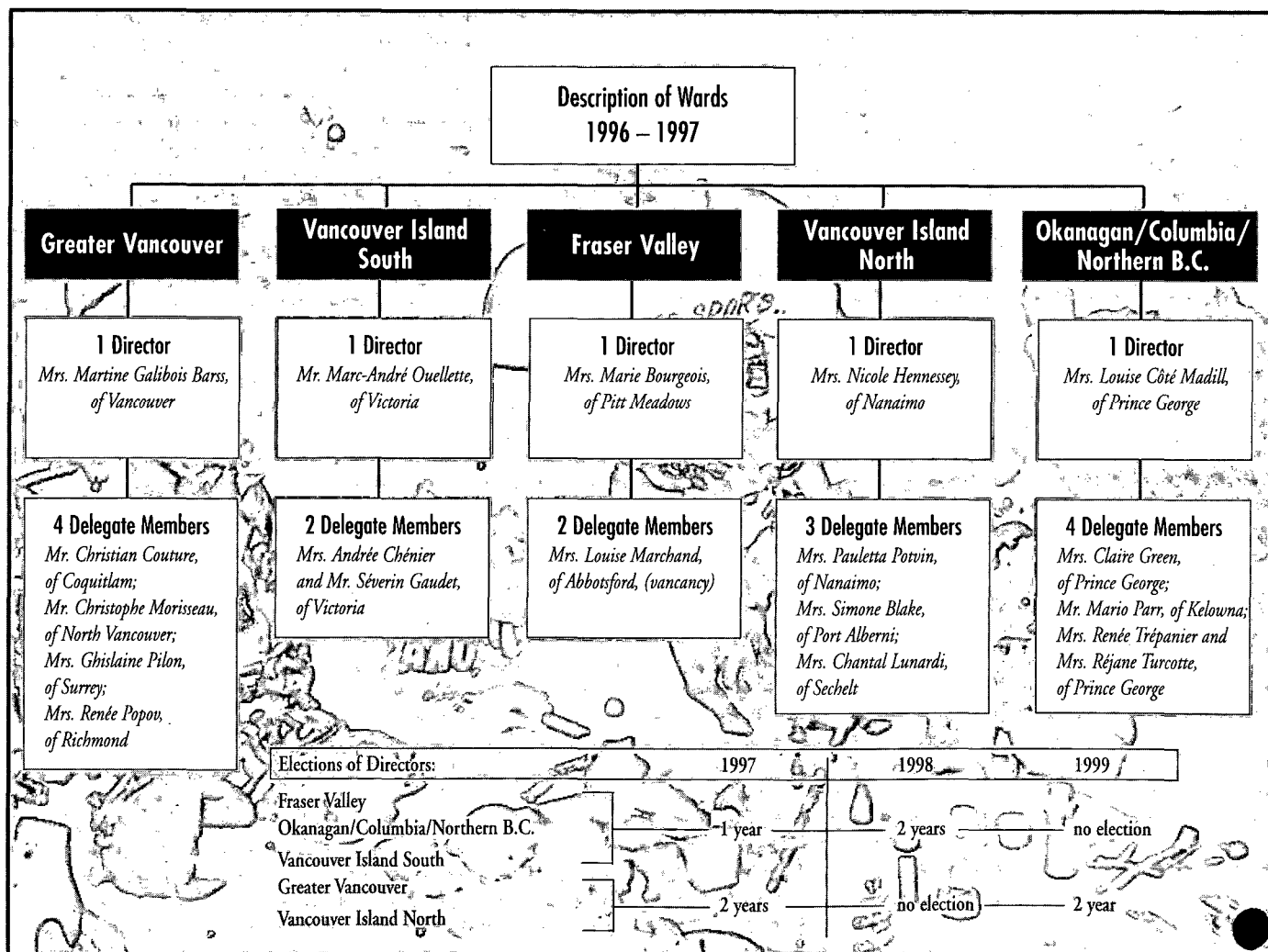
Elections

within the Conseil scolaire
francophone de la C.-B.



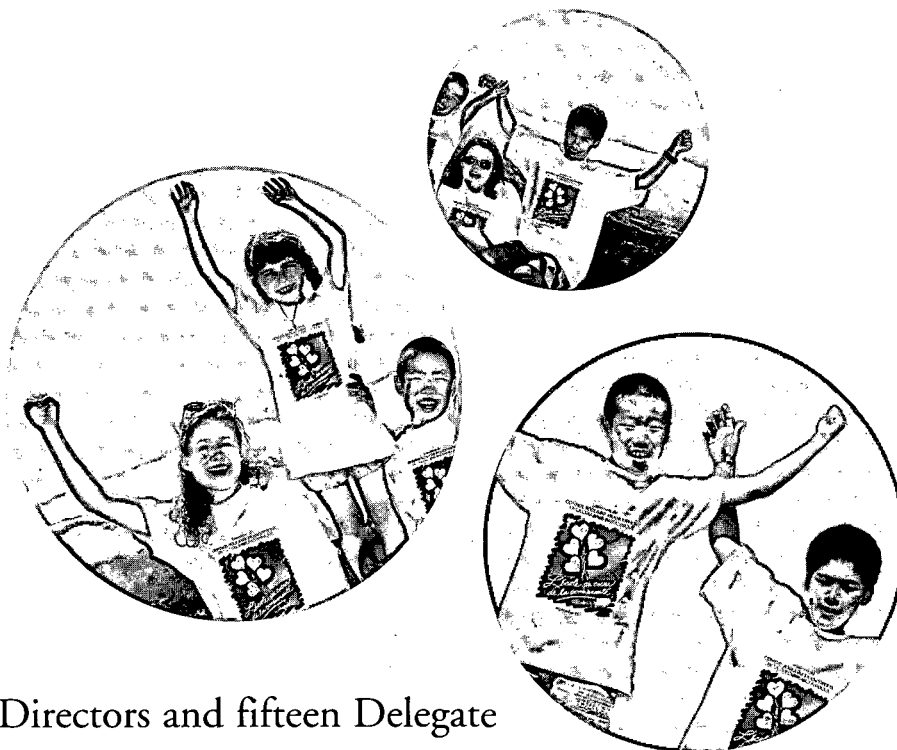
The *Conseil's* first elections were launched on October 15, 1996 with a nomination period for the five Director positions and the 15 Delegate Member positions within the province's five wards. By the end of this period, on November 14th, 34 nominations had been accepted, 12 of which were for the position of Director and 22 for the position of Delegate Member.

First Elections Results



Electoral campaigning took place either through public meetings or the mailing out of campaign materials. In fact, the entire process eventually took place by mail in accordance with the Regulation. The CSF sent ballots to each of its members who in turn returned the stamped envelope containing the ballot no later than January 13, 1997.

Out of a total of 1,699 members, 649 exercised their right to vote. The newly elected Directors and Delegate Members will begin their terms of office on March 15, 1997, at the time of the CSF's Annual General Meeting. The Chief Executive Officer Jean-Guy Vienneau, issued a press release on January 14 to announce the elections results.



“This first ever election of five Directors and fifteen Delegate Members is an important step toward implementing the *Conseil scolaire francophone* (CSF). Thirty-eight percent of members took part in the elections and the many candidates ensured that this process was a success....”

THE FOLLOWING ARE THE ÉLECTION RESULTS FOR DIRECTORS
AND DELEGATE MEMBERS BY WARD:

ELECTIONS 96/97

	TOTAL / MEMBERS	VOTES CAST	% TURNOUT
10 - Greater Vancouver	803	289	36 %
20 - Fraser Valley	198	64	32 %
30 - Vancouver Island North	151	69	46 %
40 - Vancouver Island South	325	131	40 %
50 - Okanagan/Columbia/ Northern B.C.	222	96	43 %
TOTAL	1699	649	38 %

Promoting the Francophone Education Program



The *Conseil scolaire francophone* has developed a comprehensive communication strategy to advertise the Francophone Program and to recruit new students.

Some of the strategies to get the message out include

advertising campaigns in English-language newspapers in the Spring and late Summer, publication of a brochure promoting Francophone Program schools, and, of course, regular publication of the CSF newsletter. This newsletter, originally published under the name of "Transition," was introduced in March of 1996 and 7 issues have already been published. Seven thousand copies are printed every two months in both official languages.

The *Conseil* also decided to issue a brief informational pamphlet on major decisions being made at each of the meetings. This information leaflet was distributed to Delegate Members, teachers, schools, parent committees and CSF members.

In September 1996, the CSF distributed 1996-1997 school calendars to all students, teachers and parents. It contains a wealth of information about the CSF ranging from the electoral process to a

comprehensive list of British Columbia schools offering the Francophone Program. A bookmark displaying the CSF's vision and mission statements was handed out at the beginning of the school year to celebrate the official inauguration.

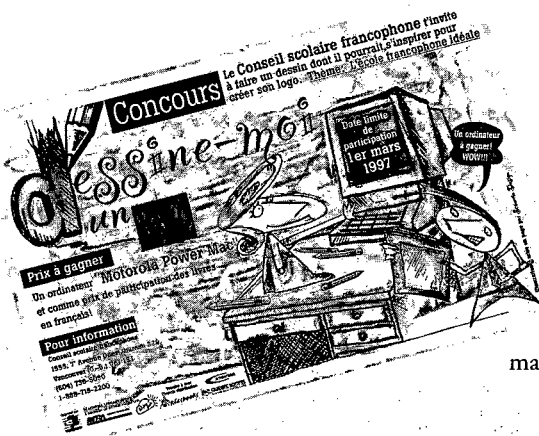
In the realm of telecommunications, the *Conseil* is promoting its toll-free telephone number (1-888-715-2200) which has been available since April 1996 to respond to the many queries. An e-mail address and Internet Web Site have been operational since January of 1997. These promotional tools play a decisive role in making the CSF more accessible and in increasing the reputation of the Francophone Program.



CSF Logo Competition

A logo design competition was open to students in Grades 1 through 12 in the Francophone Program. Promotional posters, contest rules and sign-up forms were sent to every schools to encourage students to submit their works before March 1, 1997. Ten merchants generously donated prizes to be awarded to participants. The winner was presented with a Motorola Power Macintosh computer. Unveiling of the winning design took place at a press conference during the Francophone celebration *la Semaine de la francophonie en C.-B.*

The winning logo is now displayed on all stationery and promotional materials issued by the CSF.



The School and the Community: Connected Cultural Environments

School plays a major cultural role in minority environments. It is often where the community comes together. With the partnerships it establishes in the community, the school provides learners with reference points and cultural activities and services that give them a sense of belonging. It is a priority for Francophones living in BC and for the CSF to set up partnerships with the Francophone organizations that stimulate community life. During the consultative process led by the CSF from September to December 1996, it became abundantly clear that the activities available to Francophone students will determine their commitment to the Francophone community, their sense of identity and belonging, and will impact positively on their academic and social development. The following are partnership initiatives developed by the *Conseil scolaire francophone* in various community activities.

- a video production shown during the *Forum sur la culture* organized from February 21 to 23, 1997 by the *Consortium en Éducation (Conseil jeunesse Francophone de la C.-B., Educacentre and the Association des parents Francophones de la C.-B. and their partners)*;
- school matinees of the *Rendez-vous du cinéma québécois*, February 1997;
- the *Festival du Bois* attended by nearly 1,000 students in the Francophone Program on its school program day, March 5, 1997;
- the *Semaine nationale de la francophonie*, from March 9 to 15, 1997.

A well-attended family picnic to celebrate the creation of the Conseil scolaire francophone brought together staff members, parents, teachers, children and the Francophone community at Spanish Banks on September 28, 1996.



Special guests to the "Forum sur la culture" view an introductory video to the weekend discussions in Vancouver on February 21 to 23, 1997.

(From l. to r.) Mrs. Dominique Pilon, Program Officer, Heritage Canada; Mr. Marc-André Ouellette, Director for the Vancouver Island South Ward; Mrs. Nicole Hennessey, Director for the Vancouver Island North Ward; Mr. Jean-Guy Vienneau, Chief Executive Officer of the CSF; Mrs. Marie Bourgeois, newly elected Director for the Fraser Valley Ward and Mrs. Diane Côté, President of La Fédération des francophones de la C.-B.



The CSF, its Future and Priorities

The *Conseil scolaire francophone* will be facing a significant number of challenges in the months and years to come. The CSF is therefore in the midst of strategic planning that will set its course to the year 2001. Consultations will take place with partners before final publication of these strategic guidelines.

During this process the CSF will be concentrating on the following issues:

- integration of teaching staff and full Francophone school governance;
- establishment of regional secondary schools and stand alone Francophone schools where possible;
- changes to the Regulation in order to give full, province-wide control to the CSF;
- implementation of specialized services in all Francophone Program schools;
- program promotion and (entitled) student recruitment;
- creation of a permanent mechanism for consultation.

Staff Members:

Jean-Guy Vienneau
Chief Executive Officer

Nick Ardanaz
Director of Educational Services

Carole Toscano
Director of Communications

Odette Lemieux
Administrative Officer

Hélène Adl
Executive Secretary and
Secretary to the Board

Marie-Andrée Mathieu
Secretary/Receptionist

Francine Benoit
Community Liaison Officer

Sylvie Boutonné
Educational Research Assistant

Denis Deschênes
Coordinator of Technology
and Distance Education

États Financiers et rapport du vérificateur

Rapport du vérificateur

Présenté au Conseil d'administration

Conseil scolaire francophone

Nous avons examiné les états financiers du Conseil scolaire francophone au 30 juin 1996 et pour le semestre clos à cette date.

Nous avons effectué notre vérification conformément aux normes de vérification généralement reconnues.

À notre avis, ces états financiers présentent raisonnablement, selon la forme prescrite et à tous égards importants, la situation financière du Conseil scolaire francophone au 30 juin 1996 et les résultats de ses opérations pour la période de six mois terminée à cette date conformément aux principes comptables divulgués à la note 1 annexée aux états financiers.

Doane Raymond
Comptables agréés
Richmond (Canada)
Le 5 septembre 1996

Fonds de fonctionnement – Bilan

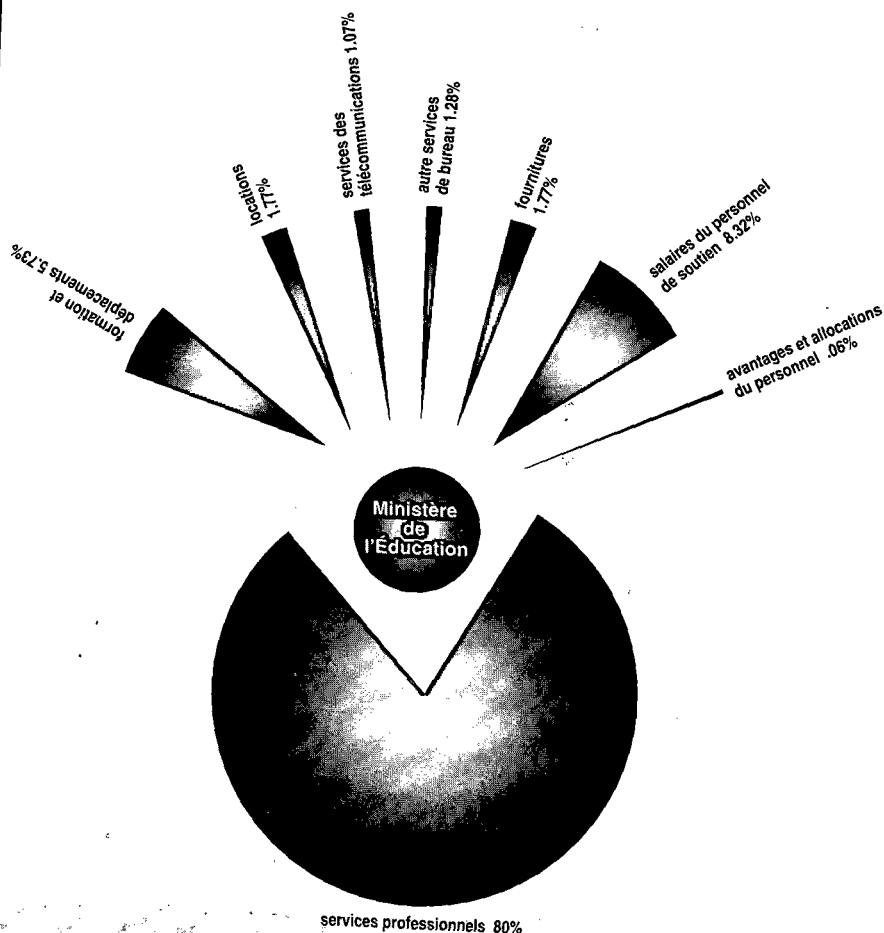
1^{er} janvier au 30 juin 1996

Revenus	776, 750
	155, 000
	931, 750

Dépenses	564, 676
Surplus	212, 074
Fond Capital	155, 000
	931, 750

Fonds de fonctionnement – Distribution des dépenses

1^{er} janvier au 30 juin 1996



8140-6-96



ASSOCIATION DES PARENTS FRANCOPHONES
DE LA COLOMBIE-BRITANNIQUE

1555, 7e Avenue Ouest, bureau 223
Vancouver, Colombie-Britannique V6J 1S1

par rem
Faites des copies pour les 3

MESSAGE PAR TÉLÉCOPIEUR - FAX MESSAGE

DATE:

12 juin 1996

A/TO:

Roger Collett - Roger Farby
et Hilaire Remoyne

DE/ FROM:

Martine Galois Baess
APFCB

SUJET/ RE:

Justice Canada Chamber brief -
toilette paper -
~~toilette~~

38
N° PAGES/ # PAGES

Avec des amis comme ça
nous n'avons plus besoin
d'exercices

et moi qui croyait que Patrimoine
était le chef de Justice Canada avec
comme interressant pour le pays
la cause des parents en C.B. Martine

1996 10:38AM

JUSTICE CANADA

NO.892

P.2/38

EBAUCHE
No. A890762
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

L'ASSOCIATION DES PARENTS FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, LA FÉDÉRATION DES FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, AND PIERRETTE LARRIVÉE WOODS, DANIEL LE SCIELLER, LOUIS BRIÈRE, DEEDRE WARD-FOGARTY, MICHEL LEROUX, DIANE DUPUIS, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS RESIDING IN THE VANCOUVER/LOWER MAINLAND AND VICTORIA REGIONS HAVING FRENCH LANGUAGE EDUCATIONAL RIGHTS PURSUANT TO S. 23 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, BEING PART I OF THE CONSTITUTION ACT, 1982, S.C. 1982

Plaintiffs

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**

AND:

**THE MINISTER OF EDUCATION OF THE PROVINCE OF
BRITISH COLUMBIA**

AND:

**THE ATTORNEY GENERAL OF THE PROVINCE OF
BRITISH COLUMBIA**

Defendants

AND:

THE COMMISSIONER OF OFFICIAL LANGUAGES

AND:

THE ATTORNEY GENERAL OF CANADA

Interveners

**Chamber's Brief of the
Attorney General of Canada**

**George Thomson
Deputy Attorney General of Canada
Department of Justice
239 Wellington Street
Ottawa, Ontario
K1A 0H3**

**Johannes Van Iperen
Michel Francoeur
Counsel for the
Attorney General of Canada
Vancouver Regional Office
Robson Court
900-840 Howe Street, Vancouver, BC
V6Z 2S9
Tel.: (604) 666-1340**

1996 10:39AM

JUSTICE CANADA

NO. 892 P. 3/38

TABLE OF CONTENTS

I.	NATURE OF ACTION	1
II.	INTERVENTION OF THE ATTORNEY GENERAL OF CANADA	3
III.	ISSUES AT BAR	4
IV.	FACTS	5
V.	LAW	6
A)	RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS	6
B)	PURPOSE OF S. 23 OF THE CHARTER	10
C)	GENERAL INTERPRETATIVE PRINCIPLES	11
D)	"SLIDING SCALE" METHOD	12
E)	PROVINCIAL OBLIGATIONS	16
F)	NUMBERS	18
G)	LEGISLATIVE SCHEME OF B.C. AND ISSUES AT BAR	20
VI.	CONCLUSION	34

JUN. 11. 1996 10:39AM

JUSTICE CANADA

NO. 892

P. 4/38

I. NATURE OF ACTION

1. Pursuant to sections 23 and 24(1) of the *Canadian Charter of Rights and Freedoms* (hereinafter, the "*Charter*"), the Plaintiffs ask this Honourable Court to declare that the number of Francophone students in the Vancouver/Lower Mainland and Victoria regions of the province of British Columbia is sufficient to warrant, out of public funds, the provision of primary and secondary French minority language instruction in facilities managed and controlled by the Francophone minority.

- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982, c.11, ss. 23 and 24(1).

2. In addition, pursuant to ss. 23 and 24(1) of the *Charter*, the Plaintiffs ask this Honourable Court to declare that in the regions mentioned above, they are entitled to have their children educated in facilities — and to powers of management and control thereof — at least equivalent to those of the school boards of the majority.

3. On that basis, the Plaintiffs ask this Honourable Court to declare that the *School Act* and the *Francophone Education Regulation* are inconsistent with s. 23 of the *Charter*, and therefore of no force and effect pursuant to s. 52 of the *Constitution Act*, 1982.

- *Constitution Act*, 1982, *supra*, s. 52;
- *School Act*, R.S.B.C. 1979 c.375.1;
- *Francophone Education Regulation*, made by Order-in-council 1345, B.C. Reg. 457/95, B.C. Gazette, Vol. 38, No. 23 (hereinafter, the "*Regulation*").

4. Assuming such a declaration is made by the Court, the Plaintiffs also ask this Honourable Court, pursuant to s. 24(1) of the *Charter*, to suspend temporarily the effects of its declaration or to declare that the *School Act*, its amendments, regulations, orders in council and ministerial orders will have temporary validity until an appropriate legislative scheme is adopted to ensure the effective implementation of the rights of the Plaintiffs under

JUN. 11. 1996 10:39AM

JUSTICE CANADA

ND. 852

P. 5/38

- 2 -

s. 23 of the *Charter*, alternately, the Plaintiffs ask this Honourable Court to read into the *School Act* provisions which remedy the constitutional failing of the *Act*.

5. Finally, the Plaintiffs ask this Honourable Court, pursuant to s. 24(1) of the *Charter* and ss. 40, 182 and 190 of the *School Act*, to order the Defendants to create a French Language School District and a French Language School Board or Boards; to make provision for, and to transfer such human and material (moveable and immovable) resources to establish, administer and operate the French Language District and School Board(s); to appropriate public funds in an amount not less than \$1.5 million for the implementation costs of the French Language District, and a further amount of not less than \$8,633 per projected pupil per year for the basic operational costs of the French Language School District and its programs; to enact legislation guaranteeing the Francophone School District's right to mandatory funding for operating and capital expenses, equivalent to the funding provided to the public school districts; to cause an election of Trustees of the French Language School District amongst eligible parents under s. 23 of the *Charter*, and to establish matriculation requirements for the French Language School District.

JUN. 11. 1995 10:37AM

JUSTICE CHAMN

- 3 -

II. INTERVENTION OF THE ATTORNEY GENERAL OF CANADA

6. On May 16, 1995, the Attorney General of Canada sought leave to intervene in this case before this Honourable Court, which was granted by the Honourable Mr. Justice MacDonald.

- Order of the Honourable Mr. Justice MacDonald, dated May 16, 1995.

7. In the affidavit supporting the motion to intervene by the Attorney General of Canada, it is stated that the Attorney General of Canada will not adduce evidence or necessarily support the position taken by any party. Rather, the Attorney General of Canada wishes to act as an *amicus curiae* and call the attention of the Court to several important points of law that might otherwise not be considered.

- Affidavit of Michel Francoeur, April 20, 1995, at par. 10.

8. The submissions of the Attorney General of Canada in this case are consequently made to assist the Court in the interpretation of the broad principles which form the basis of s. 23 of the *Charter*, as enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839.

9. On that basis, the Attorney General of Canada does not take any concluded position with regard to the consistency or inconsistency of the *School Act* and the *Francophone Education Regulation* with s. 23 of the *Charter*.

JUN. 11. 1996 10:40AM

JUSTICE CANADA

NO. 892 P. 1158

- 4 -

III. ISSUES AT BAR

10. The general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as construed by the Supreme Court of Canada. More specifically, four issues relating to principles of minority language educational rights are raised by the Plaintiffs:

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23?
- (b) Does s. 23 of the *Charter* require the systematic establishment of a management organization identical to that of the linguistic majority?
- (c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding to the linguistic minority?
- (d) Does s. 23 of the *Charter* guarantee a right to property acquisitions and capital expenditures?

JUN. 11. 1996 10:40AM

JUSTICE CANADA

NO. 892

P. 8/38

- 5 -

IV. FACTS

11. The Attorney General of Canada does not take issue with the facts as agreed to between the Plaintiffs and the Defendants and set out in the Agreed Statement of Facts.

JUN.11.1996 10:40AM

JUSTICE CANADA

NO. 892

P. 9/88

- 6 -

V. LAW

A) RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

12. The issues at bar relate to section 23 of the *Charter*, which reads as follows:

23.(1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(4) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

SUN. 11.1996 10:40AM

JUSTICE CANADA

NO. 892

P.10/38

- 7 -

- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

23.(1) Les citoyens canadiens :

a) dont la première langue apprise et encore comprise est celle de la minorité francophone ou anglophone de la province où ils résident,

b) qui ont reçu leur instruction, au niveau primaire, en français ou en anglais au Canada et qui résident dans une province où la langue dans laquelle ils ont reçu cette instruction est celle de la minorité francophone ou anglophone de la province.

ont, dans l'un ou l'autre cas, le droit d'y faire instruire leurs enfants, aux niveaux primaire et secondaire, dans cette langue.

(2) Les citoyens canadiens dont un enfant a reçu ou reçoit son instruction, au niveau primaire ou secondaire, en français ou en anglais au Canada ont le droit de faire instruire tous leurs enfants, aux niveaux primaire et secondaire, dans la langue de cette instruction.

(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province:

- a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

JUN 11 1996 10:41AM

JUSTICE CANADA

NO. 896

P. 11/28

- 8 -

- b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

13. The issues to be decided also relate to section 5 of the *School Act*, which reads as follows:

5.(1) Every student is entitled to receive an educational program that is provided in the English language.

(2) Students whose parents have the right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in a language other than English are entitled to receive that instruction.

(3) Subject to the approval of the minister, a board may permit an educational program to be provided in a language other than as provided under subsections (1) and (2).

(4) The Lieutenant Governor in Council may make regulations

- (a) respecting the provision of educational programs in languages other than English,
- (b) to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*, and
- (c) determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2),

and may make different regulations for different circumstances.

JUN. 11. 1996 10:41AM

JUSTICE CANADA

NO. 892 P. 12/38

- 9 -

14. Finally, the issues to be decided relate to the *Francophone Education Regulation*; the key provisions of the *Regulation* (ss. 2(1), 3(1), 4(1), 7(1) to (3) and 11(1) to (4)) read as follow:

- 2.(1) There is established as a Francophone Education Authority a corporation known as the *Autorité Scolaire* with the articles set out in Schedule B.
- 3.(1) Subject to this regulation and the enactments referred to in section 17, a Francophone Education Authority has the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction.
- 4.(1) Subject to this regulation and the enactment referred to in section 17, a Francophone Education Authority must make available a Francophone educational program to all eligible students resident in its prescribed area who enroll in a Francophone educational program provided by the Francophone Education Authority.
- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
 - (a) the establishment, maintenance and operation of the Francophone Education Authority;
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- 7.(2) The minister must by grant provide to a Francophone Education Authority that portion of the money provided for the Francophone Education Authority by the federal government that is identified as being for capital expenditures of the Francophone Education Authority.
- 7.(3) A Francophone Education Authority that receives money under subsection (1) must budget, spend and account for that money in accordance with any directions of the minister provided to the Francophone Education Authority.
- 11.(1) A Francophone Education Authority may, for educational purposes, including the provision of housing accommodation for eligible students or employees, Francophone Education Authority offices and outdoor activities,

JUN. 11. 1996 10:41AM

JUSTICE CANADA

NO. 892 P. 13/38

- 10 -

- (a) with the approval of the minister, lease, as lessee, land or land and improvements within or outside of its prescribed area, and
 - (b) subject to the orders of the minister and with the approval of the minister, dispose of a leasehold interest referred to in paragraph (a).
- (2) A Francophone Education Authority, with the minister's prior approval, may enter into an agreement with municipalities or regional districts that are located in or located in part of the Francophone Education Authority's prescribed area or with boards for school districts that are located in the Francophone Education Authority's prescribed area or with other persons for
- (a) the maintenance, operation or joint use of facilities, or
 - (b) contribution to the cost of the maintenance or operation of facilities for the joint use of those facilities by the Francophone Education Authority and one or more of the following that are located in or located in part of the Francophone Education Authority's prescribed area:
 - (i) a municipality;
 - (ii) a regional district;
 - (iii) a board.
- (3) A Francophone Education Authority must not use for a capital expense any money provided to it by the government, other than money identified by the minister as being money provided by the federal government for capital expenses.
- (4) A Francophone Education Authority must obtain the approval of the minister before
- (a) acquiring land or improvements with the money provided to it for capital expenses under subsection (3), and
 - (b) disposing of any land or improvements as required.

