

BILL 46 - 16 AMENDMENTS

THIS DOCUMENT IS NOT A LEGAL OPINION ON BILL 46 - EDUCATION ACT. ITS PURPOSE IS SIMPLY TO PROPOSE CERTAIN CHANGES IN ORDER TO RESPECT THE MANAGEMENT RIGHTS OF FRANCOPHONE DISTRICT EDUCATION COUNCILS.

PREAMBLE :

Section 23 of the *Canadian Charter of Rights and Freedoms* confers specific rights on right holders and their representatives. Any amendments to the *Education Act* must take this into account. It is also important to remember that Section 23 is not intended to confer any rights whatsoever on parents who are members of the majority. The purpose of section 23 is not to adopt a formal concept of equality that would aim primarily to treat official language majority and minority groups in the same way.

In our view, there is no place in New Brunswick where there are not enough minority language children to justify access to French-language education. However, there are still regions of the province where equitable access to French schools does not exist. For example, French-speaking parents living in western and central New Brunswick, from Florenceville to Nackawic to Woodstock, have difficulty accessing French-language education because the nearest French-language schools are a hundred kilometres or more away. This makes it easier for French-speaking parents to send their children to English schools. In such cases, the possibility of asserting Section 23 rights could be considered.

As the Supreme Court of Canada has stated on numerous occasions, the management and control of education by rights holders or their representatives is necessary and essential because many educational management issues have implications on both language and culture. The Supreme Court also recognizes that minority language parents and their representatives are in the best position to identify the needs of that community. Consequently, a minority language education system, to satisfy section 23, imposes certain parameters on the province from which it cannot derogate if it intends to honour its constitutional obligations.

In other decisions, the Supreme Court of Canada has concluded that when a minority language board of education has been established to meet the requirement of section 23, it is up to this board, because it represents the official language minority, to decide what is the most appropriate culturally and linguistically. The discretionary powers of the Minister of Education in such a system must therefore be exercised in accordance with the rights of linguistic minorities and in consideration of their needs and priorities.

It is on this basis that we have analyzed the Education Bill and are proposing the following changes.

BILL	PROPOSED AMENDMENTS	JUSTIFICATION
<p>1. Article 1 - Purpose of the law</p>	<p>Add a paragraph stipulating that the law must be interpreted, for the French-speaking sector, in conformity with Article 23.</p>	<p>Since the province, as we have just described, is charged with a special role by virtue of section 23 of the <i>Charter</i>, it must ensure that any interpretation or amendments of the law respects the rights of entitled parents and their representatives.</p> <p>Section 23 sets out the minimum standards to which the law must conform, if it does not meet these standards, it contravenes the <i>Charter</i> and is presumed unconstitutional.</p>
<p>2. Section 28 of the <i>Bill</i> describes the role of the Minister</p>		<p>While we see no problem with this section <i>a priori</i>, we would like to point out that in exercising his role, the Minister of Education is charged under Section 23 of the <i>Charter</i> with two specific obligations:</p> <p>(1) he must weigh the pros and cons of his decisions on the minority community - assess whether his decision will harm the pedagogy adapted to the children of the community - and consider the broader consequences of his decisions on the minority community itself, and</p> <p>(2) it must recognize the leading role of minority school boards in all matters relating to language and culture. In other words, it must give the highest possible deference to the decisions of Francophone district education councils on matters of language and culture.</p>

<p>3. Subsection 29(1) of the <i>Bill</i> deals with the "provincial education plan".</p>	<p>Add a paragraph stipulating that for the French-language sector, the "provincial education plan" must comply with Section 23 of the <i>Charter</i>.</p>	<p>This plan must absolutely consider the obligations arising from Article 23 and the leading role of the Francophone district education councils in all matters relating to language and culture.</p>
<p>4. Subsection 30(1) of the <i>Bill</i> deals with "policies and guidelines" that the Minister may adopt.</p>	<p>Add a paragraph stipulating that for the Francophone sector, "policies and directives" must comply with Section 23 of the <i>Charter</i>.</p>	<p>Some of the items listed in this paragraph (admission and placement of students, official language programs and other language programs, establishment, operation and closure of schools, transportation of students) directly affect language and culture and must therefore fall under the exclusive management authority of the Francophone district education councils. Therefore, for these matters, the Minister must defer to the Francophone district education councils or at least recognize in the legislation their power to adapt these policies or directives so that they respond to their linguistic and cultural reality.</p>
<p>5. Article 31 - Provincial forums</p>	<p>Subsection 31(3) must be amended to provide that the Minister may invite representatives of an advisory body established under subsection 139(2) to the forum only after consulting with and obtaining the consent of the Francophone district education councils.</p>	<p>Because of the obligations set out in section 23, the discretionary power conferred on the Minister by subsection 139(2) should not be exercised without the consultation and approval of the Francophone district education councils. In other words, no organization should be invited to participate in the Forum without the prior approval of the Francophone district education councils.</p>

