Chapter 3: British Columbia

LAST UPDATE: DECEMBER 2017

British Columbia – Main Language Laws

First Peoples' Heritage, Language and Culture Act, R.S.B.C. 1996, c. 147

Preamble

WHEREAS the Province of British Columbia wishes to

> **(a) protect, revitalize and enhance First Nations heritage, language, culture and arts,**
>
> **[…]**

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

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1. Definitions

1. (1) In this Act: […]

"First Nations language group" means a First Nations language group prescribed by the minister under subsection (2).

1. (2) After consulting with the board, the minister may make regulations setting out the First Nations language groups from which the members of the committee may be appointed.

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2. First Peoples' Advisory Committee

2. (2) The minister may appoint one representative to the committee from each First Nations language group on the recommendation of the board.

2. (2.1) For the purposes of subsection (2), a First Nations language group may submit to the board the names of one or more members

> **(a) whom the First Nations language group considers suitable for appointment to the committee, and**
>
> **(b) who are willing to accept an appointment to the committee.**

[…]

2. (5) A member of the committee may designate another member of the First Nations language group from which he or she was appointed to attend one or more committee meetings in his or her place.

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3. The First Peoples' Heritage, Language and Culture Council

3. (1) The First Peoples' Heritage, Language and Culture Council is continued as a corporation.

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6. Purposes and powers

6. (1) The purposes of the corporation are as follows:

(a) to provide support to any of the following that are associated with First Nations heritage, language, culture or arts:

(i) organizations;

(ii) programs;

(iii) cultural centres;

(b) to receive, manage and distribute funds and property of every nature and kind from any source for the establishment, operation and maintenance of the corporation and to further the purposes of the corporation;

(c) to support and advise ministries of government on initiatives, programs and services related to First Nations heritage, language, culture and arts;

(d) to advise the government on the preservation and fostering of First Nations languages, arts and other aspects of cultural development of First Nations peoples throughout British Columbia;

First Peoples' Heritage, Language and Culture Regulation – First Peoples' Heritage, Language and Culture Act, B.C. Reg. 65/2011

1. First Nations language groups prescribed

1. The following First Nations language groups are prescribed for the purposes of section 2 of the *First Peoples' Heritage, Language and Culture Act*:

Item Language group name

1 Anishnaubemowin (Saulteau)

2 Nēhiyawēwin (ᓀᐦᐃᔨᐧᐃᐣ) (Plains Cree)

3 Dakelh (ᑕᗷᒡ)

4 Dane-Zaa (ᑕᓀᖬ)

5 Danezāgé'

6 Dene K'e

7 Nedut'en /Wet'suwet'en

8 Tāltān

9 Tse'khene

10 Tsilhqot'in

11 Tutchone (Southern)

12 Lingít

13 Ktunaxa

14 Éy7á7juuthem

15 Hul'q'umi'num' / Halq'eméylem / həńqəmińəm

16 SENĆOŦEN / Malchosen / Lekwungen / Semiahmoo / T'Sou-ke

17 She shashishalhem

18 Sḵwx̱wú7mesh sníchim

19 Nłeʔkepmxcín

20 Nsyilxcən

21 Secwepemctsin

22 Státimcets

23 Nuxalk

24 Gitsenimx̱

25 Nisga'a

26 Ski:xs

27 Sḿalgya̱x

28 DiitiidʔaatX̱

29 Hailhzaqvla

30 KwaÇwala

31 Nuučaaƙul

32 Oowekyala

33 àenaksialaÇala / àa'islaÇala

34 Úaad Kil / Úaaydaa Kil

British Columbia – Federal Laws

First Nations Jurisdiction over Education in British Columbia Act, S.C. 2006, c. 10

Purpose and Powers of the Authority

19. (1) Education co-management agreements

19. (1) In furthering its purpose, the Authority shall, if requested by a participating First Nation and in accordance with an individual agreement, enter into a co-management agreement in respect of education with that participating First Nation.

19. (2) Education standards

19. (2) The Authority shall, as provided for by a co-management agreement,

> **(a) establish standards that are applicable to education provided by a participating First Nation on First Nation land for curriculum and examinations for courses necessary to meet graduation requirements;**
>
> **(b) provide a teacher certification process for teachers providing educational instruction in schools operated by a participating First Nation on First Nation land, other than teachers who teach only the language and culture of the participating First Nation;**
>
> **(c) provide, upon request by a participating First Nation, a teacher certification process for teachers who teach only the language and culture of the participating First Nation in schools operated by the participating First Nation on First Nation land;**
>
> **(d) provide a process for certifying schools that are operated by a participating First Nation on First Nation land; and**
>
> **(e) perform any other duties that are consistent with the individual agreement and this Act.**

N.B. – Although this is a federal statute, we have also included it in the British Columbia chapter due to its relevance to this jurisdiction.

British Columbia – Other Language Laws

An Act that All Proceedings in Courts of Justice within that Part of Great Britain called England and in the Court of Exchequer in Scotland shall be in the English Language, 1730-31, 4 Geo. 2, c. 26

[Incorporated by reference under the *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 2]

Preamble

[…] [A]ll Writs, Process and returns thereof, and Proceedings thereon, and all Pleadings Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, and all Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever shall be in the English tongue and Language only, and not in Latin or French, or any other tongue or language whatsoever […].

ANNOTATIONS

Conseil scolaire francophone de la Colombie-Britannique v. British Columbia, [2013] 2 S.C.R. 774, 2013 SCC 42 (CanLII)

[13] British Columbia has advanced two legislative rules as a result of which, it says, the documents at issue in this case may not be admitted into evidence: the 1731 Act and Rule 22-3 of the Supreme Court Civil Rules. In my view, both of these rules apply, and their effect is that documents submitted to British Columbia courts must either be in English or be accompanied by an English translation.

[…]

[16] […] Currently, the reception of English law in British Columbia is governed by the Law and Equity Act, s. 2 of which reads as follows:

> 2 Subject to section 3, the Civil and Criminal Laws of England, as they existed on November 19, 1858, so far as they are not from local circumstances inapplicable, are in force in British Columbia, but those laws must be held to be modified and altered by all legislation that has the force of law in British Columbia or in any former Colony comprised within its geographical limits.

[17] There are two criteria for an English statute to be received into law in British Columbia: (1) it must have been in force in England on November 19, 1858; and (2) it must be applicable to local circumstances. Further, in interpreting any received law, a court must consider whether that law has been modified by legislation having the force of law in British Columbia. I will return to these issues after discussing the scope of the 1731 Act itself.

[…]

[19] The Preamble to the 1731 Act requires all the following to be in English:

> . . . all Writs, Process and Returns thereof, and Proceedings thereon, and all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, and all Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever . . ..

The appellants argue that the words "Proceedings thereon", "Proceedings relating thereunto" and "all Proceedings whatsoever" should be taken to be limited to procedural aspects of an action. Although I accept the appellants' submission that there is a difference between procedure and evidence, they have submitted no arguments to explain why the word "proceedings" should be read as equivalent to "procedure". The meaning of the word "procedure" is therefore not relevant to the interpretation of the 1731 Act. In any event, even if it were the case that the 1731 Act applied only to procedural law, there was a time when the law of procedure was considered to include what we would now call the law of evidence: U. Blickensderfer, *Blickensderfer's Blackstone's Elements of Law Etc.* (1889), at pp. 220-21.

[…]

[22] The appellants further suggest that the expressions "Proceedings thereon", "Proceedings relating thereunto" and "all Proceedings whatsoever" should be restricted by the limited class (*ejusdem generis*) presumption. They argue that the lists of items that come before these general expressions do not include evidence or exhibits, and that the expressions themselves must therefore be interpreted as being similarly limited.

[23] This argument must fail, however, for two reasons. First, I would question whether the limited class presumption should apply where the item at issue appears to be separated from the main list. When applying this presumption, "attention must be paid to the grammatical structure of the provision in question": R. Sullivan, Sullivan on the Construction of Statutes (5th ed. 2008), at p. 239. In this case, the relevant passages from the 1731 Act should be considered to form three distinct groups that are separated from one another by the word "and":

> (1) all Writs, Process and Returns thereof, and Proceedings thereon, and
>
> (2) all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments, Verdicts, Prohibitions, Certificates, and all Patents, Charters, Pardons, Commissions, Records, Judgments, Statutes, Recognizances, Bonds, Rolls, Entries, Fines and Recoveries, and all Proceedings relating thereunto, and
>
> (3) all Proceedings of Courts Leet, Courts Baron and Customary Courts, and all Copies thereof, and all Proceedings whatsoever . . . .

Each of these groups has two parts: a list of documents or courts and a general clause about "Proceedings". It is not clear to me that the references to proceedings should be taken to be part of the lists in question, given that for each group, the last two items of the list are separated by the conjunction "and" (e.g. "all Writs, Process and Returns thereof"), which precedes an "and" that separates the clause about proceedings from the list (e.g. "and Proceedings thereon").

[24] Second, the general word "Proceedings" is never used in isolation, but always forms part of an expression such as "Proceedings thereon" or "Proceedings relating thereunto". These

expressions convey an intention to include not just specific documents, but also any actions taken in relation to them.

[25] Finally, the appellants argue that, since the 1731 Act does not explicitly permit the admission of translations into evidence, no translations can be admitted, which renders the law absurd. I am unable to see how a law that requires documents to be in a particular language can have the effect of excluding translations into that language. I cannot accept this argument.

[26] In conclusion, if the 1731 Act applies in British Columbia, I am of the view that it has the effect of requiring that all documents filed in court proceedings be in English or be accompanied by an English translation.

[…]

[28] The parties agree that the 1731 Act existed and was in force in England on November 19, 1858. They disagree, however, about whether the 1731 Act is "from local circumstances inapplicable". The appellants ask the Court to adopt a strict test for applicability according to which every received statute must be both necessary and applicable. The appellants also argue that applicability should be assessed as of the time when the facts of the case arose rather than as of the date of reception, November 19, 1858.

[29] Neither of these submissions is compelling. Necessity is not a requirement for the reception of English law. Certainty in the legal system is, as the appellants acknowledge, a desirable outcome, but certainty cannot be obtained if the status of received law must be reconsidered each and every time a party seeks to rely on it. I therefore conclude that the test for determining whether such law is applicable should be based on its suitability, and that this should be assessed as of the date of reception.

[…]

[34] It is my view that the Law and Equity Act, rather than requiring proof of necessity, requires that statutes be considered to be received unless they are unsuitable to local circumstances in British Columbia. A suitability test is consistent with the authorities and eliminates the need to engage in detailed historical comparisons or to speculate about the legislative intent behind a statute that was adopted hundreds of years ago. According to McPherson, the test is "whether the rule of English law can reasonably be applied or is suitable, or in its nature not unsuitable, to local needs, and not whether it would be beneficial or convenient to apply it": pp. 373-74. Peter Hogg also discusses the common law rule for determining whether received law is applicable in terms of suitability, stating that received laws "did not include those laws that were not suited to the circumstances of the colony": P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at s. 2.2(b).

[…]

[41] It seems clear from an assessment of the applicability — understood to mean suitability — of the 1731 Act as of November 19, 1858, that this statute was not "from local circumstances inapplicable". At that time in British Columbia, the government operated in English. Immigration to the province was coming largely from the United States as a result of the Fraser Canyon gold rush, which meant that English was the common language of settlers. Given that I have rejected the appellants' purposive approach to the assessment of applicability, it is irrelevant that the problems the 1731 Act was meant to address (the use of archaic languages in court proceedings) never existed in British Columbia. Nothing about the circumstances in the province would have made a rule requiring that court proceedings be conducted in English unsuitable. The 1731

Act was therefore received into law in British Columbia and is now in force there, subject to any modifications, which I will discuss below.