B) PURPOSE OF S. 23 OF THE CHARTER

15. In the unanimous decisions of *Mahe v. Alberta*, *supra*, and *Reference Re Public Schools Act (Man.)*, *supra*, the Supreme Court of Canada has expressed the broad principles which form the basis for the application of section 23 of the *Charter*. More specifically, the importance of section 23 in Canadian law and society was underlined as it relates to the linguistic duality of the country.

001748

JUN. 11. 1996 12:42AM

JUSTICE CANADA

NO. 892

P. 14/33

- 11 -

Section 23 is one component in Canada's constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism.

- *Mahe v. Alberta, supra*, at 350.

16. Furthermore, the general purpose of s. 23 of the *Charter* was defined by the Supreme Court of Canada as the preservation and promotion of both official languages and their respective cultures, by assuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population: to achieve this goal, s. 23 grants minority language educational rights to minority language parents throughout Canada.

- *Mahe v. Alberta, supra*, at 362;

- *Reference Re Public Schools Act (Man.), supra*, at 849.

C) GENERAL INTERPRETATIVE PRINCIPLES

17. Given the nature of s. 23 and the novel form of legal right that it provides, the Supreme Court of Canada has outlined several interpretative guidelines for the purpose of defining the rights guaranteed by this section. Firstly, a purposive approach should be taken by the courts when interpreting these educational rights.

Therefore, in accordance with the purpose of the right as defined in *Mahe*, the answers to the questions should ideally be guided by that which will most effectively encourage the flourishing and preservation of the French-language minority in the province.

- *Reference Re Public Schools Act (Man.), supra*, at 850.

JUN. 11. 1996 10:42AM

JUSTICE CANADA

NO. 892

P. 15/38

- 12 -

18. Secondly, section 23 has a remedial nature which aims at correcting a situation of previous injustices which has existed in Canada and that requires the enhancement of protection for minority language rights.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 850;
- *Meiorin v. Alberta*, *supra*, at 363-364.

19. Thirdly, the historical context of language and culture remains relevant in the interpretation and application of s. 23 in various situations, in order to be sensitive to and aware of the unique blend of linguistic dynamics that have developed in each province.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 851.

20. Finally, the Supreme Court of Canada has indicated that s. 23 should not be given a particularly narrow construction, and that it was open to courts to breathe life into the clearly expressed purpose of s. 23; however, the Court also stressed that prudent interpretation of s. 23 was wise insofar as it places positive obligations on governments to develop major institutional structures.

- *Meiorin v. Alberta*, *supra*, p. 364-5; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 851-2.

D) "SLIDING SCALE" METHOD

21. The Supreme Court of Canada has ruled that the general right to minority language instruction provided under s. 23 should not be construed "as only encompassing two rights — one with respect to instruction and one with respect to facilities — each providing a certain

JUN. 11. 1996 10:42AM

JUSTICE CANADA

NO. 892 P. 16/38

- 13 -

level of services appropriate for one of two numerical thresholds"; rather, the Court is of the opinion that a sliding scale approach is preferable:

[Section] 23 should be viewed as encompassing a "sliding scale" of requirement, with subs. (3)(b) indicating the upper level of this range and the term "instruction" in subs. (3)(a) indicating the lower level. The idea of a sliding scale is simply that s. 23 guarantees whatever type and level of rights and services is appropriate in order to provide minority language instruction for the particular number of students involved.
[...]

The sliding scale approach is preferable to the separate rights approach, not only because it accords with the text of s. 23, but also because it is consistent with the purpose of s. 23. The sliding scale approach ensures that the minority group receives the full amount of protection that its numbers warrant.

- *Mehe v. Alberta*, *supra*, at 366; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 850, 853.

22. The sliding scale approach establishes that what is required in any case will depend on what the numbers warrant. While large numbers of students can give rise to a comprehensive right to minority language instruction and facilities, as the numbers decrease so does the content of the right to minority language instruction: as a consequence, when the numbers are very small, the content of the right may not require that any programs be put in place at all.

- *Mehe v. Alberta*, *supra*, at 367;
- *Reference R Public Schools Act (Man.)*, *supra*, at 857.

23. To determine the content of the right to instruction and facilities under s. 23, the courts must therefore address the "where numbers warrant" question. In that regard, the

JUN. 11. 1996 18:43AM

JUSTICE CANADA

NO. 692 P. 17/38

- 14 -

Supreme Court of Canada has refused to apply a rigid formula, and ruled that the relevant figure for the purposes of determining what numbers warrant is

[...] the number of persons who can eventually be expected to take advantage of a given programme or facility. While this figure is admittedly impossible to know with certainty, it can be estimated by considering the parameters within which it must fall: the known demand for the services and the total number who potentially could take advantage of the service.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 858; see also *Mahe v. Alberta*, *supra*, at 384.

24. The "numbers warrant" provision requires, in general, that two factors be taken into account in determining what s. 23 demands in a particular situation: (1) the pedagogical services which are appropriate for the number of students involved; and (2) the cost of the contemplated services. However, in situations where cost may hamper pedagogical requirements, the remedial nature of s. 23 suggests that pedagogical considerations will have more weight than financial requirements in determining whether the numbers warrant a particular educational scheme.

- *Mahe v. Alberta*, *supra*, at 384-385;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 850.

25. Moreover, where numbers warrant, s. 23 grants a right of management and control, both by virtue of the textual analysis of par. 23(3)(b) — in which the expression "minority language educational facilities" does not mean only physical structures *per se* — and by virtue of the purpose of s. 23, whereby such control is essential to the protection and the promotion of the language and culture of the minority throughout Canada.

Such management and control is vital to ensure that their language and culture flourish. It is necessary because a variety of management issues in education, e.g., curricula, hiring and expenditures, can effect linguistic and cultural concerns. I think it incontrovertible that the health and survival of the

JUN.11.1996 10:43AM

JUSTICE CANADA

NO.852 P.18/38

- 15 -

minority language and culture can be affected in subtle but important ways by decisions relating to these issues.

- *Mahe v. Alberta, supra*, at 372.

26. The forms which the management and control of educational facilities may take will vary depending on the number of children involved, in accordance with the sliding-scale approach. The scheme will consequently vary according to the circumstances: for instance, it may include the establishment of a separate school board in all or part of the territory, or guaranteed proportional representation within the existing school boards — or a mix of the two —, and it may also require distinct physical settings and facilities.

- *Mahe v. Alberta, supra*, at 374-375;

- *Reference Re Public Schools Act (Man.)*, *supra*, at 852-6.

27. In circumstances where it may be sufficient to require linguistic minority representation on an existing school board, the Supreme Court of Canada has ruled that representatives should have exclusive authority to make some decisions relating to the minority language instruction and facilities, such as expenditures of funds, appointment and direction of persons in charge of the administration, establishment of programs of instruction, recruitment and assignment of personnel and teachers, and making agreements for education and services for minority language students.

- *Mahe v. Alberta, supra*, at 377.

28. That being said, the Supreme Court indicated that it remained difficult to spell out a detailed model of management and control for each particular province, region or district, and thus limited itself to a general description of the requirements mandated by s. 23, as effective powers of management and control by the linguistic minority group over its educational facilities will be exercised in different ways, according to local circumstances and the particular character of the education system in place. These factors will affect the

JUN. 11. 1996 10:43AM

JUSTICE CANADA

NO. 692 P. 19/38

- 16 -

methods to be applied to ensure respect for the constitutional rights of the linguistic minority groups in each particular situation.

- *Mahe v. Alberta, supra*, at 376 and 378-80;
- *Reference Re Public Schools Act (Man.), supra*, at 858-60.

29. Finally, it should be underlined that s. 23 of the *Charter* does not entitle the linguistic minorities to a specific legislative scheme; rather, it guarantees a right to a particular type of educational system.

- *Mahe v. Alberta, supra*, at 392;
- *Reference Re Public Schools Act (Man.), supra*, at 852.

E) PROVINCIAL OBLIGATIONS

30. The Supreme Court of Canada has indicated that there is a positive obligation on the provinces to put in place legislative schemes which ensure the effective and meaningful exercise of — and are not an obstacle to — the rights guaranteed by s. 23. Yet, the Court stressed that the widest degree of latitude possible must be given to the provincial authorities in designing the means by which they will respect their constitutional duties concerning minority language education rights.

- *Reference Re Public Schools Act (Man.), supra*, at 858.
- *Mahe v. Alberta, supra*, at 392-393.

31. To accomplish this, the province should have a full understanding of the needs of its linguistic minority population to be able to effect a proper implementation of its duties, and the minority language parents or their representatives should be involved in the assessment of educational needs and the setting up of structures and services which best respond to those needs.

JUN. 11. 1996 18:44AM

JUSTICE CANADA

NO. 892

P. 20/38

- 17 -

- *Reference Re Public Schools Act (Man.)*, *supra*, at 862.

12. The provincial authorities also have the duty to make educational services known and accessible to minority language parents, and to provide a level of education which will be on a basis of equality with that of the majority. However, it is not necessary that the educational system of the minority be identical to that of the majority.

[T]he specific form of educational system provided to the minority need not be identical to that provided to the majority. The different circumstances under which various schools find themselves, as well as the demands of a minority language education itself, make such a requirement impractical and undesirable.

- *Mohr v. Alberta*, *supra*, at 378; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

33. In addition, minority education structures and programs should benefit from public funding equivalent to that of the majority schools, with a view to ensuring the establishment of educational services equal to those of the majority. In fact, different circumstances — such as start-up costs and the absence of economies of scale — may warrant a higher per capita funding for students of the linguistic minority.

- *Mohr v. Alberta*, *supra*, at 378; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

34. Finally, the requirements of s. 23 constitute a minimum and not a maximum in the area of management and control of minority education, and nothing precludes provincial or local authorities from providing for a greater degree of management and control.

- *Mohr v. Alberta*, *supra*, at 379;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 864.

JUN. 11. 1996 10:44AM

JUSTICE CANADA

NO. 892

P. 21/32

- 18 -

F) NUMBERS

35. According to the 1991 Statistics Canada Census, the total number of eligible children in British Columbia under s. 23 of the *Charter* is 17 385; in comparison, the number of eligible children is 21 825 in Alberta, 16 100 in Manitoba and 9 885 in Saskatchewan. With regard to the Vancouver/Lower Mainland and Victoria regions, the numbers are at 8 725, while 1 611 students are currently enrolled in the *Programme cadre de français*, distributed in 25 schools.

- Agreed Statement of Facts, at 14, 17, 20, 24 and 25.

36. In the *Mahe* case, where the educational system of the French minority population of Edmonton was at issue, it was determined that approximately 3 750 children of school age (5-19 years of age) were eligible under s. 23 of the *Charter*, while the actual enrolment in the Francophone school of Edmonton was 242 students, from kindergarten to grade 6, with 73 students in grade 7 and 8 immersion programs. On that basis, the Supreme Court concluded that these numbers were sufficient to justify, in both pedagogical and financial terms, the creation of an independent school. However, the number of students was deemed insufficient by the Court to mandate the establishment of an independent Francophone school board, yet high enough to grant to the minority language parents the right to proportional representation on the school board of the majority, with the appropriate degree of management and control.

- *Mahe v. Alberta*, *supra*, at 386-389.

37. A different situation was considered by the Supreme Court of Canada in the *Reference Re Public Schools Act (Man.)* case, which dealt with the educational rights of the Francophone minority of Manitoba. On the question of the number of students, 5 617 students were found to be taking advantage of the programme of minority language

JUN.11.1996 10:44AM

JUSTICE CANADA

NO.892 P.22733

- 19 -

instruction, a number which was considered by the Court to fall on the higher end of the sliding scale. The Supreme Court of Canada therefore concluded that the number of actual French language students warranted the establishment of an independent French language province-wide school board in Manitoba, under the exclusive management and control of the French language minority.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 858-859.

38. From a strictly quantitative perspective, the number of students in the Vancouver/Lower Mainland and Victoria regions of British Columbia is significantly higher than the numbers referred to in the *Mahe* case with regard to the city of Edmonton, where the Supreme Court of Canada ordered the establishment of an independent school in addition to proportional representation on the majority school board, but remains somewhat lower than the numbers in the *Reference Re Public Schools Act (Man.)* case regarding the province of Manitoba, where the creation of an independent school board was ordered. Of course, the type of territory varies from one case to the other (i.e., a region in the case at bar, a province in the *Manitoba Reference* and a city in *Mahe v. Alberta*) and the more relevant numbers may be the province-wide numbers, which are at 17 385 in B.C., 16 100 in Manitoba and 21 825 in Alberta.

39. However, one should remain careful before making pure numerical comparisons between provinces in which the Francophone minority populations are distributed according to different demographic patterns, and where the facilities, management structures, pedagogical programmes and financial means may vary significantly.

JUN. 11. 1996 10:45AM

JUSTICE CANADA

NO. 892 P. 23/94

- 20 -

6) **LEGISLATIVE SCHEME OF B.C. AND ISSUES AT BAR**

40. The *School Act* of British Columbia provides that the parents covered by s. 23 of the *Charter* are entitled to have their children receive their instruction in the official language of the minority population, and that the Lieutenant Governor in Council may make regulations to give effect to s. 23 of the *Charter*.

- *School Act, supra*, ss. 5(2) and (4)(a), (b) (c) and *in fine*.

41. On that basis, the *Francophone Education Regulation* establishes the Francophone Education Authority (hereinafter, the "Authority"), which is described as having "the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction."

Regulation, supra, ss. 2(1) and 3(1).

42. The general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as developed by the Supreme Court of Canada. More specifically, four issues are raised by the Plaintiffs:

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23?
- (b) Does s. 23 of the *Charter* require the systematic establishment of a management organisation identical to that of the linguistic majority?

JUN.11.1996 10:45AM

JUSTICE CANADA

NO.892

P.24/38

- 21 -

- (c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding to the linguistic minority?
- (d) Does s. 23 of the *Charter* guarantee a right to property acquisitions and capital expenditures?

43. It should be underlined that the Plaintiffs also ask this Honourable Court to declare that the *Regulation* is *ultra vires* the *School Act*. The Attorney General of Canada takes no position with regard to this question, as it does not relate *per se* to the principles of minority language educational rights under s. 23 of the *Charter*. However, the Attorney General of Canada has the following observations regarding the other issues at bar.

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23?

44. The first issue is whether the fact that the linguistic minority education rights are implemented in British Columbia mainly through regulation, and not primary legislation, is consistent with s. 23 of the *Charter*.

45. The Supreme Court of Canada has indicated that s. 23 does not guarantee a particular legislative scheme, but rather a type of educational system, and that provincial authorities have a wide discretion in the selection of the means to implement s. 23; however, provincial authorities must at a minimum put into place a scheme which in its essential attributes has force of law and prescribes with sufficient precision the measures of implementation of s. 23 to ensure that minority language parents and children can exercise their rights effectively.

JUN. 11. 1996 10:45AM

JUSTICE CANADA

NO. 892

P. 25/28

- 22 -

[T]he right which the appellants possess under s. 23 is not a right to any particular legislative scheme, it is a right to a certain type of educational system. What is significant under s. 23 is that the appellants receive the appropriate services and powers; how they receive these services and powers is not directly at issue in determining if the appellants have been accorded their s. 23 rights.

[...]

[T]he government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met; the courts should be loath to interfere and impose what will be necessarily procrustean standards, unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right.

- *Mahe v. Alberta*, *supra*, at 392;

- *Reference Re Public Schools Act (Man.)*, *supra*, at 852.

46. It is true that the Supreme Court of Canada has also stated that "[s]ection 23 of the *Charter* imposes on provincial legislatures the positive obligation of enacting precise legislative schemes providing for minority language instruction and educational facilities where numbers warrant" (*Mahe*, *supra*, at 392-3, emphasis added). That statement, however, should be analyzed in the context of the particular legislative scheme which prevailed in Alberta at the time that case was heard by the Court. The relevant provisions of the *School Act* of Alberta, R.S.A., 1980, c. S-3, read as follows:

13(1). The Minister may establish any portion of Alberta as a public school district.

158. Subject to section 159, all pupils in school shall be taught in the English language.

159(1). A board may authorize

- (a) that French be used as a language of instruction, or
- (b) that any other language be used as a language of instruction in addition to the English language, in all or any of its schools.

(2) A board authorizing French or any other language as a language of instruction shall comply with the regulations of the Minister.

JUN. 11. 1996 10:46AM

JUSTICE CANADA

NO. 692

P. 26/38

- 73 -

- (3) Notwithstanding section 80, a board, subject to the regulations of the Minister, may employ one or more competent persons to give instruction in French or any other language to all pupils whose parents have signified a willingness that they should receive it.
- (4) The course of instruction must not supersede or in any way interfere with the instruction required by the regulations of the Minister and by this Act.
[Emphasis added]

47. It is respectfully submitted that these provisions are of the same type as the provisions of the *School Act* of British Columbia, insofar as both Acts state as a principle that French can be the language of instruction in schools of those provinces, while prescribing that it is for administrative or delegated authorities to regulate the implementation of such instruction. Yet, in *Mahe*, the Supreme Court of Canada indicated that the infringement of s. 23 of the *Charter* was not a result of the *School Act* of Alberta *per se*, but rather of the defective regulations passed thereunder and the inaction of the provincial authorities.

[I]t is not clear that the existing legislation in Alberta is a bar to the realization of the appellants' rights. The real obstacle is the inaction of the public authorities. The government could implement a scheme within the existing legislation to ensure that these s. 23 parents and other s. 23 parents in the province receive what is due to them. The problem is that they have not done so.

- *Mahe v. Alberta*, *supra*, at 392;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 859.

48. The Attorney General of Canada consequently submits that the key issue is not whether the implementation of s. 23 can be accomplished by provincial authorities through delegated legislation, but rather whether the legislative and regulatory scheme developed by the provincial authorities enables the effective implementation of minority language education rights.

JUN. 11. 1996 10:46AM

JUSTICE CANADA

NO. 892 P. 27/38

- 24 -

(b) Does s. 23 of the *Charter* require the systematic establishment of a management organization identical to that of the linguistic majority?

Not
just
issue

49. The second issue is whether the fact that the Francophone Authority is not a school board with legislative and administrative structures and powers identical to those of the majority school boards of British Columbia is consistent with the requirements of s. 23 of the *Charter*.

50. As indicated earlier, the Supreme Court of Canada has stated that "the government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met [...] unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right", while "the specific form of educational systems provided to the minority need not be identical to that provided to the majority."

- *Mahe v. Alberta*, *supra*, at 378 and 393.

51. The Supreme Court of Canada has also indicated, in a case falling on the higher end of the sliding scale of s. 23, that the French-language minority was entitled to an "independent French-language school board [...] under the exclusive management and control of the French-language minority" (*Reference Re Public Schools Act (Man.)*, *supra*, at 866). However, it is submitted that the key terms of this statement are not necessarily "school board", but rather "independent" and "exclusive management and control", as these are generally the two fundamental characteristics of any scheme of minority educational programme falling on the higher end of the sliding-scale criteria.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

52. In that regard, it is respectfully submitted that the reference by the Supreme Court of Canada to the concept of "school board" was not necessarily meant to preclude the

JUN. 11. 1996 10:47AM

JUSTICE CANADA

NO. 892

P. 28/38

- 25 -

establishment of other bodies having different legislative and administrative structures. Rather, the Attorney General of Canada submits that the use of these words by the Supreme Court of Canada was a practical illustration of the type of organization required to satisfy the level of management associated with the higher end of the sliding-scale criteria, for lack of other terminology or concepts. (The fact that the Supreme Court of Canada had before it a proposed legislative scheme which would have established a school board (*Reference Re Public Schools Act (Man.)*, at 861), and that it was presumably not presented with nor aware of other types of school organisations which could have the same level of independence and management as school boards, may have been a key factor.)

Imposing a specific form of educational system in the multitude of different circumstances which exist across Canada would be unrealistic and self-defeating.
[...]

[T]he appropriate response for the courts is to describe in general terms the requirements mandated. It is up to the public authorities to satisfy these general requirements. Where there are alternative ways of satisfying the requirements, the public authorities may choose the means of fulfilling their duties.
(Emphasis added)

- *Mahe v. Alberta*, *supra*, at 376;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 860.

53. The Attorney General of Canada consequently submits that the key issue is not whether the minority education management body of a given province is an actual school board with legislative and administrative structures identical to that of the school boards of the majority, but rather whether the minority organisation is independent and under the management and control of the linguistic minority parents.

See, by analogy, *Reference Re Education Act*, [1993] 2 S.C.R. 511, at 567.

JUN. 11. 1996 10:47AM

JUSTICE CANADA

NU. 072

P. 23. 38

- 26 -

- (c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding to the linguistic minority?

54. The Supreme Court of Canada has stated that s. 23 of the *Charter* imposes upon provincial authorities the duty to ensure that "funds allocated for the minority language schools [are] at least equivalent on a per student basis to the funds allocated to the majority schools," while "special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools."

- *Mohr v. Alberta*, *supra*, at 378 and 391-2.
- *Reference Re Public Schools Act*, *supra*, at 862;
- See also, by analogy, *Reference Re Education Act*, *supra*, at 566-7, 590.

55. The issue at bar is whether the fact that s. 7(1) of the *Regulation* states that the Minister of Education of British Columbia "may" provide a grant to the Francophone Authority, for "one or more" of the operations of the Authority enumerated in s. 7(1)(a), (b) and (c), without indicating the full or per capita amount of the grant nor whether the grant must be at least equivalent to those of the school boards of the majority, constitutes a violation of s. 23 of the *Charter*. Section 7(1) reads as follows:

- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
- (a) the establishment maintenance and operation of the Francophone Education Authority,
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- [Emphasis added]

56. The term "may" (and "or") generally conveys a discretionary or optional power upon the concerned authority, both on the basis of its usual meaning and pursuant to legislation relating to interpretation.

- JUN.11.1996 18:47AM

JUSTICE CANADA

NO. 396 P. 34/38

- 27 -

- *Interpretation Act*, RSBC, Chap. 206, s. 29 (definition of "may");
- Côté, P.A., *The Interpretation of Legislation in Canada*, Yvon Blais Ed., Cowansville, 1991 (2nd ed.), at 199-202.

57. However, the object or context of a legislative instrument can also suggest that its authorizing or permissive provisions are more than purely discretionary, in particular when the power is granted for the enforcement of a right or because of the possible negative consequences of the exercise of discretion.

- *Interpretation Act*, *supra*, s. 8;
- Côté, P.A., *supra*, at 200-2;
- *Fisheries Act Reference* [1928] S.C.R. 457, at 462-4 and 475-7, Aff. [1930] 1 D.L.R. 194 at 200-1 (p.c.);
- *Bridge v. The Queen* [1953] 1 S.C.R. 8, at 12-3.

58. In addition, in *Mahe*, the Supreme Court of Canada noted that although the relevant provisions of the *School Act* of Alberta, R.S.A., 1980, c. S-3, were permissive provisions (see par. 46 and 47 of this brief) which did not guarantee that the provincial authorities would act in accordance with s. 23 of the *Charter*, the real obstacle to the realization of the rights guaranteed by s. 23 was not the legislation *per se*, but rather the inaction of the public authorities.

- *Mahe v. Alberta*, *supra*, at 391-2.

59. In the case at bar, it might be said that the discretionary power found in s. 7(1) must be construed in harmony with the mandatory requirements of s. 23 relating to funding, and that this is a case where "may" means "must". It could also be argued that s. 23 of the *Charter* would be infringed only if the public authorities (i.e., the Minister of Education) are indeed "inactive" or refuse to exercise their discretionary funding power in accordance with s. 23.

JUN.11.1996 10:48AM

JUSTICE CANADA

NO.892 P.31/38

- 28 -

60. That being said, it is certainly not unreasonable to argue that the public authorities (i.e., the Lieutenant Governor in Council) have taken inadequate action to secure funding for minority education — a discretionary power granted to a Minister —, especially in light of the wording of ss. 7(2) of the *Regulation* and 124(1) of the *School Act*, which, in comparison, respectively state that the Minister "must" transfer certain federal monies to the Francophone Authority and that the Minister "shall" establish a block of funds to be paid to majority school boards.

- *School Act, supra*, s. 124(1).

61. As a consequence, there may be circumstances where s. 7(1) of the *Regulation* could objectively be viewed as a bar to the principle of independence of linguistic minorities and to the effective implementation of s. 23 rights, in particular if there is uncertainty — real or perceived — surrounding the intention of a given Minister of Education to exercise the power found in s. 7(1). In the end, it is for the provincial authorities to take the necessary means to offer guarantees to the linguistic minority as to the availability of adequate funds for the implementation of minority language education rights.

(d) Does s. 23 of the *Charter* guarantee a right to property acquisitions and capital expenditures?

62. The fourth issue is whether s. 11(3) of the *Regulation* is consistent with s. 23 of the *Charter*, insofar as it prohibits the Francophone Authority from making capital expenditures with provincial funding. Section 11(3) reads as follows:

11(3) A Francophone Education Authority must not use for a capital expense any money provided to it by the government, other than money identified by the minister as being money provided by the federal government for capital expenses.

JUN.11.1996 10:48AM

JUSTICE CANADA

NO.892 P.33/38

- 29 -

63. The Supreme Court of Canada has not yet ruled whether s. 23 of the *Charter* guarantees a genuine right to property acquisitions or capital expenditures when the number of students of a given province, region or district fall on the higher end of the sliding scale criteria; however, the Supreme Court has indicated that minority language educational facilities must "belong to" the minority.

- *Mahe v. Alberta*, *supra*, at 370;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 854 and 865-6.
- See also, by analogy, *Reference Re Education Act*, *supra*, at 579.

64. The term "belong to" was not necessarily used by the Supreme Court of Canada as the expression of a right to property or to capital expenditures *per se*; in fact, the Court used that term to underline what was meant by the possessive term "*de la*" found in the French version of s. 23(3)(b), and that this necessarily meant that a certain level of management and control was due to the linguistic minority.

The underlined phrase in the French text — which utilizes the possessive "*de la*" — is more strongly suggestive than the English text that the facilities belong to the minority and hence that a measure of management and control should go to the linguistic minority in respect of educational facilities.

- *Mahe v. Alberta*, *supra*, at 370.

65. Insofar as this statement of the Court was meant to cover a variety of management and control situations along the sliding scale criteria — from proportional representation on majority school boards to independent school boards (or authorities) — it is not clear that the use of the term "belong to" by the Supreme Court of Canada can be construed as meaning that s. 23 necessarily guarantees a right to property or capital expenditures.

JUN. 11. 1996 10:49AM

JUSTICE CANADA

NO. 892 P. 34/38

- 30 -

66. That being said, s. 23 does not prohibit the vesting of property rights and the making of capital expenditures, and in circumstances where the alternative measures contemplated by the provincial authorities do not guarantee exclusive management and control — and independence — by the minority school board or authority, s. 23 might indeed require the exercise of a genuine right to property and capital expenditures.

Arrangement and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which encourage the development and use of minority language facilities should be considered and implemented.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 963.
- See, by analogy, *Reference Re Education Act*, *supra*, at 579.

67. In the case at bar, s. 11(1)(a) states that the Francophone Authority can lease land or land and improvements for educational purposes, while s. 11(2) states that the Authority can enter into agreements with municipalities, regional districts, boards or other persons for the maintenance, operation or joint use of facilities.

11.(1) A Francophone Education Authority may, for educational purposes, including the provision of housing accommodation for eligible students or employees, Francophone Education Authority offices and outdoor activities,

- (a) with the approval of the minister, lease, as lessee, land or land and improvements within or outside of its prescribed area, and
- (b) subject to the orders of the minister and with the approval of the minister, dispose of a leasehold interest referred to in paragraph (a).

