

Facts We Ought To Know

About Education Rights Of Children

October 1998

Preface

Yes. At last. A clear, concise outline of the child's legal rights to attend English school. This is an ongoing story: we hope to expand those rights to open wider the door to English schools. But, meanwhile, parents are entitled to know the existing state of the law and what their child's chances are. Sam Ephraim has done us all a favour by putting the facts down on paper in a quickly digestible form. May many parents be enlightened, and many many children receive the benefit of English schooling.

William Johnson
President of Alliance Quebec

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CANADA ACT 1982

1982 CHAPTER 11

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Minority Language Educational Rights

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. (91)

Continuity of language of instruction

(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.

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

59. (1) Paragraph 23(1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

(2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec. (105)

(3) This section may be repealed on the day paragraph 23(1)(a) comes into force in respect of Quebec and this Act amended and renumbered, consequentially upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

CHARTER OF HUMAN RIGHTS AND FREEDOMS

Gouvernement du Québec

R.S.Q., c. C-12

[Preamble]

WHEREAS every human being possesses intrinsic rights and freedoms designed to ensure his protection and development;

WHEREAS all human beings are equal in worth and dignity, and are entitled to equal protection of the law;

WHEREAS respect for the dignity of the human being and recognition of his rights and freedoms constitute the foundation of justice and peace;

WHEREAS the rights and freedoms of the human person are inseparable from the rights and freedoms of others and from the common well-being;

WHEREAS it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;

THEREFORE, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:

PART I

HUMAN RIGHTS AND FREEDOMS

1. [Right to life] Every human being has a right to life, and to personal security, inviolability and freedom.

[Juridical personality] He also possesses juridical personality.

2. [Right to assistance] Every human being whose life is in peril has a right to assistance.

[Aiding person whose life is in peril] Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.

CHAPTER I.1

RIGHT TO EQUAL RECOGNITION AND EXERCISE OF RIGHTS AND FREEDOMS

10. [Discrimination forbidden] Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

[Discrimination defined] Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

12. [Discrimination in juridical acts] No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

13. [Clause forbidden] No one in a juridical act stipulate a clause involving discrimination.

[Nullity] Such a clause is deemed without effect.

50. [No suppression of right] The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

52. * [Sections to prevail over subsequent Act] No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

53. [Doubt in interpretation] If any doubt arises in the interpretation of a provision of the act, it shall be resolved in keeping with the intent of the Charter.

PART III

HUMAN RIGHTS AND FREEDOMS

86. [Affirmative action program] The object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or of health services and other services generally available to the public.

CHARTER OF THE FRENCH LANGUAGE

CHAPTER VIII

THE LANGUAGE OF INSTRUCTION

Language of instruction

72. Instruction in the kindergarten classes and in the elementary and secondary schools shall be in French, except where this chapter allows otherwise.

Scope

This rule obtains in school bodies within the meaning of the Schedule and in private educational institutions accredited for purposes of subsidies under the Act respecting private education (chapter E-9.1) with respect to the educational services covered by an accreditation.

Instruction in English

Nothing in this section shall preclude instruction in English to foster the learning thereof, in accordance with the formalities and on the conditions prescribed in the basic school regulations established by the Government under section 447 of the Education Act (chapter 1-13.3).

Instruction in English

The following children, at the request of one of their parents, may receive instruction in English:

(1) a child whose father or mother is a Canadian citizen and received elementary instruction in English in Canada, provided that that instruction constitutes the major part of the elementary instruction he or she received in Canada;

(2) a child whose father or mother is a Canadian citizen and who has received or is receiving elementary or secondary instruction in English in Canada, and the brothers and sisters of that child, provided that that instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada;

(3) a child whose father and mother are not Canadian citizens, but whose father or mother received elementary instruction in English in Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec;

(4) a child who, in his last year in school in Québec before 26 August 1977, was receiving instruction in English in a public kindergarten class or in an elementary or secondary school, and the brothers and sisters of that child;

(5) a child whose father or mother was residing in Québec on 26 August 1977 and had received elementary instruction in English outside Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received outside Québec.

Parental authority

74. The parent who may make the requests provided for in this chapter must be the holder of parental authority. However, the person who has *de facto* custody of the child and who is not the holder of parental authority may also make such a request provided the holder of parental authority does not object.

Verification of eligibility

75. The Minister of Education may empower such persons as he may designate to verify and decide on children's eligibility for instruction in English under any of sections 73, 81, 85 and 86.1.

76. The persons designated by the Minister of Education under section 75 may verify the eligibility of children to receive their instruction in English even if they are already receiving or are about to receive their instruction in French.

