



Firm Foundation: Section 23 of the *Canadian Charter of Rights and Freedoms* in Quebec

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QUESCREN Education and Vitality Forum

Panel: “Education Rights and the Law”

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Outline

1. What is s. 23 of the *Canadian Charter of Rights and Freedoms*?
2. Section 23 and English-speaking Quebec
3. Recent developments: outside Quebec
4. Recent developments: in Quebec



1. What is section 23 of the Charter?

➤ What is the purpose of s. 23?

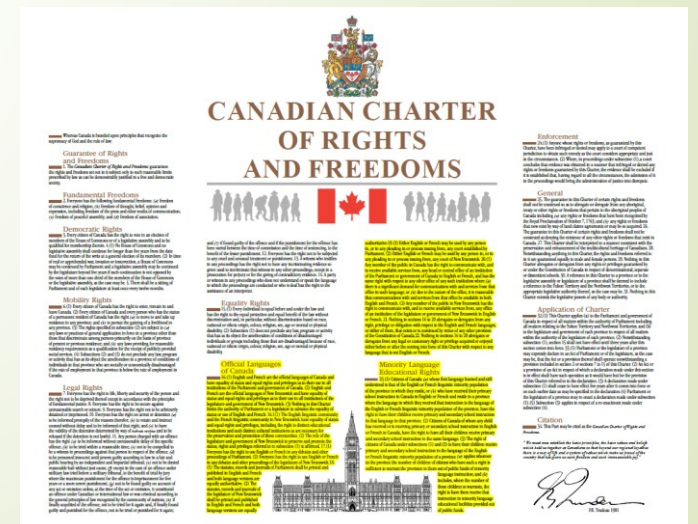
➤ What does s. 23 guarantee?

A. Eligibility

B. Quality

C. Management and control

➤ Why does this matter?



1. What is section 23 of the Charter?

A. Eligibility



In Quebec, there are two categories of rights holders under s. 23 of the *Charter*:

- Category 1: Citizens of Canada who have received their primary school instruction in Canada in English (s. 23(1)(b))
- Category 2: Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English in Canada (s. 23(2))

These citizens have the right to have their children educated in English out of public funds, where numbers warrant.

1. What is section 23 of the Charter?

B. Quality

Facilities: sliding scale

Quality: substantive equivalence

“Official language minorities are entitled to have their children receive, anywhere in Canada, an educational experience that is substantively equivalent to the experience provided to majority language children.”

(Conseil scolaire francophone de la Colombie-Britannique v. British Columbia, 2020 SCC 13 at para 110)



1. What is section 23 of the Charter?

C. Management and control



- The minority language group should have:
 - “a measure of management and control over the educational facilities in which their children are taught”. (*Mahe v Alberta* at 371-72)
 - control “over those aspects of education which pertain to or have an effect upon their language and culture.” (*Mahe v Alberta* at 375)

1. What is section 23 of the Charter?

Why does this matter?

- The Canadian Charter is the supreme law of Canada
- Section 23 is not subject to notwithstanding clause

Section 23 is now the **constitutional foundation** of the English-language education system in Quebec



2. Section 23 and English-speaking Quebec

- *A.G. (Que.) v. Quebec Protestant School Boards*, [1984] 2 SCR 66 ("Quebec clause")



- *Gosselin* (2005), *Solski* (2005) and *Nguyen* (2009)

3. Recent developments: outside Quebec

A. Nova Scotia

- 2018: Abolition of school boards

B. British Columbia

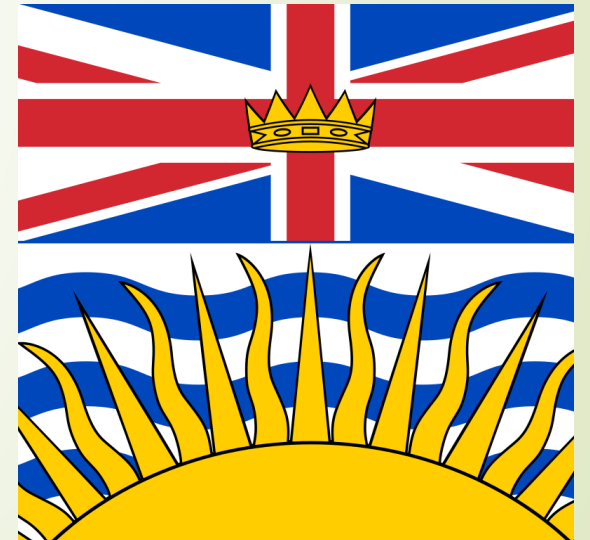
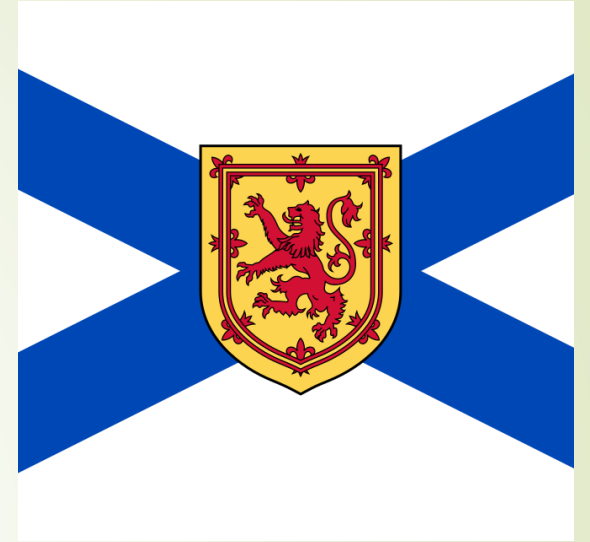
- 2020: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2020 SCC 13

C. Northwest Territories

- 2021: *A.B. v Northwest Territories (Minister of Education, Culture and Employment)*, 2021 NWTCA 8

D. Alberta

- 2020-2021: Campus St-Jean



4. Recent developments: in Quebec

- Bill 40 (abolition of school boards)
- Bill 21 (religious symbols)





Questions?

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