(2) A Francophone Education Authority, with the minister's prior approval may enter into an agreement with municipalities or regional districts that are located in or located in part of the Francophone Education Authority's prescribed area or with boards for school districts that are located in the Francophone Education Authority's prescribed area or with other persons for

- (a) the maintenance, operation or joint use of facilities, or

JUN. 11. 1996 10:49AM

JUSTICE CANADA

NO. 692

P. 33/38

- 31 -

- (b) contribution to the cost of the maintenance or operation of facilities for the joint use of those facilities by the Francophone Education Authority and one or more of the following that are located in or located in part of the Francophone Education Authority's prescribed area:
- (i) a municipality;
 - (ii) a regional district;
 - (iii) a board.

68. The fact that a minority school board or authority may have to enter into leasing agreements to obtain access to facilities and equipment is not necessarily an impediment to the independence of — and the exclusive management of educational programs by — the linguistic minority. In fact, it can be argued that there are numerous accounts of public or private organizations of all types (governmental, educational, industrial, commercial, agricultural, etc.) which although they enjoy an independent status and the exclusive management and control of their operations, enter into leasing agreements to have access to facilities and equipments.

(500) 69. However, the independence of the linguistic minority and its right to exclusive management and control could be hampered by such leasing agreements, more particularly if the negotiations leading to them and their terms and conditions are prejudicial to the linguistic minority. In the particular context of educational facilities, the risk of impediments is high as the lessee will generally be limited in the choice of possible facilities — and lessors — which are adapted to educational activities and situated in the region or area where the minority student population is located: as a result, the minority school board or authority will generally have to lease its facilities and equipment from the existing majority school board(s) of a given region or area, a situation which could lead to serious obstacles to the independence of the minority organisation.

70. For instance, the possibility of negotiations in bad faith and the ensuing risk that the minority school authority be offered to lease second-class facilities and equipments, or the possibility of short-term leases without the necessary time or right to renovate and adapt the

- JUN. 11. 1996 10:49AM

JUSTICE CANADA

NO. 632 P. 35/36

- 32 -

facilities to the specific needs of the Francophone minority, could seriously jeopardize the linguistic minority's right to independence and exclusive management and control over the minority educational system. In that regard, the comments of the Supreme Court of Canada on the general issue of management and control are relevant *mutatis mutandis*:

[M]inority language groups cannot always rely upon the majority to take account of all of their linguistic and cultural concerns. Such neglect is not necessarily intentional: the majority cannot be expected to understand and appreciate all of the diverse ways in which educational practices may influence the language and culture of the minority.

- *Mahe v. Alberta*, *supra*, at 372.

71. It is consequently submitted that any duty imposed upon the linguistic minority boards or authorities to lease facilities and equipment should at a minimum have some corollary guarantees from provincial authorities as to the conduct of negotiations, the resolution of disputes and the terms and conditions of leases, to ensure the effective implementation of the management and control rights of the linguistic minority — and its independence —, as guaranteed by s. 23 of the *Charter*.

- See, by analogy, *Reference Re Education*, *supra*, at 582-90.

72. In addition, the fact that s. 11 of the *Regulation* prohibits the use of provincial funds for capital expenses by the Francophone Authority — while indicating that money provided by the federal government can be used for such purposes — is certainly ambiguous. In particular, if this is meant to suggest that provincial authorities acknowledge that in some circumstances capital expenses may be necessary or envisaged under s. 23, but that provincial funds nevertheless cannot be used for such purposes, this would certainly raise concerns as to the full consistency of the *Regulation* with s. 23 of the *Charter*.

JUN. 11. 1996 10:50AM

JUSTICE CANADA

NO. 852 P. 37/33

- 33 -

73. Finally, it is certainly questionable whether the higher end of the sliding-scale criteria of s. 23 can be met by prohibiting access to capital expenditures funds by the minority boards or authorities while the majority school boards have access to such funds: this issue should be resolved in light of the principle of funding "equivalence" between the minority and majority school systems.

- *Mahe v. Alberta, supra*, at 378;
- *School Act*, s. 135;
- See, by analogy, *Reference Re Education Act, supra*, at 566.

JUN. 11. 1996 10:50AM

JUSTICE CANADA

NO. 892 P. 38/38

- 34 -

VI. CONCLUSION

74. The Attorney General of Canada respectfully submits that the issues at bar should be answered on the basis of the principles enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839, more particularly the existence of a legislative scheme which ensures the adequate implementation of s. 23 rights, the independence of the linguistic minority school organisations and their exclusive control and management over the minority educational programs, the funding equivalence between minority and majority school systems, and the equality of the level of education provided to the linguistic minority and majority.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Vancouver, this __ day of June 1996.

Johannes Van Iperen
Michel Francoeur
Counsel for the Intervenor,
the Attorney General of Canada

8140-6-96
cc DS
PDS

G. Brent Gawne & Associates

G. Brent Gawne
(also of the B.C. Bar)
Peggy Koby
Janet E. Morck (Student at Law)

2300, Centennial Building
10015 - 103 Avenue
Edmonton, Alberta T6J 0H1

Barristers & Solicitors

Telephone: (403) 421-1132
Facsimile: (403) 429-1440

Our File: 2549 GBG

Your File:

FACSIMILE COVER LETTER

DATE: June 7, 1996

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Martine
FIRM: Association
CITY: Vancouver
FAX NO: (604) 736-1259

MESSAGE: Enclosed is the Memorandum of Argument by the Province.

TOTAL NUMBER OF PAGES: 16 (INCLUDING COVER LETTER)

ORIGINAL TO BE FORWARDED BY MAIL: YES X NO

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.

FACSIMILE OPERATOR: Peggy

Ref: C:\WORK\2549\ CLIENT FAX
June 7, 1996

06/07/96 03:12

2604 387 5758

BC AG LIBRARY

003/017

NO. A890762
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**L'ASSOCIATION DES PARENTS FRANCOPHONES DE
LA COLOMBIE-BRITANNIQUE, LA FEDERATION DES
FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, AND
PIERRETTE LARRIVEE WOODS, DANIEL LESCIELLER, LOUIS
BRIERE, DEIRDRE WARD-FOGARTY, MICHEL LEROUX, DIANE
DUPRUIS, ON BEHALF OF THEMSELVES AND ALL OTHER
PERSONS RESIDING IN THE VANCOUVER/LOWER MAINLAND
AND VICTORIA REGIONS HAVING FRENCH LANGUAGE
EDUCATIONAL RIGHTS PURSUANT TO S.23 OF THE CANADIAN
CHARTER OF RIGHTS AND FREEDOMS, BEING PART I OF THE
CONSTITUTION ACT, 1982, S.C. 1982**

PLAINTIFFS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, MINISTER OF
EDUCATION OF THE PROVINCE OF
BRITISH COLUMBIA AND THE
ATTORNEY GENERAL OF THE PROVINCE
OF BRITISH COLUMBIA**

DEFENDANTS

MEMORANDUM OF ARGUMENT OF THE DEFENDANTS

**HARVEY GROBERMAN
MINISTRY OF ATTORNEY GENERAL
Legal Services Branch
1001 Douglas Street, 6th Floor
Victoria, British Columbia
V8V 1X4 (#356-8848)**

06/07/96

03:12

2804 387 5758

BC AG LIBRARY

0004/017

MEMORANDUM OF ARGUMENT OF THE DEFENDANTS**PART I****STATEMENT OF FACTS**

1. The issues on this application are limited to the vires and constitutionality of the Francophone Education Regulation, B.C. Reg. 457/95.

2. The Regulation was deposited on November 2, 1995. There had previously been extensive consultations with the plaintiffs over the proposal. The Regulation is British Columbia's method of complying with section 23 of the *Canadian Charter of Rights and Freedoms*.

Affidavit of Marine Galibois Barss, filed May 8, 1996, para. 8

3. It is conceded that the Plaintiffs are people with section 23 rights, and that they have standing to bring this application.

4. The Francophone Education Authority set up under the Francophone Education Regulation is, in almost all respects, equivalent to a school board. There are some differences owing to the different natures of the entities. For the most part, these differences, (such as the electoral process and powers of taxation) are not under challenge in this proceeding.

06-07-96 08:27AM

FROM G. BRENT GAWNE & ASOC

TO 16047361299

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information

06/07/96

03:12

2604 387 5758

BC AG LIBRARY

0005/017

- 2 -

PART II
ISSUES OF LAW

5. The Plaintiffs raise the following issues:

- (a) Is the Francophone Education Regulation *ultra vires* the School Act?
- (b) Is the Regulation unconstitutional in not providing for mandatory funding for the Francophone Education Authority?
- (c) Is the Regulation unconstitutional in prohibiting the Francophone Education Authority from using provincial funds for capital expenditures?
- (d) Is the Regulation unconstitutional in not providing a dispute resolution mechanism to ensure that the Francophone Education Authority will be able to obtain facilities and equipment?
- (e) Is the legislative scheme unconstitutional by virtue of being enacted by Regulation rather than by primary legislation?
- (f) Is the Regulation unconstitutional by reason of government delay?

06/07/98

03:13

2804 387 5758

BC AG LIBRARY

008/017

- 3 -

PART II
ARGUMENT

6. It is the position of the Defendants that the Francophone Education Regulation meets, and may exceed, the requirements of section 23 of the *Canadian Charter of Rights and Freedoms* in respect of the geographical area with which this lawsuit is concerned.

The Requirements of Section 23

7. Section 23 of the Charter provides as follows:

23.(1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

06/07/96 03:13 3604 387 5758

BC AG LIBRARY

007/017

- 4 -

8. A significant gloss on section 23 has been added by two decisions of the Supreme Court of Canada. These cases establish that section 23 "mandates, where the numbers warrant, a measure of management and control" over minority language education by the members of the linguistic minority. The administrative structures appropriate to that "measure of management and control" depend primarily on the numbers of children enrolled (or, during a start-up period, who are likely to be enrolled) in minority language education facilities.

Mahe v. Alberta, [1990] 1 S.C.R. 342, particularly at 369, 379, 380
Reference Re School Act (Manitoba), [1993] 1 S.C.R. 839

9. The Supreme Court has held that section 23 does not impose any specific form of educational system on Provincial governments, nor does it require that "the specific form of educational system provided to the minority ... be identical to that provided to the majority." What is required is that the quality of education provided to the minority be, in principle, equal to that received by the majority.

Mahe v. Alberta, [1990] 1 S.C.R. 342 at 376, 378, 379, 380
Reference Re School Act (Manitoba), [1993] 1 S.C.R. 839 at 852

10. The Francophone Education Authority set up under the regulation is functionally equivalent to School Board. Accordingly, the Regulation serves to meet even the highest level of management and control required by section 23 of the *Canadian Charter of Rights and Freedoms*. This case, therefore, is not about the level of management and control given to the minority language group, or about whether their "numbers warrant" a particular degree of control.

11. The issue on this application is whether the Francophone Education Regulation contemplates that the quality of education provided to the minority will be equal to that received by the majority. It is submitted that the regulation creates an environment in which the Francophone Education authority is able to deliver education equal in quality to the education available in other public schools.

06/07/96 03:14 2804 387 5758

BC AG LIBRARY

008/017

- 5 -

Vires of the Regulation

12. The Plaintiffs' first argument is that the Francophone Education Regulation fails to meet the Province's obligations under section 23 because the regulation is *ultra vires*.

13. The cases cited by the Plaintiffs deal primarily with the vires of regulations enacted pursuant to general regulation-making powers. Some of the cases deal with regulations manifestly outside the terms of the regulation-making power conferred by the legislature. The Defendants do not take issue with the general propositions cited by the Plaintiffs, but says that they are inapplicable to the statutory structure that this Honourable Court is asked to consider in this case.

14. The regulation-making power at issue in this case is specific and clear. It is a power to make regulations "to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*." The regulation in question undoubtedly fits within the language of section 5(4)(b) of the *School Act*. If the words of that section are to be interpreted according to their ordinary meaning, the Regulation would appear to be *intra vires*.

15. On the face of it, there is no reason to give section 5(4)(b) a narrow scope. Indeed, given that the legislation is remedial and constitutionally mandated, it ought to be given an expansive meaning.

16. The only issue of substance in the Plaintiffs argument that Regulation is *ultra vires*, therefore, arises from alleged conflicts between the Regulation and specific provisions of the statute.

06/07/96

03:14

3604 387 5738

BC AG LIBRARY

009/017

- 6 -

17. There is no principle of law that prohibits regulations from nullifying or modifying provisions of statutes. Indeed, there are many familiar forms of regulation that have this effect. The Lieutenant Governor in Council is often given the power to determine the date on which legislation becomes effective or ceases to have effect by Regulation. As well, many statutes provide that the Lieutenant Governor in Council may exempt specific persons or situations from the operation of some provisions of a statute.

18. There is, however, a principle that regulations cannot have the effect of modifying statutory provisions unless there is clear statutory authority to do so. The cases cited by the Plaintiffs provide ample authority for this principle.

19. It has been established that section 23 of the *Canadian Charter of Rights and Freedoms* requires that Francophone schools be under the management and control of the linguistic minority in situations where the numbers of students warrant. Absent s. 5(4)(b), this requirement could not be met within the provisions of the *School Act*.

20. The express purpose of section 5(4)(b) of the *School Act* is to allow the Province to meet its obligations under section 23 of the *Charter*. Its obvious intent is to allow the Lieutenant Governor in Council to do everything necessary to comply with section 23 of the *Charter*.

21. In the result, there is some conflict between section 5(4)(b) and other provisions of the *School Act*. In particular, there is a degree of conflict, identified by the Plaintiffs, between section 5(4)(b) and section 3 of the statute.

22. The Plaintiffs appear to assume that this conflict is to be resolved by interpreting section 5(4)(b) as being devoid of all content. This is not in accordance with general principles of statutory interpretation.

06/07/96

03:15

2804 387 5758

BC AG LIBRARY

010/017

- 7 -

23. Where two statutory provisions are in apparent conflict, an attempt must be made to reconcile them. Where they are not reconcilable, established principles of statutory interpretation apply. The relevant principle in this case is *generalia specialibus non derogant* (special laws take precedence over general laws).

Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd edition) (Cowansville, Quebec: Éditions Yvon Blais, 1991), pp. 301-304

E.A. Driedger, *Construction of Statutes* (2nd edition) (Toronto: Butterworths, 1983), pp. 226-235

24. It is patently clear that the intent of the Legislature in passing section 5(4)(b) is to allow compliance with section 23 of the *Charter*. The more general provisions of the *School Act* dealing with education in the Province are, to the extent of any inconsistency between them and section 5(4)(b) of the *School Act*, inapplicable to educational programs necessary to comply with section 23 of the *Charter*.

25. In the result, section 5(4)(b) of the *School Act* provides adequate authority to the Lieutenant Governor in Council to promulgate the Francophone Education Regulation. The Regulation is not inconsistent with any other provision of the *School Act* except to the extent necessary to bring the Province into compliance with section 23 of the *Charter*. Section 5(4)(b) of the *School Act*, by necessary implication, authorises the regulation to override statutory provisions to that extent.

Mandatory Funding

26. Section 7 of the Francophone Education Regulation provides that the Minister may grant certain funds, and must grant certain other funds to the Francophone Education Authority. The Plaintiffs argue that these provisions are

06/07/96

03:15

8804 387 5758

BC AG LIBRARY

011/017

- 8 -

unconstitutional, in that they do not mirror the language of sections 124 and 125 of the *School Act*.

27. In *Mahe*, the Supreme Court of Canada emphasized that section 23 of the *Charter* does not require either any specific legislative structure for minority language education, nor does it require that the structure be identical to the structure in place for the majority. While section 23 requires that public funding for the minority be at least equivalent (on a per student basis) to that provided for the majority, it does not demand a particular legislative construct for the delivery of that funding.

28. Where a statute provides a broad discretion, the Courts ought not to assume that the discretion can or will be exercised in a manner that is unconstitutional.

Slaight Communications v. Davidson, (1989), 59 D.L.R. (4th) 416 (SCC)

29. The Affidavit evidence makes it clear that the Francophone Education Authority is being funded in accordance with the requirements of section 23 of the *Charter*. The theoretical possibility that a Minister would take section 7 of the Regulation as an invitation to violate section 23 of the *Charter* should not be entertained by this Court.

Affidavit of Joan Axford, paragraph 2

30. Accordingly, section 7 of the Regulation does not contravene the *Charter*.

Capital Expenditures

31. Section 11 of the Francophone Education Regulation deals with interests in land. The restriction on capital expenditures in section 11(3) is intended only to relate to the purchase of lands and buildings by the authority.

Affidavit of Peter Owen, para. 10

06/07/96

03:15

2604 387 5758

BC AG LIBRARY

012/017

- 9 -

32. It is conceded that section 11(3) of the Regulation constitutes a difference between the Francophone Education Authority and school boards. School boards are not prohibited from using provincial funds for capital purposes, although they can only do so with the specific approval of the Minister of Education under section 135(5) of the *School Act*. Capital funding for all school boards is stringently controlled by the Ministry.

Affidavit of Peter Owen, para. 9

33. The mere fact that there are differences between the powers of the Francophone Education Authority and school boards does not lead to the conclusion that there is a violation of section 23 of the *Charter*. Section 23 does not mandate identical statutory powers; what it requires is that the minority language group have control over aspects of education which pertain to linguistic and cultural concerns, and that the minority be in a position to provide a quality of education equal to that provided in other public schools.

Mahe v. Alberta, [1990] 1 S.C.R. 342

34. Ownership of land or buildings does not, on the face of it, have any cultural or linguistic component, nor does it have any obvious relationship to the quality of education.

35. Unless it can be shown that section 11(3) has the effect of giving the Francophone Education Authority lesser facilities than those used by majority language School Boards, section 11(3) is not unconstitutional. The Plaintiffs are inviting the Court, without any evidence, to engage in speculation to the effect that leasehold facilities may be unavailable or of lower quality than facilities owned by school boards. To date, the facilities used for minority language education are similar in quality to those used by other public school programs. In the future, there is no reason to believe that appropriate facilities could not be acquired on a leasehold rather than freehold basis.

06/07/96 03:16 1604 387 5758

BC AG LIBRARY

013/017

- 10 -

36. The Plaintiffs cannot, in any event, show any practical effect of section 11(3) of the Regulation. The section does not prohibit the Francophone Education Authority from owning land or buildings, but only from using provincial funds for purchases.

37. To date, Francophone Education in the Province has been provided in facilities owned by School Boards. It is the intent of the Francophone Education Authority to use these same facilities for Francophone Education in the coming academic year. There is no suggestion that the Francophone Education Authority is in a position to, or wishes, in the near future, to purchase land or buildings for school purposes. Accordingly, section 11(3) of the regulation does not currently have any practical effect.

Lack of Dispute-Resolution Mechanism

38. The Francophone Education Regulation does not compel the Francophone Education Authority to obtain its school facilities from any particular source. Accordingly, the authority is free to lease facilities and obtain equipment and supplies from any source.

39. Given the Authority's ability to obtain space and equipment on the open market, there is no demonstrated need for a "dispute-resolution mechanism" as alleged by the Plaintiffs.

40. To date, the Francophone Education Authority has chosen to lease space and equipment from school boards. This process appears to be proceeding smoothly.

06/07/96

03:16

2604 387 5758

BC AG LIBRARY

014/017

- 11 -

41. The Plaintiffs are inviting the Court to speculate that space and equipment may, in future, be available only from specific parties, and that the authority may be unable to reach agreement with these parties. There is no evidence to support this proposition. It is submitted that the Court ought not to act on such speculation.

Enactment By Regulation

42. The Plaintiffs complain that the Francophone Education Authority is set up by Regulation rather than directly by statute. They suggest that this is unconstitutional.

43. The Plaintiffs cite no authority for the proposition that section 23 of the *Charter* demands that Provinces enact primary legislation. Section 23 does not set out the legislative method by which a Province is required to delivery its obligations.

44. The Plaintiffs suggest certain advantages to enactment of a scheme by statute. In particular, they appear to be of the view that a statute has greater "permanence" than a Regulation.

45. It is true that there are greater legislative requirements for amendment of a statute than for amendment of a Regulation. These requirements do not, however, have any necessary relation to the "permanence" of the legislation.

46. Given the novelty of an overlapping public school authority in British Columbia, there are obvious advantages to enactment of the details of the scheme by regulation rather than by statute. Subordinate legislation can generally be modified more easily than can primary legislation. This allows the

06/07/96

03:17

2804 387 5758

BC AG LIBRARY

015/017

- 12 -

government the ability to "fine-tune" the legislation should it prove insufficient for its purpose or should it have unforeseen effects.

47. Given the unprecedented nature of the Plaintiffs argument, and the lack of any jurisprudential foundation for the proposition that section 23 rights must be delivered through detailed primary legislation rather than through regulations, it is submitted that the Plaintiffs' argument must be dismissed.

Alleged Delay

48. The Francophone Education Regulation was enacted following several years of negotiations between the Plaintiff association and the Ministry of Education. While there has been some delay in achieving a legislative framework in which to deliver section 23 rights in British Columbia, this delay has been a result of a failure to reach an accord on the appropriate administrative structure.

49. Indeed, in the end, the Province has had to proceed without the agreement of the Plaintiffs, but with some commitment from them that they will attempt to make the system work.

50. In this proceeding, there is little to be gained by dwelling on the history of negotiations. It is submitted that the current Regulations are workable, and satisfy section 23.

51. The Plaintiffs allegation that the Francophone Education Authority is being forced to "meet a virtually impossible deadline" does not withstand scrutiny. The Province has, throughout, indicated that the Authority (and, before its existence, the Plaintiff Association) could postpone taking over management and control of Francophone education if it considered the timelines unworkable.

08/07/96

03:17

2804 387 5758

BC AG LIBRARY

016/017

- 13 -

The Plaintiffs and the authority have been clear that they wish to take over management and control of Francophone Education for the 1986-87 school year.

Affidavit of Peter Owen, paras. 4 & 6

52. It is, therefore, the minority language group itself which has chosen to meet a September, 1996, rather than a September, 1997, deadline. It is not appropriate for the Plaintiffs to blame government for "imposing" a timeframe which they have readily accepted.

53. In any event, it appears that everything is on track for delivery of Francophone Education by the Francophone Education Authority beginning in September, 1996. The timelines do not appear to be "virtually impossible".

54. Section 23 of the *Charter*, by giving "management and control" of Francophone Education to the linguistic minority does impose responsibilities on that minority. Given that the Province has provided the Francophone Education Authority with all resources necessary to implement a program of instruction, it is up to the Francophone Education Authority to manage and control those resources in an appropriate manner. Nothing done by the provincial government interferes with the ability of the Francophone Education Authority to deliver educational programs beginning in September, 1996.

55. While it is clear that the Francophone Education Authority has a difficult task ahead of it, resources have been provided to it by government to ensure that it can be equal to that task.

06-07-96 08:27AM FROM G. BRENT GAWNE & ASOC TO 16047361259

P016/016

06/07/96 03:17 3604 387 3758

BC AG LIBRARY

017/017

- 14 -

PART IV
NATURE OF ORDER SOUGHT

56. It is submitted that the Plaintiffs' application should be dismissed.

57. The Defendants concur with the Plaintiffs that, in the event that this Honourable Court finds any part of the Francophone Education Authority to be *ultra vires* the School Act or unconstitutional, then the appropriate remedy would be a declaration, combined with a declaration of temporary validity.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Harvey Groberman
Counsel for the Defendants

June 6, 1996



Department of Justice / Ministère de la Justice
Canada

*copies
à
Michael
Viviane
Roger
pour info*

Michelle B. Chauvin

*Michelle
pour information et
classé.
R.*

FACSIMILE TRANSMISSION TRANSMISSION PAR TÉLÉCOPIEUR

SEND TO / ENVOYER À		FROM / DE	
Name / Nom: Pierre Gaudet		Name / Nom: Michel Francoeur Section des droits de la personne	
Address / Adresse: Patrimoine Canadien		Address / Adresse: 239, rue Wellington Pièce 416	
Fax # / No du télécopieur: 953-9353	Tel. No. / No du Tél:	Fax # / No du télécopieur: (613) 952-4137	Tel. No. / No du Tél: (613) 941-4037
Comments / Commentaires: Veuillez trouver ci-joint une copie de la note d'information préparée pour le Ministre de la Justice concernant le procès devant la Cour suprême de la Colombie-Britannique concernant l'art. 23 de la Charte.			
SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ <div style="display: flex; justify-content: space-between;"> <div> Unclassified documents only VIA clear transmission. Protected information permitted within Justice secure FAX network. </div> <div> Documents non cotés à transmettre sans protection. Renseignements protégés par le réseau des télécopieurs protégés de la Justice. </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div> Protected documents? Documents protégés? </div> <div> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Oui </div> <div> <input type="checkbox"/> No <input type="checkbox"/> Non </div> </div>			
Transmission			
Pages (including cover sheet) 2	Date: 07/06/96	Time: 09:34	

Department of Justice
of CanadaMinistère de la Justice
du Canada**QUESTION PERIOD NOTE**
NOTE POUR LA PÉRIODE DE QUESTIONS

Date: 5 juin 1996

Classification: protégé

Title - Titre

Intervention du P.G. du Canada devant la Cour suprême de la Colombie-Britannique dans une affaire relative aux droits à l'instruction dans la langue de la minorité (art. 23 de la *Charte Canadienne*).

Subject - Highlights / Sujet - Points saillants

Le 10 juin 1996, le Procureur Général du Canada déposera son mémoire devant la Cour suprême de la Colombie-Britannique dans l'affaire *Association des parents francophones de la Colombie-Britannique c. British Columbia*, dans laquelle le P.G. du Canada a le statut d'intervenant.

Sources:**Suggested Reply - Réponse suggérée**

- Cette affaire a trait à la mise en oeuvre et à l'interprétation de dispositions constitutionnelles importantes, plus précisément le droit de gestion et de contrôle des écoles minoritaires par les parents des minorités de langue officielle.
- Depuis 1982, le Gouvernement du Canada appuie et encourage les provinces, les territoires et les minorités linguistiques à assurer la mise en oeuvre effective des droits linguistiques prévus à l'art. 23 de la *Charte*.
- L'intervention du P.G. du Canada dans ce litige a pour objet de prêter assistance à la Cour en ce qui a trait à l'interprétation des principes de droit applicables à l'art. 23 de la *Charte*, tels que développés par la Cour suprême du Canada.
- Puisque ces questions sont présentement devant les tribunaux, je ne peux commenter l'affaire plus avant.

Background - Status / Contexte - Situation

- L'intervention du P.G. du Canada est exceptionnelle devant une cour de première instance, mais en 1994 le ministre du Patrimoine Canadien a déclaré à la Chambre des communes et devant le Comité parlementaire sur les langues officielles que le gouvernement du Canada prendrait les moyens nécessaires pour assurer la mise en oeuvre de l'art. 23 de la *Charte* en Colombie-Britannique, à une époque (1994) où cette province refusait toujours d'accorder la gestion et le contrôle de leurs écoles aux francophones.
- Le 3 novembre 1995, le gouvernement de la Colombie-Britannique a finalement adopté le *Francophone Education Regulation* dans le but d'assurer l'application de l'art. 23 de la *Charte*, en prévoyant notamment la création d'une structure de gestion scolaire francophone.
- Toutefois, les parents considèrent que ce règlement demeure insuffisant par rapport aux exigences de l'art. 23, et ont donc décidé de poursuivre leur action en justice dans le but de faire déclarer l'invalidité constitutionnelle du règlement en question.
- Le Commissaire aux langues officielles, qui est également intervenant dans cette affaire, appuie les parents dans leurs revendications. Il a d'ailleurs discuté de cet appui dans deux lettres au Ministre de la Justice, dans lesquelles il demandait une rencontre avec ce dernier (cette rencontre n'a toujours pas eu lieu).
- Dans son mémoire, le P.G. du Canada ne se prononce pas sur la validité constitutionnelle du règlement de la Colombie-Britannique, se limitant plutôt à exposer les principes juridiques pertinents à la résolution de ce litige, tels que développés par la Cour suprême du Canada.
- Le ministère de la Justice a acheminé des copies de l'ébauche du mémoire et a recueilli les commentaires, le cas échéant, des représentants de Patrimoine Canada, du Conseil du Trésor, du bureau du Conseil Privé ainsi que du Groupe sur l'unité canadienne du ministère.
- L'audition aura lieu du 8 au 12 juillet 1996, à Nanaimo, en Colombie-Britannique.

001790

Prepared by - Préparé par

Approved by - Approuvé par

Approved by - Approuvé par

8/40-6-96
Vol 1

To: Michel Francoeur

Fax: 952-4137

From: Michael O'Keefe

Date: June 4, 1996

Pages: Two, including cover sheet.

