

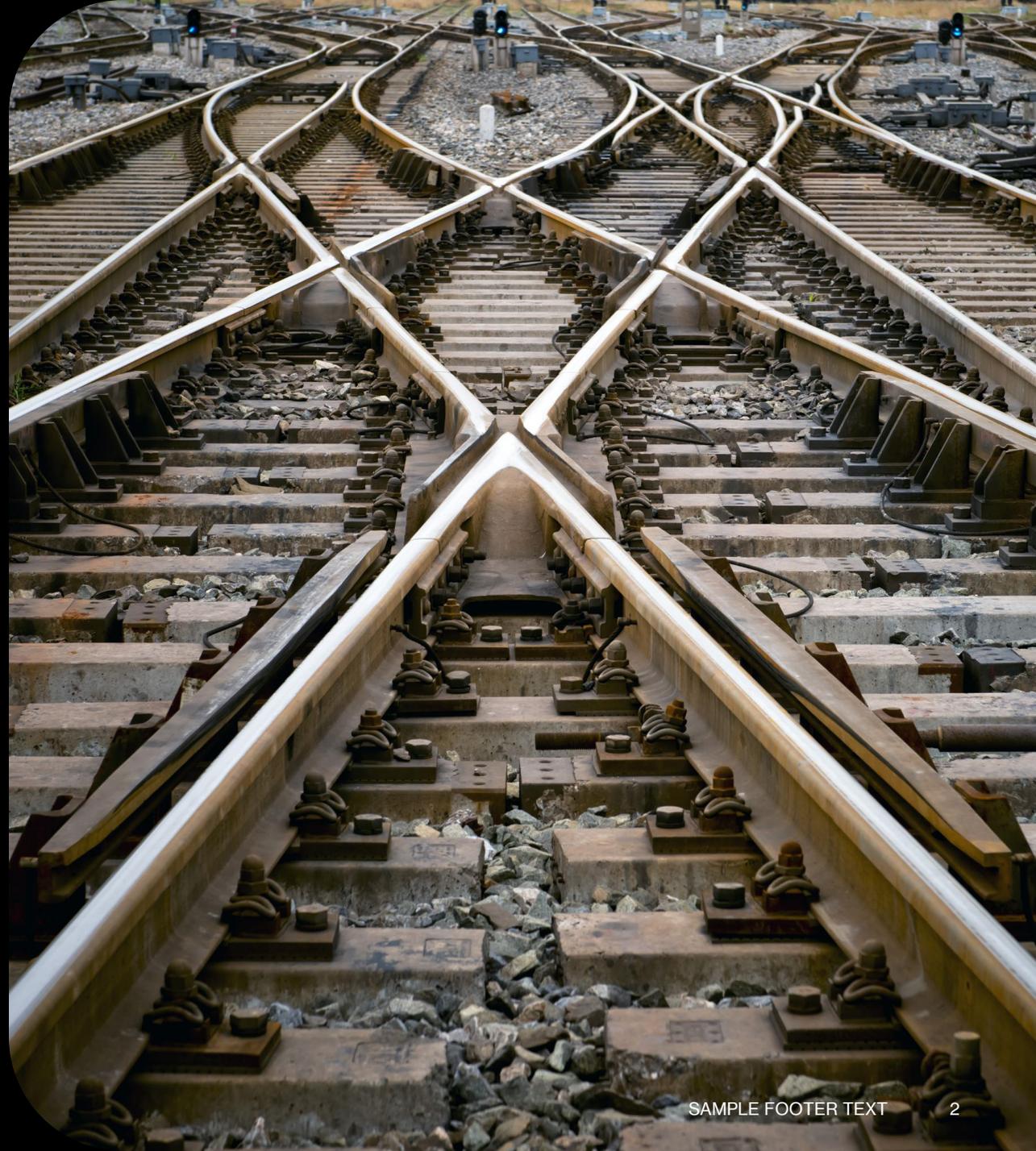


**English-speaking Quebec and Minority Language Educational Rights:
A Lost Opportunity?**

Stephen Thompson, LL.M

Outline

- The nature of language rights
- The purpose of Section 23 minority language educational rights
- Section 23 and Quebec
- Questions and Challenges