Eligibility

Such persons may also declare a child eligible to receive instruction in English where his father or mother attended school after 26 August 1977 and would have been eligible to receive such instruction under any of paragraphs 1 to 5 of section 73, even if he or she did not receive such instruction. However, where the father or mother attended school before 17 April 1982, his or her eligibility shall be determined in accordance with section 73 as it read before that date, by adding, at the end of paragraphs *a* and *b* of that section, the words "provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec".

Presumption

76.1 The persons declared eligible to receive instruction in English under any of sections 73, 76, 81, 85.1 and 86.1 are deemed to have received or be receiving instruction in English for the purposes of section 73.

Prohibition

78.1 No person may permit or tolerate a child's receiving instruction in English if he is ineligible therefor.

Authorization to introduce instruction in English

79. A school body not already giving instruction in English in its schools is not required to introduce it and shall not introduce it without express and prior authorization of the Minister of Education.

However, every school body shall, where necessary, avail itself of section 213 of the Education Act (chapter I-13.3) to arrange for the instruction in English of any child declared eligible therefor.

Authorization at Minister's discretion

The Minister of Education shall grant the authorization referred to in the first paragraph if, in his opinion, it is warranted by the number of pupils in the jurisdiction of the school body who are eligible for instruction in English under this chapter.

Procedure and proof

80. The Government may, by regulation, prescribe the procedure to be followed where parents invoke section 73 or section 86.1, and the elements of proof they must furnish in support of their request.

Instruction in English

81. Children having serious learning disabilities may, at the request of one of their parents, receive instruction in English. The brothers and sisters of children thus exempted from the application of the first paragraph of section 72 may also be exempted.

Regulation exemption

The Government, by regulation, may define the classes of children envisaged in the preceding paragraph and determine the procedure to be followed in view of obtaining such an exemption.

Appeal

82. An appeal lies from every decision rendered by the persons designated by the Minister of Education under section 75.

Time limit

An appeal is brought within 60 days after communication of a decision.

Appeals Committee

83. An appeals committee is established to hear appeals provided for in section 82. This committee consists of three members appointed by the Government after consultation with the most representative associations or organizations of parents, teachers, school boards, school administrators and socio-economic groups. The decisions of this committee are final. The Government shall appoint a substitute member to act whenever a member is absent or unable to act.

Temporary Residents

85. Children staying in Québec temporarily may, at the request of one of their parents, be exempted from the application of the first paragraph of section 72 and receive instruction in English in the cases or circumstances and on the conditions determined by regulation of the Government. The regulation shall also prescribe the period for which such an exemption may be granted and the procedure to be followed in order to obtain or renew it.

File transmitted to the Minister

85.1. Where the appeals committee cannot allow an appeal pertaining to an application relating to the eligibility of a child for instruction in English but deems that proof of the existence of a serious situation has been made on family or humanitarian grounds, it shall make a report to the Minister of Education and transmit the child's file to him.

Certification

The Minister may certify eligible for instruction in English a child whose file is transmitted to him by the appeals committee under the first paragraph.

Report

The Minister of Education shall indicate in the report referred to in section 4 of the Act respecting the Ministère de l'Éducation (chapter M-15), the number of children certified eligible for instruction in English under the second paragraph and the grounds on which he certified them eligible.

Reciprocity agreement

86. The Government may make regulations extending the scope of section 73 to include such persons as may be contemplated in any reciprocity agreement that may be concluded between the Gouvernement du Québec and another province.

Instruction in English

86.1 In addition to the cases provided for in section 73, the Government, by order, may, at the request of one of the parents, authorize generally the following children to receive their instruction in English:

- (a) a child whose father or mother received the greater part of his or her elementary instruction in English elsewhere in Canada and, before establishing domicile in Québec, was domiciled in a province or territory that it indicates in the order and where it considers that the services of instruction in French offered to French-speaking persons are comparable to those offered in English to English-speaking persons in Québec;
- (b) a child whose father or mother establishes domicile in Québec and who, during his last school year or from the beginning of the current school year, has received primary or secondary instruction in English in the province or territory indicated in the order;
- (c) the younger brothers or sisters of children described in subparagraphs *a* and *b*.

Sections 76 to 79 apply to the persons contemplated in this section.

APPLICATION OF THE LAW

SCREENING PROCESS FOR THE PURPOSE OF GRANTING ELIGIBILITY CERTIFICATE

ONE of the following categories must apply:

FORM 1 A

Code A, article 73.1:

- A child whose father or mother is a Canadian citizen;
- That parent received elementary instruction in English in Canada;
- That instruction constitutes the major part of the elementary instruction received by that parent in Canada.

Code B, C, article 73.3:

- A child whose father or mother is a Canadian citizen;
- The child has received or is receiving elementary or secondary instruction in English in Canada;
- That instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada.

Code D, article 73.3:

- A child whose father and mother are not Canadian citizens;
- The father or mother of the child received elementary instruction in Quebec;
- That instruction constitutes the major part of the elementary instruction received by that parent in Quebec.