*Merci
Michael
copie à Jimiano
pour son info*

Michel:

These are our written comments on the factum as promised, give me a call if you have any questions or they require clarification.

Michael

fax

FEDERAL FACTUM - SCHOOL GOVERNANCE IN B.C.

- The conclusion should be strengthened to reflect some of the key objectives of s.23 in relation to the proposed "authority" as reflected in the body of the factum. The court needs to be provided with a sense of the vision behind s.23 and its importance to the survival of minority language communities. In particular, the Mahé principles could be restated in the light of the restrictive aspects of the proposed authority's powers (i.e. the issues raised in paragraphs 40, 50, 62 and 74).
- While the importance of the historic context of the individual province is highlighted, it would be helpful to give a sense as to how B.C. compares to other provinces in this regard. The text presents B.C. as falling between Manitoba and Alberta in terms of number. Statistics Canada report 14,035 children with education rights in B.C. compared to 14,965 in Manitoba (behind Ontario, New Brunswick and Alberta)
- On the question of funding, the equality of the educational outcomes should be the focus. The principle seems to be, at least equal funding, but if necessary more funding than the majority system could be required. We should be more

From the desk of...

Michael O'Keefe
Chief, Policy and Research
Official Languages/ Canadian Heritage
15 Eddy Street
Ottawa, Ontario
K1A 0M5

(819) 994-5936
Fax: (819) 953-9353

- We should invite the court to consider whether this new school authority has appropriate powers given the objectives of s. 23. The discretionary nature of the funding which the province would supply and limiting it to having to lease facilities raises issues regarding the eventual independence of the school authority. The factum already talks about the importance of independence of minority language system and this could be linked to the issue of funding.
- Education is an exclusive provincial responsibility. The limits on capital spending to that provided by the federal government is bizarre and suggests the province may be acting in bad faith. This will place our program in a difficult position when negotiating with B.C. Primary provincial responsibility should be emphasised. As proposed capital spending by the "authority" would require the consent of both senior levels of government, this would seem to run contrary to the principle of parental control and independence.
- Given that we are essentially siding with the province on the first two issues we might want to be a little stronger in the tone we use in relation to the last two issues. In any event, there are already several legitimate questions raised in the factum regarding the B.C. approach.

c.c. Hilaire Lemoine
Pierre Gaudet ✓
Roger Farley

4140-6-96 35

To: Michel Francoeur

Fax: 952-4137

From: Michael O'Keefe

Date: June 4, 1996

Pages: Two, including cover sheet.

Michel:

These are our written comments on the factum as promised, give me a call if you have any questions or they require clarification.

Michael

fax

FEDERAL FACTUM - SCHOOL GOVERNANCE IN B.C.

- The conclusion should be strengthened to reflect some of the key objectives of s.23 in relation to the proposed "authority" as reflected in the body of the factum. The court needs to be provided with a sense of the vision behind s.23 and its importance to the survival of minority language communities. In particular, the Mahé principles could be restated in the light of the restrictive aspects of the proposed authority's powers (i.e. the issues raised in paragraphs 40, 50, 62 and 74).
- While the importance of the historic context of the individual province is highlighted, it would be helpful to give a sense as to how B.C. compares to other provinces in this regard. The text presents B.C. as falling between Manitoba and Alberta in terms of number. Statistics Canada report 14,035 children with education rights in B.C. compared to 14,965 in Manitoba (behind Ontario, New Brunswick and Alberta)
- On the question of funding, the equality of the educational outcomes should be the focus. The principle seems to be, at least equal funding, but if necessary more funding than the majority system could be required. We should be more

From the desk of...

Michael O'Keefe
Chief, Policy and Research
Official Languages/ Canadian Heritage
15 Eddy Street
Ottawa, Ontario
K1A 0M5

(819) 994-5936
Fax: (819) 953-9353

explicit, it is already implicit in the text.

- We should invite the court to consider whether this new school authority has appropriate powers given the objectives of s. 23. The discretionary nature of the funding which the province would supply and limiting it to having to lease facilities raises issues regarding the eventual independence of the school authority. The factum already talks about the importance of independence of minority language system and this could be linked to the issue of funding.
- Education is an exclusive provincial responsibility. The limits on capital spending to that provided by the federal government is bizarre and suggests the province may be acting in bad faith. This will place our program in a difficult position when negotiating with B.C. Primary provincial responsibility should be emphasised. As proposed capital spending by the "authority" would require the consent of both senior levels of government, this would seem to run contrary to the principle of parental control and independence.
- Given that we are essentially siding with the province on the first two issues we might want to be a little stronger in the tone we use in relation to the last two issues. In any event, there are already several legitimate questions raised in the factum regarding the B.C. approach.

c.c. Hilaire Lemoine
Pierre Gaudet
Roger Farley ✓

Author: Roger Farley at JLS7-HULL
Date: 96-05-30 16:19
Priority: Normal
TO: Bob Robertson at VANCOUVER
CC: Hilaire Lemoine
CC: Michele Blais-Chauvin
CC: Ginette Montreuil at VANCOUVER
Subject: School Management

Michele Blais-Chauvin

*Michelle Blais-Chauvin
d'Hydrex*

96.5.31

Roger

----- Message Contents -----

A quick up-date on francophone school governance.

Michelle Soulières called me to know where we were at with the text of of the agreement.

I informed her that we looked at the changes that they proposed at the last conference call at the beginning of the month and that we can accept them. The changes have been included in the text. I also mentioned that I wanted to check a point concerning the wording of the clauses referring to the costs of renting facilities. We should have a final draft to send to them by Wednesday, June 5, 1996.

I asked her to work on the appendix to the agreement (the three years budget) and she seemed not to have problems to finalize the appendix for the end of next week.

When we will have a final draft with a budget on which we will both (province and federal) agree, we should proceed immediately with the consultations with the parents/community. I mentioned to her that it will be important to have a good discussion on the strategy for the consultation. If you have any ideas on how they should be done they would be welcome as I am sure the Peter Owen does not have a fixed view on that.

After the consultations, the text could be finalized and the Department of Education will submit it to Treasury Board. Once approved by the provincial Treasury Board, we will be in position to make our recommendation to our Minister to sign the agreement and transmit it to the Minister of Education.

Given all the steps that we and the province have to go through, I am sure that the trial will be finished (July 12) before the two signatures appears on the agreement!

Roger

*J'ai parlé
à Jean Boutin
matin et d'ont
d'accorder cette
stratégie.*

4140-6-96

96.5.25

Author: Roger Farley at JLS7-HULL
Date: 96-05-23 13:19
Priority: Urgent
TO: Hilaire Lemoine
TO: Bob Robertson at VANCOUVER
CC: Thérèse Laberge at JLS13-HULL
CC: Michele Blais-Chauvin
CC: Ginette Montreuil at VANCOUVER
Subject: Gestion scolaire en C.-B.

Message Contents

J'ai eu une conversation ce matin avec Martine Galibois-Barss au sujet de la rencontre des procureurs des parents, de la province et du ministère de la Justice (Michel Francoeur) avec le juge adjoint au sujet de la demande de la province de reporter le procès.

De ce que j'ai compris, il semble qu'aucun juge n'avait été assigné comme tel pour la cause qui devait être entendue au début juin. A la demande de tous les procureurs, la date du procès a été fixée au 8 juillet 1996. Le juge adjoint estime à 5 jours la durée du procès et il a mentionné qu'il y avait urgence à tenir le procès avant la rentrée scolaire. Il aurait aussi mentionné que le jugement devrait aussi être rendu rapidement, soit avant la mi-août. Il verrait aussi à ce qu'un juge soit assigné au procès et le premier choix serait le juge en chef.

En ce qui concerne l'entente Canada-C.-B., la présidente de l'Association des parents demande à Patrimoine DE NE PAS SIGNER AVANT LE PROCES. On devra réévaluer la situation après le procès (après le 13 juillet) pour voir si on devrait signer avant ou après le jugement.

Roger Farley



Michèle

MEMORANDUM/NOTE DE SERVICE

Security classification - Cote de sécurité
File number - Numéro de dossier
Date 28 mai 1996
Telephone / FAX - Téléphone / Télécopieur 941-4037/952-4137

TO/DEST:

Diffusion

FROM/ORIG.:

Michel Francoeur, Avocat-conseil p.i.
Groupe du droit des langues officielles
Section des droits de la personne

SUBJECT/OBJET:

Mémoire du Procureur général du Canada dans l'affaire
Association des parents francophones de la Colombie-
Britannique (art. 23 de la Charte)

Comments/Remarques

Vous trouverez ci-joint une copie de l'ébauche de mémoire du P.-G du Canada dans l'affaire mentionnée en rubrique. Ce mémoire sera à l'ordre du jour de la prochaine réunion du Comité des litiges du Ministère de la Justice, qui aura lieu le 4 juin 1996, et sera ensuite déposé à la Cour au plus tard le 10 juin 1996.

Si vous avez des commentaires ou des questions concernant le mémoire, n'hésitez pas à communiquer avec le soussigné au plus tard le 3 juin 1996.

Merci de votre collaboration.


Michel Francoeur

p.j.

Diffusion:

Beverley Wilton

Louise Rocque

Gérard Finn

Hilaire Lemoine *HL*

Ja haur
① Copie
à Roger
pour analyse
~~et no soumettre~~
~~cette copie~~
② Faut mémoir renvoyer
avec B. Wilton pour
discuter certains
HL

Do not write in this space / Ne pas écrire dans cet espace

ÉBAUCHE

No. A890762

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

L'ASSOCIATION DES PARENTS FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, LA FÉDÉRATION DES FRANCOPHONES DE LA COLOMBIE-BRITANNIQUE, AND PIERRETTE LARRIVÉE WOODS, DANIEL LE SCIELLER, LOUIS BRIÈRE, DEIRDRE WARD-FOGARTY, MICHEL LEROUX, DIANE DUPUIS, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS RESIDING IN THE VANCOUVER/LOWER MAINLAND AND VICTORIA REGIONS HAVING FRENCH LANGUAGE EDUCATIONAL RIGHTS PURSUANT TO S. 23 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, BEING PART I OF THE CONSTITUTION ACT, 1982, S.C. 1982

Plaintiffs

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

AND:

THE MINISTER OF EDUCATION OF THE PROVINCE OF
BRITISH COLUMBIA

AND:

THE ATTORNEY GENERAL OF THE PROVINCE OF
BRITISH COLUMBIA

Defendants

AND:

THE COMMISSIONER OF OFFICIAL LANGUAGES

AND:

THE ATTORNEY GENERAL OF CANADA

Interveners

**Chamber's Brief of the
Attorney General of Canada**

George Thomson
Deputy Attorney General of Canada
Department of Justice
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Hans Van Iperen
Michel Francoeur
Counsel for the
Attorney General of Canada
Vancouver Regional Office
Royal Centre
2800-1055 West Georgia St Vancouver, BC
V6E 3P9
Tel.: (604) 666-1340

TABLE OF CONTENTS

I.	NATURE OF ACTION	1
II.	INTERVENTION OF THE ATTORNEY GENERAL OF CANADA	3
III.	ISSUES AT BAR	4
IV.	FACTS	4
V.	LAW	5
A)	RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS	5
B)	PURPOSE OF S. 23 OF THE <i>CHARTER</i>	8
C)	GENERAL INTERPRETATIVE PRINCIPLES	9
D)	"SLIDING SCALE" METHOD	10
E)	PROVINCIAL OBLIGATIONS	14
F)	NUMBERS AND LEGISLATION OF B.C. AND ISSUES AT BAR	16
VI.	CONCLUSION	30

I. NATURE OF ACTION

1. Pursuant to sections 23 and 24(1) of the *Canadian Charter of Rights and Freedoms* (hereinafter, the "*Charter*"), the Plaintiffs ask this Honourable Court to declare that the number of Francophone students in the Vancouver/Lower Mainland and Victoria regions of the province of British Columbia is sufficient to warrant, out of public funds, the provision of primary and secondary French minority language instruction in facilities managed and controlled by the Francophone minority.

- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss. 23 and 24(1).

2. In addition, pursuant to ss. 23 and 24(1) of the *Charter*, the Plaintiffs ask this Honourable Court to declare that in the regions mentioned above, they are entitled to have their children educated in facilities - and to powers of management and control thereof - at least equivalent to those of the school boards of the majority.

3. On that basis, the Plaintiffs ask this Honourable Court to declare that the *School Act* and the *Francophone Education Regulation* are inconsistent with s. 23 of the *Charter*, and therefore of no force and effect pursuant to s. 52 of the *Constitution Act, 1982*.

- *Constitution Act, 1982, supra*, s. 52;
- *Francophone Education Regulation*, made by Order-in-council 1345, B.C. Reg. 457/95, B.C. Gazette, Vol. 38, No. 23 (hereinafter, the "*Regulation*");
- *School Act*, R.S.B.C. 1979 c-375.1.

4. The Plaintiffs further ask this Honourable Court, pursuant to s. 24(1) of the *Charter* and ss. 40, 182 and 190 of the *School Act*, to order the Defendants to create a French Language School District and a French Language School Board or Boards; to make provision for, and to transfer such human and material (moveable and immovable) resources to establish, administer and operate the French Language District and School Board(s); to

- 2 -

appropriate public funds in an amount not less than \$1.5 million for the implementation costs of the French Language District, and a further amount of not less than \$8,633 per projected pupil per year for the basic operational costs of the French Language School District and its programs; to enact legislation guaranteeing the Francophone School District's right to mandatory funding for operating and capital expenses, equivalent to the funding provided to the public school districts; to cause an election of Trustees of the French Language School District amongst eligible parents under s. 23 of the *Charter*; and to establish matriculation requirements for the French Language School District.

5. Furthermore, the Plaintiffs ask this Honourable Court, pursuant to s. 24(1) of the *Charter*, to declare that the *School Act*, its amendments, regulations, orders in council and ministerial orders will have temporary validity until an appropriate legislative scheme is adopted to ensure the implementation of and give full force and effect to the rights of the Plaintiffs under s. 23 of the *Charter*.

6. Finally, pursuant to s. 24(1) of the *Charter*, the Plaintiffs ask this Honourable Court to order that the Defendants establish a charitable purpose trust of \$4,000,000 for the benefit of the persons who reside in the regions of Vancouver/Lower Mainland and Victoria and whose s. 23 rights have been — and continue to be — infringed by the Defendants. This trust would be established for the purpose of restoring, preserving and promoting cultural and linguistic rights and heritage of the persons mentioned above.

- 3 -

II. INTERVENTION OF THE ATTORNEY GENERAL OF CANADA

7. On May 16, 1995, the A.G. of Canada sought leave to intervene in this case before this Honourable Court, and was granted same by the Honourable Mr. Justice MacDonald.

- Order of the Honourable Mr. Justice MacDonald, dated May 16, 1995.

8. In the affidavit supporting the motion to intervene of the Attorney General of Canada, it is said that the Attorney General of Canada will not adduce evidence nor necessarily support the position taken by any given party, as the Attorney General of Canada rather wishes to act as an *amicus curiae* and call the attention of the Court to several important points of law that could otherwise not be considered.

- Affidavit of Michel Francoeur, April 20, 1995, at par. 10.

9. The submissions of the Attorney General of Canada in this case are consequently made to assist the Court in the interpretation of the broad principles which form the basis of s. 23 of the *Charter*, as enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839.

10. However, the A.G. of Canada does not take any particular position with regard to the consistence or inconsistency of the *School Act* and the *Francophone Education Regulation* with s. 23 of the *Charter*.

III. ISSUES AT BAR

11. The general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as developed by the Supreme Court of Canada. More specifically, four sub-issues are raised by the Plaintiffs:

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23 ?
- (b) Does the high end of the sliding-scale criteria of s. 23 require the systematic establishment of a management organisation identical to those of the linguistic majority?
- (c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding at least equivalent to that of the majority school boards and schools?
- (d) Does the high end of the sliding-scale criteria of s. 23 guarantee a right to property and capital expenditures?

IV. FACTS

12. The Attorney General of Canada does not take issues with the facts as agreed to between the Plaintiffs and the Defendants in the Agreed Statement of Facts.

- 5 -

V. LAW

A) RELEVANT CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

13. The issues at bar refer to section 23 of the *Charter*, which reads as follows:

23.(1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

- 6 -

- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

14. The issues to be decided also refer to section 5 of the *School Act*, which reads as follows:

5.(1) Every student is entitled to receive an educational program that is provided in the English language.

(2) Students whose parents have the right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in a language other than English are entitled to receive that instruction.

(3) Subject to the approval of the minister, a board may permit an educational program to be provided in a language other than as provided under subsections (1) and (2).

(4) The Lieutenant Governor in Council may make regulations

- (a) respecting the provision of educational programs in languages other than English,
- (b) to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*, and
- (c) determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2),

and may make different regulations for different circumstances.

15. Finally, the issues to be decided refer to the *Francophone Education Regulation*; the key provisions of the *Regulation* (ss. 2(1), 3(1), 4(1), 7(1) to (3) and 11(1) to (4)) read as follow:

- 7 -

- 2.(1) There is established as a Francophone Education Authority a corporation known as the Autorité Scolaire with the articles set out in Schedule B.
- 3.(1) Subject to this regulation and the enactments referred to in section 17, a Francophone Education Authority has the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction.
- 4.(1) Subject to this regulation and the enactment referred to in section 17, a Francophone Education Authority must make available a Francophone educational program to all eligible students resident in its prescribed area who enrol in a Francophone educational program provided by the Francophone Education Authority.
- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
 - (a) the establishment, maintenance and operation of the Francophone Education Authority;
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- 7.(2) The minister must by grant provide to a Francophone Education Authority that portion of the money provided for the Francophone Education Authority by the federal government that is identified as being for capital expenditures of the Francophone Education Authority.
- 7.(3) A Francophone Education Authority that receives money under subsection (1) must budget, spend and account for that money in accordance with any directions of the minister provided to the Francophone Education Authority.
- 11.(1) A Francophone Education Authority may, for educational purposes, including the provision of housing accommodation for eligible students or employees, Francophone Education Authority offices and outdoor activities,
 - (a) with the approval of the minister, lease, as lessee, land or land and improvements within or outside of its prescribed area, and
 - (b) subject to the orders of the minister and with the approval of the minister, dispose of a leasehold interest referred to in paragraph (a).

- 8 -

- (2) A Francophone Education Authority, with the minister's prior approval may enter into an agreement with municipalities or regional districts that are located in or located in part of the Francophone Education Authority's prescribed area or with boards for school districts that are located in the Francophone Education Authority's prescribed area or with other persons for
 - (a) the maintenance, operation or joint use of facilities, or
 - (b) contribution to the cost of the maintenance or operation of facilities for the joint use of those facilities by the Francophone Education Authority and one or more of the following that are located in or located in part of the Francophone Education Authority's prescribed area:
 - (i) a municipality;
 - (ii) a regional district;
 - (iii) a board.
- (3) A Francophone Education Authority must not use for a capital expense any money provided to it by the government, other than money identified by the minister as being money provided by the federal government for capital expenses.
- (4) A Francophone Education Authority must obtain the approval of the minister before
 - (a) acquiring land or improvements with the money provided to it for capital expenses under subsection (3), and
 - (b) disposing of any land or improvements as required.

B) PURPOSE OF S. 23 OF THE CHARTER

16. In the unanimous decisions of *Mahé v. Alberta, supra*, and *Reference Re Public Schools Act (Man.), supra*, the Supreme Court of Canada has expressed the broad principles which form the basis for the application of section 23 of the *Charter*. More specifically, the importance of section 23 in Canadian law and society was underlined as it relates to the linguistic duality of the country.

Section 23 is one component in Canada's constitutional protection of the official languages. The section is especially

- 9 -

important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism.

- *Mahé v. Alberta, supra*, at 350.

17. Furthermore, the general purpose of s. 23 of the *Charter* was defined by the Supreme Court of Canada as the preservation and promotion of both official languages and their respective cultures, by assuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population: to achieve this goal, s. 23 grants minority language educational rights to minority language parents throughout Canada.

- *Mahé v. Alberta, supra*, at 362;

- *Reference Re Public Schools Act (Man.), supra*, at 849.

C) GENERAL INTERPRETATIVE PRINCIPLES

18. Given the nature of s. 23 and the novel form of legal right that it provides, the Supreme Court of Canada has outlined several interpretative guidelines for the purpose of defining the rights guaranteed by this section. Firstly, a purposive approach should be taken by the courts when interpreting these educational rights.

Therefore, in accordance with the purpose of the right as defined in *Mahe*, the answers to the questions should ideally be guided by that which will most effectively encourage the flourishing and preservation of the French-language minority in the province.

- *Reference Re Public Schools Act (Man.), supra*, at 850.

- 10 -

19. Secondly, section 23 has a remedial nature which aims at correcting a situation of previous injustices which has existed in Canada and that requires the entrenchment of protection for minority language rights.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 850;
- *Mahé v. Alberta*, *supra*, at 363-364.

20. Thirdly, the historical context of language and culture remains relevant in the interpretation and application of s. 23 in various situations, in order to be sensitive and aware of the unique blend of linguistic dynamics that have developed in each province.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 851.

21. Finally, s. 23 should not be given a particularly narrow construction. This provision forms a new kind of legal guarantee, and even if it is wise to be prudent in the interpretation of language rights,

[...] this does not mean that courts should not "breathe life" into the expressed purpose of the section, or avoid implementing the possibly novel remedies needed to achieve that purpose.

- *Mahé v. Alberta*, *supra*, p. 365; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 852.

D) "SLIDING SCALE" METHOD

22. The Supreme Court of Canada has ruled that the general right to minority language instruction provided under s. 23 should not be construed "as only encompassing two rights — one with respect to instruction and one with respect to facilities — each providing a certain

- 11 -

level of services appropriate for one of two numerical thresholds"; rather, the Court is of the opinion that a sliding-scale approach is preferable.

[Section] 23 should be viewed as encompassing a "sliding scale" of requirement, with subs. (3)(b) indicating the upper level of this range and the term "instruction" in subs. (3)(a) indicating the lower level. The idea of a sliding scale is simply that s. 23 guarantees whatever type and level of rights and services is appropriate in order to provide minority language instruction for the particular number of students involved.
[...]

The sliding scale approach is preferable to the separate rights approach, not only because it accords with the text of s. 23, but also because it is consistent with the purpose of s. 23. The sliding scale approach ensures that the minority group receives the full amount of protection that its numbers warrant.

- *Mahé v. Alberta, supra*, at 366; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 850, 853.

23. The sliding scale approach establishes that what is required in any case will depend on what the numbers warrant. While large numbers of students can give rise to a comprehensive right to minority language instruction and facilities, as the numbers decrease, so does the content of the right to minority language instruction: as a consequence, when the numbers are very small, the content of the right may not require that any programs be put in place at all.

- *Mahé v. Alberta, supra*, at 367;
- *Reference R Public Schools Act (Man.)*, *supra*, at 857.

24. To determine the content of the right to instruction and facilities under s. 23, the courts must therefore address the "numbers warrant" question. In that regard, the Supreme

- 12 -

Court of Canada has refused to apply a rigid formula, and ruled that the relevant figure for the purposes of determining what numbers warrant is

[...] the number of persons who can eventually be expected to take advantage of a given programme or facility. While this figure is admittedly impossible to know with certainty, it can be estimated by considering the parameters within which it must fall: the known demand for the services and the total number who potentially could take advantage of the service.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 858; see also *Mahé v. Alberta*, *supra*, at 384.

25. The "numbers warrant" provision requires, in general, that two factors be taken into account in determining what s. 23 demands in a particular situation: (1) the pedagogical services which are appropriate for the number of students involved; and (2) the cost of the contemplated services. However, in situation where cost may hamper pedagogical requirements, the remedial nature of s. 23 suggests that pedagogical considerations will have more weight than financial requirements in determining whether numbers warrant a particular educational scheme.

- *Mahé v. Alberta*, *supra*, at 384-385;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 850.

26. Moreover, where numbers warrant, s. 23 grants a right of management and control, both by virtue of the textual analysis of par. 23(3)(b) — in which the expression "minority language educational facilities" does not only mean physical structures *per se* — and by virtue of the purpose of s. 23, whereby such control is necessary to the protection and the promotion of the language and culture of the minority throughout Canada.

If the term "minority language educational facilities" is not viewed as encompassing a degree of management and control, then there would not appear to be any purpose in including it in s. 23.

- 13 -

- *Mahé v. Alberta, supra*, at 370.

27. The forms which the management and control of educational facilities may take will vary depending on the number of children involved, in accordance with the "sliding-scale" approach. The scheme will consequently vary according to the circumstances: for instance, it may include the establishment of a separate school board on all or part of the territory, or guaranteed proportional representation within the existing school boards, or a mix of the two.

- *Mahé v. Alberta, supra*, at 374-375;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 853.

28. In circumstances where it may be sufficient to require linguistic minority representation on an existing school board, representatives should have exclusive authority to make decisions relating to the minority language instruction and facilities such as expenditures of funds, appointment and direction of people in charge of the administration, establishment of programs of instruction, recruitment and assignment of personnel and teachers, and making agreements for education and services for minority language students.

- *Mahé v. Alberta, supra*, at 377.

29. That being said, it remains difficult to spell out a detailed model of management and control for each particular province, region or district, and the appropriate response from the courts is to describe the requirements mandated in general terms.

- *Mahé v. Alberta, supra*, at 376;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 860.

30. Thus, effective powers of management and control by the linguistic minority group over its educational facilities can be exercised in different ways, according to local circumstances and the particular character of the education system in place; these factors will

- 14 -

affect the methods to be applied to ensure the respect of the constitutional rights of the linguistic minority groups in each particular situation.

- *Mahé v. Alberta, supra*, at 378-380;
- *Reference Re Public Schools Act (Man.), supra*, at 858-859.

31. Finally, it should be underlined that s. 23 of the *Charter* does not entitle the linguistic minorities to a specific legislative scheme; rather, it guarantees a right to a particular type of educational scheme.

- *Mahé v. Alberta, supra*, at 392;
- *Reference Re Public Schools Act (Man.), supra*, at 852.

E) PROVINCIAL OBLIGATIONS

32. The Supreme Court of Canada has indicated that there is a positive obligation on the provinces to enact legislative schemes which ensure the effective and meaningful exercise of — and are not an obstacle to the implementation of — the rights guaranteed by s. 23. Yet, the widest degree of latitude possible must be given to the provincial authorities in designing the means by which they will respect their constitutional duties concerning minority language education rights.

- *Reference Re Public Schools Act (Man.), supra*, at 858.
- *Mahé v. Alberta, supra*, at 392-393.

33. To accomplish this, the province should have a full understanding of the needs of its linguistic minority population to be able to make a proper implementation of its duties, and the minority language parents or their representatives should be involved in the assessment of education needs and the setting up of structures and services which best respond to them.

- 15 -

- *Reference Re Public Schools Act (Man.)*, *supra*, at 862.

34. The provincial authorities also have the duty to make educational services known and accessible to minority language parents, in order to provide a quality of education which will be on a basis of equality with the majority; however, it is not necessary that the educational system of the minority be identical to that of the majority.

[T]he specific form of educational system provided to the minority need not be identical to that provided to the majority. The different circumstances under which various schools find themselves, as well as the demands of a minority language education itself, make such a requirement impractical and undesirable.

- *Mahé v. Alberta*, *supra*, at 378; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

35. With regard to funding, minority education structures and programs should benefit from public funding equivalent to that of the majority schools; in fact, different circumstances — such as the absence of economies of scale — may warrant a higher per capita funding for minority students of the linguistic minority.

It should be stressed that the funds allocated for the minority language schools must be at least equivalent on a per student basis to the funds allocated to the majority schools. Special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools.

- *Mahé v. Alberta*, *supra*, at 378; see also *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

36. Finally, the requirements of s. 23 constitute a minimum and not a maximum in the area of management and control of minority education, and nothing precludes provincial or local authorities from providing for a greater degree of management and control.

- 16 -

- *Mahe v. Alberta, supra*, at 379;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 864.

F) NUMBERS AND LEGISLATION OF B.C. AND ISSUES AT BAR

(i) Numbers

37. The total population of eligible children under s. 23 of the *Charter* in the Vancouver/Lower Mainland and Victoria area is 8 725, and there are presently 1 611 students enrolled in the current *Programme cadre de français*, scattered in 25 schools.

- Agreed Statement of Facts, at p. ?