<p>6. Article 33 - Legal status of "educational entities"</p>	<p>Subsection 33(4), which stipulates that "education entities", which include the Francophone district education councils, are agents of the Crown, must be amended.</p>	<p>Francophone district education councils must be autonomous and independent of the Crown. Moreover, designating them as agents is contrary to Section 23, which defines the members of the district education councils as the trustees of the rights holders.</p>
<p>7. Section 35 stipulates that "policies and procedures" developed by DEC's must be consistent with the Minister's "policies and directives".</p>	<p>See item 4 above</p>	<p>If these "policies and procedures" deal with language or cultural issues, they must fall under the exclusive authority conferred on the representatives of rights holders by Section 23 of the Charter. In these cases, it is the provincial policies and procedures that must not be incompatible with those of the district education councils. The <i>Bill</i> must therefore be amended to comply with this constitutional obligation.</p>
<p>8. Article 36 deals with the establishment and amalgamation of districts</p>	<p>This is a matter of language and culture and should be the responsibility of the DEC's.</p>	<p>The issue of school district amalgamation directly affects the linguistic and cultural dimension and should therefore fall under the authority of the district education councils.</p> <p>The demographic distribution of New Brunswick's Francophone community means that linguistic problems and demographic challenges can arise in different ways from one region to another. We could even say that in New Brunswick we have three levels of Francophone communities: (1) predominantly Francophone communities, particularly in the Acadian Peninsula and the Northwest; (2) communities</p>

		<p>living in a bilingual environment in Bathurst, Campbellton, Grand Falls, Moncton and the Kent County regions; and finally (3) communities in predominantly Anglophone regions in Miramichi, Fredericton and Saint John. Although these communities share similar challenges, they also face certain challenges that are specific to the region in which they are located, hence the importance of having a governance structure that takes this into account.</p> <p>Consequently, decisions to merge school districts in the Francophone sector must first be approved by the Francophone district education councils.</p>
<p>9. Paragraph 52 - Right to education according to language proficiency - Francophone sector</p>	<p>Subsection 52(2), which stipulates that superintendents are responsible for administering the tests <u>that the Minister deems necessary</u>, must be amended to stipulate that the necessary tests will be <u>determined by the district education councils</u>.</p>	<p>Admission to French-language schools is a matter of language and culture and must therefore, according to section 23, be the exclusive responsibility of the district education councils in that sector.</p>
<p>10. Subsection 52(3)</p>	<p>This paragraph provides that the district education council shall provide students of entitled parents admitted to the school with such additional educational programs and services as, in the opinion of the superintendent, are necessary to improve the students language proficiency.</p>	<p>We agree with this paragraph, but it should also stipulate that a specific budget envelope will be allocated to the district education councils to enable them to achieve this objective.</p>

<p>11. Clauses 39(4) and 51(4) of the bill - Educational programs offered in the other official language to people who already speak that language.</p>	<p>This provision must clearly establish that a student who already has a knowledge of the French language, although admitted to the English-language school, cannot be admitted to the French immersion program of that school. There must be no vagueness in the law in this respect.</p>	<p>English-language DEC's have the power and the duty to deny access to their immersion programs to students who already have a working knowledge of the language intended for that immersion program. The Supreme Court of Canada explains that immersion programs are designed to provide second language training to children who attend schools intended for those who adopt the majority language. They are taught in a majority language environment where the majority language is spoken outside the classroom and during extracurricular activities. They are offered in majority language schools that are part of the majority school system. They therefore lack the cultural element essential to instruction in the minority language. Consequently, it would be contrary to the purpose of Section 23 to equate immersion programs with minority language education.</p>
<p>12. Article 57 - Accountability forum</p>	<p>This article must be withdrawn.</p>	<p>This section, which does not apply to the English-language sector, is a direct attack on the management rights of the Francophone district education councils. This provision is an indirect way of allowing the Minister to exercise control over district education councils in the French-language sector. It is our view that in its current form this provision is a flagrant violation of the right of governance set out</p>

		in Section 23 and must be amended.
13. Section 61 deals with the composition of district education councils: the elected members are covered by paragraph 61(1) a). In addition, each district education council has a First Nations member appointed by the Minister (61(1) b) and a student representative appointed by the Minister (61(1) c).	First Nations and student representatives must be appointed by the district education councils.	Because of Section 23, First Nations and student representatives in the Francophone sector should be appointed by the district education councils.
14. School programming - See, among others, paragraphs 28(f), (g) and (i) and 30(1) (iv), (v) and (vi).		<p>Once again, we would like to emphasize the key role that right holders and their representatives must play in all matters relating to language and culture, including school programming.</p> <p>With respect to school programming, the Supreme Court of Canada has determined that the establishment of school programs must be the exclusive responsibility of minority language representatives, i.e. district education councils.</p> <p>They must not only manage the educational institutions, but also take charge of the educational mission and the pedagogical-community curriculum that will make it possible, among other things, to develop a minority-language pedagogy through which young people will realize their full learning potential, assume their identity, and learn to become citizens of the world and participate fully in the</p>

		<p>development of their community.</p> <p>According to the Supreme Court of Canada, this exclusive jurisdiction is necessary because several educational issues, including curricula, "may have an impact on the linguistic and cultural spheres".</p>
<p>15. Section 140 of the <i>Bill</i> stipulates that the signing of agreements with the Government of Canada remains under the exclusive jurisdiction of the Minister without any obligation to consult the DEC's of the Francophone sector.</p>	<p>This article needs to be amended.</p>	<p>In <i>Mahé</i>, the Supreme Court made it clear that the conclusion of agreements for the education and services provided to minority language students was within the exclusive power of the rights holders or their representatives.</p>
<p>16. Article 38.2 SUPPORT STAFF (former law)</p>	<p>This article no longer appears in the bill and must be reinstated.</p>	<p>This section infringes on the management rights of Francophone district education councils.</p> <p>Francophone district education Councils must be autonomous and independent of the Crown.</p> <p>This section allows for the existence of support staff dedicated to district education councils and facilitates communication and information sharing between district education councils and to coordinate the training of Parent School Support Committees (PSSC) members and District Education Councils (DEC) on an autonomous and independent basis from the Crown.</p>