Code E, article 73.4(i):

- A child who, in his/her last year of school in Quebec before August 26, 1977, received instruction in English in a public kindergarten class or in an elementary or secondary school.

(These children are now parents, therefore, request for their children must be made under code A.)

Code F, article 73.4(ii):

- A child whose brother or sister received instruction in English in a public kindergarten class or in an elementary or secondary school in his/her last year of school in Quebec, before August 26, 1977.

Code G, article 73.5:

- A child whose father or mother was residing in Quebec on August 26, 1977;
- That parent had received elementary instruction in English outside Quebec;
- That instruction constitutes the major part of the elementary instruction received by the parent outside Quebec.

Code H, article 86.1(a):

- A child whose father or mother received the major part of his/her elementary instruction in English in Canada, and, before establishing domicile in Quebec, was domiciled in New Brunswick.

FORM 2 A - TEMPORARY STAY

(In accordance with provisions of the regulation of the Minister as well)

Code A, section 85,1.2:

- Child who holds a certificate of acceptance issued in accordance with the Act respecting immigration to Quebec.

Code B, section 85,1.2:

- Child who holds an employment authorization or a student authorization.

Code C, section 85, 1.3:

- Child who is exempted from the obligation to hold a Quebec certificate of acceptance, an employment authorization or a student authorization.

Code D, section 85, 1.4:

- Dependent child of a foreign national who holds a Quebec certificate of acceptance.

Code E, section 85, 1.5:

- Dependent child of a foreign national who holds an employment authorization or a student authorization in accordance with the Immigration Act.

Code F, section 85,1.6:

- Dependent child of a foreign national who is exempted from the obligation to hold a certificate or acceptance, an employment authorization or a student authorization under a statute application in Quebec.

Code G, section 85,1.7:

- Child who is a Canadian citizen or permanent resident domiciled in another Canadian province or a territory of Canada, or dependent child of such a Canadian citizen or permanent resident who comes to Quebec to study or work.

Code H, section 85,2:

- Child who is not a Canadian citizen and who is the dependent of a person who is not a Canadian citizen, who is staying in Quebec temporarily as a representative or officer of a country other than Canada or of an international organization.

Code I, section 85,3:

- Dependent child of a member of the Canadian Armed Forces, and who is assigned to Quebec temporarily.

FORM 3 A - SERIOUS LEARNING DISABILITIES

Code A, article 81:

- Child with serious learning disabilities.

Code B, article 81:

- A child whose brother or sister has had an exemption because he/she had serious learning disabilities.

(Note: Non-eligible, if certified as having serious learning disabilities, may enter an English language school under this provision of the law).

FORM 4 A

CATEGORY 1 - The father or mother attended school in Quebec between August 26, 1977 and April 16, 1982 and,

Code A, section 76:

- A child whose father or mother had received elementary instruction in English in Quebec, provided this instruction constituted the major part of elementary instruction received by that parent in Quebec.

Code B, section 76:

- A child whose father or mother was domiciled in Quebec on August 26, 1977 and had received elementary instruction in English outside Quebec, provided that instruction constituted the major part of the elementary instruction received by that parent outside Quebec.

Code C, section 76:

- A child who in his/her last year in school in Quebec before August 26, 1977 received instruction in English in a public kindergarten class or in an elementary or secondary school.

Code D, section 76:

- The younger brother or sister of a child to whom code C applies.

CATEGORY 2 - The father or mother attended school in Quebec after April 16, 1982.

Code E, section 76:

- A child whose father or mother was a Canadian citizen and had received elementary instruction in English in Canada, provided that instruction constituted the major part of elementary instruction received by that parent in Canada.

Code F, section 76:

- A child, or children's brother or sister, whose father or mother was a Canadian citizen had received elementary instruction in English in Canada, provided that instruction constituted the major part of elementary instruction received by that parent in Canada.

Code G, section 76:

- A child whose father or mother was not Canadian citizen, but whose father or mother had received elementary instruction in English in Quebec, provided that instruction constituted the major part of elementary instruction received by that parent in Quebec.

Code H, section 76:

- A child, or a child's brother or sister, who in his/her last year in school in Quebec before August 26, 1977 received instruction in English in a public kindergarten class or in an elementary or secondary school.

Code I, section 76:

- A child whose father or mother was residing in Québec on August 26, 1977 and had received elementary instruction in English outside Quebec, provided that instruction constituted the major part of the elementary or secondary instruction received by that parent outside Quebec.

ACTUAL CASES**CASE 1**

Child 5 years old - Request to enter kindergarten class, September 1998.

Mother - English - her father English - husband, French

Mother's education - Primary in French school in Quebec;

- Secondary education in Ontario and Quebec;
- Received certificate of eligibility (temporary) in 1978;
- Graduated and received Quebec secondary education diploma from the Ministry of Education in 1980.