38. In the *Mahé* case, where the educational system of the French minority population of Edmonton was at issue, it was determined that approximately 3 750 children of school age (5-19 years of age) were eligible under s. 23 of the *Charter*, while the actual enrolment in the Francophone school of Edmonton was 242 students, from kindergarten to grade 6, with 73 students in grade 7 and 8 immersion programs: on that basis, the Supreme Court concluded that these numbers were sufficient to justify, in both pedagogical and financial terms, the creation of an independent school. However, the number of students was deemed insufficient by the Court to mandate the establishment of an independent Francophone school board, but high enough to grant to the minority language parents the right to proportional representation on the separate school board with the appropriate degree of management and control.

- *Mahé v. Alberta, supra*, at 386-389.

39. A different situation was considered by the Supreme Court of Canada in the *Reference Re Public Schools Act (Man.)* case, which dealt with the educational rights of the

- 17 -

Francophone minority of Manitoba. On the question of the number of students, 5 617 students were found to be taking advantage of the programme of minority language instruction, a number which was considered by the Court to fall on the higher end of the sliding scale. The Supreme Court of Canada therefore concluded that the number of actual French language students warranted the establishment of an independent French language province-wide school board in Manitoba, under the exclusive management and control of the French language minority.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 858-859.

40. As a consequence, from a strict quantitative perspective, the number of students in the Vancouver/Lower Mainland and Victoria regions of British Columbia is significantly higher than the numbers referred to in the *Mahé* case, where the Supreme Court of Canada ordered the establishment of an independent school in addition to proportional representation on the majority school board, but remains somewhat lower than the numbers in the *Reference Re Public Schools Act (Man.)* case, where the creation of an independent school board was ordered.

41. That being said, one should remain careful before making pure numerical comparisons between provinces in which the Francophone minority populations are scattered according to different demographic patterns, and where the facilities, pedagogical programmes and financial means may vary significantly.

(ii) Legislation

42. The *School Act* of British Columbia provides that the parents covered by s. 23 of the *Charter* are entitled to have their children receive their instruction in the official language of the minority population, and that the Lieutenant Governor in Council may make regulations to give effect to s. 23 of the *Charter*.

- 18 -

- *School Act*, *supra*, ss. 5(2) and (4)(a), (b) (c) and *in fine*.

43. On that basis, *the Francophone Education Regulation* establishes the Francophone Education Authority (hereinafter, the "Authority"), which is described as having "the exclusive right to provide a Francophone educational program to eligible students resident in the prescribed area over which it has jurisdiction."

Regulation, *supra*, ss. 2(1) and 3(1).

(iii) Issues at Bar

44. The general issue at bar is whether the *School Act*, the *Regulation* and the Authority it establishes are consistent with the requirements of section 23 of the *Charter*, as developed by the Supreme Court of Canada. More specifically, four sub-issues are raised by the Plaintiffs:

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23 ?
- (b) Does the high end of the sliding-scale criteria of s. 23 require the systematic establishment of a management organisation identical to those of the linguistic majority?
- (c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding at least equivalent to that of the majority school boards and schools?
- (d) Does the high end of the sliding-scale criteria of s. 23 guarantee a right to property and capital expenditures?

- 19 -

45. Before addressing each of those issues, it should be underlined that the Plaintiffs also ask this Honourable Court to declare that the *Regulation* is *ultra vires* the *School Act*. The Attorney General of Canada takes no position with regard to this question, as it does not relate *per se* to the principles of minority language educational rights under s. 23 of the *Charter*. However, assuming this Honourable Court concludes the *Regulation* is *intra vires* the *School Act*, the A.G. of Canada has the following observations regarding the other issues at bar.

- (a) Can s. 23 of the *Charter* be implemented by provincial authorities through delegated (or secondary) legislation, or can only primary legislation ensure compliance with the requirements of s. 23?

46. The first issue is whether the fact that the linguistic minority education rights are implemented in British Columbia through regulation, and not primary legislation, is consistent with s. 23 of the *Charter*.

47. The Supreme Court of Canada has indicated that s. 23 does not guarantee a particular legislative scheme, but rather a type of educational system, and that provincial authorities have a wide discretion in the selection of the means to implement s. 23; however, provincial authorities must at a minimum put into place a scheme which has force of law and prescribes with sufficient precision the measures of implementation of s. 23 which will ensure that minority language parents and children can exercise their rights effectively.

[T]he right which the appellants possess under s. 23 is not a right to any particular legislative scheme, it is a right to a certain type of educational system. What is significant under s. 23 is that the appellants receive the appropriate services and powers; how they receive these services and powers is not directly at issue in determining if the appellants have been accorded their s. 23 rights.

[...]

- 20 -

[T]he government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met; the courts should be loath to interfere and impose what will be necessarily procrustean standards, unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right.

- *Mahe v. Alberta, supra*, at 392;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 852.

48. It is true that the Supreme Court of Canada has also stated that "[s]ection 23 of the *Charter* imposes on provincial legislatures the positive obligation of enacting precise legislative schemes providing for minority language instruction and educational facilities where numbers warrant" (*Mahe, supra*, at 392-3, emphasis added); however, that statement must be analyzed in the context of the particular legislative scheme which prevailed in Alberta at the time that case was heard by the Court. The relevant provisions of the *School Act* of Alberta, R.S.A., 1980, c. S-3, read as follows:

13(1). The Minister may establish any portion of Alberta as a public school district.

158. Subject to section 159, all pupils in school shall be taught in the English language.

159(1). A board may authorize

- (a) that French be used as a language of instruction, or
- (b) that any other language be used as a language of instruction in addition to the English language, in all or any of its schools.
- (2) A board authorizing French or any other language as a language of instruction shall comply with the regulations of the Minister.
- (3) Notwithstanding section 80, a board, subject to the regulations of the Minister, may employ one or more competent persons to give instruction in French or any other language to all pupils whose parents have signified a willingness that they should receive it.
- (4) The course of instruction must not supersede or in any way interfere with the instruction required by the regulations of the Minister and by this Act.

[Emphasis added]

- 21 -

49. It is respectfully submitted that these provisions are of the same type as the provisions of the *School Act* of British Columbia, insofar as both Acts state as a principle that French can be the language of instruction in schools of those provinces, while prescribing that it is for administrative or delegated authorities to regulate the implementation of such instruction. Yet, in the case of *Mahe*, the Supreme Court of Canada indicated that the infringement of s. 23 of the *Charter* was not a result of the *School Act* of Alberta *per se*, but rather of the defective regulations passed thereunder and the inaction of the provincial authorities.

[I]t is not clear that the existing legislation in Alberta is a bar to the realization of the appellants' rights. The real obstacle is the inaction of the public authorities. The government could implement a scheme within the existing legislation to ensure that these s. 23 parents and other s. 23 parents in the province receive what is due to them. The problem is that they have not done so.

- *Mahe v. Alberta*, *supra*, at 392;
- *Reference Re Public Schools Act (Man.)*, *supra*, at 859.

50. For the above reasons, the fact that the implementation of s. 23 of the *Charter* is accomplished by provincial authorities through delegated legislation does not — in and of itself — constitute an infringement of s. 23. However, defective delegated legislation or inaction on part of the provincial authorities to ensure the effective implementation of minority education language rights will lead to an infringement of s. 23.

- (b) Does the high end of the sliding-scale criteria of s. 23 require the systematic establishment of a management organisation identical to those of the linguistic majority?

51. The second issue is whether the fact that the Francophone Authority is not a school board with legislative and administrative structures and powers identical to those of the

majority school boards of British Columbia is consistent with the requirements of s. 23 of the *Charter*.

52. As indicated earlier, the Supreme Court of Canada has stated that "the government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met [...] unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right", while "the specific form of educational systems provided to the minority need not be identical to that provided to the majority."

- *Mahe v. Alberta, supra*, at 378 and 393.

53. The Supreme Court of Canada has also indicated, in a case falling on the high end of the sliding scale of s. 23, that the French-language minority was entitled to an "independent French-language school board [...] under the exclusive management and control of the French-language minority" (*Reference Re Public Schools Act (Man.)*, *supra*, at 866); however, it is submitted that the key terms of this statement are not "school board", but rather "independent" and "exclusive management and control", as these are the two fundamental characteristics of any scheme of minority educational programme falling on the high end of the sliding-scale criteria.

- *Reference Re Public Schools Act (Man.)*, *supra*, at 863.

54. In that regard, it is respectfully submitted that the reference by the Supreme Court of Canada to the concept of "school board" was not meant to preclude the establishment of other bodies having different legislative and administrative structures. We suggest that the use of these words by the Court was rather a practical illustration of what is required to satisfy the level of management associated with the high end of the sliding-scale criteria, for lack of other terminology or concepts, as the Court had before it a proposed legislative scheme which would have established a school board (*Reference Re Public Schools Act*

- 23 -

(*Man.*), at 861), and was presumably not presented with nor aware of other types of school organisations which could have the same level of independence as school boards and their level of exclusivity over the management and control of educational programs.

The appropriate response for the courts is to describe in general terms the requirements mandated. It is up to the public authorities to satisfy these general requirements. Where there are alternative ways of satisfying the requirements, the public authorities may choose the means of fulfilling their duties.

(Emphasis added)

- *Mahe v. Alberta, supra*, at 376;
- *Reference Re Public Schools Act (Man.), supra*, at 860.

55. The A.G. of Canada consequently submits that the key issue is not whether the minority educational organisation is an actual school board with legislative and administrative structures identical to that of the school boards of the majority, but whether the minority organisation is independent and under the exclusive management and control of the linguistic minority parents, as required by the high end of the sliding scale criteria of s. 23.

- See, by analogy, *Reference Re Education Act*, [1993] 2 S.C.R. 511, at 567.

(c) Under s. 23 of the *Charter*, must the legislative scheme expressly state that provincial authorities have the duty to provide funding at least equivalent to that of the majority schools?

56. The Supreme Court of Canada has stated that s. 23 of the *Charter* imposes upon provincial authorities the duty to ensure that "funds allocated for the minority language schools [are] at least equivalent on a per student basis to the funds allocated to the majority

- 24 -

schools," while "special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools."

- *Mahe v. Alberta, supra*, at 378 and 391-2.
- *Reference Re Public Schools Act, supra*, at 862;
- See also, by analogy, *Reference Re Education Act, supra*, at 566-7, 590.

57. The issue at bar is whether the fact that s. 7(1) of the *Regulation* states that the Minister of Education of British Columbia "may" provide a grant to the Francophone Authority, for "one or more" of the operations of the Authority enumerated in s. 7(1)(a),(b) and (c), without indicating the full or per capita amount of the grant nor whether the grant must be at least equivalent to those of the school boards of the majority, constitutes a violation of s. 23 of the *Charter*. Section 7(1) reads as follows:

- 7.(1) Subject to an appropriation being made by the Legislature, the minister may provide to a Francophone Education Authority a grant, determined by the minister, for one or more of the following:
- (a) the establishment maintenance and operation of the Francophone Education Authority;
 - (b) the maintenance and operation of one or more Francophone schools;
 - (c) the delivery and support of Francophone educational programs.
- [Emphasis added]

58. The term "may" (and "or") generally conveys a discretionary or optional power upon the concerned authority, both on the basis of its usual meaning and pursuant to legislation relating to interpretation.

- *Interpretation Act*, RSBC, Chap. 206, s. 29 (definition of "may");
- Côté, P.A., *The Interpretation of Legislation in Canada*, Yvon Blais Ed., Cowansville, 1991 (2nd ed.), at 199-202.

- 25 -

59. However, the object or context of a legislative instrument can also suggest that its authorizing or permissive provisions are more than purely discretionary, in particular when the power is granted for the enforcement of a right or because of the possible negative consequences of the exercise of discretion.

- *Interpretation Act, supra*, s. 8;
- Côté, P.A., *supra*, at 200-2;
- *Fisheries Act Reference* [1928] S.C.R. 457, at 462-4, Aff. [1930] 1 D.L.R. 194 (p.c.);
- *Bridge v. The Queen* [1953] 1 S.C.R. 8, at 12-3.

60. In addition, in *Mahe*, the Supreme Court of Canada noted that although the relevant provisions of the *School Act* of Alberta, R.S.A., 1980, c. 5-3, were permissive provisions (see par. 48 and 49 of this brief) which did not guarantee that the provincial authorities would act in accordance with s. 23 of the *Charter*, the real obstacle to the realization of the rights guaranteed by s. 23 was not the legislation *per se*, but rather the inaction of the public authorities.

- *Mahe v. Alberta, supra*, at 391-2.

61. In the case at bar, it might be said that the discretionary power found in s. 7(1) must be construed in harmony with the compulsory requirements of s. 23 relating to funding, and that this is a case where "may" means "must"; it could also be argued that s. 23 of the *Charter* would be infringed only if the public authorities (i.e., the Minister of Education) are indeed "inactive" or refuse to exercise their discretionary funding power in compliance with s. 23.

62. That being said, it is certainly legitimate to argue that the public authorities (i.e., the Lieutenant Governor in Council) have taken inadequate actions -- a purely discretionary power granted to a minister -- to secure funding for minority education, and that the wording of s. 7(2) of the *Regulation*, which, in comparison, states that the Minister "must" transfer

- 26 -

certain federal monies to the Francophone Authority, is an indication of the provincial authorities' reluctance to provide funding for minority education.

63. On that basis, it is submitted that s. 7(1) of the *Regulation* could be a bar to the effective implementation of s. 23 rights, especially if there is uncertainty -- real or perceived -- surrounding the intention of the Minister of Education to exercise the power found in s. 7(1) in order to provide adequate funding to linguistic minorities.

(d) Does the high end of the sliding-scale criteria of s. 23 guarantee a right to property and capital expenditures?

64. The fourth issue is whether s. 11(3) of the *Regulation* is consistent with s. 23 of the *Charter*, insofar as it prohibits the Francophone Authority from making capital expenditures with provincial funding. Section 11(3) reads as follows:

11(3) A Francophone Education Authority must not use for a capital expense any money provided to it by the government, other than money identified by the minister as being money provided by the federal government for capital expenses.

65. The Supreme Court of Canada has not yet ruled whether s. 23 of the *Charter* guarantees a genuine right to property or capital expenditures when the numbers of a given province, region or district fall on the high-end of the sliding scale criteria; however, the Supreme Court has indicated that minority language educational facilities must "belong to" the minority.

- *Mahe v. Alberta*, *supra*, at 370;
- *Reference Re Public Schools Act* (Man.), *supra*, at 854 and 865-6.
- See also, by analogy, *Reference Re Education Act*, *supra*, at 579.

- 27 -

66. The term "belong to" was not necessarily used by the Supreme Court of Canada as the expression of a right to property or to capital expenditures *per se*; in fact, the Court used that term to underline what was meant by the possessive term "*de la*" found in the French version of s. 23(3)(b), and that this necessarily meant that a certain level of management and control was due to the linguistic minority.

The underlined phrase in the French text - which utilizes the possessive "*de la*" - is more strongly suggestive than the English text that the facilities belong to the minority and hence that a measure of management and control should go to the linguistic minority in respect of educational facilities.

- *Mahe v. Alberta, supra*, at 370.

67. Insofar as this statement of the Court was meant to cover a variety of management and control situations along the sliding scale criteria — from proportional representation on majority school boards to independent school boards (or authorities) — it is not clear how the use of the term "belong to" by the Supreme Court of Canada could be construed as meaning that s.23 necessarily encompasses a right to property or capital expenditures.

68. That being said, s. 23 certainly does not prohibit property rights and capital expenditures; in fact, in circumstances where the alternative measures contemplated by the provincial authorities do not guarantee exclusive management and control — and independence — by the minority school board or authority, s. 23 might indeed require the exercise of a genuine right to property and capital expenditures.

Arrangement and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which encourage the development and use of minority language facilities should be considered and implemented.

- 28 -

- *Reference Re Public Schools Act (Man.), supra.* at 963.
- See, by analogy, *Reference Re Education Act, supra.* at 579.

69. In the case at bar, s. 11(1)(a) states that the Francophone Authority can lease land or land and improvements for educational purposes, while s. 11(2) states that the Authority can enter into agreements with municipalities, regional districts, boards or other persons for the maintenance, operation or joint use of facilities.

- 11.(1) A Francophone Education Authority may, for educational purposes, including the provision of housing accommodation for eligible students or employees, Francophone Education Authority offices and outdoor activities,
 - (a) with the approval of the minister, lease, as lessee, land or land and improvements within or outside of its prescribed area, and
 - (b) subject to the orders of the minister and with the approval of the minister, dispose of a leasehold interest referred to in paragraph (a).
- (2) A Francophone Education Authority, with the minister's prior approval may enter into an agreement with municipalities or regional districts that are located in or located in part of the Francophone Education Authority's prescribed area or with boards for school districts that are located in the Francophone Education Authority's prescribed area or with other persons for
 - (a) the maintenance, operation or joint use of facilities, or
 - (b) contribution to the cost of the maintenance or operation of facilities for the joint use of those facilities by the Francophone Education Authority and one or more of the following that are located in or located in part of the Francophone Education Authority's prescribed area:
 - (i) a municipality;
 - (ii) a regional district;
 - (iii) a board.

70. The fact that a minority school board or authority may have to enter into leasing agreements to obtain access to facilities and equipments is not necessarily an impediment to the independence of — and the exclusive management of educational programs by — the linguistic minority. In fact, it can be argued that there are numerous accounts of public or

private organizations of all types (industrial, commercial, agricultural, governmental, etc.) which, although they enjoy an independent status and the exclusive management and control of their operations, enter into leasing agreements to have access to facilities and equipments.

71. That being said, it is certainly questionable whether the high end of the sliding-scale criteria of s. 23 can be complied with by imposing leasing agreements upon minority boards or authorities, while the majority school boards can exercise a complete right to property and capital expenditures (see, by analogy, *Reference Re Education Act, supra*, at 566). In addition, the independence of the linguistic minority and its right to exclusive management and control could be hampered by such leasing agreements, more particularly if the negotiations leading to them and their terms and conditions are prejudicial to the linguistic minority.

72. In the context of educational facilities, the risk of impediments is high as the lessee will generally be limited in the choice of possible facilities — and lessors — which are adapted to educational activities and situated in the region or area where the minority student population is located: as a result, the minority school board or authority will generally have to lease its facilities and equipments from the existing majority school board(s) of a given region or area, a situation which could lead to serious obstacles to the full independence of the minority organisation.

73. For instance, the possibility of negotiations in bad faith and the ensuing risk that the minority school authority be offered to lease second-class facilities and equipments, or the possibility of short-term leases without the necessary time or right to renovate and adapt the facilities to the specific needs of the Francophone minority, could seriously jeopardize the linguistic minority's right to independence and exclusive management and control over the minority educational system.

74. It is consequently submitted that any duty imposed upon the linguistic minority boards or authorities to lease facilities and equipments should have corollary guarantees as to the

- 30 -

conduct of negotiations, the resolution of disputes and the terms and conditions of leases, to ensure the effective implementation of the management and control rights of the linguistic minority - and its independence -, as guaranteed by s. 23 of the *Charter*.

VI. CONCLUSION

75. The Attorney General of Canada respectfully submits that the issues at bar should be answered on the basis of the principles enunciated by the Supreme Court of Canada in the cases of *Mahe v. Alberta*, [1990] 1 S.C.R. 342 and *Reference Re Public Schools Act (Man.)*, [1993] 1 S.C.R. 839.

Author: Roger Farley at JLS7-HULL
Date: 96-05-27 14:08
Priority: Normal
TO: Bob Robertson at VANCOUVER
CC: Hilaire Lemoine
CC: Ginette Montreuil at VANCOUVER
CC: Michele Blais-Chauvin
Subject: Gestion scolaire

AC
96.5.28
Michele
pour information of lesson
P.
----- Message Contents -----

Hi Bob,

As you know I talk to Martine lastweek on the court case and the postponement on July 8, 1996.

You told me that you will have a meeting of the joint-committee tonight or tomorrow to decide on the use of the Canada-community agreement's funds so I wanted to let you know the situation on the funding of the parent's court case.

Martine received last week the lawyer's invoice for the work done to date. I have not seen the invoice but it seems that a large portion of the legal fees are not payable by the Court Challenge program.

Without interfering in the decision process of the Canada-community agreement, I think we should make sure that the community members realise that French-language education is a priority and that they support the action taken by the Association des parents. We should remind them that the \$1.5 M should be used for such priorities.

Roger

4140-6-96

96.5.38


**ASSOCIATION DES PARENTS FRANCOPHONES
DE LA COLOMBIE-BRITANNIQUE**

 1555, 7e Avenue Ouest, bureau 223
Vancouver, Colombie-Britannique V6J 1S1

 Michèle
pour information de
chasse.

Roger

MESSAGE PAR TÉLÉCOPIEUR - FAX MESSAGE

DATE:

23 Mai 1996

A/TO:

HILAIRE LEMOINE !

 Patrimoine canadien
Ottawa

DE/ FROM:

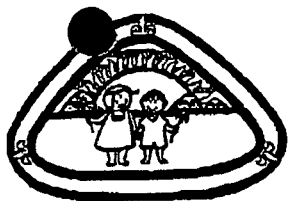
 Marc Gignac
Directeur Général

SUJET/ RE:

Memo:

N° PAGES/ # PAGES

2



Association des parents francophones de la Colombie-Britannique

MEMO MEMO MEMO MEMO MEMO MEMO

DATE : 23 mai 1996
 À : Ministère du Patrimoine canadien
 DE : Marc Gignac, Directeur général
 OBJET : Mise à jour du dossier de la cause juridique

La cause juridique des parents francophones contre le Procureur de la Couronne de la C.-B. devait être entendue en Cour Suprême les 4,5 et 6 juin prochain.

En prévision pour ce procès, une rencontre appelée «Pre-Trial Conference» a eu lieu le 22 mai, devant l'adjoint du Juge en Chef de la Cour Suprême de la C.-B., le juge Dohm.

Au cours de cette rencontre, l'avocat du Procureur de la Couronne a demandé l'ajournement de la cause juridique jusqu'à l'automne prochain.

Le juge Dohm n'a pas répondu à la demande de l'avocat du Procureur. Cependant, devant la complexité de la cause qui implique la Constitution canadienne et la loi scolaire de la C.-B., il a décidé qu'il faudrait prévoir 5 jours pour le déroulement du procès et non pas 3 comme initialement prévu.

Comme il n'y a pas de créneau disponible en juin, le juge Dohm a ordonné que le procès ait lieu du 8 au 12 juillet prochain et qu'un juge soit spécialement assigné à cette cause et ce le plus tôt possible.

Le juge Dohm a également dit qu'il réalisait l'importance que le jugement dans cette cause soit rendu avant le mois de septembre. C'est donc dire que le jugement pourrait être rendu avant la fin du mois de juillet.

Ceci veut dire que le Procureur ne peut plus trouver d'excuse pour retarder le procès. De plus, le Juge en Chef de la Cour Suprême de la C.-B., le juge Esson, pourrait décider d'entendre la cause. Sinon, il assignera un juge qui a l'expertise nécessaire pour présider le tribunal.

À tout événement, un juge sera assigné dans un avenir prochain, ce qui lui permettra de lire toute la documentation avant le procès (souvent les juges lisent la documentation après le procès juste avant de rendre leur jugement).

Si le juge Esson décide de ne pas présider le tribunal, un juge sera assigné à notre cause dans les prochains jours. Cependant si le juge Esson décide d'entendre notre cause, il sera assigné dans environ deux semaines, puisqu'il n'est pas disponible présentement (en vacances ou autre, on ne sait pas).

Si vous désirez plus d'information, n'hésitez pas à communiquer avec moi.

Pour une

éducation

de qualité!

4140-6-96

I.2.19

ROUTING SLIP / FICHE D'ACHEMINEMENT

MEMORANDUM OF AGREEMENT / ACCORD DE CONTRIBUTION

HEADQUARTERS / ADMINISTRATION CENTRALE

Name of Client / Nom du client: Gouvernement de C-B. Commitment Control No. / No d'engagement: _____

Program/Programme: LOE

Multi-year agreement (24 months and more) / Entente pluri-annuelle (24 mois et plus) ☐ Yes / oui ☒ No / non

Duration overlapping two fiscal years / Durée chevauchant deux exercices financiers ☐ Yes / oui ☐ No / non

If yes, fiscal years covered by the agreement / Si oui, exercices financiers couverts par l'entente: _____

Standard ☐

Name in print / Nom en lettres moulées: _____

Non-standard ☒

Signature-Director/Directeur: _____

Date: _____

If Standard : Forward to Secretariat and Systems Unit after signed by Director
Si standard : Transmettre au Secrétariat et systèmes après la signature du Directeur

If Non-standard : Forward after signed by the Director to the following:
Si non standard : Transmettre après la signature du Directeur aux:

FINANCE BRANCH
FINANCES

Voir mémo.

Claire Maquis Conseiller fin 15/5/96
Signature Title/Titre Date

ENVIRONMENT
COORDINATOR/
COORDONNATEUR
EN MATIÈRE
D'ENVIRONNEMENT

N/A

Signature Title/Titre Date

LEGAL SERVICES/
SERVICES
JURIDIQUES

J'ai reçu ce dossier. Outre le point soulevé par Claire et qui est très juste, j'ai mon avis et j'ai fait de nouveaux commentaires à faire.
Sharon Hareff avocate 23-5-96
Signature Title/Titre Date

Forward to / Transmettre à: _____ Contact person/personnes ressources: _____ Phone/téléphone: _____ Room/pièce: _____

Government
of Canada

Gouvernement
du Canada

MEMORANDUM / NOTE DE SERVICE

A
to Michèle Blais-Chauvin
Agent de programmes
Langues officielles dans l'enseignement

de
from Claire Marquis
Conseiller financier
Services consultatifs financiers
Subventions et contributions

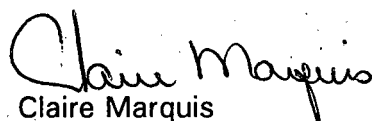
16 mai 1996

Gouvernement de la Colombie-Britannique - Langues officielles dans l'enseignement
Ébauche de l'entente spéciale

1.0 Dépenses admissibles

Dans son approche, le Canada reconnaît les dépenses de loyer comme dépenses admissibles (clause 2.1d) mais à la clause 5.1 c) et 6.1, le Canada n'inclut pas cette dépenses comme faisant partie de la contribution du Canada. Cette approche est inconsistante. Si le Canada reconnaît la dépense de loyer comme dépense admissible mais ne veut pas y être associée, la contribution du Canada sera supérieure à 50% des dépenses admissibles (??????) ce qui n'est pas acceptable en vertu de vos modalités de programme.

Si le Canada ne reconnaît pas la dépense de loyer comme dépense admissible, il appert que la contribution totale du Canada ne pourra être déboursé puisqu'il n'y aura pas assez de dépenses admissibles. Il serait intéressant de vérifier auprès de la province si d'autres dépenses ne pourraient être considérées. Il semble que le programme s'est déjà engagé à faire approuver une contribution additionnelle (1.5M?) pour ce projet en vertu de l'Entente bilatérale : que financerons-nous si à cette étape nous ne sommes pas en mesure de financer pas suffisamment de dépenses admissibles à l'intérieur de cette entente spéciale?


Claire Marquis

c.c. Thérèse Laberge



Government of Canada
Department of Communications

Gouvernement du Canada
Ministère des Communications

Ottawa, Canada
K1A 0C8

Your file *Votre référence*

Our file *Notre référence*





Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

To
À

Claire Marquis
Analyste financier
Subventions et contributions

From
De

Michèle Blais-Chauvin
Agent principal
Colombie-Britannique et Yukon

Subject
Objet

Ébauche d'entente entre le ministère de l'Éducation de la Colombie-Britannique et Patrimoine canadien relative à la gestion scolaire

Tu trouveras ci-joint l'ébauche modifiée suite à notre conférence téléphonique du 3 mai dernier avec les représentants de la province ainsi que les commentaires écrits de la province.

J'aimerais recevoir tes commentaires et te demander d'acheminer ensuite le tout à Thérèse Laberge pour ses commentaires. Je pense qu'il va falloir décider si on peut ou non exclure les dépenses mentionnées à la clause 2 (d) et si non, modifier le texte en conséquence. Pour ce qui est de la cause transfert, nous n'avons pas cru bon de l'ajouter parce que contrairement à l'entente de l'Alberta que tu m'as envoyée, il n'y a pas différents projets dans cette entente et aucune clause ne mentionne qu'on ne peut transférer d'argent, d'une catégorie à l'autre lors de la révision du budget annuel.

J'aimerais recevoir vos commentaires cette semaine, si possible. N'hésite pas à m'appeler si tu as besoin d'information supplémentaire.

p.j.

Security Classification - Classification de sécurité
Our File - Notre référence
Your File - Votre référence
Date 13 mai 1996



Province of
British Columbia

Ministry of
Attorney General

LEGAL SERVICES BRANCH

4 - 1001 Douglas St.