[42] The 1731 Act has not been modified in respect of civil proceedings in British Columbia. It is common ground that the British Columbia legislature has not expressly repealed or modified the 1731 Act. What remains at issue is whether the 1731 Act has been implicitly modified. Although the parties to this case appear to disagree about the test for implied modification, a closer reading of the authorities reveals that both the appellants and the respondents propose a test based on the concept of occupation of the field. Applying this test, I am unable to conclude that any legislation has "occupied the field" of the 1731 Act with respect to civil proceedings to the extent required for a finding of implied modification.

[…]

[54] My conclusion on this issue is based on an implied exclusion, or *a contrario*, argument. The legislature's failure to act in the face of repeated endorsements of the rule reflects an acceptance of the current state of the law. Although the strength of this presumption always depends on the circumstances in which it is invoked, it seems clear, in light of the number of cases and the passage of time between them, that there was at the very least no legislative intention to modify the 1731 Act.

[55] Finally, the appellants urge this Court to adopt an approach to these issues based on *Charter* values and constitutional principles. The appellants argue that the *Charter* requires that legislation, including received legislation, be interpreted in a manner consistent with *Charter* values. The Court has of course repeatedly noted the role that *Charter* values play in the evolution of the common law and in statutory interpretation: *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573; *R. v. Zundel*, [1992] 2 S.C.R. 731; *R. v. National Post*, 2010 SCC 16, [2010] 1 S.C.R. 477. The *Charter* explicitly provides that English and French are the official languages of Canada: s. 16. The Court has also recognized the important role of linguistic minorities in Canada: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 79.

[56] However, the *Charter* also reflects a recognition that Canada is a federation and that each province has a role to play in the protection and advancement of the country's official languages. This is evident from ss. 16 to 20, which require bilingualism in the federal government, in Parliament, in courts established by Parliament, and in the province of New Brunswick. The *Charter* does not require any province other than New Brunswick to provide for court proceedings in both official languages. In addition, s. 16(3) provides that the legislatures may act to advance the use of English and French. In my view, therefore, while it is true that the *Charter* reflects the importance of language rights, it also reflects the importance of respect for the constitutional powers of the provinces. Federalism is one of Canada's underlying constitutional principles: *Reference re Secession of Quebec*, at paras. 55-60. Thus, it is not inconsistent with *Charter* values for the British Columbia legislature to restrict the language of court proceedings in the province to English.

[57] This being said, in light of s. 16(3) of the *Charter*, which specifically provides that provincial legislatures may advance the equality of status of English and French, it would be open to the British Columbia legislature to enact legislation, like that proposed in 1971, to authorize civil proceedings in French. Such legislation would no doubt further the values embodied in s. 16(3), which protects legislative initiatives intended to increase the equality of the official languages but does not, as this Court has already held, confer any rights. However, given the absence of any such initiative by the British Columbia legislature, it is not possible for this Court to impose one on it.

McDonnell v. Fed. des Franco-Colombiens, 1986 CanLII 927 (BC CA)

[7] In referring to "the Act", he [the appellant] means the Act passed by the British Parliament in 1731 which required all court proceedings to be in the English language. The courts have held this Act to be in force in British Columbia […].

[8] On the other hand, counsel for the Attorney General, relying on the *expressio unius* maxim, submits that ss. 16 to 22 are exhaustive of the subject of language rights, that there is nothing in any of these sections which would affect the power of British Columbia to pass R. 4(2) and that, therefore, the federation cannot rely on s. 15. He contends, too, that the majority judgments of the Supreme Court in *MacDonald* and in *Soc. des Acadiens* clearly refute counsel's submissions and contentions.

[9] Generally, I agree with the submissions of the Attorney General.

[…]

[11] While the opening words of s. 16(1) make English and French the official languages of Canada, the remainder of the subsection clearly establishes that "equality of status and equal rights and privileges as to their use" is not universally applicable throughout Canada but only with regard to all institutions of the Parliament and government of Canada. An examination of subss. (2) and (3) confirms this view and warrants the inference that "equality of status and equal rights and privileges as to their use" does not apply to a province unless the Constitution provides for it: see, for example, *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721, [1985] 4 W.W.R. 385 (sub nom. *Ref. re Language Rights under s. 23 of Manitoba Act*, 1870, and s. 133 of *Constitution Act, 1867*), 19 D.L.R. (4th) 1, 35 Man. R. (2d) 83, 59 N.R. 321. Subsection (2) is identical with subs. (1) except that it relates solely to the legislature and government of New Brunswick. Subsection (3) provides that nothing in the *Charter* limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

[12] A consideration of ss. 17, 18 and 19 and s. 43 reinforces this conclusion. Subsection (1) of each of these sections gives the right to use French or English in a specified field relating to Parliament. Subsection (2) of each section relates to the use of English or French and subs. (2) of each section is identical with subs. (1) but relates to the right to use French or English in New Brunswick, that is, in a provincial setting. Section 19 is particularly apposite in this case. Subsection (1) provides that either English or French may be used by any person, or in any pleading in or process issuing from, any court established by Parliament. Subsection (2) is identical with subs. (1), except that it applies to any court in New Brunswick. Obviously, subs. (1) relates only to federal courts and not to courts which British Columbia has established.

[13] Section 43 of the Constitution also supports this conclusion. It provides in part:

> 43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including …
>
> > (b) any amendment to any provision that relates to the use of the English or the French language within a province.
>
> may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

If s. 16(1) had the scope which counsel for the federation contends that it has, it would seem that subs. (2) of ss. 16 to 19 and s. 43(b) would be unnecessary.

[…]

[17] Section 15 is a guarantee against discrimination and is a legal right. While discrimination based purely on language may be within s. 15, our concern is whether the concept of “official language” comes within it. Having regard to the provisions of ss. 16 to 22 and the other sections dealing with languages and the judgments of the majority in *MacDonald* and *Soc. des Acadiens*, I do not think that it does.

Regina v. Keller, [1965] B.C.J. No. 64 (BC SC) [hyperlink not available]

[14] Despite the scrupulous care of the accused's interests which has distinguished the administration of justice in our criminal Courts, I cannot persuade myself that anything more is required in the way of notification than the giving of notice in plain, unambiguous English. To hold otherwise would be placing an intolerable burden upon the prosecutor which I am sure Parliament never intended. As stated by Sheppard, J.A., speaking for the Court, in *R. v. Taylor*, [1964] 1 C.C.C. 207 at p. 209, 41 C.R. 44, 42 W.W.R. 692, "the purpose of the notice is as stated, namely, to give warning to the accused of his potential liability for greater punishment by reason of previous convictions". Surely it is sufficient to prove that the warning was given without the added requirement of proving that the nature and effect of the warning was comprehended, particularly when, as here, the appellant had pleaded "not guilty" and no possible prejudice could have resulted from his failure to appreciate before his plea that conviction for a second offence carried a greater penalty than a first conviction. Had there been a plea of "guilty" and had the learned Magistrate then found that such plea would not have been entered save for the inability of the accused man to comprehend the nature and effect of the warning it might have been argued with some force that the accused at that point should have been given the opportunity to withdraw his plea, but that is not the case here. In any event this would involve simply the favourable exercise of discretion in favour of the accused and not recognition of his legal right; and the validity of the notice would remain unimpaired and would operate again if the accused were then convicted following a new plea of "not guilty".

[15] In holding that a notice in plain, unambiguous English is sufficient I am applying what I conceive to be the law in British Columbia with reference to the use of the English language in our Courts and in their process. As part of the English law, as it existed on November 19, 1858, which [is in force in] this Province by the *English Law Act*, R.S.B.C. 1960, c. 129, was a statute originally introduced by Sir Robert Walpole in 1731, 4 Geo. II, c. 26 [Statutes at Large, Vol. 6, p. 65], and reading in part as follows:

> "...all Pleadings, Rules, Orders, Indictments, Informations... and all Proceedings relating thereunto... and all Proceedings whatsoever, in any Courts of Justice...and which concern the Law and Administration of Justice, shall be in the English Tongue and Language only, and not in Latin or French, or any other Tongue or Language whatsoever..."

[16] This appears to be unaffected up to the present time by any enactment, Dominion or provincial.

[17] While the common law recognizes the right of an accused, ignorant of or insufficiently acquainted with the English language, to have the evidence given at his trial interpreted to him (*R. v. Lee Kun* (1915), 11 Cr. App. R. 293) no such right appears to exist with reference to any proceedings taken or process issued before the appearance of the accused in Court.

SEE ALSO:

HMTQ v. Pelletier, 2002 BCSC 561 (CanLII)

Macmillan Bloedel, Ltd. v. Rheaume, 1994 CanLII 2257 (BC SC)

Poulin (Re), 1968 CanLII 788 (BC SC)

Adoption Act, R.S.B.C. 1996, c. 5

3. Best interests of child

3. (1) All relevant factors must be considered in determining the child's best interests, including for example:

> **[…]**
>
> **(f) the child's cultural, racial, linguistic and religious heritage;**

ANNOTATIONS

British Columbia Birth Registration No. XX-XX297 (Re), 2015 BCSC 1577 (CanLII)

[80] The "best interest of the child test" was articulated by McIntyre J. in *King v. Low*, 1985 CanLII 59 (SCC), [1985] 1 S.C.R. 87 at 101:

> I would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

[81] Counsel for the respondents framed the present case as "an opportunity for the Court to right an historical wrong" by refusing to remove R. from his birth family the way so many First Nations children were removed from their families and communities and sent to residential schools and non-aboriginal homes. While the respondents raise legitimate concerns (some of which have been addressed by the Band's child welfare bylaws, and by provisions in the Adoption Act specific to Aboriginal children), it is neither appropriate nor possible for this Court in an adoption proceeding to right historical wrongs. R. is not a symbolic figurehead. He is a real little boy. My task is to determine whether adoption by the petitioners is in his best interest based on a consideration of all relevant factors.

[…]

[85] The respondents argue that they are better suited to pass on to R. his cultural identity, including the proud history of the K. family. They point out that M.M. does not speak the Shuswap language. However, it is sadly the case that the respondents do not speak Shuswap either, other than a few words. N.K. attributed this to the removal of his generation to residential schools.

[86] T.B.'s older daughter, M.I., is learning the language through CDs and from the Internet. Only C.K. speaks Shuswap and also teaches it and traditional ways and history in schools. I note that C.K., who did not testify at trial, has remained on good terms with the petitioners and has ongoing contact with R. Even without that exposure to C.K., however, it is clear that R., like M.I., can learn his language more readily from resources available on the Internet, than from the respondents. He can also learn about his family, including the pride that should be associated with the K. name, through access to his birth family. He will, despite an adoption, continue to be a member of the Splatsin Band, just as E.U. and E.V. continue to be members of their respective Bands.

[...]

[92] Both families' views in this case are deserving of respect and careful consideration. But on the entire record before me, I conclude that it is in R.'s best interest to remain with and to be adopted by the petitioners, with access to T.B.

Adoption Regulation – Adoption Act, B.C. Reg. 291/96

Part 2 – Placement for Adoption

3. Requirements of a homestudy

3. (1) For the purposes of sections 6 (1) (b) and (2) (a) and 48 (2) (c) of the Act, a homestudy of the prospective adoptive parents respecting their ability to provide for the physical and emotional needs of a child must be prepared by a social worker and must consider and provide for all of the following:

[…]

(g) the prospective adoptive parents' understanding of the child's cultural, racial, linguistic and religious heritage and their willingness to help the child appreciate and integrate that heritage;

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4. Biological family medical and social history report

4. (1) For the purposes of sections 6 (1) (c) and 8 (2) (b) of the Act, a director or the administrator must, with respect to a child to be placed for adoption, obtain information about the medical and social history of the child and the child's biological family that includes, as practicable, all of the following:

(a) a physical description of the biological mother and biological father, and information about

[…]

(ii) their cultural, racial and linguistic heritage, and

[…]

(e) a physical description of the child, and information about

[…]

(ii) the cultural, racial, linguistic and religious heritage of the child;

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7. Requirements of a pre-placement assessment

7. (1) For the purpose of section 8 (2) (d) of the Act, a pre-placement assessment of the prospective adoptive parents respecting their ability to provide for the physical and emotional needs of a child must be prepared by a social worker and must consider and provide for all of the following:

[…]

(f) the prospective adoptive parents' understanding of the child's cultural, racial, linguistic and religious heritage and their willingness to help the child appreciate and integrate that heritage;

Business Corporations Act, S.B.C. 2002, c. 57

Part II – Incorporation

25. Multilingual names

25. (1) The name of a company must be in one or both of

(a) an English form, and

(b) a French form.

