



**Brief Presented to the Standing Senate Committee on Social Affairs, Science and
Technology, Ottawa**

Bill C-35 – An Act respecting early learning and child care in Canada

BRIEF BY

**THE FÉDÉRATION DES CONSEILS D'ÉDUCATION DU NOUVEAU-
BRUNSWICK**

As the Royal Commission on Bilingualism and Biculturalism pointed out, if the majority language is the only medium of instruction, the linguistic minority as a language group is at risk. In this context, the minority group is immersed in a social environment where the language of the majority community is constantly in use. Teaching in minority institutions must act as a counterbalance in this setting and give pride of place to the minority language, so that it can become a communication tool in its own right.

Education therefore plays a key role when it comes to maintaining the culture and language of a linguistic minority. It was in this spirit that section 23 of the Charter was adopted. This section provides that parents who are rights-holders have the right “to have their children receive primary and secondary school instruction” in the French language. Preschool programs must be given a greater role in the overarching vision of section 23. Early childhood programs in the minority language complement educational programs in that language.

Programs for preschool children are a determining factor in their future schooling. There is no denying that these programs play a vital role in transmitting the minority language and culture. These programs must serve as vehicles for recruitment and francization. Since minority communities have a significant number of exogamous households, schools and preschools are often the best places, and sometimes the only places, for children to learn the minority language and culture.

In 1982, when section 23 was adopted, there was very little research to measure the impact of preschool on the minority language and the vitality of official language minority communities. This section merely recognized the right of parents to have their children educated in the minority official language in schools run by the official language minority. It met a glaring need, since in many provinces, this basic right did not exist.

Although this section has enabled francophones across Canada to establish French-language schools, we are still a long way from francophone minority communities truly taking charge of education. Demolinguistic data and research on the vitality of linguistic communities indicate that we must consider whether the right to education under this section should be expanded, to include early childhood education in particular.



The right to education recognized in section 23 will have little impact on the vitality of francophone communities if a significant portion of the minority population does not attend their educational institutions. At present, studies show that a large proportion of rights-holders' children do not attend French schools. This situation is also reflected at the preschool level. According to Statistics Canada's 2021 survey, there are 32,215 children aged 0 to 4 in N.B., of which 11,245 have parents who are rights-holders. Yet, as of March 1, 2023, there were 16,455 spaces in designated centres for children aged 0 to 5, including 5,675 in educational daycare centres that use a francophone curriculum (34.5% of current spaces).

This affects not only the number of students in French-language schools but also the vitality of the French-speaking community. Because of its linguistic fragility, the French-speaking minority community cannot afford to lose a significant proportion of its population in the medium term. In a study carried out in 2001, Angéline Martel noted the potential and foreseeable loss of rights-holders due to the fact that many French-speaking parents do not pass on French to their children, and do not enrol them in French-language schools.¹ This requires, she says, "language planning based on the objective of section 23, namely to remedy historical wrongs."²

Since enrolment in French-language schools in each province and territory depends on the demographic capital of francophone minority communities, it is important to ensure that as many rights-holders as possible not only enrol their children in French-language schools, but also have access to French-language early childhood education.

In addition, we believe that to achieve this goal, certain initiatives to support parents throughout the preschool years are needed. First, we believe that an information campaign targeting new parents to inform them of the issues and consequences of their language choices should be implemented. Such an initiative must go hand in hand with the need for sufficient francophone daycare centres in minority communities, rather than bilingual daycare centres, which, as experience has shown, become a source of assimilation for minority children.

It is also essential to set up a structure for early childhood education that would be conducive to integrating children of rights-holders with limited French language skills and children from multicultural communities. However, this non-exhaustive list of positive measures could only be achieved if they the necessary human and financial resources are in place. These positive measures also involve the jurisdiction of both the federal and provincial governments, and it appeals to the remedial nature of section 23.

The situation faced by francophone minority communities is unheard of in majority schools. These majority schools do not have to worry about developing their students' culture and identity. As a result, it is a unique challenge for minority language schools. While francophone schools must welcome the children of rights-holders with limited French skills on

¹ A. Martel, *Rights, schools and communities in minority contexts: 1986-2002: toward the development of French through education: an analysis*, Ottawa, Office of the Commissioner of Official Languages, 2001.

² *Ibid.*, p. 35.



the one hand, on the other, they must ensure that the school climate and the quality of its teaching uphold the francophone identity. French-language schools in minority settings must not become immersion schools. That is why it is important to allocate sufficient resources to set up childcare facilities in line with the specific mandate conferred on minority schools by section 23, which must begin in early childhood.

Full implementation of section 23 requires a comprehensive partnership of education stakeholders, including parents and their representatives, as well as federal and provincial governments. Section 23 refers to the need for official language minority communities to take charge of the management of educational institutions and the programs they offer, from preschool through to post-secondary education. We believe that this interpretation should lead to the recognition of a right to preschool educational services, which would include French language support throughout the preschool years, including educational daycare centres and a structure conducive to the integration of the children of rights-holders with limited French-language skills.