Victoria, B.C.

V8W 1C8

Telephone: (604) 356-8400

Facsimile: 356-9264

*A. Michie**To: Roger***FACSIMILE COVER SHEET**

This fax is **CONFIDENTIAL** and may be protected by solicitor-client privilege. It is intended only for the use of the person to whom it is addressed. Any distribution, copying or other use by anyone else is strictly prohibited. If you have received this fax in error, please telephone us immediately and destroy this fax.

TO: ROGER FARLEY
6580

FAX: (819) 953-

FROM: ELIZABETH KING

DATE: MAY 3, 1996

TELEPHONE NUMBER: 356-8458

FAX NUMBER:

356-9264

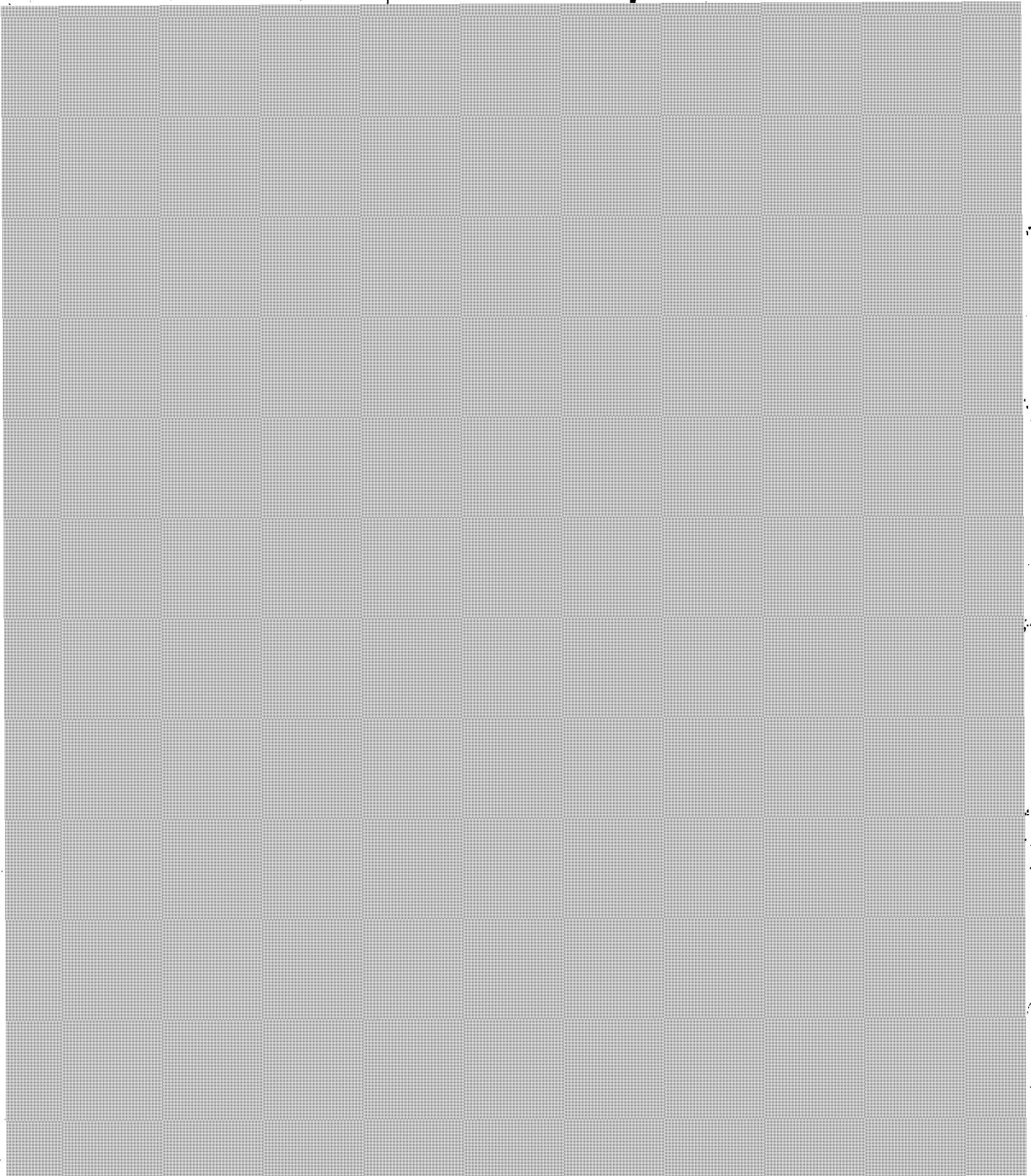
Number of pages: 4 (including this page)

ORIGINALS &/or DOCUMENTS will follow () will not follow (x) BY MAIL

MESSAGE: Federal/Provincial Francophone Legislation Agreement:
Roger, please forward the attached to Michelle and Claire. Thanks.

If you have any difficulty in receiving this message, please telephone Liz Tyson
at 387-4762 / Min. of AG / Legal Services Branch

Liz King's Notes from the April 23, 1996 Meeting



s.23

? *

MAY 03 '96 01:29PM A.G. LEGAL SERVICES

4

9.



s.23

**Pages 1841 to / à 1852
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

8190-6-96

I.2.19

ROUTING SLIP / FICHE D'ACHEMINEMENT

MEMORANDUM OF AGREEMENT / ACCORD DE CONTRIBUTION

HEADQUARTERS / ADMINISTRATION CENTRALE

Name of Client / Nom du client: Gouvernement de C-B Commitment Control No. / No d'engagement: _____
 Program/Programme: LOE
 Multi-year agreement (24 months and more) / Entente pluri-annuelle (24 mois et plus): ☐ Yes / oui ☒ No / non
 Duration overlapping two fiscal years / Durée chevauchant deux exercices financiers: ☐ Yes / oui ☐ No / non
 If yes, fiscal years covered by the agreement / Si oui, exercices financiers couverts par l'entente: _____

Name in print / Nom en lettres moulées: _____ Standard: ☐
 Non-standard: ☒
 Signature-Director / Directeur: _____ Date: _____

If Standard: Forward to Secretariat and Systems Unit after signed by Director
 Si standard: Transmettre au Secrétariat et systèmes après la signature du Directeur
 If Non-standard: Forward after signed by the Director to the following:
 Si non standard: Transmettre après la signature du Directeur aux:

FINANCE BRANCH FINANCES	Voir même. Claire Maquis <u>Conseiller fin</u> 15/5/96 Signature Title/Titre Date		
ENVIRONMENT COORDINATOR/ COORDONNATEUR EN MATIÈRE D'ENVIRONNEMENT	N/A Signature Title/Titre Date		
LEGAL SERVICES/ SERVICES JURIDIQUES	J'ai reçu ce dossier. Outre le point soulevé par Claire et qui est très juste, mon avis se situe de nouveaux commentaires à faire. [Signature] <u>avocate</u> 23-5-96 Signature Title/Titre Date		

Forward to / Transmettre à: _____
 Contact person / personnes ressources: _____ Phone / téléphone: _____ Room / pièce: _____

I.2.19

ROUTING SLIP / FICHE D'ACHEMINEMENT

MEMORANDUM OF AGREEMENT / ACCORD DE CONTRIBUTION

HEADQUARTERS / ADMINISTRATION CENTRALE

Name of Client
Nom du client

Gouvernement de C-B.

Commitment Control No.
No d'engagement

Program/Programme

LoE

Multi-year agreement (24 months and more)/
Entente pluri-annuelle (24 mois et plus)



Yes
oui



No
non

Duration overlapping two fiscal years/
Durée chevauchant deux exercices financiers



Yes
oui



No
non

If yes, fiscal years covered by the agreement/
Si oui, exercices financiers couverts par l'entente

Standard



Name in print/Nom en lettres moulées

Non-standard



Signature-Director/Directeur

Date

If Standard : Forward to Secretariat and Systems Unit after signed by Director

Si standard : Transmettre au Secrétariat et systèmes après la signature du Directeur

If Non-standard : Forward after signed by the Director to the following:

Si non standard : Transmettre après la signature du Directeur aux:

FINANCE BRANCH
FINANCES

voir mémo.

Claire Marquis Conseiller fin

Signature

Title/Titre

Date

15/5/96

ENVIRONMENT
COORDINATOR/
COORDONNATEUR
EN MATIÈRE
D'ENVIRONNEMENT

N/A

Signature

Title/Titre

Date

LEGAL SERVICES/
SERVICES
JURIDIQUES

Signature

Title/Titre

Date

Forward to

Transmettre à

Contact person/personnes ressources

Phone/téléphone

Room/pièce

001854

Government
of Canada

Gouvernement
du Canada

MEMORANDUM / NOTE DE SERVICE

A
to

Michèle Blais-Chauvin
Agent de programmes
Langues officielles dans l'enseignement

de
from

Claire Marquis
Conseiller financier
Services consultatifs financiers
Subventions et contributions

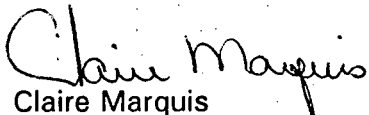
16 mai 1996

Gouvernement de la Colombie-Britannique - Langues officielles dans l'enseignement
Ébauche de l'entente spéciale

1.0 Dépenses admissibles

Dans son approche, le Canada reconnaît les dépenses de loyer comme dépenses admissibles (clause 2.1d) mais à la clause 5.1 c) et 6.1, le Canada n'inclut pas cette dépenses comme faisant partie de la contribution du Canada. Cette approche est inconsistante. Si le Canada reconnaît la dépense de loyer comme dépense admissible mais ne veut pas y être associée, la contribution du Canada sera supérieure à 50% des dépenses admissibles (??????) ce qui n'est pas acceptable en vertu de vos modalités de programme.

Si le Canada ne reconnaît pas la dépense de loyer comme dépense admissible, il appert que la contribution totale du Canada ne pourra être déboursé puisqu'il n'y aura pas assez de dépenses admissibles. Il serait intéressant de vérifier auprès de la province si d'autres dépenses ne pourraient être considérées. Il semble que le programme s'est déjà engagé à faire approuver une contribution additionnelle (1.5M?) pour ce projet en vertu de l'Entente bilatérale : que financerons-nous si à cette étape nous ne sommes pas en mesure de financer pas suffisamment de dépenses admissibles à l'intérieur de cette entente spéciale?


Claire Marquis

c.c. Thérèse Laberge



Government of Canada
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

To
À

Claire Marquis
Analyste financier
Subventions et contributions

From
De

Michèle Blais-Chauvin
Agent principal
Colombie-Britannique et Yukon

Subject
Objet

Ébauche d'entente entre le ministère de l'Éducation de la Colombie-Britannique et Patrimoine canadien relative à la gestion scolaire

Tu trouveras ci-joint l'ébauche modifiée suite à notre conférence téléphonique du 3 mai dernier avec les représentants de la province ainsi que les commentaires écrits de la province.

J'aimerais recevoir tes commentaires et te demander d'acheminer ensuite le tout à Thérèse Laberge pour ses commentaires. Je pense qu'il va falloir décider si on peut ou non exclure les dépenses mentionnées à la clause 2 (d) et si non, modifier le texte en conséquence. Pour ce qui est de la cause transfert, nous n'avons pas cru bon de l'ajouter parce que contrairement à l'entente de l'Alberta que tu m'as envoyée, il n'y a pas différents projets dans cette entente et aucune clause ne mentionne qu'on ne peut transférer d'argent, d'une catégorie à l'autre lors de la révision du budget annuel.

J'aimerais recevoir vos commentaires cette semaine, si possible. N'hésite pas à m'appeler si tu as besoin d'information supplémentaire.

p.j.

Security Classification - Classification de sécurité
Our File - Notre référence
Your File - Votre référence
Date 13 mai 1996

Canada



Province of
British Columbia

Ministry of
Attorney General

LEGAL SERVICES BRANCH

4 - 1001 Douglas St.

Victoria, B.C.

V8W 1C8

Telephone: (604) 356-8400

Facsimile: 356-9264

A. Michie

To: Roger

FACSIMILE COVER SHEET

This fax is **CONFIDENTIAL** and may be protected by solicitor-client privilege. It is intended only for the use of the person to whom it is addressed. Any distribution, copying or other use by anyone else is strictly prohibited. If you have received this fax in error, please telephone us immediately and destroy this fax.

TO: ROGER FARLEY
6580

FAX: (819) 953-

FROM: ELIZABETH KING

DATE: MAY 3, 1996

TELEPHONE NUMBER: 356-8458

FAX NUMBER:

356-9264

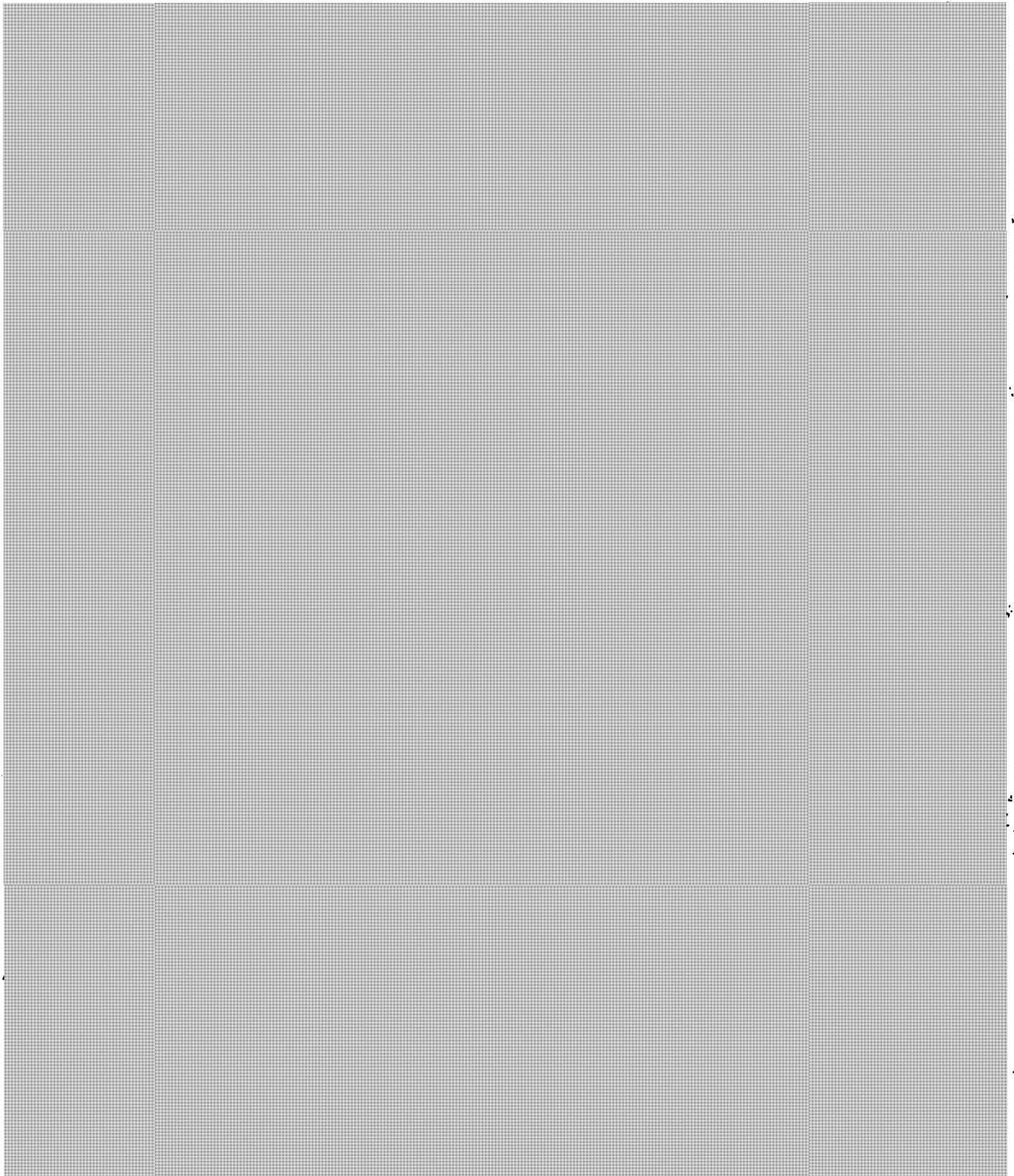
Number of pages: 4 (including this page)

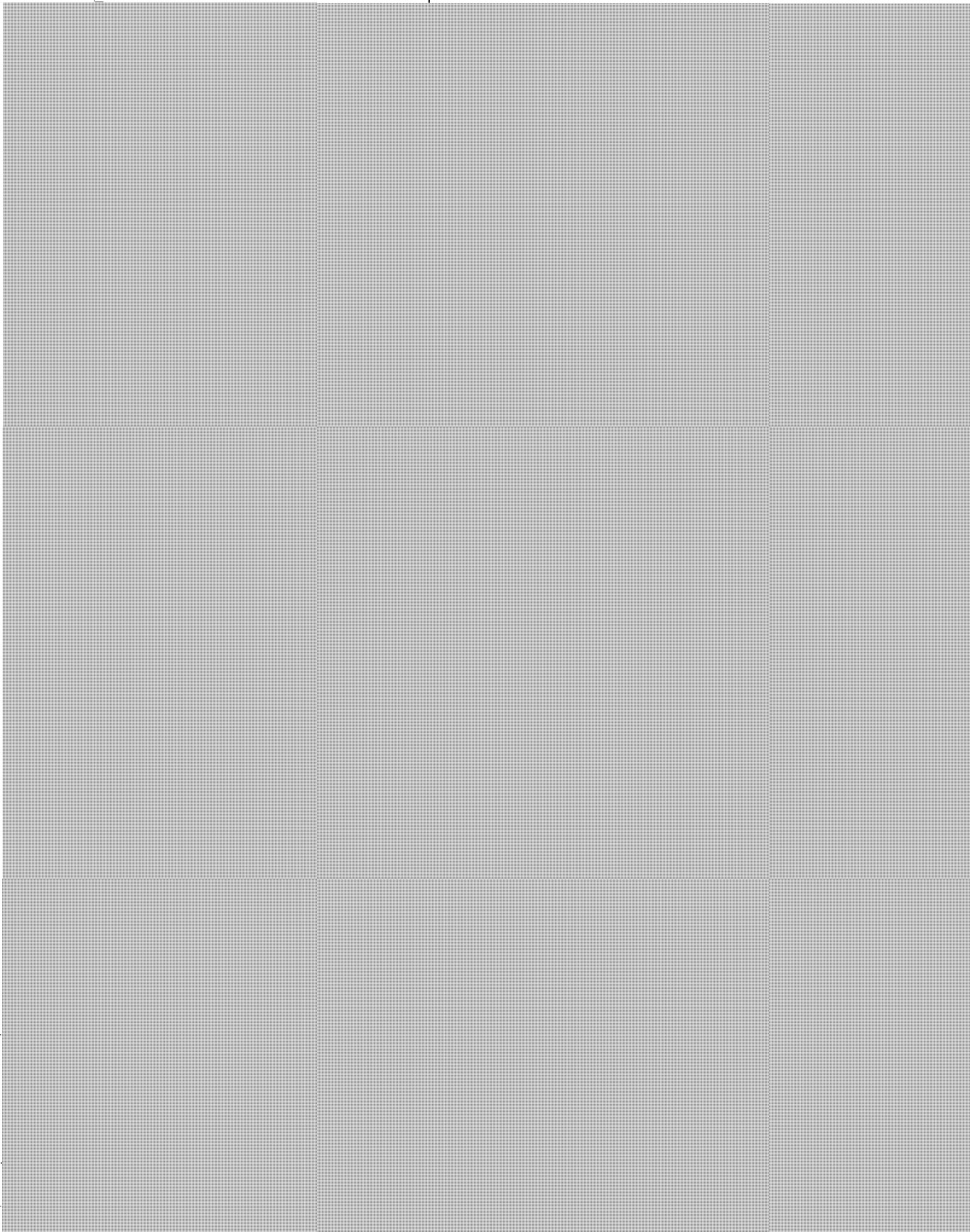
ORIGINALS &/or DOCUMENTS will follow () will not follow (x) BY MAIL

MESSAGE: Federal/Provincial Francophone Legislation Agreement:
Roger, please forward the attached to Michelle and Claire. Thanks.

If you have any difficulty in receiving this message, please telephone Liz Tyson
at 387-4762 / Min. of AG / Legal Services Branch

Liz King's Notes from the April 23, 1996 Meeting

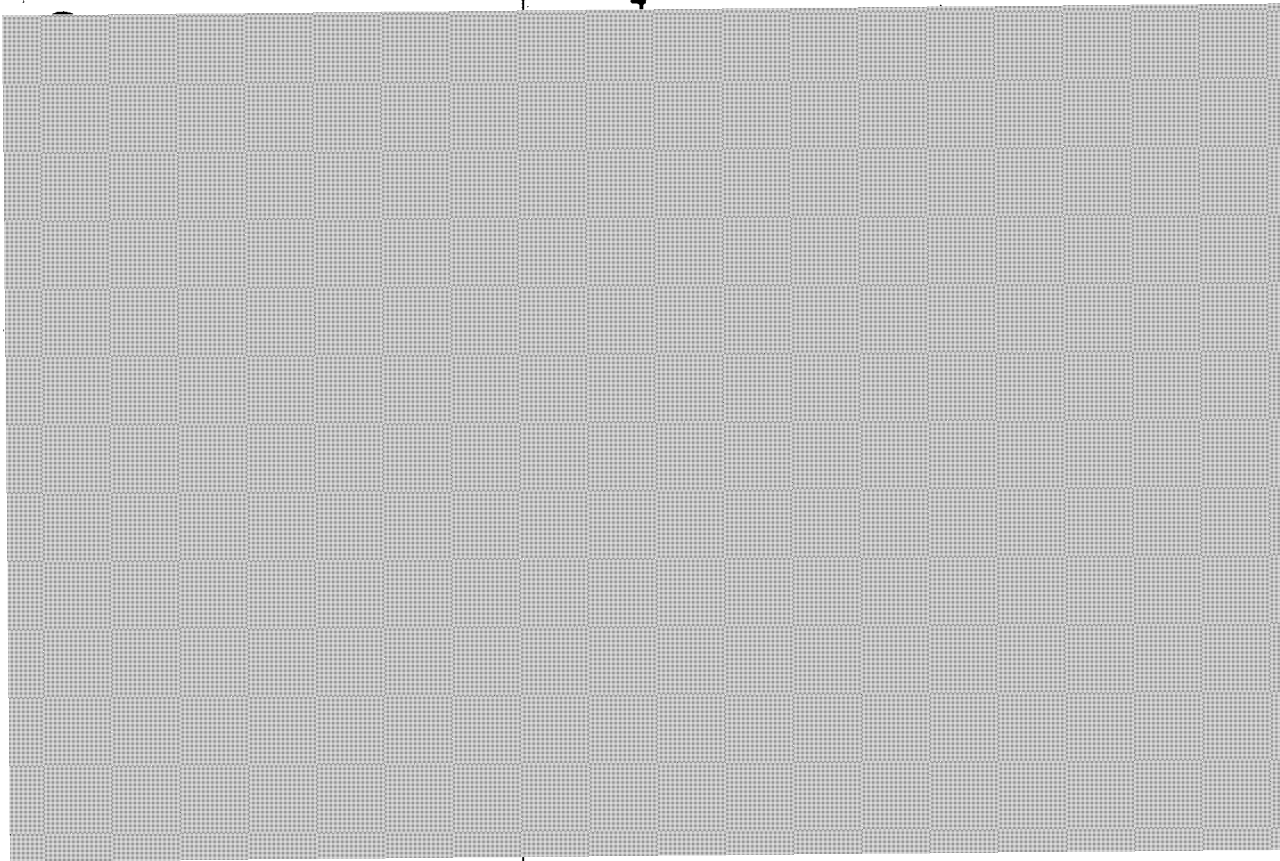




? *

MAY 03 '96 01:29PM A.G. LEGAL SERVICES

4



s.23

**Pages 1861 to / à 1872
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

4140-6-96

le 14 mai 1996

À : Hilaire

De : Michèle

Lors de notre dernière conférence téléphonique avec Peter Owen, Roger s'est engagé à lui faire parvenir une ébauche de la lettre couverture, de ministre à ministre, qui accompagnerait la signature de l'entente de gestion scolaire.

Roger m'a indiqué que le montant de 1,5 M\$ provenant des fonds supplémentaires ne serait pas en sus du financement régulier versé à la province sous les fonds supplémentaires; j'ai donc préparé l'ébauche de lettre en conséquence.

Il sera intéressant de voir la réaction de la province.

1^{er}
Sami
d'accord

MB
- 1^{er} et 2nd des problèmes
relatif à ?
- 1^{er} problème qui est
est suffisamment
vague - 1^{er} problème
par qui on veut
explicitement dire
que ce n'est pas
en sus de...
de...

The Honourable Paul Ramsey
Minister of Education, Skills and Training
Government of British Columbia
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Ramsey:

I am very pleased that our two levels of government have undertaken to sign the enclosed Canada- British Columbia Special Agreement for the implementation of Francophone school governance. Under this Special Agreement, Canada's contribution will amount to ten and a half million dollars (\$ 10 500 000) over the next three years, which represents one-half of the expenses that will be incurred by British Columbia under the Special Agreement.

Further to this Special Agreement, Canada is committed to providing a complementary contribution under the Supplementary Funds of the Official Languages in Education Program, subject to maintenance of the current budgetary levels until March 31, 1998 and to the renewal of the Program as of April 1, 1998. This complementary contribution will amount to one and a half million dollars (\$ 1 500 000), beginning in 1996-97 and ending in 1998-99 and will be used for specific projects related to Francophone school governance.

You will find enclosed two copies of the Special Agreement that I have already signed. I would kindly ask you to sign both copies and return one to the Department for our files.

I would like to thank you for your close co-operation in the signing of the Special Agreement and I look forward to working with you in the important area of the official languages in education and school management.

Yours sincerely,

Lucienne Robillard

Attachment



Government
of Canada

Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

Security Classification - Classification de sécurité

Our File - Notre référence

Your File - Votre référence

Date 13 mai 1996

To
A
Claire Marquis
Analyste financier
Subventions et contributions

From
De
Michèle Blais-Chauvin
Agent principal
Colombie-Britannique et Yukon

Subject
Objet

Ébauche d'entente entre le ministère de l'Éducation de la Colombie-Britannique et Patrimoine canadien relative à la gestion scolaire

Tu trouveras ci-joint l'ébauche modifiée suite à notre conférence téléphonique du 3 mai dernier avec les représentants de la province ainsi que les commentaires écrits de la province.

J'aimerais recevoir tes commentaires et te demander d'acheminer ensuite le tout à Thérèse Laberge pour ses commentaires. Je pense qu'il va falloir décider si on peut ou non exclure les dépenses mentionnées à la clause 2 (d) et si non, modifier le texte en conséquence. Pour ce qui est de la cause transfert, nous n'avons pas cru bon de l'ajouter parce que contrairement à l'entente de l'Alberta que tu m'as envoyée, il n'y a pas différents projets dans cette entente et aucune clause ne mentionne qu'on ne peut transférer d'argent, d'une catégorie à l'autre lors de la révision du budget annuel.

J'aimerais recevoir vos commentaires cette semaine, si possible. N'hésite pas à m'appeler si tu as besoin d'information supplémentaire.

MB

p.j.

Canada

Province of
British ColumbiaMinistry of
Attorney General

LEGAL SERVICES BRANCH

4 - 1001 Douglas St.

Victoria, B.C.

V8W 1C8

Telephone: (604) 356-8400

Facsimile: 356-9264

*A. Michèle**Dr. Roger*

FACSIMILE COVER SHEET

This fax is **CONFIDENTIAL** and may be protected by solicitor-client privilege. It is intended only for the use of the person to whom it is addressed. Any distribution, copying or other use by anyone else is strictly prohibited. If you have received this fax in error, please telephone us immediately and destroy this fax.