25. (2) If the name of a company is in both an English form and a French form, the company may use, and may be legally designated by, either form or a combination of both forms for the purposes of section 27 or any other purpose.

25. (3) Subject to section 256, a company may translate its name into any other language and may be designated by that translation of the name outside Canada if the translation of the name is set out in

(a) the memorandum, or

(b) the notice of articles in accordance with section 11(f) and in the articles in accordance with section 12(2)(c)(iii).

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27. Name to be displayed

27. (1) A company or extraprovincial company must display its name ot, in the case of an extraprovincial company that has adopted an assumed name under this Act, its assumed name, in legible English or French characters,

(a) in a conspicuous position at each place in British Columbia at which it carries on business,

(b) in all its notices and other official publications used in British Columbia,

(c) on all its contracts, business letters and orders for goods, and on all its invoices, statements of account, receipts and letters of credit used in British Columbia, and

(d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money used in British Columbia and signed by it or on its behalf.

27. (2) If a company has a seal, the company must have its name in legible characters on that seal.

Chartered Professional Accountants Act, S.B.C. 2015, c. 1

Part 5 – Designations and Prohibitions

44. Designations

44. (8) A person authorized under subsection (1), (2), (3), (4), (5) or (6) to use or display a designation or initials signifying that designation in the English language is also authorized to use or display the designation or initials signifying that designation together with their equivalent in a language other than English.

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45. Use of designations

45. (1) Except as authorized by this Act, and in the case of legacy designations, as authorized or required by the bylaws, a person must not

[…]

(b) use or display in a language other than English a designation or the initials signifying a designation that is equivalent to the corresponding designation or initials referred to in paragraph (a)

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46

70. Rights of children in care

70. (1) Children in care have the following rights:

[…]

(k) to be provided with an interpreter if language or disability is a barrier to consulting with them on decisions affecting their custody or care;

Child, Family and Community Service Regulation – Child, Family and Community Service Act, B.C. Reg. 527/95

8. Contents of other plans of care

8. (1) In this section, "plan of care" means a plan of care prepared for a court hearing to consider an application for an order,

> **(a) other than an interim order, that a child be returned to or remain in the custody of the parent apparently entitled to custody and be under a director's supervision for a specified period, or**
>
> **(b) that a child be placed in the custody of a director under**
>
> > **(i) a temporary custody order, or**
> >
> > **(ii) a continuing custody order.**

8. (2) A plan of care must include the following information:

> **[…]**
>
> **(m) a description of how the director proposes to meet the child's need for**
>
> > **[…]**
> >
> > **(iii) continuity of cultural heritage, religion, language, and social and recreational activities;**

8.01 Contents of plan of care if director seeking order that child be placed in temporary or permanent custody of care provider

8.01 (2) A plan of care must include the following information:

> **(h) a description of how the care provider proposes to meet the child's need for**
>
> > **[…]**
> >
> > **(iii) continuity of cultural heritage, religion, language, and social and recreational activities;**

8.2 Contents of plan for independence

8.2 For the purposes of section 12.2 (3) of the Act, a plan for independence must contain the following:

> **[…]**

(b) information necessary to support and preserve the youth's cultural, racial, linguistic and religious heritage;

Court Order Enforcement Act, R.S.B.C. 1996, c. 78

32. If judgment is in language other than English

32. (1) If a judgment sought to be registered under the Part is in a language other than the English language, the judgment or the exemplification or certified copy of its, as the case may be, must have attached to it for this Part a translation in the English language approved by the court.

32. (2) On approval being given under subsection (1), the judgment is deemed to be in the English language.

Part 4 – Canada – United Kingdom Convention

41. Definition for Part

41. In this Part, "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the English language version of which is set out in Schedule 4.

Court Rules Act, R.S.B.C. 1996, c. 80

1. (1) Rules of the Court

1. (1) The Lieutenant Governor in Council may, by regulation, make rules that the Lieutenant Governor in Council considers necessary or advisable governing the conduct of proceedings in the Court of Appeal, the Supreme Court and the Provincial Court.

Court of Appeal Rules – Court Rules Act, B.C. Reg. 297/2001

Part 9 – General

53. Documents for use in court

53. All documents prepared for the use of the court must be in English and all paper documents must be legibly printed or typewritten on durable white paper having dimensions of 21.5 cm by 28 cm.

ANNOTATIONS

Conseil scolaire francophone de la Colombie-Britannique v. British Columbia, [2013] 2 S.C.R. 774, 2013 SCC 42 (CanLII)

[48] Given that the subject matter of the 1731 Act is the language of court proceedings, there are only two legislative provisions that might be considered to have modified that Act in respect of civil proceedings: Rule 22-3 of the *Supreme Court Civil Rules* and its counterpart, Rule 53 of the *Court of Appeal Rules*, B.C. Reg. 297/2001. These rules provide that "document[s] prepared for use in the court" (Rule 22-3) and "documents prepared for the use of the court" (Rule 53) must be in English. Rule 22-3 provides for a limited exception in cases in which the nature of the document renders compliance with the rule "impracticable". In respect of criminal proceedings, on the other hand, there is no dispute that the 1731 Act has been modified by s. 530 of the *Criminal Code*.

[49] Two issues arise in considering whether the rules of court in question have modified the 1731 Act. First, can rules of court, ostensibly subordinate legislation that takes the form of a regulation, modify received statutes such as the 1731 Act? Second, is the scope of such rules sufficient for them to displace the 1731 Act?

[50] With respect to the first issue, I accept the appellants' submission that British Columbia's rules of court are considered to have the force of statute law: *Robitaille v. Vancouver Hockey Club Ltd.* (1979), 1979 CanLII 336 (BC SC), 13 B.C.L.R. 309 (S.C.); *Boleak v. Boleak*, 1999 BCCA 776 (CanLII), 183 D.L.R. (4th) 152, at para. 21. It is therefore conceivable that a rule of court, such as Rule 22-3 or Rule 53, could modify the 1731 Act.

[51] I part ways with the appellants on the second issue, however, as I do not see how two rules relating to the documents used in court can be said to occupy the entire field of language for court proceedings. As I mentioned above, the 1731 Act pertains not only to the language of documents filed in court, but also to that of judgments, orders, trials and evidence. A rule that covers only one aspect of the subject matter while remaining silent on other aspects cannot have the effect of impliedly modifying a received statute. This situation can be distinguished from the implied modification by s. 530 of the *Criminal Code*, which establishes a complete system for criminal proceedings.

[52] This conclusion is reinforced by the fact that, since 1965, British Columbia courts have repeatedly endorsed the 1731 Act and the legislature has not intervened in this regard. The first reported case in which a court considered the 1731 Act was *Keller*. In *Keller*, the accused was a Hungarian immigrant who had been served with documents in English. He argued that he had not received adequate notice, because he was not capable of understanding English. Harvey Co. Ct. J. relied on the 1731 Act to conclude that the notice was sufficient. The same conclusion was reached in several subsequent decisions: *Poulin*; *Lajoie*; *R. v. Pare* (1986), 1986 CanLII 1189 (BC SC), 31 C.C.C. (3d) 260 (B.C.S.C.). This issue has also been considered since the enactment of s. 530 of the *Criminal Code* and the *Charter*. In 2002, in *Pelletier*, Shaw J. applied the 1731 Act to require that a parole eligibility hearing under the "faint hope" clause in the *Criminal Code* be conducted in English.

[53] Faced with these decisions, the British Columbia legislature has, rightly or wrongly, declined to act to change the law on the language of court proceedings in the province. A bill was in fact introduced in 1971 to provide the courts with a discretion to conduct civil trials in French. The bill was never adopted, however, and during second reading, the Attorney General expressed concerns about the capacity of the court system to deal with cases in French: Debates of the Legislative Assembly, 2nd Sess., 29th Parl., March 10, 1971, at p. 646.

[54] My conclusion on this issue is based on an implied exclusion, or a contrario, argument. The legislature's failure to act in the face of repeated endorsements of the rule reflects an acceptance of the current state of the law. Although the strength of this presumption always depends on the circumstances in which it is invoked, it seems clear, in light of the number of cases and the passage of time between them, that there was at the very least no legislative intention to modify the 1731 Act.

Provincial Court (Family) Rules – Court Rules Act, B.C. Reg. 417/98, Rules 1 to 22 - 417/98

Rule 21 – Parenting after Separation Program

(6) A party who is unable to attend the program

(6) A program administrator may exempt a party from attending a program if the party provides to the program administrator a parenting after separation exemption request in Form 31 that states one of the following reasons:

> **(a) the party is not fluent in a language in which a program is offered;**
>
> **[…]**

[en. B.C. Reg. 111/2012, s. 1 (d).]

Supreme Court Family Rules – Court Rules Act, B.C. Reg. 169/2009

Rule 9-7 – Depositions

Letter of request

(11) If an order referred to in subrule (10) is made, the letter of request must be sent by the party obtaining the order to the Under Secretary of State for External Affairs Canada (or, if the evidence is to be taken in Canada, to the Deputy Attorney General for the Province of British Columbia), and must have attached to it

> **[…]**
>
> **(c) a copy of the letter of request and any interrogatories**
>
> > **(i) translated into the appropriate official language of the jurisdiction where the examination is to take place, and**
> >
> > **(ii) bearing the certificate of the translator that it is a true translation and giving the translator's full name and address.**

Rule 10-4 – Affidavits

Interpretation to person swearing or affirming the affidavit who does not understand English

(7) If it appears to the person before whom an affidavit is to be sworn or affirmed that the person swearing or affirming the affidavit does not understand the English language, the affidavit must be interpreted to the person swearing or affirming the affidavit by a competent interpreter who must clarify on the affidavit, by endorsement in Form 109, that he or she has interpreted the affidavit to the person swearing or affirming the affidavit.

Rule 19-1 – Canadian Judgments

Registration requirements for Canadian judgments

(2) A person wishing to register a Canadian judgment under the *Enforcement of Canadian Judgments and Decrees Act* must, for the purposes of section 3(1)(b) of the Act, file a certified English translation of the Canadian judgment if the judgment was made in a language other than English.

Rule 19-2 – Foreign Judgments

Affidavit in support

(3) The application for registration of a reciprocally enforceable judgment must be supported by an affidavit

> **(a) exhibiting […]**
>
> > **(iii) a certified translation of the judgment or certificate if made in a language other than English […].**

Rule 19-4 – Transfer of Proceedings from Foreign Courts

Court may require translation for transferred proceeding

(1) On an application under the *Court Jurisdiction and Proceedings Transfer Act* for an order that the court accept a transfer to it of a proceeding within the meaning of that Act, the court may order that the person applying for that order do one or both of the following:

> **(a) pay any expenses that have been or may be incurred by the court in having the documents in the transferring court's file relating to the proceeding translated into English by a person satisfactory to the court**

Rule 21-1 – Forms and Documents

Documents

(2) Unless the nature of the document renders it impracticable, every document prepared for use in the court must be in the English language, legibly printed, typewritten, written or reproduced on 8 ½ inch x 11 inch durable white paper or durable off-white recycled paper.

