

# Supreme Court emphasizes positive duties owed to French-language schools under the Charter

June 15, 2020

In [Conseil scolaire francophone de la Colombie-Britannique v. British Columbia](#), a majority of the Supreme Court of Canada found that British Columbia underfunded French-language schools and clarified the test for determining when such funding issues may amount to a breach of section 23 (minority language educational rights) under the Charter of Rights and Freedoms.

## Background

In June 2010, the Conseil scolaire francophone de la Colombie-Britannique, the Fédération des parents francophones de Colombie-Britannique and three parents (the coalition) filed a lawsuit against British Columbia. In the suit, the coalition alleged that aspects of the education system funding penalized the official language minority and infringed on their rights under section 23 of the Charter. The allegations ranged from a lack of adequate French-language facilities to the need for additional French-language schools. The coalition sought compensation from the province as a remedy.

The British Columbia courts, among other things, provided declarations concerning the right to educational facilities in several communities in the province. However, the Courts were not persuaded that compensation was an appropriate remedy.

## Supreme Court's reasoning

In a 7-2 decision, Chief Justice Wagner - writing for the majority - found that the lower courts' interpretation of section 23 was "inordinately narrow." Section 23 had a remedial purpose, designed to correct the "erosion of official language groups and to give effect to the equal partnership of the two official language groups in the context of education." In this context, the Court further clarified a "sliding scale approach," which guarantees whatever type and level of rights and services is appropriate under section 23 in order to provide minority language instruction for the particular number of students involved.

The majority in this decision clarified this approach, enumerating a three-part test for determining the state's obligations under section 23:

- The first stage requires an assessment of whether, in light of the number of students at issue, the level of services the minority proposes will make it possible to meet all curriculum requirements. Cost is a factor, but is not dispositive of the issues.
- The second stage demands a comparative approach in order to determine whether the school contemplated by the minority language group is appropriate from a pedagogy and cost standpoint. This is meant to evaluate whether the students from the official language minority are comparable to the numbers of students in the majority language schools. If the court finds that the number of minority language students is comparable to the numbers of students in local majority language schools, that favours a finding that minority language students be provided a linguistically "homogeneous school."
- The third stage examines the level of services to be provided. If the court finds at the second step that the number of students is comparable and that number is at the high end of the sliding scale, then the minority is entitled to have its children receive instruction in a linguistically homogeneous school.

Applying this approach to the facts before it, the majority found that the coalition was justified in demanding more minority language schools within the communities in question and that the failure to provide them amounted to a section 23 violation.

The Supreme Court took a "strict" approach to its section 1 analysis. The majority ruled that the infringements were not saved under section 1 and, *inter alia*, the coalition was owed compensation as a remedy.

## Takeaways from the decision

For the coalition and many francophone communities the Supreme Court's decision marks a significant victory, both in terms of vindicating their constitutional rights and securing compensation from the government.

Legally, this case continues to highlight the Supreme Court's openness to recognizing and specifying ways in which to assess positive duties that the state owes to linguistic minority groups under the Charter (and other quasi-constitutional documents). The Court has not been as receptive to the concept of positive obligations with respect to other rights enshrined in the Charter.

The majority's decision also illustrates the need for provincial bodies to carefully tailor their educational policies in light of the more nuanced "sliding scale" test developed by the Court. This approach may invite both legislative and grassroot changes and may lead to greater investment in French-language schools and programs.

Finally, the majority provided a series of declarations for more French-language schools in British Columbia. The Court chose not to remain seized with the matter of implementation, an issue that the Court grappled with in its earlier decision of [Doucet-Boudreau v. Nova Scotia \(Minister of Education\)](#).

By

Nadia Effendi, Mannu Chowdhury

Expertise

Labour & Employment, Appellate Advocacy, Administrative and Public Law

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3  
  
T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9  
  
T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2  
  
T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4  
  
T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3  
  
T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.