TO: ROGER FARLEY
6580

FAX: (819) 953-

FROM: ELIZABETH KING

DATE: MAY 3 1996

TELEPHONE NUMBER: 356-8458 FAX NUMBER: 356-9264

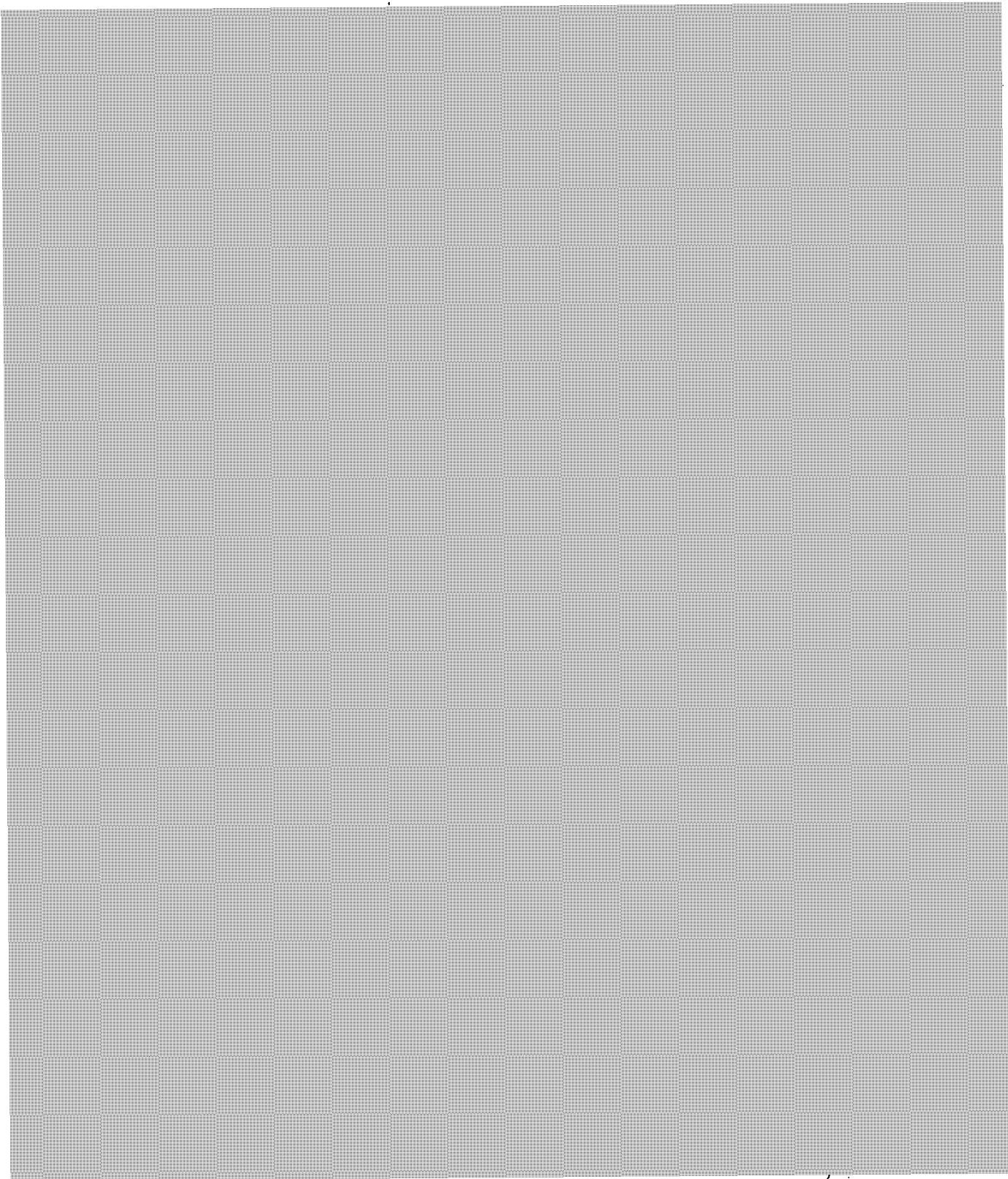
Number of pages: 4 (including this page)

ORIGINALS &/or DOCUMENTS will follow () will not follow (x) BY MAIL

MESSAGE: Federal/Provincial Francophone Legislation Agreement:
Roger, please forward the attached to Michelle and Claire. Thanks.

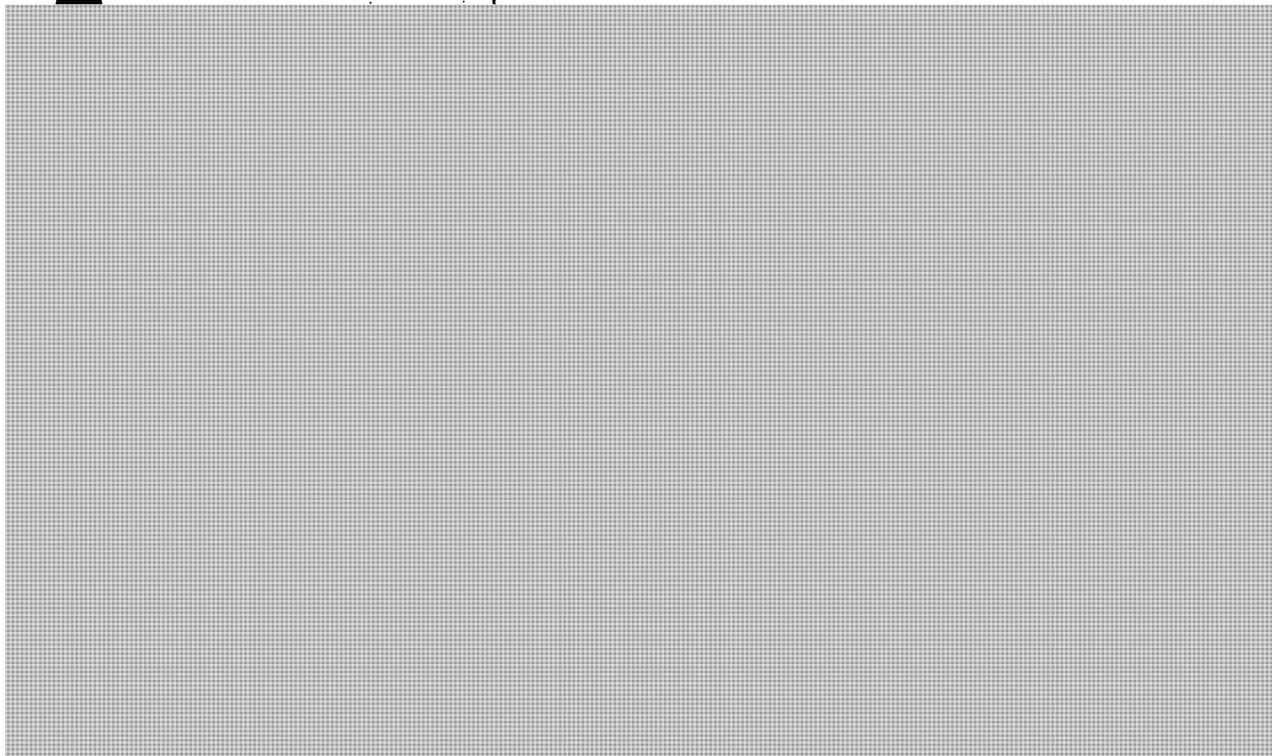
If you have any difficulty in receiving this message, please telephone Liz Tyson
at 387-4762 / Min. of AG / Legal Services Branch

Liz King's Notes from the April 23, 1996 Meeting



s.23

? *



s.23

**Pages 1880 to / à 1891
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Department of Justice
Canada

Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8

Document disclosed under the Access to Information Act
Document divulgué en vertu de la Loi sur l'accès à l'information
Copie à Roger F. Michael, Vivian pour info
8140-6-96
Vol 1

Patrimoine canadien
Développement des politiques
et analyses

APR 22 1996

Canadian Heritage
Policy Development and
Analysis

Le 18 avril 1996

Pierre Gaudet, Directeur
Patrimoine canadien
Politiques, analyses et coopération
Programmes d'appui aux langues officielles
25, rue Eddy, pièce 11H31
Hull (Québec)
K1A 0M5

Cher M. Gaudet,

Selon les dernières informations que nous avons reçues, l'affaire *Association des parents francophones de la Colombie-Britannique c. Colombie-Britannique* (art. 23 de la *Charte*) serait vraisemblablement entendue les 4, 5 et 6 juin prochain. Si des changements ultérieurs sont apportés à ces dates d'audition, nous communiquerons alors à nouveau avec vous.

Veuillez également noter que nous circulerons sous peu, dans le but d'obtenir vos commentaires, une copie du mémoire que le P.G. du Canada déposera devant la Cour suprême de Colombie-Britannique dans cette affaire.

Je vous prie d'agréer, cher M. Gaudet, mes sincères salutations.

Bruno Thériault, Conseiller juridique
Groupe du droit des langues officielles
Section des droits de la personne

BT\lb

8140-6-96

Journal 2ème classe/Second Class Mail n° 0046 1645, 5ème Ave. O., Vancouver, (604) 730-9575. Fax : (604) 730-9576, adresse électronique : 102627.2172@compuserve.com 60 cents

Le Soleil

de Colombie-Britannique

Premier forum pour le Conseil scolaire francophone

1 96/10/27
CENTRE DCC DES LO LANG OFF TPAI
PATRIMOINE CANADIEN
200-15 EDDY RUE
HULL ON CAN KIA QMS

PAR MATTHIEU MASSIP

Commencer à créer un esprit de communauté dans le milieu de l'éducation en français, tel était l'objectif de ce premier forum, organisé par le Conseil scolaire francophone, le 25 mai à l'école Anne Hébert.

Environ 150 parents et membres du personnel des écoles francophones ont pu ainsi se rencontrer pour la première fois depuis la création de l'autorité francophone. «Le résultat aujourd'hui dépasse nos espérances», s'enthousiasmait Vincent Pigeon, président du Conseil, les gens ont compris qu'avec un Conseil scolaire on a notre destin entre nos mains.

Tout le monde a pu profiter de l'expérience d'un «groupe d'experts» de l'Alberta, où les francophones gèrent leurs écoles depuis deux ans, pour mesurer le chemin à parcourir. Le discours d'Yvon Mahé, directeur adjoint à la direction de l'éducation française au ministère de l'Éducation de l'Alberta, sur l'intégration de l'identité dans la programmation scolaire, a notamment été très apprécié.

Aux questions parfois anxieuses de parents se demandant si une éducation séparée n'enfermait pas les enfants dans un ghetto, Yvon Mahé a répondu en défendant l'idée d'une «école distincte» mais universelle et ouverte sur le monde. L'important étant de ne pas laisser l'extérieur imposer ses propres normes de ghettoïsation. Vincent Pigeon confiait lui, que les 1700 enfants concernés actuellement par le programme sont la preuve que l'éducation francophone ne constitue pas un ghetto.

PHOTO CUTLINE - GRACIEUSEMENT COMMUNIQUÉS



Lors du forum, une loterie a été organisée pour désigner la première personne à devenir membre du Conseil scolaire francophone de Colombie Britannique. La gagnante, Yseult Friolet, remplit ici sa demande d'inscription avec à sa gauche David Vary, et à droite Vincent Pigeon, président du Conseil scolaire francophone.

Les participants ont aussi défini des priorités stratégiques pour le moyen terme. Parmi elles, le recrutement sera l'objectif numéro un. Le Conseil scolaire s'apprête, dans cette perspective, à lancer une vaste

campagne de publicité. D'après Vincent Pigeon, le nombre potentiel d'enfants correspondant aux critères de l'article 23 de la Charte des droits et libertés, serait de plus de 5000 dans le Sud-Ouest de la province. Le Con-

seil devrait en outre, prochainement, compléter sa structure en embauchant son premier directeur général. □

8140-6-96

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

MAI 1991	DÉPÔT DU RAPPORT DU COMITÉ SPÉCIAL
AUTOMNE 1991	ÉLECTION DU NOUVEAU PARTI DÉMOCRATIQUE EN COLOMBIE-BRITANNIQUE
FÉVRIER 1992	LE RAPPORT DU COMITÉ SPÉCIAL EST RENDU PUBLIC
JUIN 1992	CONSULTATION DU PUBLIC
17 AOÛT 1992	RENCONTRE DES HAUTS FONCTIONNAIRES DU MINISTÈRE DE L'ÉDUCATION SUITE À LAQUELLE UNE ENTENTE EST CONCLUE POUR LA CRÉATION D'UNE SEULE COMMISSION SCOLAIRE FRANCOPHONE PROVINCIALE
22 DÉCEMBRE 1992	COMMUNIQUÉ DE PRESSE DE LA MINISTRE DE L'ÉDUCATION A.HAGEN, ANNONÇANT OFFICIELLEMENT L'INTENTION DU GOUVERNEMENT DE CRÉER UNE COMMISSION SCOLAIRE FRANCOPHONE PROVINCIALE OPÉRATIONNELLE POUR LA RENTRÉE SCOLAIRE 1995 SOUS CONDITION D'UNE PARTICIPATION FINANCIÈRE DU GOUVERNEMENT FÉDÉRAL
17 MARS 1993	RENCONTRE AVEC LA SOUS-MINISTRE DE L'ÉDUCATION, AU COURS DE LAQUELLE CELLE-CI DÉCLARE QUE RIEN NE SERA FAIT TANT QUE LE GOUVERNEMENT FÉDÉRAL N'AURA PAS SIGNÉ D'ENTENTE FINANCIÈRE. L'A.P.F.C.B. DÉPLORE LE MANQUE DE LEADERSHIP DANS CE DOSSIER
20 MAI 1993	ANNONCE DU GOUVERNEMENT FÉDÉRAL DE LA DISPONIBILITÉ D'UNE SOMME DE 112 MILLIONS POUR SOUTENIR L'IMPLANTATION DE LA GESTION SCOLAIRE FRANCOPHONE À TRAVERS LE CANADA
8 JUILLET 1993	RENCONTRE AVEC LA MINISTRE DE L'ÉDUCATION, ANITA HAGEN ET DES HAUTS FONCTIONNAIRES. LE GOUVERNEMENT INVOQUE DES «POLICY ISSUES- BAD TIMING - NECESSITY OF A BROADER COMMUNITY CONSULTATION» ET LE DÉSAPOINTEMENT FACE À L'OFFRE FINANCIÈRE DU GOUVERNEMENT FÉDÉRAL, POUR RETARDER LA MISE EN PLACE DE LA COMMISSION SCOLAIRE FRANCOPHONE.

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

PAGE 2

MI-SEPTEMBRE 1993	REMANIEMENT MINISTÉRIEL PROVINCIAL : NOUVEAU MINISTRE DE L'ÉDUCATION, ART CHARBONNEAU
22 OCTOBRE 1993	RENCONTRE AVEC LE MINISTÈRE DE L'ÉDUCATION, POUR UNE MISE À JOUR SUR L'ENTENTE FINANCIÈRE DE PRINCIPE AVEC LE GOUVERNEMENT FÉDÉRAL POUR L'IMPLANTATION D'UNE COMMISSION SCOLAIRE
5 NOVEMBRE 1993	RENCONTRE OSCAR BÉDARD, SOUS-MINISTRE ADJOINT «EDUCATIONAL PROGRAMS DEPARTMENT», MINISTÈRE DE L'ÉDUCATION QUI DEMANDE DE TROUVER UN AUTRE MODÈLE DE GESTION
23 NOVEMBRE 1993	RENCONTRE ART CHARBONNEAU QUI DEMANDE QUE L'ON PENSE À TOUS LES MODÈLES POSSIBLES AFIN DE TROUVER LE PLUS «COST EFFICIENT»
3 DÉCEMBRE 1993	RENCONTRE CYNTHIA MORTON, (NOUVELLE SOUS-MINISTRE DE L'ÉDUCATION) ET HAUTS FONCTIONNAIRES QUI PRÉSENTENT L'ÉBAUCHE D'UN SYSTÈME DE GESTION BASÉE SUR DES COMITÉS CONSEILS DE PARENTS LOCAUX AVEC DES LE POUVOIR DE DONNER DES DIRECTIVES AUX DISTRICTS SCOLAIRES SUR DES SUJETS RELIÉS AU PROGRAMME FRANCOPHONE.
16 DÉCEMBRE 1993	RENCONTRE AVEC LES SOUS-MINISTRE DE L'ÉDUCATION ET LES HAUTS FONCTIONNAIRES POUR DES DISCUSSIONS PLUS ÉLABORÉES SUR LE MODÈLE PROPOSÉ
7 JANVIER 1994	RÉPONSE A.P.F.C.B. AU MINISTÈRE DE L'ÉDUCATION : MODÈLE INACCEPTABLE
14 JANVIER 1994	RENCONTRE A OTTAWA DES COLLABORATEURS DU MINISTRE DU PATRIMOINE CANADIEN, MICHEL DUPUY, POUR DEMANDER LE SUPPORT DU MINISTÈRE DU PATRIMOINE CANADIEN
JANVIER 1994	CAMPAGNE DE LOBBYING
18 FÉVRIER 1994	RENCONTRE AVEC LA SOUS-MINISTRE DE L'ÉDUCATION QUI PROPOSE DE TRAVAILLER SUR LE MODÈLE DES ÉCOLES INDÉPENDANTES

HISTORIQUE
DÉVELOPPEMENT DU DOSSIER GESTION SCOLAIRE FRANCOPHONE
EN COLOMBIE-BRITANNIQUE
DEPUIS LE DÉPÔT DU RAPPORT
DU COMITÉ SPÉCIAL SUR L'ÉDUCATION EN LANGUE MINORITAIRE OFFICIELLE

PAGE 3

16 MARS 1994

LA SOUS-MINISTRE DE L'ÉDUCATION CONFIRME QU'AUCUN AMENDEMENT À LA LOI SCOLAIRE NE SERA ADOPTÉ POUR PERMETTRE LA GESTION SCOLAIRE FRANCOPHONE. CEPENDANT, ELLE VEUT BIEN DISCUTER DES MOYENS À PRENDRE POUR OFFRIR UNE MEILLEURE QUALITÉ D'ÉDUCATION AU PROGRAMME FRANCOPHONE.

2 SEPTEMBRE 1994

RÉACTIVATION DE LA CAUSE JURIDIQUE INITIÉE EN 1989, AVEC AMENDEMENT À LA CAUSE ORIGINALE, POUR DEMANDER UNE COMMISSION SCOLAIRE QUI COUVRE LE TERRITOIRE SUIVANT : VALLÉE DU FRASER, VANCOUVER, VANCOUVER-MÉTROPOLITAIN, VICTORIA, VICTORIA-MÉTROPOLITAIN

28 JUILLET 1995

COMMUNIQUÉ DE PRESSE DU MINISTÈRE DE L'ÉDUCATION QUI ANNONCE L'INTENTION DU GOUVERNEMENT DE COLOMBIE-BRITANNIQUE DE CRÉER, PAR VOIE DE RÉGLEMENTATION, UN CONSEIL SCOLAIRE FRANCOPHONE POUR LES RÉGIONS IDENTIFIÉES DANS LA CAUSE JURIDIQUE DE L'A.P.F.C.B.

AOÛT 1995

NÉGOCIATIONS SUR LA RÉGLEMENTATION PROPOSÉE

2 NOVEMBRE 1995

LA RÉGLEMENTATION EST ADOPTÉE PAR ARRÊTÉ EN CONSEIL, TEL QU'ANNONCÉ EN JUILLET 1995.

14 DÉCEMBRE 1995

NOMINATION PAR ARRÊTÉ EN CONSEIL DES 5 PREMIERS CONSEILLERS SCOLAIRE.

JANVIER/FÉVRIER 1996

PROCESSUS POUR AMENDER LA CAUSE JURIDIQUE COMPTE-TENU DE L'ADOPTION DE LA RÉGLEMENTATION :

LA RÉGLEMENTATION ADOPTÉE LE 2 NOVEMBRE EST INCONSTITUTIONNELLE PUISQU'ELLE NE RESPECTE PAS L'ARTICLE 23 DE LA CHARTE CANADIENNE DES DROITS ET LIBERTÉS

DÉBUT MAI 1996

LA PROVINCE DEMANDE UN AJOURNEMENT JUSQU'À L'AUTOMNE 1996. L'A.P.F.C.B. REFUSE L'AJOURNEMENT.

22 MAI 1996

CONFÉRENCE PRÉPARATOIRE DEVANT L'ADJOINT DU JUGE EN CHEF DE LA COUR SUPRÊME DE LA C.-B. LE JUGE REFUSE L'AJOURNEMENT ET ORDONNE QUE LE PROCÈS SOIT ENTENDU DU 8 AU 12 JUILLET 1996.

CAUSE JURIDIQUE

1989	Action juridique devant la Cour Suprême de la C.-B.
Mars 1990	Jugement de la Cour Suprême du Canada dans l'affaire Mahé
Mai 1990	Ajournement de la cause juridique et création du Comité spécial
Février 1992	Publication du rapport du Comité spécial
Déc. 1992	Annnonce de la création pour septembre 1995, d'une commission scolaire francophone provinciale
Octobre 1993	Élection fédérale (vote Reform 52% en C.-B.), recul du gouvernement
Mars 1994	Début des démarches pour réactiver la cause juridique
Sept. 1994	Dépot de la demande amendée pour inclure une demande pour une commission scolaire
Juillet 1995	Annnonce de l'intention du gouvernement de créer un conseil scolaire
Novembre 1995	Adoption de la réglementation créant un conseil scolaire
Décembre 1995	Remise du procès sommaire prévu pour le début décembre
Hiver 1996	Développement de la preuve pour déclarer la réglementation non constitutionnelle
Juin 1996	Procès sommaire portant sur la réglementation adoptée par le gouvernement
Automne 1996	Amendement à la cause pour inclure demandes des parents résidant à l'extérieur du territoire sous juridiction du conseil scolaire (région visée)
?????	Procès portant sur demande des parents à l'extérieur de la région visée
?????	Procès portant sur la demande de 4 millions pour dommages et intérêts.

CONSEIL SCOLAIRE FRANCOPHONE

STRUCTURE

Société formée de cinq conseillers

Membership provincial

Territoire divisé en cinq régions

Assemblée générale formée de délégués représentant les cinq régions

TERRITOIRE

Chilliwack jusqu'au Victoria métropolitain (18 districts scolaires)

10 districts offrant le Programme cadre de français:

Chilliwack, Abbotsford, Mission, Surrey, Delta, Coquitlam, Vancouver,
North Vancouver, Saanich, Greater Victoria

CONSEIL SCOLAIRE FRANCOPHONE

FONCTIONNEMENT

Gestionnaire : CEO

Clientèle : enfants d'ayants droit

Éligibilité des membres : ayants droit

Possibilité de contracter avec les districts pour offrir des services

Possibilité d'extension du territoire

Statuts et règlements approuvés par le Ministre de l'Éducation

FINANCEMENT

Selon les formules de financement du Ministère de l'Éducation

Excédent des coûts :

- Entente bilatérale en éducation

- Entente spéciale pour la gestion

POTENTIEL D'ENFANTS ADMISSIBLES AU PROGRAMME CADRE

Vancouver métro :
5510 enfants (4 délégués)

Vallée du Fraser :
1925 enfants (2 délégués)

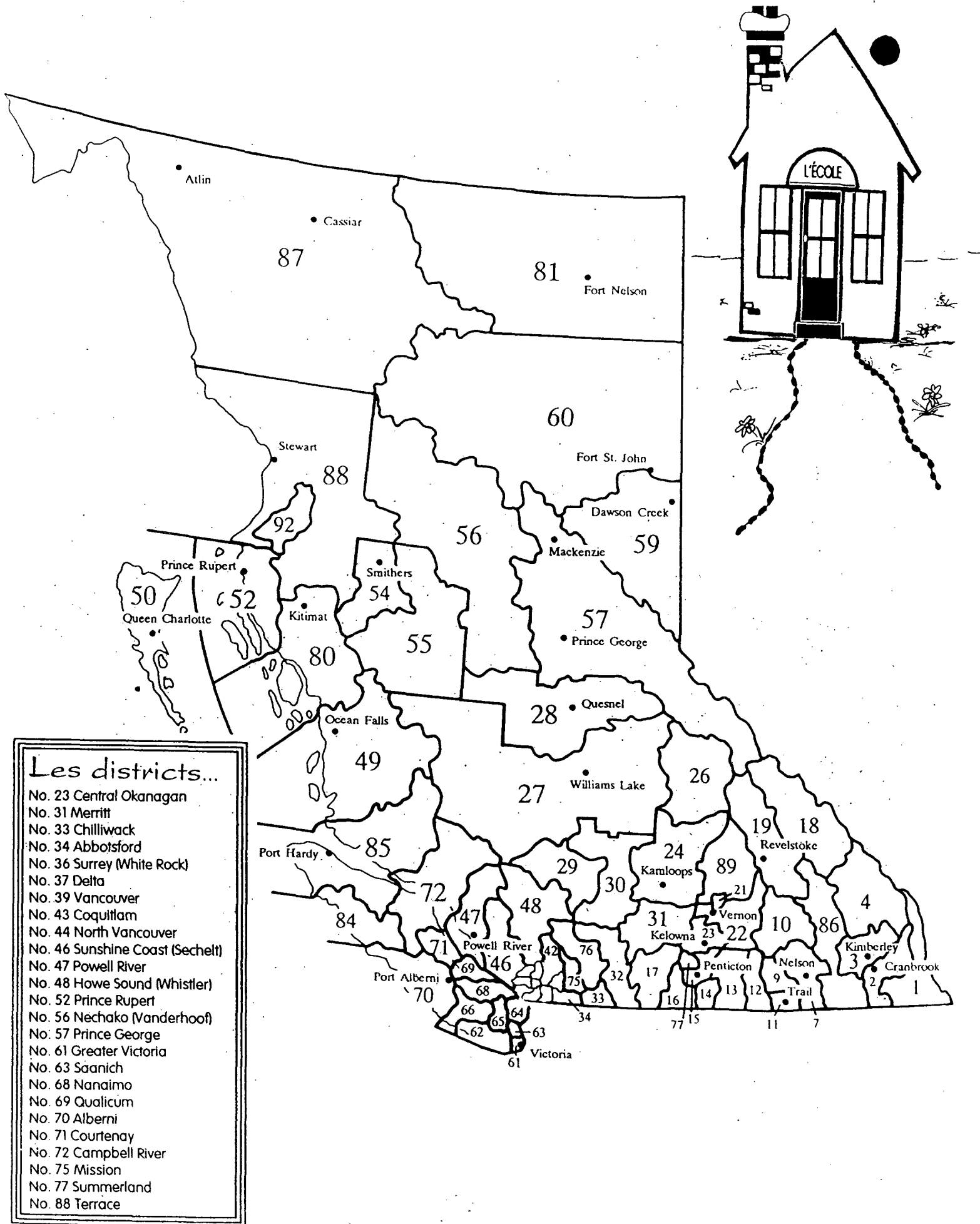
Victoria métro :
1410 enfants (2 délégués)

Ile Vancouver Nord, Sunshine Coast, Whistler :
2215 enfants (3 délégués)

Kootenays, Okanagan, Nord de la province :
6325 enfants (4 délégués)

COLOMBIE-BRITANNIQUE : 17385 enfants

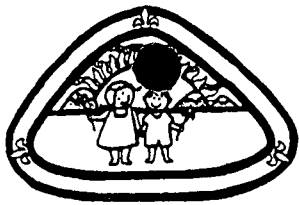
(Source : Angus Reid, basé sur Statistique Canada 1991)



RÈGLEMENTATION CRÉANT LE CONSEIL SCOLAIRE FRANCOPHONE

POINTS EN LITIGE

- ▶ Les droits de gestion sont à l'intérieur d'une réglementation qui peut être modifiée facilement par Arrêté en Conseil (Cabinet)
- ▶ La réglementation ne fait pas état des principes d'égalité, plus particulièrement en ce qui a trait au financement et aux établissements scolaires
- ▶ On nie l'accès au financement pour les immobilisations sauf si le gouvernement fédéral défraie les coûts à 100%
- ▶ Le financement du Conseil scolaire francophone est discrétionnaire et rien n'assure une stabilité financière à long terme
- ▶ Il n'y a pas de mécanisme de prévu pour la résolution des disputes qui surviendront lors des négociations avec les districts scolaires pour les ententes de service



Association des parents francophones de la Colombie-Britannique

COMMUNIQUÉ DE PRESSE

Le nouveau Conseil scolaire francophone ne suffit pas à mettre fin
à la contestation juridique en vertu de la Charte.

Vancouver, le 31 juillet 1995 - En réponse à l'annonce du gouvernement provincial de la Colombie-Britannique de son intention d'établir un Conseil scolaire francophone, l'Association des parents francophones de la Colombie-Britannique remarque que c'est un pas dans la bonne direction, qui, cependant, est bien loin de satisfaire aux exigences minimales de la Constitution, telles qu'énoncées par la Cour Suprême du Canada dans ses jugements dans l'affaire Mahé en Alberta et dans le Renvoi du Manitoba.