Transcripts

(3) Transcripts of oral evidence must conform to subrule (2).

Supreme Court Civil Rules – Court Rules Act, B.C. Reg. 168/2009

Rule 7-8 – Depositions

Letter of request

(11) If an order referred to in subrule (10) is made, the letter of request must be sent by the party obtaining the order to the Under Secretary of State for External Affairs Canada (or, if the evidence is to be taken in Canada, to the Deputy Attorney General for the Province of British Columbia), and must have attached to it

[…]

(c) a copy of the letter of request and any interrogatories

(i) translated into the appropriate official language of the jurisdiction where the examination is to take place, and

(ii) bearing the certificate of the translator that it is a true translation and giving the translator's full name and address.

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[…]

(iii) a certified translation of the judgment or certificate if made in a language other than English;

Rule 19-4 – Transfer of Proceedings from Foreign Courts

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(a) pay any expenses that have been or may be incurred by the court in having the documents in the transferring court's file relating to the proceeding translated into English by a person satisfactory to the court […]

Rule 22-2 – Affidavits

Interpretation to person swearing or affirming the affidavit who does not understand English

(7) If it appears to the person before whom an affidavit is to be sworn or affirmed that the person swearing or affirming the affidavit does not understand the English language, the affidavit must be interpreted to the person swearing or affirming the affidavit by a competent interpreter who must clarify on the affidavit, by endorsement in Form 109, that he or she has interpreted the affidavit to the person swearing or affirming the affidavit.

ANNOTATIONS

XY, LLC v. International Newtech Development Incorporated, 2015 BCSC 1524 (CanLII)

[48] Thus the Rules require affidavits for translations in the instance of applications for estate grant or resealing. But for registration of a Canadian judgment to register a foreign judgment, for letters of request or for the transfer of a foreign proceeding, there is no requirement of an affidavit. There are other analogous situations. For example, Rule 22 – 2(7) concerns persons swearing or affirming an affidavit who do not understand English. The Rule provides:

(7) if it appears to the person before whom an affidavit is to be sworn or affirmed that the person swearing or affirming the affidavit does not understand the English language, the affidavit must be interpreted to the person swearing or affirming the affidavit by a competent interpreter who must certify on the affidavit by endorsement in Form 109 that he or she has interpreted the affidavit to the person swearing or affirming the affidavit. The endorsement in form 109 provides as follows:

1. I have a knowledge of the English and ---- languages and I am competent to interpret from one to the other.

2. I am advised by the person swearing or affirming the affidavit and believe that the person swearing or affirming the affidavit understands the ------ language.

3. Before the affidavit on which this endorsement appears was made by the person swearing or affirming the affidavit I correctly interpreted it for the person swearing or affirming the affidavit from the English language into the ------ language and the person swearing or affirming the affidavit appeared to fully understand the contents.

[49] The endorsement is not sworn by the interpreter and the endorsement proceeds on the basis of the interpreter's self-reported competency without any information that provides the court with an assessment of the interpreter's qualifications or ability.

[50] In a 2012 decision, *Sandhu v. British Columbia (Provincial Court)*, 2012 BCSC 1064 (CanLII), the court confirmed that the term "court certified interpreter" was a misnomer. There is a list of "certified interpreters". It is only significant in that it indicates those interpreters who currently have a contract with provincial Court services to compensate those interpreters in connection with criminal proceedings, family law proceedings in Provincial Court, traffic court cases, municipal bylaw cases and other cases by court order.

[51] It is noteworthy that prior to Mr. Zhu's response argument in February 25, 2015, no issue had been raised regarding translations. All of these documents which have been translated arise from documents disclosed by Mr. Zhu's former counsel in the Topsires action.

[52] In May 2014 XY applied in the Topsires action for relief from the implied undertaking in respect of the documents listed in the compendium. On May 27, 2014 counsel for XY and Mr. Zhu appeared before Madam Justice Fitzpatrick to hear the application for relief from the implied undertaking. Mr. Zhu consented to the order that was pronounced that day granting relief for the documents set out in Schedule A for the express purpose of this contempt application.

[53] All of this is to say that Mr. Zhu has known since May 2014 that these particular documents, as translated, would be relied upon as evidence of his contempt of court.

[54] The affiants have deposed that the translations accurately reflect the discussions, events, and steps taken.

[55] Certainly it was open to Mr. Zhu to challenge these translations. Evidence could have been adduced which challenged the translations or provided alternative translations. There is no such evidence adduced by Mr. Zhu.

[56] I conclude that in these circumstances the English translations of the documents are admissible as translations.

Rule 22-3 – Forms and Documents

Documents

(2) Unless the nature of the document renders it impracticable, every document prepared for use in the court must be in the English language, legibly printed, typewritten, written or reproduced on 8 ½ inch x 11 inch durable white paper or durable off-white recycled paper.

Transcripts

(3) Transcripts of oral evidence must conform to subrule (2).

ANNOTATIONS

Conseil scolaire francophone de la Colombie-Britannique v. British Columbia, [2013] 2 S.C.R. 774, 2013 SCC 42 (CanLII)

[9] The chambers judge held that Rule 22-3 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, which requires that documents prepared for use in court be in English unless the nature of the document renders this impracticable, is a manifestation of the general rule derived from the 1731 Act that the language of the British Columbia courts is English. Whether the impugned exhibits qualified as "documents prepared for use in the court" was therefore irrelevant. Furthermore, assuming that Rule 22-3 applied to these exhibits, the chambers judge held that nothing about their nature rendered their translation impracticable. He accordingly dismissed the application.

[…]

[11] The Court of Appeal added that the 1731 Act applies to documentary evidence of the type the Conseil and the Fédération had submitted. Rule 22-3 of the *Supreme Court Civil Rules* merely confirms that all civil proceedings in British Columbia must be conducted in English.

[12] The Court of Appeal accordingly held that a judge presiding over civil proceedings in British Columbia does not have a discretion to admit documentary evidence in a language other than English without a certified translation.

IV. Analysis

[13] British Columbia has advanced two legislative rules as a result of which, it says, the documents at issue in this case may not be admitted into evidence: the 1731 Act and Rule 22-3 of the *Supreme Court Civil Rules*. In my view, both of these rules apply, and their effect is that documents submitted to British Columbia courts must either be in English or be accompanied by an English translation.

[…]

[49] Two issues arise in considering whether the rules of court in question have modified the 1731 Act. First, can rules of court, ostensibly subordinate legislation that takes the form of a regulation, modify received statutes such as the 1731 Act? Second, is the scope of such rules sufficient for them to displace the 1731 Act?

[50] With respect to the first issue, I accept the appellants' submission that British Columbia's rules of court are considered to have the force of statute law: *Robitaille v. Vancouver Hockey*

Club Ltd. (1979), 1979 CanLII 336 (BC SC), 13 B.C.L.R. 309 (S.C.); *Boleak v. Boleak*, 1999 BCCA 776 (CanLII), 183 D.L.R. (4th) 152, at para. 21. It is therefore conceivable that a rule of court, such as Rule 22-3 or Rule 53, could modify the 1731 Act.

[…]

B. What Is the Effect of Rule 22-3?

[58] Even if the 1731 Act were not applicable to British Columbia or if it had been modified, Rule 22-3 of the *Supreme Court Civil Rules* requires that exhibits attached to affidavits and filed in court be in English. The respondents advanced this as an alternative argument, and it was accepted by both of the courts below. Rule 22-3(2) states:

> (2) Unless the nature of the document renders it impracticable, every document prepared for use in the court must be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper or durable off-white recycled paper.

[59] Although the appellants argue that the exhibits attached to the affidavits were not prepared for use in court, because they were prepared in the usual course of their business, it is my view that once the exhibits were attached to the affidavits, they became part of a document prepared for use in court. It cannot be possible to circumvent the rule by moving information on which a party seeks to rely from the body of the affidavit into an exhibit. If the appellants wish to rely on the content of the exhibits, as opposed to their existence or their authenticity, the exhibits must comply with the rule, since an exhibit that is relied upon for its content is effectively incorporated into the affidavit.

[60] This is different from the case of documents produced in the discovery process. The appellants argue that because Rule 22-3 does not require documents produced on discovery to be translated, the same should be true for documents introduced as evidence. The appellants rely on two cases in which it was held that discovery documents do not need to be translated: *Han v. Cho*, 2008 BCSC 1208 (CanLII), 88 B.C.L.R. (4th) 193; *Bilfinger Berger (Canada) v. Greater Vancouver Water District*, 2010 BCSC 1104 (CanLII). In my view, those cases are inapplicable, since documents exchanged on discovery are not prepared for use in court. Indeed, it is quite possible that such documents will never find their way into a court file. Discovery documents are not filed with the court, but simply pass from one party to another. Moreover, in both of the cases cited by the appellants, the judge acknowledged that if any of the discovery documents were to be used in court, they would have to be translated: *Han*, at para. 14; *Bilfinger*, at para. 18.

[61] However, Rule 22-3 does introduce a certain discretion to admit documents that do not comply with the rule if their nature would render compliance “impracticable”. The word “document” is defined in the rules to include photographs, films, sound recordings and “information recorded or stored by means of any device”: Rule 1-1(1). Rule 22-3 requires not only that documents be in English, but also that they be “legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper or durable off-white recycled paper”. In light of the expanded definition of “document”, it seems clear that the impracticability exception was intended to apply to items such as photographs, films, receipt books or business ledgers, to which the formatting requirements cannot logically apply.

[62] Where, as in the instant case, the documents at issue are written in French, it is clear that there is nothing inherent in them that would render it impracticable to have them translated into English. As the chambers judge found that there was “no basis upon which I can hold that the nature of the documents exhibited to the affidavits in this case renders it impracticable that they be translated into the English language” (para. 58), I do not accept that the large volume of

documents in question can change “the nature of the documents” so as to render compliance with the rule impracticable.

[63] There is no doubt that the British Columbia Supreme Court has the inherent jurisdiction and discretion to fulfill its judicial function, but as this Court noted in *R. v. Caron*, 2011 SCC 5 (CanLII), [2011] 1 S.C.R. 78, at para. 32, they are subject to the requirement that the court exercise them without contravening any statutory provision. In the case at bar, Rule 22-3 limits the court’s discretion to admit documents in languages other than English. The court can exercise this discretion only if the criterion of “impracticab[ility]” discussed above is satisfied. Only those documents whose nature renders compliance with the rule impracticable can be admitted.

Emergency Health Services Act, R.S.B.C. 1996, c. 182

5.5 Provision of services by visiting health professionals

5.5 (2) A visiting health professional may, while in British Columbia

[…]

(b) use, when providing services under paragraph (a), any of the following that he or she is authorized, in the jurisdiction of his or her governing body, to use in relation to the practice of his or her health profession:

[…]

(iii) an equivalent of a title, term or abbreviation in another language.

Employment Standards Act, R.S.B.C. 1996, c. 113

28. Payroll records

28. (2) Payroll records must

(a) be in English;

Employment Standards Regulation – Employment Standards Act, B.C. Reg. 396/95

3. Employment agency records

3. (1) An employment agency must keep a record of the following:

(a) the name and address of each employer for whom the employment agency provides a service;

(b) the name, occupation and address of each person who is directed to an employer for the purpose of being hired or who is provided with information about employers seeking employees.

3. (2) The record must

(a) be in English,

[…]

[am. B.C. Reg. 307/2002, s. 2.]

---

6. Duties of farm labour contractors

6. (5) The records required by subsection (4) must

(a) be in English, and

[…]

[am. B.C. Regs. 216/98, s. (a); 113/99, s. 2; 307/2002, s. 3; 195/2003, s. 1.]