However, two court rulings have raised questions about the scope of section 23 as it applies to preschools. In the *Association des parents de Yellowknife* case, the parents who were rights-holders claimed that section 23 of the Charter applied to daycares and preschools because they are closely linked to the recruitment of students for minority-language schools. The trial judge rejected this argument.³

The Court of Appeal for the Northwest Territories upheld the trial judge's decision and added:

Section 23 only grants eligible parents the right to have their children receive their primary and secondary school instruction in the official language of the minority. It specifically does not cover pre-primary or post-secondary education. There is no basis upon which the section can be interpreted to include pre-school or daycare; the drafters of the Charter clearly excluded those rights. The respondents asserted that it is very important to encourage francization at the preschool level to slow assimilation. This may be true, but from a legal point of view, their argument amounts to arguing that section 23 should have had a broader scope. [TRANSLATION]⁴

Similarly, in *Conseil scolaire francophone de la C.-B.*, the Supreme Court of British Columbia states:

The plaintiffs argue that the Province is required to provide the CSF with space for early childhood education services because it has a positive duty to affirm and promote minority language education. As I explained in Chapter VI, *The Respective Roles of the Province and the CSF*, this argument goes too far. Section 23 ensures a certain form of education rights to give effect to the principle of preserving and promoting the minority language and culture. It does not place a duty on government to achieve those ends

³ *Association des parents de Yellowknife, Trial Division, supra* note 40 at paras 758-59.

⁴ *Associations des parents de Yellowknife, supra* note 69 at paras. 80-81.



through any means other than providing the mandatory minimum level of minority language education.⁵

Based on these two rulings, we can conclude that daycare centres, preschools and kindergartens are not included in section 23 of the Charter. However, if these services are offered to the majority community, it would hold that governments also have an obligation to offer them to the minority community. These rulings also demonstrate the importance of targeted action on the part of our governments, particularly the federal government.

In any case, we believe that the situation in New Brunswick is unique, regardless of the ultimate interpretation of section 23. In New Brunswick, section 16.1 of the Charter recognizes the right of the province's two official linguistic communities to have separate educational institutions. As a result, laws intended to create educational programs or institutions must ensure that the right conferred by this provision is respected.

With regard to education, section 16.1 complements the rights granted in section 23 by specifying that the province's two official linguistic communities are entitled to have separate educational institutions. In addition to schools, which are also protected by section 23 of the Charter, section 16.1 also grants constitutional protection to post-secondary institutions, such as the Université de Moncton and the network of francophone community colleges, as well as to preschool institutions, such as daycares.

We would like to reiterate that programs for preschool children are a determining factor in their future schooling. These programs play a vital role in transmitting the minority language and culture. With an ever-increasing number of exogamous households, preschool often becomes the best place, and sometimes the only place, to learn the minority language and culture. Studies show that early childhood programs in the minority language feed into instructional programs in that language.

The right to education recognized in sections 23 and 16.1 will have little impact on the vitality of francophone communities if a significant portion of the minority population does not attend minority schools. To achieve the goal of reaching as many francophones as possible and preparing them for French-language school, francophone minority communities need the support of all levels of government, including the federal government.

To help achieve this endeavour, which is important for minority communities, we propose the following:

- That Bill C-35 be amended to take into account the needs of francophone minority communities as regards early childhood education.
- That the federal government take into account the needs of francophone minority communities in its agreements with the provinces and territories on early childhood services.
- That the bill include a staffing or workforce plan to ensure that the Canada-wide Early Learning and Child Care (ELCC) program requires staff to be qualified.

⁵ *Conseil scolaire francophone*, *supra* note 40 at paras. 1867-1870.



- That the bill ensure that the funding provided to operators reflects the actual cost of providing high-quality, accessible and inclusive care, and that the funding formula is indexed to inflation.
- That the child's best interests be incorporated into the bill as a guiding principle for the Act respecting early learning and child care in Canada and for decisions made under the Act.
- That the principle of universal and equitable access to childcare services be enshrined in the Act.

We would also like to express our support to the Senate Committee for the following recommendations presented by the Commission nationale des parents francophones (CNPF) to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities:

- in the preamble, recognition of the role of official language minority communities in providing early childhood services, and the importance of such services for community vitality;
- in clause 2, a definition of "official language minority community";
- in clause 5, explicit recognition of the importance of implementing early childhood services in both official languages as part of in the purpose of the bill;
- in clause 6, explicit recognition of the importance of early childhood services created by and for official language minority communities;
- in clause 7, the possibility of entering into agreements directly with official language minority communities to fund services created by and for these communities, and consideration of these communities' needs in federal-provincial-territorial agreements;
- in clause 8, a financial commitment that includes services for official language minority communities; and
- in clause 11, the inclusion of an Indigenous representative and an official language minority community representative on the National Advisory Council on Early Learning and Child Care.

Thank you.