La présidente de l'Association, Mme Galibois Barss déclare : « Notre association n'endosse pas et n'endorsera pas ce projet du gouvernement. Tel que proposé, les parents se voient chargés de toutes les obligations et de toutes les responsabilités en ce qui concerne l'éducation des enfants francophones, mais les outils qui leur seront fournis pour prendre en charge ces obligations et ces responsabilités sont inefficaces. Nous poursuivrons donc notre cause devant les tribunaux. »

Dans son communiqué du 28 juillet, le gouvernement annonçait la mise sur pied, par voie de réglementation en vertu de la Loi scolaire, d'un Conseil scolaire francophone pour les districts scolaires situés dans les régions touchées par la cause juridique de l'Association seulement, soit les régions suivantes : Vallée du Fraser, Vancouver, Vancouver métropolitain, Victoria et Victoria métropolitain.

En 1989, l'Association et plusieurs autres organismes francophones concernés avaient intenté une action contre le gouvernement en vue d'obtenir les droits en matière d'éducation et de culture qui sont garantis à la communauté francophone en vertu de l'article 23 de la Charte des droits et libertés.

Les procédures étaient provisoirement ajournées en 1990, pendant qu'un Comité spécial, mis sur pied à cette fin, se penchait sur ce dossier. Le rapport du Comité spécial, publié en 1992, recommandait l'établissement de conseils scolaires francophones, la communauté francophone ayant le pouvoir exclusif de gestion et de contrôle à l'égard de l'instruction et des établissements scolaires.

En décembre 1992, Mme Anita Hagen, ministre de l'Éducation à l'époque, reconnaissait publiquement les obligations constitutionnelles du gouvernement, et annonçait son intention d'établir un seul conseil scolaire francophone provincial afin de mettre en oeuvre les recommandations du Comité spécial.

À l'automne de 1993, le gouvernement est revenu sur ses intentions. C'est pourquoi, en 1994 l'Association et les co-demandeurs réactivaient la cause juridique, avec des amendements pour y inclure les régions suivantes : Vallée du Fraser, Vancouver, Vancouver métropolitain, Victoria et Victoria métropolitain. L'annonce actuelle du gouvernement ne couvre que le territoire visé par l'action devant les tribunaux.

En expliquant pourquoi l'Association poursuit la cause juridique, Mme Galibois Barss précise : « Par cette proposition, le gouvernement manque à ses responsabilités

constitutionnelles. Le projet ne satisfait même pas les exigences minimales nécessaires au fonctionnement efficace d'un système scolaire francophone».

L'Association est d'avis que l'interdiction du financement provincial pour les immobilisations qui fait partie de la proposition du gouvernement, contrevient à son obligation de fournir des «établissements d'enseignement de la minorité» lorsque le nombre le justifie.

L'obligation de fournir des établissements d'enseignement doit être remplie selon le principe de l'égalité avec ce qui est offert à la majorité. Cette interdiction de financement entraîne donc des inégalités inhérentes et fondamentales.

De plus, la proposition ne prévoit aucune formule ni mécanisme qui permettraient d'élargir le territoire du Conseil scolaire. Ce point inquiète particulièrement les parents francophones qui vivent à l'extérieur des régions suivantes : Vallée du Fraser, Vancouver, Vancouver métropolitain, Victoria et Victoria métropolitain, dont les enfants sont inscrits aux programmes dispensés par les commissions scolaires de la majorité, programmes qui, de ce fait, échappent à la gestion et au contrôle des parents francophones.

Il s'ensuit qu'il n'y a pas de dispositions législatives précises pour assurer aux francophones ce qui leur est dû en vertu de l'article 23. L'adoption «sans plus tarder» de telles dispositions est pourtant définie par la Cour Suprême du Canada dans son jugement Mahé, en tant qu'obligation qui incombe aux législatures provinciales.

En même temps, le gouvernement a fait connaître son intention de procéder avec la réglementation, sans tenir compte des objections et malgré les efforts pour trouver une solution réalisable.

Devant l'inévitabilité de la mise en oeuvre de ce projet, Mme Galibois Barss a entrepris des démarches auprès du ministre de l'Éducation de la Colombie-Britannique et auprès du ministre du Patrimoine canadien pour la reprise de négociations interrompues, en vue d'en arriver à une entente entre les deux gouvernements sur le partage des coûts, pour faciliter l'établissement du Conseil scolaire. «Sans une entente de partage des coûts, le Conseil scolaire rencontrera peut être des obstacles insurmontables avant même qu'il ne commence à fonctionner», dit Mme Galibois Barss.

Étant donné l'intention ferme du gouvernement de procéder avec la réglementation, l'Association se voit dans l'obligation de participer à ces démarches afin d'apporter l'information nécessaire ainsi que le point de vue des parents. Mme Galibois Barss dit que l'Association continuera de collaborer avec le ministre de l'Éducation et son ministère dans le but «...de s'assurer que l'éducation de nos enfants ne subisse un préjudice irréparable d'ici la résolution du litige actuellement devant les tribunaux».

Elle ajoute : «Notre participation au processus de mise en oeuvre de cette réglementation, tout comme notre participation au Programme cadre, ne signifient nullement que nous considérons ces programmes comme rencontrant les obligations du gouvernement en vertu de l'article 23. Nous participons seulement en autant qu'il est nécessaire de faire en sorte que le processus perturbe le moins possible nos enfants et aussi de s'assurer qu'il y ait quelqu'un qui parle pour eux et qui représente leurs besoins».

- 30 -

Source : A.P.F.C.B.

Martine Galibois Barss (604) 736-5056

**CAUSE JURIDIQUE
MISE À JOUR
Juin 1996**

La cause juridique intentée par les parents francophones contre le Procureur de la Couronne de la C.-B. devait être entendue en Cour Suprême les 4, 5 et 6 juin prochain.

En prévision de ce procès, une rencontre préparatoire a eu lieu le 22 mai dernier, devant l'adjoint du Juge en Chef de la Cour Suprême de la C.-B., le juge Dohm.

Au cours de cette rencontre, l'avocat du Procureur de la Couronne a demandé l'ajournement de la cause juridique jusqu'à l'automne prochain.

Le juge Dohm n'a pas répondu à la demande de l'avocat du Procureur. Cependant, devant la complexité de la cause qui implique la Constitution canadienne, la loi scolaire de la C.-B. et la réglementation créant le Conseil scolaire francophone, le juge Dohm a décidé qu'il fallait prévoir 5 jours pour le déroulement du procès et non pas 3 comme initialement prévu.

Comme il n'y avait pas de créneau disponible en juin, le juge Dohm a ordonné que le procès ait lieu du 8 au 12 juillet prochain et qu'un juge, ayant l'expertise nécessaire pour entendre une telle cause, soit spécialement assigné.

Le juge Dohm a également dit qu'il réalisait l'importance que le jugement dans cette cause soit rendu avant le mois de septembre. C'est donc dire que le jugement pourrait être rendu avant la fin du mois de juillet. Ceci veut également dire que le Procureur ne peut plus trouver d'excuse pour retarder le procès.

Au cours de la semaine du 27 mai, on nous a fait savoir que le procès se déroulera à Nanaimo, du 8 au 12 juillet prochain et que le juge David Vickers présidera le tribunal.

Il aura fallu 7 ans, pour que l'action judiciaire intentée par les parents francophones, soit entendue par les tribunaux...!

MOT DE LA PRÉSIDENTE

Malgré le fait que Dame Nature ne semble pas vouloir collaborer, l'été est quand même à nos portes, nous annonçant la fin de l'année scolaire, le début de la période des vacances pour plusieurs d'entre vous et le numéro de fin d'année du bulletin «Info Parents»...

J'aimerais profiter de l'occasion pour clarifier la situation actuelle par rapport au fait que je siège présentement sur le Conseil scolaire francophone à titre de conseillère et sur le Conseil d'administration de l'A.P.F.C.B., à titre de Présidente. Certaines personnes semblent interpréter cette situation comme étant conflictuelle par rapport aux intérêts des deux entités.

Lorsque j'ai accepté ma nomination au sein du Conseil scolaire francophone, j'ai écrit au ministre de l'Éducation de l'époque, Art Charbonneau, pour lui rappeler que j'étais toujours présidente de l'Association des parents francophones, et qu'à ce titre je n'endossais absolument pas la réglementation adoptée par le gouvernement provincial. L'Association et ses conseillers juridiques jugeaient cette réglementation non conforme à l'Article 23 de la Charte canadienne des droits et libertés et conséquemment elle continuait la poursuite juridique.

Cependant, malgré le fait que l'Association n'endosse pas l'initiative gouvernementale, elle allait quand même supporter la mise en place du Conseil scolaire afin de s'assurer **que l'éducation de nos enfants ne subisse un préjudice irréparable** d'ici la résolution du litige actuellement devant les tribunaux. C'est pour cette raison que j'ai accepté la nomination au poste de conseillère et monsieur Charbonneau n'y a pas vu de potentiel de conflit d'intérêt.

Le fait de participer de mise en place du Conseil scolaire francophone, tout comme notre participation au développement du Programme cadre de français, ne signifient nullement que nous considérons ces structures comme rencontrant les obligations du gouvernement en vertu de l'Article 23.

De par ma présence sur le Conseil scolaire, je suis en mesure de faire entendre la voix des parents francophones de la Colombie-Britannique et de m'assurer qu'il y ait quelqu'un qui parle au nom des enfants, qui représente leurs besoins et qui fasse en sorte que le processus perturbe le moins possible le système d'éducation francophone.

Il faut se rappeler également que les buts du Conseil scolaire et de l'A.P.F.C.B. se ressemblent beaucoup, en ce sens qu'ils sont basés sur une vision commune, à savoir que **«les francophones de la Colombie-Britannique reçoivent une éducation en français reconnue pour son excellence et sa contribution à l'épanouissement de la culture francophone»**, et que cette vision ne sera atteinte que si tous les partenaires en éducation travaillent ensemble dans un climat de respect et de confiance.

J'espère que cette brève mise à jour vous permettra de mieux comprendre pourquoi j'ai accepté de siéger sur le Conseil scolaire. Ce n'est pas pour des raisons politiques, ni pour des raisons juridiques et encore moins pour des raisons pécuniaires. C'est tout simplement pour le bien-être des enfants francophones de la province.

Sur ce, j'aimerais souhaiter à toutes et à tous, de belles vacances en famille avec beaucoup de repos et plein de bonnes choses. Septembre viendra bien assez vite...!

Martine

DE TOUT ET DE RIEN...

Au cours de l'année scolaire qui se terminera bientôt, nous avons tous été témoins de la création, par voie de réglementation adoptée par le gouvernement provincial, d'une corporation responsable de gérer le système d'éducation francophone, dans le territoire s'étendant de Chilliwack au Grand Victoria. Cette corporation, appelée dans la réglementation l'Autorité scolaire, a été renommée Conseil scolaire francophone, suite à une résolution adoptée par les premiers conseillers scolaires, nommés par le ministre de l'Éducation.

Les attentes sont très élevées vis à vis du nouveau Conseil scolaire. On s'attend à une amélioration très rapide de tous les aspects du système d'éducation francophone. Que ce soit aux niveaux du transport scolaire, de la promotion, des ressources pédagogiques, des locaux, du support aux enseignants, des structures décisionnelles, des programmes d'étude, des services préscolaires ou encore de l'animation culturelle, on espère que le Conseil scolaire apportera des améliorations sensibles à tous ces aspects, et ce dans des délais assez courts. Tout un contrat en perspective...!

On a de bonnes raisons d'être optimistes face à l'avenir de l'école francophone. Cependant, il faut être réaliste. Le Conseil scolaire ne pourra répondre aux attentes de tout le monde, s'il n'est pas appuyé par tous les partenaires en éducation. Les parents, les enseignants, les administrateurs, les élèves et la communauté en général ont tous un rôle important à jouer dans la poursuite de la mission du Conseil scolaire francophone qui **«s'engage à offrir des services éducatifs valorisant le plein épanouissement et l'identité culturelle des apprenants francophones de la province»**.

La réalisation de la mission du Conseil scolaire (et par le fait même de l'école francophone) doit donc se faire à travers un effort collectif. C'est pourquoi, nous devons dès maintenant concentrer une grande partie de nos énergies à élaborer et réaliser des projets qui favorisent la création de partenariats aux niveaux local et provincial; partenariats qui viseront la réalisation de la mission de l'école.

Parmi les projets possibles, il en existe un qui a déjà fait ses preuves ailleurs et qui pourrait être facilement adapté aux besoins spécifiques du système d'éducation francophone de la Colombie-Britannique : **le projet éducatif**.

Un projet éducatif, c'est quoi ça au juste? En fait ce n'est pas très compliqué. C'est un processus à travers lequel l'école précise ses fondements (mission, valeurs, buts, etc...), identifie les objectifs qu'elle veut atteindre (résultats concrets), et se dote d'un plan d'action qui inclut des activités d'évaluation. Tout le processus s'effectue à travers un partenariat Foyer-École.

Ce processus permet de concentrer les énergies de tous les partenaires sur l'atteinte de résultats concrets, et de coordonner leurs interventions qui s'avèrent dès lors très efficaces. Les interventions dans les domaines tels que la promotion et le recrutement et l'animation culturelle, pour ne nommer que ceux-là, ont alors plus de chance de donner les résultats prévus.

C'est pourquoi, au cours de la prochaine année, le Consortium en éducation francophone (A.P.F.C.B., Conseil jeunesse, Educacentre) orientera ses interventions vers la création de projets éducatifs dans les écoles.

Le travail a déjà commencé au cours de la dernière année avec l'organisation de sessions de formation en animation culturelle qui se continueront l'automne prochain. Ces activités déboucheront sur un forum, en février 1997, qui aura comme thème «l'école et la culture». Lors de ce forum, les participants (parents, enseignants, étudiants, membres de la communauté) auront l'occasion d'élaborer tous ensemble, le cadre d'un projet éducatif pour l'école francophone de la Colombie-Britannique.

C'est à travers des initiatives comme celles-ci, que nous serons en mesure d'offrir aux enfants francophones de la C.-B., une éducation de qualité qui répond à leurs besoins, plus particulièrement aux niveaux culturels et linguistiques.

De beaux projets pour la prochaine année... Nous espérons que vous serez au rendez-vous!!!

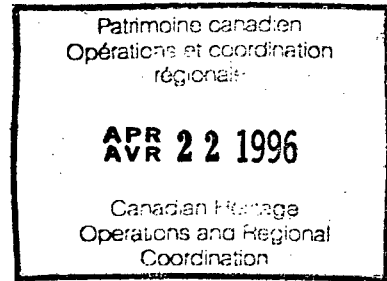
En terminant, j'aimerais souhaiter à toutes et à tous, parents, enseignants(es), administrateurs(trices) et élèves, un bel été plein de soleil, en espérant que vous reviendrez en grande forme pour le début de la prochaine année scolaire.



Department of Justice
Canada

Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8



Le 18 avril 1996

Done

Roger Farley, Chef
Patrimoine canadien
15, rue Eddy, pièce 10E14
Hull (Québec)
K1A 0N5

96.4.23

*Noted
pour information
Rog*

Cher M. Farley,

Selon les dernières informations que nous avons reçues, l'affaire *Association des parents francophones de la Colombie-Britannique c. Colombie-Britannique* (art. 23 de la *Charte*) serait vraisemblablement entendue les 4, 5 et 6 juin prochain. Si des changements ultérieurs sont apportés à ces dates d'audition, nous communiquerons alors à nouveau avec vous.

Veuillez également noter que nous circulerons sous peu, dans le but d'obtenir vos commentaires, une copie du mémoire que le P.G. du Canada déposera devant la Cour suprême de Colombie-Britannique dans cette affaire.

Je vous prie d'agréer, cher M. Farley, mes sincères salutations.

Bruno Thériault

Bruno Thériault, Conseiller juridique
Groupe du droit des langues officielles
Section des droits de la personne

BT/lb



Department of Justice - Ministère de la Justice
Canada

Ottawa, Canada
K1A 0H8

8140-6-91

Le 18 avril 1996

AC

Rosen
inf

Cosser

Hilaire Lemoine, Directeur général
Patrimoine canadien
Direction générale des programmes d'appui
aux langues officielles
25, rue Eddy, pièce 11H31
Hull (Québec)
K1A 0M5

Cher M. Lemoine,

Selon les dernières informations que nous avons reçues, l'affaire *Association des parents francophones de la Colombie-Britannique c. Colombie-Britannique* (art. 23 de la *Charte*) serait vraisemblablement entendue les 4, 5 et 6 juin prochain. Si des changements ultérieurs sont apportés à ces dates d'audition, nous communiquerons alors à nouveau avec vous.

Veuillez également noter que nous circulerons sous peu, dans le but d'obtenir vos commentaires, une copie du mémoire que le P.G. du Canada déposera devant la Cour suprême de Colombie-Britannique dans cette affaire.

Je vous prie d'agréer, cher M. Lemoine, mes sincères salutations.

Bruno Thériault, Conseiller juridique
Groupe du droit des langues officielles
Section des droits de la personne

BT/lb

CONSEIL SCOLAIRE FRANCOPHONE DE LA COLOMBIE-BRITANNIQUE**COMMUNIQUÉ DE PRESSE****Pour diffusion immédiate****«UN MOMENT HISTORIQUE POUR LA COMMUNAUTÉ FRANCOPHONE»**

Vancouver, le 23 janvier 1996 - Vendredi le 19 janvier à 19 h, une page d'histoire a été écrite pour la communauté francophone de Colombie-Britannique. En effet, au cours d'une cérémonie officielle à laquelle assistaient des représentants des comités de parents et des associations francophones, le juge Raymond Paris de la Cour suprême de la Colombie-Britannique a procédé à l'assermentation des premiers conseillers du Conseil scolaire francophone de la C-B., soit :

- ▶ Martine Galibois Barss, de la région Grand Vancouver
- ▶ Nicole Hennessey, de la région Île Vancouver Nord
- ▶ Louise Côté Madill, de la région Nord de la province-Okanagan-Columbia
- ▶ Marc-André Ouellette, de la région Île Vancouver Sud
- ▶ Vincent Pigeon, de la région Grand Vancouver

Les cinq conseillers avaient été nommés par Arrêté en Conseil, le 14 décembre dernier, pour une période maximale de quinze (15) mois. Cette nomination faisait suite à l'adoption par le cabinet provincial, le 2 novembre 1995, d'une réglementation qui créait le premier conseil scolaire francophone en Colombie-Britannique.

Les conseillers auront comme principale tâche la mise en place de la structure du nouveau Conseil scolaire, en vue de la prise en charge du système d'éducation francophone dans la région s'étendant de Chilliwack jusqu'au Victoria métropolitain, et ce dès septembre 1996.

Suite à la cérémonie d'assermentation, les conseillers se sont mis immédiatement au travail. Une rencontre d'orientation avec le ministère de l'Éducation a été suivie d'une session de planification stratégique au cours de laquelle les conseillers ont adopté une vision ainsi qu'une mission qui se lisent comme suit :

VISION

Les francophones de la Colombie-Britannique reçoivent une éducation en français reconnue pour son excellence et sa contribution à l'épanouissement de la culture francophone.



Multiculturalisme et
Citoyenneté Canada

Multiculturalism and
Citizenship Canada

Ottawa K1A 1K5



Canada

MISSION

Le Conseil scolaire francophone de la Colombie-Britannique s'engage à offrir des services éducatifs valorisant le plein épanouissement et l'identité culturelle des apprenants francophones de la province.

«Il est important que la vision et la mission du Conseil scolaire francophone reflètent bien ses particularités, notamment en ce qui a trait à la langue et la culture» a déclaré Vincent Pigeon, élu président du Conseil scolaire francophone lors de la rencontre de la fin de semaine. Marc-André Ouellette, de Victoria, a été élu vice-président.

Au cours de la fin de semaine, les conseillers ont également entamé un processus pour l'embauche d'un consultant. **«Le consultant nous guidera dans le début de nos opérations. Il nous aidera entre autres, à sélectionner le directeur général du Conseil scolaire»** a précisé le président.

Monsieur Pigeon a terminé en affirmant qu'il était très fier de faire partie du premier conseil scolaire francophone de la Colombie-Britannique. **« Suite à notre fin de semaine de travail, je peux vous assurer que les membres du Conseil forment une équipe extrêmement compétente et dynamique qui travaillera avec persistance en vue d'offrir aux enfants francophones une éducation de qualité qui réponde à leurs besoins spécifiques, notamment aux niveaux culturel et linguistique».**

- 30 -

Information : Marc Gignac
(604) 736-5030



Multiculturalisme et
Citoyenneté Canada

Multiculturalism and
Citizenship Canada

Ottawa K1A 1K5

*FRANCOPHONE EDUCATION AUTHORITY***PRESS RELEASE****Immediate release****"AN HISTORICAL MOMENT FOR THE FRANCOPHONE COMMUNITY"**

Vancouver, January 23, 1996 - In the history of the BC Francophone Community, Friday, January 19, 1996, will be a memorable day. Representatives of Parents Committees and Francophone Associations attended a ceremony where the first directors of the Francophone Education Authority were sworn in by Justice Raymond Paris of the Supreme Court of British Columbia.

The directors are as follows:

- ▶ Martine Galibois Barss, from the Greater Vancouver Ward
- ▶ Nicole Hennessey, from the Vancouver Island North Ward
- ▶ Louise Côté Madill, from the Okanagan - Columbia - Northern BC Ward
- ▶ Marc-André Ouellette, from the Vancouver Island South Ward
- ▶ Vincent Pigeon, from the Greater Vancouver Ward

The five directors were appointed by Order in Council, December 14, 1995, for a maximum period of fifteen (15) months. The appointment followed the adoption on November 2, of a regulation creating the first Francophone Education Authority in British Columbia.

The main task of the directors will be to implement the Education Authority structure, to be able to assume the full responsibility for the Francophone Education System in the area included between Chilliwack and Greater Victoria.

Following the swearing in, the directors participated in an orientation meeting with the Ministry of Education followed by a Strategy Planning session where they adopted vision and mission statements as follows :

VISION

Francophones of British Columbia receive an education in French recognized for its excellence and its contribution to the fulfilment of Francophone culture.

MISSION

The Francophone Education Authority commits itself to offer education services which value the full development and the cultural identity of Francophone learners in the province.



Multiculturalisme et
Citoyenneté Canada

Multiculturalism and
Citizenship Canada

Ottawa K1A 1K5

"It is important that the vision and mission statements reflect the uniqueness of the Francophone Education Authority, especially regarding the cultural and language aspects", stated Vincent Pigeon, elected President of the Francophone Education Authority. Marc-André Ouellette, from Victoria, was elected Vice-President.

During the week-end, the directors also initiated a process to hire a consultant. "The consultant will guide us during the start-up phase of our operations. He will help us, amongst other, to select the Chief Executive Officer of the Authority" specified the President.

Vincent Pigeon stated that he was very proud to be part of the first Board of directors of the Francophone Education Authority. "Following our working session, I can assure you that the members of the Board form an extremely competent and dynamic team, that will work constantly to offer to Francophone children an education of quality that respects their specific needs, more particularly regarding the language and cultural aspects".

- 30 -

Source: Marc Gignac
(604) 736-5030

FEED FAX THIS END

FAX	
To:	FEDERAL GOVERNMENT
Dept.:	
Fax No.:	
No. of Pages:	4
From:	
Date:	03/01/96
Company:	
Fax No.:	
Comments:	
Fax pad 7903E	



Multiculturalisme et
Citoyenneté Canada

Multiculturalism and
Citizenship Canada

Ottawa K1A 1K5

CANADIAN HERITAGE

CANADIAN HERITAGE

REG/PRIO:

PK

96/12/03 - 16:36

Docket No.: CH96-51214
Cross-reference No.: CH96-49481

Document date: 95/11/25
Date received: 96/12/03
Due date: 96/12/24
Campaign code:
Ack/Acc: N

Program: CIOL - Official Languages / Langues Officielles
Author: Côté, Diane
Title/Org.: Présidente/Fédération des francophones de la
Subject: Appuie l'APCFB afin que le gouvernement du Canada contribue aux frais encourus par la poursuite judiciaire visant à faire respecter la Charte canadienne des droits et libertés en Colombie-Britannique
Action: Reply/Réponse

c.c.: DMO
c.c.: RPAC, CIADM
c.c.: CIMI

Forward To: Central Corresp./Corresp. centrale - Eve - réponse

Comments:

Approved by:

DG (or designate)

(Tel. Number)

ADM/RExD (or designate)

(Tel. Number)

Signature []
required

DM

(Tel. Number)

Minister's office

Approved by:

Minister's Assistant

Date:

Approved by:

Date:

Autopen:

Info copy for Min.:



*La Fédération des
francophones de la
Colombie-Britannique*

1575, 7^e Avenue Ouest
Vancouver, C.-B. V6J 1S1
Tél: (604)732-1420
Télécopieur (Fax): (604)732-3236

REGISTRY / REGISTRY
MIN



*Développement et
épanouissement*

Vancouver, le 25 novembre 1996

'96 DEC 3 AM 8 35

L'honorable Sheila Copps
Vice-première ministre et
Ministre du Patrimoine canadien
Les Terrasses de la Chaudière
25 rue Eddy
Hull (Québec) K1A 0M5

Madame la ministre,

Au nom de la communauté francophone de la Colombie-Britannique, je veux, par la présente, appuyer sans réserve la démarche que vient d'entreprendre l'Association des parents francophones de la Colombie-Britannique (APFCB) afin que le gouvernement du Canada contribue aux frais importants encourus par la poursuite judiciaire visant à faire respecter la Charte canadienne des droits et libertés en Colombie-Britannique.

En effet, l'APFCB fait face à des coûts imposants encourus en grande partie par les délais de cette affaire judiciaire, causés par le gouvernement provincial. Aujourd'hui, cet organisme se retrouve avec un déficit de l'ordre de 85 000\$ qui n'existerait pas si le gouvernement provincial avait été amené à respecter un des principes fondamentaux du Canada, celui du droit à la gestion scolaire par les communautés de langue officielle. Cette importante cause juridique, comme vous le savez sans doute, a culminé avec un jugement très favorable qui fait déjà jurisprudence au pays.

Le 30 mai dernier, j'ai participé à une rencontre avec le directeur exécutif régional de la Colombie-Britannique de votre ministère, monsieur Orest Kruhlak, au cours de laquelle celui-ci s'est engagé à trouver le financement pour couvrir les frais juridiques. Toutefois, nous venons d'apprendre que les autorités de votre ministère viennent de refuser cette requête ce qui a pour effet de placer l'APFCB dans une situation financière précaire. Je vous demande respectueusement d'intervenir afin de renverser cette décision.

Vous avez récemment indiqué que votre gouvernement était prêt à prendre la défense et à appuyer les francophones de l'Ontario afin que ceux-ci puissent avoir accès à la gestion de leurs écoles. En Colombie-Britannique, la situation n'est toujours pas conforme à l'article 23 de la Charte et le jugement Vickers n'est qu'une étape, bien qu'importante, vers la pleine gestion scolaire. Malheureusement, sans l'aide financière de votre gouvernement, il sera bien difficile pour les intervenants de ce dossier de continuer à lutter pour le plein respect de nos droits.

Page 2

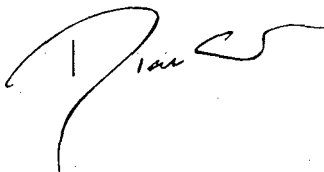
L'honorable Sheila Copps

Vancouver, le 25 novembre 1996

Je suis convaincue que vous saurez juger de la pertinence de cette demande et que vous démontrerez une fois de plus votre engagement envers notre communauté et surtout envers le respect des lois fondamentales de notre pays. Il me paraît inconcevable de croire que quatorze années après l'adoption de la Charte, des communautés, comme la nôtre, en sont encore à faire de coûteuses batailles juridiques pour que ladite Charte soit respectée par les gouvernements provinciaux. Je crois que votre gouvernement percevra son obligation morale de supporter les individus et organismes qui encourent des frais considérables dans de telles causes.

Je vous remercie de l'attention que vous porterez à la présente et vous prie de croire, madame la ministre, en mes sentiments les meilleurs.

La présidente,



Diane Côté

DC/sc

c.c. Le très honorable Jean Chrétien, Premier ministre
Députés et députées du caucus libéral de la Colombie-Britannique
Monsieur Jean Pelletier, directeur du cabinet du Premier ministre
Monsieur Orest Kruhlak, directeur régional exécutif, ministère du Patrimoine canadien
Monsieur Daniel Le Scieller, président de l'Association des parents francophones de la Colombie-Britannique