Nature of Language Rights

- What are rights? What is their source?
 - + Human rights - rights we have simply because we exist as human beings - they are not granted by any state.
 - Fundamental freedoms of the *Canadian Charter of Rights and Freedoms*
 - + *Conscience and religion, thought, belief, opinion and expression, including freedom of the press and other media of communication, peaceful assembly, freedom of association*
 - + *Democratic rights*
 - + *Mobility Rights*
 - + *Legal Rights*
 - + *Equality Rights*
 - + *Language Rights*

Language Rights

- Structural purpose
- Born of political compromise that allowed for Confederation
- Are present in *Constitution Act, 1867*



Section 23 – Minority Language Educational Rights

- Remedial in nature to protect the English and French linguistic minority populations of the province in which they (the right holder) reside.
- Section 93, *Constitution Act, 1867*
 - + In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions
- “...to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population (Mahe v. Alberta.”

Section 23 and Quebec

- ~~• (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...

Eligibility to attend English school in Quebec has nothing to do with the mother-tongue language of the right holder. Section 23 eligibility in Quebec is a function of whether a child's parents (or siblings) attended primary and secondary school in English in Canada.

So what?

- Quebec's minority school population contains a significant proportion of children from the linguistic majority. In 2012 for example, 37.2% of students attending English schools outside of Montreal were mother tongue Francophones. In 1986, it was 16.8%. This proportion was significantly less in Montreal, where 5.2% of eligible students were Francophone mother tongue in 1986 and 8.7% in 2012.
- This is a critical characteristic of the English public school system in Quebec. **What does it mean to a minority school system whose language is not perceived as threatened, and whose school population contains a significant percentage of majority language students if Section 23 is concerned with the preservation of culture as well as language?**

Observations and Questions

1. The section 23 right confers individual rights that have “a collective scope.” What collective? What does English linguistic minority population of Quebec mean?
2. Is there a lack of understanding within the community about their section 23 rights?
3. Do parents and school boards have the capacity to enjoy and protect their rights?
4. Is section 23 structured to support the unique characteristics of English-speaking Quebec? How does community’s diversity for example, and the sizeable number of right holding majority language parents reconcile with the kind of homogeneous minority culture described in the jurisprudence?
5. Is there a lack of understanding within the community about their section 23 rights?
6. Do parents and school boards have the capacity to enjoy and protect their rights?
7. Is section 23 structured to support the unique characteristics of English-speaking Quebec? How does community’s diversity for example, and the sizeable number of right holding majority language parents reconcile with the kind of homogeneous minority culture described in the jurisprudence?

Observations and Questions

1. Why do Quebec's minority English schools not have their own social science and art curricula that reflects the culture of English-speaking Quebec?
2. Why do parents accept state-imposed curricula that depends on textbooks translated from French to English?
3. Why do parents accept unreasonably long travel times to English schools?
4. Why do parents not demand the same level of services in English schools available to children attending majority schools?
5. Are parents too dependent on school boards and the Quebec English School Boards Association and other community sector organizations to defend their s.23 rights?
6. Do teachers receive specialised training to teach in a minority school setting? Do education programs offered at McGill and Bishop's offer these types of courses? Is this a professional development topic for teachers in the English system?

Conclusion

- It seems clear that English-speaking Quebec is not benefiting from the full potential of the section 23 right. The actions of the provincial government factor into this conclusion. Do English-speaking Quebec and right holding parents share responsibility?
- There is no tradition amongst right holding parents in Quebec holding the government or their school boards to account in the courts.
- A great deal of attention and effort continues to be put into defending school boards and their management and control of the schools, but there is a decided lack of energy being put towards other aspects of the right like programs of instruction and access to substantively equal services.
- Why?

RIGHTS BORN OF POLITICAL COMPROMISE ARE VULNERABLE TO POLITICAL COMPRISE