---

18. Minimum wage – farm workers

18. (5) The records required by subsection (4) must

(a) be in English,

[…]

[en. B.C. Reg. 307/2000, s. 2; am. B.C. Regs. 348/2000; 307/2002, s. 4; 196/2003, s. 1; 67/2011, App. 1, ss. 4 and 5; 40/2015, ss. 4 and 5; 136/2016, s. 4; 158/2017, s. 4.]

38.1 Compliance requirements — talent agencies

38.1 (1) A talent agency must comply with all of the following:

[…]

(i) records must be kept to indicate for each actor, performer, extra or technical creative film person employed as a consequence of the efforts of the talent agency,

(i) the amount of money received by the talent agency for the employment,

(ii) the amount the talent agency is claiming as its fee, and

(iii) the amount paid to the actor, performer, extra or technical creative film person;

(j) records must be kept of

(i) the name and address of each employer for whom the talent agency provides a service, and

(ii) the name and address of each client employed as an actor, performer, extra or technical creative film person as a consequence of the efforts of the talent agency, or who is provided with information about employers seeking actors, performers, extras or technical creative film persons;

(k) the records referred to in paragraphs (i) and (j) must be

(i) in the English language,

[…]

[en. B.C. Reg. 296/99, s. 3; am. B.C. Reg. 307/2002, s. 24.]

Family Law Act, S.B.C. 2011, c. 25

Part 4 – Care of and Time with Children

41. Parental responsibilities

41. For the purposes of this Part, parental responsibilities with respect to a child are as follows:

[…]

(e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;

ANNOTATIONS

G.B. v. L.R., 2017 BCSC 1342 (CanLII)

[544] G.B.'s willingness to involve a medical professional to assist H as he had earlier done with M is consistent with his devotion to the children as a parent who seeks to ensure that they receive the best possible support when needed.

[545] G.B. has acted in the same way by ensuring that the children are able to pursue what he believes is the best educational path for them given their French heritage while also enrolling them in Mandarin classes to recognize their Chinese heritage. [...]

B.M.D. v. C.A.F., 2016 BCPC 171 (CanLII)

[69] D.'s schooling is important to both Ms. D. and Mr. F. They each have plans to assist in D.'s future success by placing him in what they believe to be the best educational option in their

respective communities. Each presented detailed and informative written materials from the school they wish to send him to. Either option appears to offer advantages to D. However, there was no expert evidence presented to assist in determining whether or not French Immersion or "Leader in You" schooling was substantially better than the alternative.

Financial Institutions Act, R.S.B.C. 1996, c. 141

215.1 Extrajurisdictional evidence

215.1 (6) The letter of request must have attached to it

[…]

(c) a translation of the letter of request and any interrogatories into the appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.

Foreign Arbitral Awards Act, R.S.B.C. 1996, c. 154

Schedule – Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

Haida Gwaii Reconciliation Act, S.B.C. 2010, c. 17

2. Naming Haida Gwaii

2. The islands known as the Queen Charlotte Islands in the English language and Îles de la Reine-Charlotte in the French language are renamed as Haida Gwaii in both languages.

Health Professions Act, R.S.B.C. 1996, c. 183

12.1 Prohibition and limitation – use of reserved titles

12.1 (1) If a regulation under section 12(2)(b) prescribes a title to be used exclusively by registrants of a college, a person other than a registrant of the college must not use the title, an abbreviation of the title or an equivalent of the title or abbreviation in another language

(a) to describe the person's work

(b) in association with or as part of another title describing the person's work, or

(c) in association with a description of the person's work.

[…]

12.1 (3) A person other than a registrant of a college must not use a name, title, description or abbreviation of a name or title, or an equivalent of a name or title in another language, in any manner that expresses or implies that he or she is a registrant or associated with the college.

12.2 Exceptions

12.2 (1) Despite section 12.1(1) and (2), but subject to section 12.1(3), a person's use of a title prescribed under section 12(2)(b), an abbreviation of the title or an equivalent of the title or abbreviation in another language is not a contravention of section 12.1(1) if the person

(a) is authorized by a body in another province or a foreign jurisdiction that regulates a health profession in that other province or foreign jurisdiction to use the title, the abbreviation of the title or the equivalent of the title or abbreviation in another language to indicate membership in that body,

(b) indicates, in using the title, the abbreviation of the title or the equivalent of the title or abbreviation in another language

(i) whether the person is authorized to practise the health profession in the other province or foreign jurisdiction, and

(ii) the name of the other province or foreign jurisdiction, and

(c) uses the title only for the purpose of indicating whether the person is authorized to practise the health profession in the other province or foreign jurisdiction.

12.2 (2) Despite section 12.1(1) and (2), but subject to section 12.1(3), a person's use of a title prescribed under section 12(2)(b), an abbreviation of the title or an equivalent of the title or abbreviation in another language is not a contravention of section 12.1(1) if the person uses the title, the abbreviation of the title or the equivalent of the title or abbreviation in another language while

> **(a) fulfilling the conditions or requirement for registration as a member of the college whose registrants are granted exclusive use of the title by a regulation under section 12(2)(b), and**
>
> **(b) under the supervision of a registrant of a college specified for the purposes of this subsection by the board for the college referred to in paragraph (a).**

Heritage Conservation Act, R.S.B.C. 1996, c. 187

1. Definitions

1. In this Act:

[…]

"first nation" means, as the context requires, an aboriginal people sharing a common traditional territory and having a common traditional language, culture and laws, or the duly mandated governing body of one or more such people;

Human Rights Code, R.S.B.C. 1996, c. 210

8. Discrimination in accommodation, service and facility

8. (1) A person must not, without a bona fide and reasonable justification,

> **(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or**
>
> **(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public**

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

8. (2) A person does not contravene this section by discriminating

> **(a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or**
>
> **(b) on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.**

ANNOTATIONS

Brar and others v. B.C. Veterinary Medical Association and Osborne, 2015 BCHRT 151 (CanLII)

[1] Drs. Arminder Brar, Hakam Bhullar, Bhupinder Johar, Paramjeeet Sidhu, Omparkash Parbhakar, Dalbir Benipal, Tejpal S. Bhatia, Jogpreet S. Jagpal, Manjinder Hans, Privtar Bajwa, Rameez Sharma, Naresh Kumar Joshi and Sarjit S. Grewal (the "Complainants") filed a complaint against the British Columbia Veterinary Medical Association (the "BCVMA") and Valerie Osborne (the "Respondents") alleging that they discriminated against them, under the *Human Rights Code*, in the provision of a service customarily available to the public contrary to s. 8, in the area of publication contrary to s. 7, and in their membership in an occupational association contrary to s. 14, based on their race, colour, ancestry and place of origin. […] The Respondents deny they discriminated.

[2] The Complainants are all Indo-Canadian veterinarians, born and trained in either India or the Punjab. They currently practise, or hope to practise, as veterinarians, at low-cost veterinary clinics in British Columbia.

[…]

II SUMMARY OF THE DECISION

[11] The BCVMA is entitled to ensure a reasonable level of English proficiency. However, in this case, the English Language Standard was discriminatory. The evidence did not demonstrate credible concerns about the English proficiency of Indo-Canadian veterinarians. The BCVMA selected a score largely unattainable by the target group. The score was higher than that selected by other professional associations, though the BCVMA incorrectly and repeatedly asserted otherwise, despite being advised of the error. The implementation of the Standard placed Indo-Canadian applicants at a disadvantage. The BCVMA ignored the Complainants' concerns about the Standard, based on its stereotypical views of the Complainants, further damaging the relationship between the Complainants and their governing body.

[…]

[1263] One of the BCVMA's purposes is protection of the public. In order to achieve this purpose, it must be reasonably assured that an applicant is fit to practise. Part of this assessment is to assess whether or not an applicant is sufficiently proficient in English to carry on the practice of veterinary medicine. In this respect, I accept that such a standard is rationally connected to the function of practising veterinary medicine.

[1264] It is clear that more than a minimal risk must be established when implementing a professional standard that must be met in order to practice. The appropriate goal is reasonable safety. In *Gichuru*, the standard was described to be "a reasonable assurance of competence to practice law" and, as the Tribunal noted impressionistic evidence of risk will not suffice. (*Gichuru*, para. 496-498)

[1265] The Complainants agreed that the BCVMA was entitled to implement an English proficiency requirement and that the first step of the Grismer/Meiorin test had been met, in that the standard was adopted for a purpose or goal that was rationally connected to the function being performed. The concern was whether the standard implemented by the BCVMA was adopted in good faith.

5. Good Faith

[1266] The second part of the *Grismer* test is whether the standard was adopted in good faith. The Complainants argue that the English Language Standard was not adopted in good faith but was adopted for the ulterior purpose of limiting the number of Indo-Canadian veterinarians practising in British Columbia.

[1267] The Respondent disagree that the English Language Standard was implemented in bad faith. They say that they implemented the standard in good faith to ensure it was not administered by the Registrar, through a subjective process, and that the TSE [Test of Spoken English] score of 55 was appropriate.

[1268] The Complainants argued that the Act does not require a test or a "direct" assessment of English proficiency, only that the person's English be proficient enough to carry on the practice of veterinary medicine. Although, I agree that the Act does not specifically require, or mandate, the BCVMA to have an arms-length test of English proficiency, it leaves open how an assessment of English proficiency is to be done. The Act does not prohibit testing or the establishment of an arms-length test. However, I agree that the BCVMA relied on the Act for support that it was required to have an arms-length test, when in fact the Act is not clear in this respect. In my view, the English Language Task Force and then the Council mislead the membership when it took this position.

[1269] As set out above, in the discussion of systemic discrimination, the implementation of the English Language Standard was not done in good faith. I do not propose to repeat that evidence here. The English Language Standard served to limit the registration of foreign-trained Indo-Canadian veterinarians.

[1270] The BCVMA continually asserted that it was entitled, and required, to expect a high level of practice standards. That this was their obligation is not disputed. However, there is nothing to suggest that any issues with respect to the alleged lower standards of practice, or communication issues, were directly related to English proficiency.

[1271] The English Language Task Force, in its January 15, 2004 report, referred to a Supreme Court of Canada case, released in 1988, dealing with the proficiency of nurses to practice in the official language of Quebec.

[1272] In *Forget v. Quebec (Attorney General)*, 1988 CanLII 51 (SCC), [1988], 2 S.C.R. 90, the issue was whether it was discriminatory to have different methods of establishing knowledge of French. A law required professional corporations to ensure that candidates had "knowledge of the official language ... appropriate to the practice of their profession". Regulations under that law created a presumption that a person who had "taken at least three years of full time instruction in French, at the secondary level or later" had such knowledge. Persons without this training had to establish their working knowledge of French based on an examination prescribed by the regulation. A majority of the Court found a distinction between those who benefit from the presumption and those who must submit to a test and that the distinction was based on "language" within the meaning of the Charter of human rights and freedoms, as most candidates who would benefit from the presumption would be francophones. The majority found, however, that the distinction did not nullify or impair the right of candidates to full equality in admission to a professional corporation, emphasizing that the law requiring knowledge of French "appropriate to the practice of their profession" was not challenged. The majority assumed that the knowledge of French required for all candidates was the same, whether it was demonstrated through the test or through the three years' instruction in French. This is significantly different from the facts in this case, where the requirement to demonstrate English proficiency was not universal, the evidence established the Standard was imposed for the discriminatory purpose of limiting registration of veterinarians from India or the Punjab, and the score set was unattainable for the targeted group and higher than that set by other veterinary associations in North America.

[1273] I find, based on all the evidence before me, that the BCVMA did not implement the English Language Standard in good faith.

Fletcher Challenge Canada Ltd. v. British Columbia (Council of Human Rights), 1992 CanLII 1119 (BC SC)

There is no question that language is the conveyor of culture. It shapes and is shaped by culture. A culture cannot survive without the ability of its people to give expression to themselves and the way in which they see the world through the articulation of thought in language. History teaches us that one of the oppressor's most effective tools for maintaining power is the eradication of the language of the oppressed.