Her younger brother received certificate of eligibility in December 1977.

Her request is denied both by the designated person and the Provincial Social Affairs Tribunal on the grounds:

- She herself did not receive primary education in Quebec;
- She is older than her brother whose children are granted eligibility.

CASE 2

Child 5 years old - Request to enter kindergarten class, September 1998.

Mother arrived in Quebec in 1980 from England and received certificate of eligibility (temporary) to enter secondary I. Completed full 5 years of secondary education in English school, graduated and obtained secondary education certificate from Quebec Ministry of Education in 1985. Her request is denied both by the designated person and the Social Affairs Tribunal on the grounds:

- Mother did not receive elementary studies in Quebec or in Canada;
- Mother studied in English in secondary cycle because her family was in Quebec on temporary stay under article 85 of Bill 101.

CASE 3

Child 8 years old - born of American parents but has been living with his mother in Quebec since infancy.

Mother remarried an Anglophone (Quebec). Second husband received elementary and secondary education in English schools in Quebec. Thus, his two children (5 and 3 years old) from his American wife received eligibility certificates.

The designated person of the Ministry refused to grant eligibility certificate to the 8 years old because:

- Mother is not a Canadian citizen and she did not receive elementary education in Quebec. Her second husband is not the biological father.
- Insufficient grounds to apply article 85.1 (humanitarian considerations).

(8 Years old to French school; 5 years old to English school).

CASE 4

- Student 16 years old; completed three years of secondary studies in an English school in Quebec.
- Temporary eligibility granted annually for reason of temporary stay under article 85.
- Parents received landed immigrant status in August 1997.
- May 1998 designated person refused renewal of eligibility certificate for reasons of change of status (temporary to permanent stay in Quebec).
- Parents appealed. The Revision Committee could not give a positive answer according to the basic criteria of the law, but considering it to be a serious humanitarian problem referred the case to the Minister of Education in accordance with the Article 85.1 of the law.
- Considering that the child has only one more year in order to complete the secondary studies, and that it is in the child's best interest to make an exemption, the eligibility certificate was

granted by the Minister.

POSITION OF ALLIANCE QUEBEC ON THE ISSUE OF ACCESS TO ENGLISH LANGUAGE SCHOOLS

A. Position of Alliance Quebec on the issue of access to English-language schools:

- Quebec needs to secure the future of its English school system in order to secure the future of its English-speaking community.
- Alliance Quebec is a voice for Quebec's English-speaking communities. It is committed to the preservation and enhancement of the English-speaking communities and institutions in Quebec.
- The Quebec Education Act recognizes the parent as the principal agent for a child's education and as such, the parent should be awarded the fundamental right to choose for the child from among the educational options available, including the language of instruction.
- Alliance Quebec strives to see that residents of Quebec receive their full educational rights as authorized in the Constitution Act of 1982, including Sections 23.(1)(a) and 23.(2) thereof, and the previous Constitutional Acts.

B. The Task Force on English Education

The position of Alliance Quebec was reinforced by the Task Force on English Education reporting to the Minister of Education in January 1992 and it pointed out:

"It (the English-speaking community) is prevented from renewing itself, it will simply fade away. Continuing to shut it off from its traditional sources of replenishment can and will be contrived as a delayed but deliberate death sentence."

The Task Force recommended:

"That the Minister of Education recommend to the Government of Quebec that access to education in English be widened at last to include any child who was being educated in English or who has a parent from an English-speaking part of the world."

C. The report of the Commissioner of Official Languages

In the *Report of the Commissioner of Official Languages* it was also pointed out:

(EXCERPTS)

"... falling enrollment has a impact on the eligibility of English-language school boards to maintain existing facilities."

"Access to English-language schools is central to the integrity and viability of a system of education for the English-speaking community ... the principle of access must confirm the right of all English-speaking people to send their children to English-language schools in Quebec ..."

CHARTER OF HUMAN RIGHTS AND FREEDOMS

R.S.Q., c-C-12

41. [Religious or moral education] Parents or the persons acting in their stead have a right to require that, in the public educational establishments, their children receive a religious or moral education in conformity with their convictions, within the framework of the curricula provided for by law.

EDUCATION ACT

Moral or religious instruction

5. Every student other than a student enrolled in vocational training or adult education has a right to choose, every year, between either Catholic or Protestant moral and religious instruction or moral instruction.

Other confession

He also has a right to choose, every year, moral and religious instruction of a religious confession other than Catholic or Protestant where such instruction is given at the school.

Pastoral care and guidance

6. Catholic students other than those enrolled in vocational training or adult education are entitled to student services of pastoral care and guidance.

Religious care and guidance

Protestant students other than those enrolled in vocational training or adult education are entitled to student services of religious care and guidance.