One could hardly disagree with the Member Designate that language is directly related to race, colour ancestry and/or place of origin. But it cannot be said that it is necessarily related. Apart from its capacity to convey culture language is also a communication skill that may be learned, and the ability to learn any language is not dependant on race, colour or ancestry.

So too in a work environment, language may simply be a means of communicating to accomplish a task. In that context the important aspect of language is not the expression of culture, but simply a means to communicate. Language is in this context a skill, not unlike the ability to operate a machine. It is the process by which job related information is passed back and forth from employee to employee and/or from employee to anyone he or she meets in the course of performing his or her duties

Language then, has a dual aspect. It is inextricably bound with culture in one sense, but in another it is a means of communication unrelated to culture. When one examines the prohibited grounds set out in s. 8, specifically those of race, colour, ancestry and place of origin it is clear that the legislature has prohibited discrimination on the basis of inherent characteristics that a person acquires or carries with him or her from birth - matters over which an individual usually has no choice. I cannot think of any situation where discrimination on the basis of these grounds would ever be justified. The legislature has given voice through this legislation to the obvious proposition that to deny a person employment on the basis of these personal characteristics is to discriminate improperly *per se*.

[…]

As I have tried to illustrate a rule requiring proficiency in a language is not necessarily one which generalizes about a person's ability to perform a job based on membership in a group.

I am of the view then that because of the dual characteristic of language it is not included as a prohibited ground per se in s. 8 of the *Human Rights Act*. Applying the principles set out earlier, I find that the interpretation given to s. 8 of the Act is not one which the words can reasonably bear.

This is not to say however, that discrimination on the basis of language may not in some cases, when scrutinized, be found to actually be based on race, colour, ancestry or place of origin. If, for example, Mr. Grewal was denied employment at Fletcher Challenge because he spoke Punjabi, no other inference could be drawn other than the fact that he was being denied employment on the basis of race, colour, ancestry or place of origin. Discrimination can and usually does, take on more subtle forms. Refusal to employ someone on the stated basis of a language deficiency, when the ability to communicate in a particular language is not necessary to perform the job, would obviously be a veiled attempt to discriminate on the basis of race, colour, ancestry or place of origin. To put it another way, the stated reason for refusing employment would be a deceit,

the real reason would be discrimination on the basis of ancestry or one of the other prohibited grounds. In such cases it may be said that language and ancestry are inextricably bound.

For a tribunal hearing such a case it will be a matter of examining the evidence to determine whether a language requirement is legitimate, that is, whether it is rationally connected to the performance of the job, or whether it is merely an attempt to discriminate on a prohibited ground.

SEE ALSO:

Jacques Clau v. Uniglobe Pacific Travel Limited (1995), 23 CHRR D/515 (BCHRT) [hyperlink not available]

Cornejo v. Opus Building Corp. (1991), 14 CHRR D/167 (BCHRT) [hyperlink not available]

Herold v. Wiggins Adjustments Ltd. (1985), 6 CHRR D/2714 (BCHRT) [hyperlink not available]

Independent School Act, R.S.B.C. 1996, c. 216

1. Definitions

1. (1) In the Act: […]

> **"independent school" means a school, including a distributed learning independent school, that is, or is to be, maintained and operated in British Columbia by an authority and**
>
> **[…]**
>
> **But does not include**
>
> **[…]**
>
> **(e) a school that**
>
> > **[…]**
> >
> > **(ii) solely offers language instruction;**

---

19. Offence

19. (1) A person must not provide or purport to provide schooling to persons of school age other than in

> **[…]**
>
> **(b.1) a francophone school operated by a francophone education authority as defined in the *School Act*,**

[…]

(f) a school that

[…]

(ii) solely offers language instruction;

Indian Self Government Enabling Act, R.S.B.C. 1996, c. 219

Part 2 – Independent Band Taxation

12. Access to education not affected

12. (1) The existence or absence of a contract between a band and a school district for the provision of school services does not affect the entitlement or the obligation under the *School Act* of a person who is of school age and is a resident in the school district to enrol in an educational program provided by the board of school trustees of that school district.

12. (2) The existence or absence of a contract between a band and a francophone education authority as defined in the *School Act* for the provision of school services does not affect the entitlement or the obligation under the *School Act* of a person to enrol in a francophone educational program provided by the francophone education authority if

(a) the person is of school age,

(b) one or more of the person's parents have the right to have their children receive primary and secondary instruction in French in British Columbia, and

(c) the person is a resident in the francophone school district over which the francophone education authority has jurisdiction under the *School Act*.

Part 3 – Indian District Enabling Provisions

22. Access to education not affected

22. (1) The existence or absence of a contract between an Indian district and a school district for the provision of school services does not affect the entitlement or the obligation under the *School Act* of a person who is of school age and is a resident in the school district to enrol in an educational program provided by the board of school trustees of that school district.

22. (2) The existence or absence of a contract between an Indian district and a francophone education authority as defined in the *School Act* for the provision of school services does not affect the entitlement or the obligation under the *School Act* of a person to enrol in a francophone educational program provided by the francophone education authority if

(a) the person is of school age,

(b) one or more of the person's parents have the right to have their children receive primary and secondary instruction in French in British Columbia, and

(c) the person is a resident in the francophone school district over which the francophone education authority has jurisdiction under the *School Act*.

Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29

38. Translation of order or document

38. (1) If an order or other document is to be sent to a reciprocating jurisdiction that requires the order or document to be translated into a language other than English, the order or document must be accompanied by a translation into the other language that is certified by the translator as being an accurate translation.

38. (2) An order or other document to which this Act applies that is

(a) received by the designated authority or a British Columbia court, and

(b) written in a language other than English

must be accompanied by a translation into English that is certified by the translator as being an accurate translation.

International Commercial Arbitration Act, R.S.B.C. 1996, c. 233

22. Language

22. (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings.

22. (2) Failing any agreement referred to in subsection (1), the arbitral tribunal must determine the language or languages to be used in the arbitral proceedings.

[…]

22. (4) The arbitral tribunal may order that any documentary evidence must be accompanied by a translation into the language or languages agreed on by the parties or determined by the arbitral tribunal.

---

35. Recognition and enforcement

35. (3) If the arbitral award or arbitration agreement is not made in an official language of Canada, the party must supply a duly certified translation of it into an official language.

International Interests in Mobile Equipment (Aircraft Equipment) Act, S.B.C. 2011, c. 12

Schedule 1 (Section 1) – Convention on International Interests in Mobile Equipment

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Schedule 2 (Section 1) – Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

International Sale of Goods Act, R.S.B.C. 1996, c. 236

Schedule – United Nations Convention on Contracts for the International Sale of Goods

[…]

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

International Trusts Act, R.S.B.C. 1996, c. 23

Schedule – Convention on the Law Applicable to Trusts and on Their Recognition

[…]

Done at The Hague, on the..... day of ....., 19 ....., in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

Interpretation Act, R.S.B.C. 1996, c. 238

17. Corporate rights and powers

17. (1) A corporation has perpetual succession and may do the following:

[…]

(f) in the case of a corporation with a name consisting of an English and a French form or a combined English and French form, use either the English or French form of its name or both forms and show on its seal both the English and French forms of its name or have 2 seals, one showing the English and the other showing the French form of its name.

Jury Act, R.S.B.C. 1996, c. 242

4. Disqualification because of language difficulty

4. If the language in which a trial is to be conducted is one that a person is unable to understand, speak

Land Title Act, R.S.B.C. 1996, c. 250

Part 5 – Attestation and Proof of Execution of Instruments

41. Definitions

41. In this Part:

[…]

"signature" includes the mark of an individual who cannot sign his or her name in English characters;

---

47. Witnessing – persons not fluent in English

47. In the case of an instrument that is executed by an individual who appears to the officer to be unable to read English or sign his or her name in English characters, the signature of the officer is, in addition to the certification in section 43, a certification by the officer that the individual appeared before and acknowledged to the officer that the contents and effect of the instrument were sufficiently communicated to the individual and that the individual fully understood the contents of the instrument.

Legal Profession Act, S.B.C. 1998, c. 9

45.1 Society request for evidence

45.1 (6) The letter of request must have attached to it all of the following

[…]

(c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.

Local Elections Campaign Financing Act, S.B.C. 2014, c. 18

44. Advertising must include sponsorship information

44. (3) The information required under subsection (1) must be provided

(a) in English or in a manner that is understandable to readers in English, and

(b) if all or part of the election advertising is in a language other than English, in the other language or in a manner that is understandable to readers of that other language.

Maa-nulth First Nations Final Agreement Act, S.B.C. 2007, c. 43

Schedule – Maa-nulth First Nations Final Agreement

Chapter 13 – Governance

13.5.0 Registry of Laws

13.5.1 Each Maa-nulth First Nation Government will:

a. maintain a public registry of its Maa-nulth First Nation Laws in the English language and, at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language, the English version of which is authoritative; and

b. provide British Columbia and, upon request, Canada with copies of its Maa-nulth First Nation Laws after they are enacted.

13.19.0 Language and culture education

13.19.1 Each Maa-nulth First Nation Government may make laws in respect of education provided by that Maa-nulth First Nation Government or its Maa-nulth First Nation Public Institution on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation in respect of:

> **a. certification and accreditation of its Nuu-chah-nulth language and culture teachers; and**
>
> **b. the development and teaching of its Nuu-chah-nulth language and culture curriculum.**

Manufactured Home Act, S.B.C. 2003, c. 75

8. Filing of notice, application or other record

8. (1) A notice, application or other record required or permitted, by this Act, to be filed with the registrar

> **[…]**
>
> **(d) must be filed in the English language or be filed with an English translation verified in a manner satisfactory to the registrar.**

Nisga'a Final Agreement Act, R.S.B.C. 1999, c. 2

7. Nisga'a culture and language

7. Nisga'a citizens have the right to practice the Nisga'a culture, and to use the Nisga'a language, in a manner consistent with this Agreement.

Offence Act, R.S.B.C. 1996, c. 338

132. Power to make regulations

132. (1) The Lieutenant Governor in Council may, on the recommendation of the Attorney General, make regulations referred to in section 41 of the *Interpretation Act*.

132. (2) Without limiting subsection (1), the Lieutenant Governor in Council may, on the recommendation of the Attorney General, make regulations as follows:

> **[…]**
>
> **(a.1) prescribing the form and content of the violation tickets under section 14;**
>
> **(a.2) prescribing a form for the purpose of section 15.4(1);**

(a.3) prescribing instruction that must be printed beside or on the reverse side of the violation ticket that is given or mailed to or served on the person who is alleged to have contravened the enactment;

(a.4) only for the purposes of an agreement between the Province and Canada under the *Contraventions Act* (Canada), exercising the authority under paragraphs (a.1), (a.2), (a.3) and (g) in both the English and French languages;

[…]

(g) prescribing the form and content of certificates and affidavits;

[…]

132. (6) If regulations are made under subsection (2)(a.4), both language versions are equally authoritative.

SEE ALSO:

Federal Contraventions Forms Regulation – Offence Act, B.C. Reg. 124/2005

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133. Application of *Criminal Code*

133. If, in any proceeding, matter or thing to which this Act applies, express provision has not been made in this Act or only partial provision has been made, the provisions of the *Criminal Code* relating to offences punishable on summary conviction apply, with the necessary changes and so far as applicable, as if its provisions were enacted in and formed part of this Act.

ANNOTATIONS

Bessette v. British Columbia (Attorney General), 2017 BCCA 264 (CanLII)

STATUTORY FRAMEWORK

[9] The foundation of Mr. Bessette's application is his assertion that he has a right to have his trial in French by reason of the combined operation of s. 133 of the *Offence Act*, R.S.B.C. 1996, c. 338, and s. 530 of the *Criminal Code*, R.S.C. 1985, c. C-46. […]

[10] The *Offence Act* governs prosecutions under provincial statutes such as the *Motor Vehicle Act*. The predecessor to s. 133 of the *Offence Act* was first passed in 1955 as part of *An Act respecting Summary Proceedings (Summary Convictions Act, 1955)*, S.B.C. 1955, c. 71, s. 102, a section substantially similar to the current s. 133. It read as follows:

> Where, in any proceeding, matter, or thing to which this Act applies, express provision has not been made in this Act or only partial provision has been made, the provisions of the *Criminal Code* relating to offences punishable upon summary conviction shall apply, mutatis mutandis, as if the provisions thereof were enacted in and formed part of this Act.

[11] Section 530 of the *Criminal Code* (then s. 462.1) became law on June 30, 1978. It was declared in force in British Columbia on January 1, 1990.

[12] It is common ground that prior to January 1, 1990, pursuant to an *Imperial statute of 1731* (4 Geo. II, c. 26) [*1731 Act*] all legal proceedings in British Columbia had to be in English. The *1731 Act* was received into British Columbia law and is in force pursuant to the requirements of s. 2 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42 (CanLII) [Conseil scolaire]. In *Conseil scolaire*, the Supreme Court of Canada confirmed that the *1731 Act* continues to apply and that civil proceedings in British Columbia must be conducted in English.

[13] The parties also agree that since s. 530 was declared in force in British Columbia on January 1, 1990, a francophone accused charged with a *Criminal Code* offence is entitled to be tried in French. The point in contention is whether a party tried for a provincial offence can require a trial to take place in French.

[14] Mr. Bessette submits that s. 133 of the *Offence Act* incorporates s. 530 of the *Criminal Code* and his trial must be in French. The Attorney General does not agree. He maintains that Mr. Bessette does not have the right to a trial in French because the charge concerns a provincial offence, not a *Criminal Code* or other federal offence where different rules apply. He submits that provincial offences are to be tried in English, pursuant to the provisions of the *1731 Act.*

[…]

ON APPEAL

[18] Mr. Bessette submits that Mr. Justice Blok [of the Supreme Court of British Columbia] erred in law by refusing to review his application on the merits. He submits that his application raised a jurisdictional question of compliance with a mandatory statutory provision being s. 530 of the *Criminal Code*. In the alternative, he submits that Mr. Justice Blok erred in failing to find that there were special circumstances which warranted prerogative relief being granted on an interlocutory basis. Mr. Bessette asks this Court to set aside the order of Mr. Justice Blok and further, to quash the decision of Judge Gulbransen [of the Provincial Court of British Columbia] refusing to allow a trial in French. Mr. Bessette repeats his submission made below that s. 133 of the *Offence Act* incorporates s. 530 of the *Criminal Code* such that he was entitled to a trial in French.

[19] The Attorney General submits that the appeal should be dismissed. His position is that Mr. Justice Blok was correct in dismissing the petition and did not err in any of the ways alleged. He submits that Judge Gulbransen's decision was not jurisdictional in nature and no special circumstances warranted prerogative relief being granted on an interlocutory basis. Further, he submits that if Mr. Justice Blok erred in declining to consider the merits of the impugned decision, Judge Gulbransen's decision to dismiss the application for a French trial was correct. In the submission of the Attorney General, s. 133 of the *Offence Act* neither incorporates s. 530 of the *Criminal Code* nor does it, in any manner, displace the provisions of the *1731 Act* maintaining English as the language of *Offence Act* proceedings.

[…]

DISCUSSION

[29] Mr. Bessette submits that Blok J. erred in failing to recognize that the decision denying Mr. Bessette a trial in French was jurisdictional in nature. He submits that Judge Gulbransen exceeded his jurisdiction in refusing to order that Mr. Bessette receive a trial in French. Assuming without deciding that the decision was jurisdictional in nature, this does not necessarily lead to the conclusion that Justice Blok erred in refusing prerogative relief. The adequate alternative remedy principle applies even in cases involving jurisdictional error: *Harelkin* at 586; *Matsqui* at para. 33.

[30] Alternatively, Mr. Bessette submits in this case there are special circumstances that warrant this Court's immediate intervention. He draws an analogy to cases where the Court has intervened in the course of a Provincial Court trial to protect solicitor-client or informant privilege. He submits an appeal cannot effectively remedy the violation of his right to have a trial in French. I do not accept the analogy. In cases concerning privilege there is no remedy. The harm caused by disclosure cannot be undone. If Mr. Bessette is tried in English and convicted and it turns out that he was entitled to a trial in French, he will be entitled to a new trial: *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

[31] In this case, Mr. Justice Blok concluded that judicial economy strongly favoured adjudicating the language issue in an ordinary appeal. He found that Mr. Bessette failed to establish that the circumstances of this case were such that the interests of justice required immediately granting the prerogative remedy sought. Such a decision was open to him. His decision is entitled to deference. Mr. Bessette has not shown any error in principle or other reason why this Court should intervene.

[32] In the result therefore I would dismiss the appeal.

Partnership Act, R.S.B.C. 1996, c. 348

53. Name of partnership

53. (1) The firm name of each limited partnership must end with the words "Limited Partnership" in full or the French language equivalent.

Provincial Immigration Programs Act, S.B.C. 2015, c. 37

4. Approvals

4. (1) On application by a person under section 3, the director may, after taking into consideration the prescribed matters and any other matters the director considers relevant,

(a) approve the application, or

(b) decline the application.

Provincial Immigration Programs Regulation – Provincial Immigration Programs Act, B.C. Reg. 20/2017

6. Approvals

6. The following matters are prescribed for the purposes of section 4 (1) of the Act:

[…]

(c) the applicant's language skills;

School Act, R.S.B.C. 1996, c. 412

1. Definitions and interpretation

1. (1) In this Act:

[…]

"directeur général" means an individual appointed as the directeur général of a francophone education authority under section 166.27;

[…]

"distributed learning school" means a school or francophone school that offers instruction to its students by means of distributed learning only;

[…]

"educational program" means an organized set of learning activities that, in the opinion of

> **[…]**
>
> **(a.1) the francophone education authority, in the case of learning activities provided by the francophone education authority,**
>
> **[…]**

is designed to enable learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;

[…]

"eligible parent" means an individual who, under section 23 of the *Canadian Charter of Rights and Freedoms*, has the right to have his or her children receive primary and secondary instruction in French in British Columbia;

"eligible person" means

> **(a) an eligible parent, or**
>
> **(b) an adult individual who, under section 23 of the *Canadian Charter of Rights and Freedoms*, would, if that individual had children, have the right to have his or her children receive primary and secondary instruction in French in British Columbia;**

[…]

"francophone education authority" means a francophone education authority established or continued under section 166.12;

"francophone educational program" means an educational program, including, without limitation, linguistic and cultural components, designed for eligible children but does not include a course provided in the French language as part of an educational program that is designed for children other than eligible children;

"francophone literacy plan" means a plan to improve literacy in the French language in a francophone school district;

"francophone school" means

> **(a) a body of francophone students that is organized as a unit by a francophone education authority for educational purposes under the supervision of a francophone principal, francophone vice principal or francophone director of instruction,**
>
> **(b) the francophone teachers and other staff members associated with the unit, and**
>
> **(c) the facilities associated with the unit,**

and includes a Provincial resource program and a distributed learning school operated by a francophone education authority;

"francophone school district" means an area prescribed under section 166.12 (1) (c) as the area over which a francophone education authority has jurisdiction;

"francophone student" means an eligible child or an immigrant child who is enrolled in a francophone educational program provided by a francophone education authority;

"francophone teacher" means a person holding a certificate of qualification who is employed by, or has a service contract with, a francophone education authority to provide francophone educational programs to francophone students in a francophone school, but does not include the directeur général of a francophone education authority, any assistant to that officer, a francophone principal, a francophone vice principal or a francophone director of instruction;

[…]

"operating grant" means a grant to a board or francophone education authority as determined under section 106.3;

[…]

"Provincial resource program" means a program established by order of the minister and operated by a board or a francophone education authority;

[…]

"secrétaire trésorier" means an individual appointed as the secrétaire trésorier of a francophone education authority under section 166.27;

[…]

"supervise", in the context of a teacher or francophone teacher providing an educational program or francophone educational program by means of distributed learning, means to supervise the student's progress through the educational program;

---

3. Entry to educational program

3. (1) Subject to subsections (2) and (3), a person who is resident in British Columbia must

> **(a) enroll in an educational program**
>
> > **[…]**
> >
> > **(ii) in the case of an eligible child, provided by a board or a francophone education authority, and**
> >
> > **(iii) in the case of an immigrant child, provided by a board or, if the child is permitted to enrol with a francophone education authority under section 166.24, provided by that francophone education authority,**
>
> **on the first school day of a school year if, on or before December 31 of that school year, the person will have reached the age of 5 years, and**
>
> **(b) participate in an educational program provided by a board or, in the case of an eligible child or an immigrant child, by a board or a francophone education authority until he or she reaches the age of 16 years.**

SEE ALSO:

L'association des parents francophones de la Colombie-Britannique, La fédération des francophones de la Colombie-Britannique v. Woods, 1996 CanLII 1455 (BC SC)

3.1 Enrollment – distributed learning

3.1 (1) A student who is enrolled in an educational program provided by a board or a francophone student who is enrolled in a francophone educational program provided by a francophone education authority may, subject to section 2 (2), enroll in one or more

> **(a) educational programs offered by another board or by an authority under the *Independent School Act*, or**
>
> **(b) francophone educational programs offered by another francophone education authority**

if at least one of the educational programs or francophone educational programs, as applicable, is delivered, in whole or in part, through distributed learning.

3.1 (2) Despite subsection (1), a student does not acquire a right under this section to enroll with a francophone education authority if the student is not otherwise entitled or permitted under this Act to enroll with a francophone education authority.

5. Language of instruction

5. (1) Every student is entitled to receive an educational program that is provided in the English language.

5. (2) Students whose parents have the right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in a language other than English are entitled to receive that instruction.

5. (3) Subject to the approval of the minister, a board may permit an educational program to be provided in a language other than as provided under subsections (1) and (2).

5. (4) The Lieutenant Governor in Council may make regulations

> **(a) respecting the provision of educational programs in languages other than English,**
>
> **(b) to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*, and**
>
> **(c) determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2).**

5. (5) For the purposes of subsection (4), the Lieutenant Governor in Council may make different regulations for different circumstances.

ANNOTATIONS

L'association des parents francophones de la Colombie-Britannique, La fédération des francophones de la Colombie-Britannique v. Woods, 1996 CanLII 1455 (BC SC)

[6] Counsel for the plaintiffs argues that the *School Act* creates a system of education by establishing school districts and boards responsible for the education of all school age children within a board's geographic jurisdiction. An overlapping of jurisdictions is not contemplated or permitted by the legislation. As a result the *School Act* cannot provide a "precise legislative scheme" for management and control and where numbers warrant such control, the obligations imposed by s. 23 of the [*Canadian*] *Charter* [*of Rights and Freedoms*] have not been met. In the submission of counsel, the corollary of this is that the regulation is ultra vires the *School Act*. In addition, counsel submits that the regulation attempts to amend the enabling legislation by purporting to relieve parents of the express obligation to enrol children in an educational program provided by a board as mandated by s. 3 of the *School Act*.

[7] Counsel for the Province submits that s. 5(4)(b) of the *School Act* provides adequate authority for the *Francophone Education Regulation*. He acknowledges there is some conflict between this section and other provisions of the Act and in particular, he concedes a "degree of conflict" between s. 5(4)(b) and s. 3 of the Act. He urges the court to reconcile the conflict. If that is not possible then he submits that established principles of statutory interpretation must apply. In that regard he says that the principle, *generalia specialibus non derogant*, special laws take precedence over general laws, must apply. He argues that the more general provisions of the Act dealing with education in the Province are, to the extent of any inconsistency between them and s. 5(4)(b), inapplicable to educational programs designed to comply with s. 23 of the *Charter*.

[8] Section 3(1) of the *School Act* requires children to attend an educational program provided by a school board. Educational program is defined and, for the purposes of this case, means an organized set of learning activities provided by a school board. Section 3(3) provides certain exceptions for children attending other educational programs specifically authorized by the legislation but an educational program provided by the [Francophone Education] Authority is not set out in those exceptions.

[9] Section 5(2) of the *School Act* is limited to those programs of instruction contemplated by s-ss. 23(1) and 23(2). It does not appear to have reference to the management and control of educational facilities contemplated by s. 23(3). Section 5(3) refers to languages other than French or English. In my view the Regulation establishing the Authority purports to be published under the provision of s-ss. 5(4)(a) and 5(4)(b). Section 5(4)(c) is directed to the making of regulations relating to instruction which a board might provide, pursuant to ss. 23(1) and 23(2).

[10] There can be no doubt the regulation conflicts with the provisions of the Statute which places on school boards the duty to deliver educational programs and imposes the duty on persons to attend educational programs provided by school boards, s. 3. That much was conceded by counsel for the Province.

[…]

[13] Statutes will occasionally contain what have been referred to as Henry VIII Clauses. These clauses set out provisions authorizing amendment or recision by regulation. The constitutionality of such a clause was challenged in *Waddell v. Schreyer* (1983), 5 D.L.R. (4th) 254, (B.C.S.C.). Lysyk J., at p. 270, concluded that Parliament "may, as a matter of law if it clearly expresses its intention to do so, delegate authority to repeal or supersede statutory provisions by means of subordinate legislation." As in that case, the question here is whether the Legislature has delegated a power in s. 5(4) of the *School Act* to "rescind amend or add to" the specific provisions of the *School Act*.

[14] It is clear that the words of s. 5(4) do not authorize the rescinding, amending or adding to the provisions of the *School Act*. It is not a Henry VIII clause and that proposition was not advanced by counsel for the Province. In his argument, he invites me to reconcile the differences. In my view the differences cannot be reconciled without forcing an interpretation that violates specific provisions of the Statute.

[15] This is not a proper situation for the application of the rule *generalia specialibus non derogant*, special laws take precedence over general laws. The rule of interpretation that special legislation will take precedence over earlier general legislation applies to legislation and not to the publication of regulations. Both text writers to whom I was referred speak of legislation and statutes and not regulations: *Construction of Statutes*, 2nd Ed., Elmer A. Driedger; *The Interpretation of Legislation in Canada*, 2nd. Ed., Pierre-Andre Cote.

[16] In my view the specific provisions of the School Act, establishing school boards with specific geographic boundaries, making it impossible to have overlapping jurisdiction, requiring educational programs to be delivered by boards and requiring persons to attend such programs cannot be altered by regulation. To accede to the argument of counsel for the Province would result in an interpretation that violates the scheme set out in the *School Act* for the delivery of education in this Province.

[17] In my view, *B.C. Regulation 475/95, Francophone Education Regulation*, is *ultra vires* the *School Act*.

[…]

[48] In my view the legislature of British Columbia has failed to discharge the obligation imposed by s. 23 of the *Charter*. Section 5 of the *School Act*, which predates *Mahe*, is not a legislative scheme as contemplated by s. 23 and explained in *Mahe* and the *Manitoba Reference*. As was the case in Alberta and Manitoba, the Legislature of British Columbia can no longer delay putting in place an appropriate minority language education scheme.

[49] Apart from what has been said by the Supreme Court of Canada, it is my view that legislation, as opposed to regulation, is the manner in which this constitutional commitment should be met. Language rights are rights of a fundamentally different nature. Their realization may require creative or innovative measures. The burden of ensuring that the obligations imposed by s. 23 is a burden placed on both the government and the legislature of each province. Provincial legislation provides a measure of security beyond a regulatory scheme. Amending a statute is far more onerous than amending a set of regulations. As well, the presentation of legislation is more likely to ensure a better public understanding of this significant Canadian solution for the protection of language and culture, afforded to both French and English speaking Canadians. With debate in the Legislative Assembly comes the opportunity to advance a better understanding of our national heritage and the unique place it holds in the family of nations.

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13. Registration

13. (1) A parent of a child who is required under section 12 to provide the child with an educational program must register the child on or before September 30 in each year with

> **(a) a school of the parent's choice that is operating in British Columbia,**
>
> **(a.1) if the child is an eligible child, a school referred to in paragraph (a) or (c), or a francophone school of the parent's choice that is operating in the francophone school district in which the parent resides,**
>
> **(a.2) if the child is an immigrant child, a school referred to in paragraph (a) or (c), or a francophone school of the parent's choice that is operating in the francophone school district in which the parent resides but only if the francophone education authority responsible for that school permits the parent to register that child,**
>
> **[…]**

13. (2) If, in accordance with subsection (1), a parent is entitled to register his or her child with a school or, in the case of an eligible child or immigrant child, with a francophone school,

> **(a) the board that has jurisdiction over the school must ensure that the principal, vice principal or director of instruction responsible for that school registers the child, or**
>
> **(b) the francophone education authority that has jurisdiction over the francophone school must ensure that the francophone principal, francophone vice principal or francophone director of instruction of that francophone school registers the child.**

13. (3) A school or francophone school that registers a child under this section must provide the child with access to educational services in accordance with the regulations.

13. (4) A person who contravenes subsection (1) commits an offence.

---

14. Power to report

14. (1.1) A person who believes that a child who is being educated in accordance with section 12 is not receiving an educational program may report that belief

> **(a) in the case of a child registered under section 13 with a francophone school, to the directeur général of the francophone education authority for the francophone school district in which that child resides,**

---

23. Secretary treasurer

23. (1) A board must

> **(a) appoint a secretary treasurer of the board, and**
>
> **(b) arrange for the bonding of the secretary treasurer in an amount the board considers adequate.**

23. (2) The secretary treasurer of a board is its corporate financial officer and must perform those duties set out in the regulations.

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24. Notification of appointment

24. A board must promptly notify the minister of an appointment or the termination of an appointment of a superintendent of schools or secretary treasurer.

ANNOTATIONS

Conseil-scolaire francophone de la Colombie-Britannique v. British Columbia (Education), 2016 BCSC 1764 (CanLII)

C. Entitlement

[5430] The plaintiffs argue that s. 23 [of the *Canadian Charter of Rights and Freedoms*] protects the right to school board offices. The Province takes the position that it does not.

[5431] The plaintiffs argue that, as an incident of the CSF's [Conseil scolaire francophone] right to management and control, the CSF is entitled to adequate space to carry out activities related to its functions under s. 23 of the *Charter*: a school board office.

[5432] The plaintiffs point to requirements in the *School Act* that they say necessitate a school board office. They point to ss. 22 and 23 of the *School Act*, which require school boards to appoint a superintendent of schools responsible for educational programmes and the operation of schools in the district, as well as a Secretary-Treasurer to serve as the board's Corporate Financial Officer. Further, they point to s. 15, which allows a school board to employ persons

considered necessary for the conduct of its operation. The CSF also relies on s. 96(2) of the *School Act*, which gives school boards the discretionary power to acquire and hold land for educational purposes, including school board offices.

[5433] The plaintiffs' position is that when the number of s. 23 rightsholders warrants the creation of a Francophone school board, then s. 23 must also include a right to operating and capital funding necessary to acquire facilities to exercise that degree of management and control. The plaintiffs argue that s. 96(2) of the *School Act* explicitly recognizes that board offices can be held for educational purposes.

[5434] The plaintiffs also say that the CSF is entitled to a school board office to ensure substantive equivalence between the CSF and majority school boards. Thus, they say that the CSF is entitled to "a board office that is substantively equivalent to those of the majority, visible in the community, functional, and appropriate for a school district of the complexity and geographical reach of the Conseil."

[5435] The plaintiffs suggest that the School Act effectively requires districts to operate a school board office. In light of these requirements, the plaintiffs argue that if its school board office is not substantively equivalent to those of the majority-language districts, there has been an infringement of s. 23 of the *Charter*.

[5436] I agree with the plaintiffs that the right to minority language education facilities equivalent to those afforded to the majority requires that the CSF have school board office facilities equivalent to those afforded to the majority. In BC, all school boards operate some form of school board office. Most were built pursuant to a prior funding regime whereby the Ministry funded school board offices. Some operate board offices out of surplus space in schools; some have leased school board offices. All of them have a space for their Superintendent, Secretary-Treasurer and district-level staff to work. Most also have space for trustees to work and to host meetings. If the minority is to have an education equivalent to that offered to the majority, then the CSF must also have access to school board office facilities.

[5437] The plaintiffs also argue that a school board office has symbolic value to a community. They point to the evidence of Dr. Landry, who wrote that an institution can serve as a symbol of continuity for a group. Dr. Landry points to institutions like schools, churches and hospitals as institutions that are symbols of perpetuity, and to which individuals and groups may form great emotional attachment. The plaintiffs say that symbols and rallying points are particularly important to BC's linguistic minority. They liken the CSF's board office to the Parliament Buildings in Ottawa, and say that a school board office has an important impact on members of B.C.'s Francophone community, from Richmond to Prince George. The defendants admit that school board offices play a limited symbolic role.

[5438] Against this argument, I observe that several of the parents that testified admitted to having never visited the CSF board offices. None of them gave evidence about the symbolic importance of the school board office to them; their evidence focused on the importance of schools to their communities.

[5439] In my view, while institutions can be important symbols to a community, given the CSF's provincial mandate, the CSF's school board office does not play an essential symbolic role. Most parents and children will never have any contact with the CSF's school board office. They will, however, have contact with the minority language school. In my view, the CSF's schools are the most important symbols of continuity to minority language communities across the Province. In light of the little interaction the community will have with the school board office, the CSF's board office does not fill that symbolic role.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

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74. Management of schools and property

74. (1) Subject to the orders of the minister, a board is responsible for the management of the schools in its school district and for the custody, maintenance and safekeeping of all property owned or leased by the board.

74. (2) A board must ensure that a principal, vice principal or director of instruction is responsible for each school in its school district.

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f) The Effect of the CSF's [Conseil scolaire francophone] Having Admitted Non-Rightsholders

[768] The final question is what should be done about the non-rightsholders that have already been admitted to CSF programmes. The defendants argue that the Province should not be required to build facilities on the basis of students who were admitted in contravention of the *School Act*. They say that non-rightsholders ought to be excluded from the calculation of the number of students likely to enrol in a programme.

[…]

[1144] I have already explained that I do not consider the Province to have delayed implementing s. 23 of the [*Canadian*] *Charter* [*of Rights and Freedoms*] in British Columbia. In light of the importance of leaving some latitude to government, absent evidence leading me to believe that a declaration would not be effective, I will typically make an affirmative declaration of rights rather than compel the defendants to take specific actions.

Foremost among these, the plaintiffs ask the Court to issue declarations requiring the Minister to order the transfer school board property to the CSF pursuant to the newly amended s. 74 of the *School Act*, which provides:

> […]

[1145] In Mr. Miller's discovery and the Province's case, Ministry officials maintained that the Minister had no power to compel school boards to dispose of property to the CSF. The legislative history reveals that s. 74 was amended by Bill 11-2015, *Education Statutes Amendment Act*, 4th Sess., 40th Leg., BC, 2015 [Bill 11], Cl. 12. Bill 11 passed third reading on May 14, 2015, and came into force on July 1, 2015, when this Court was not sitting. The defendants closed their case in the middle of August 2015.

[1146] The plaintiffs say the amendments to s. 74(1) changed the nature of the powers the Minister has in connection with property owned and managed by school boards. In the plaintiffs' submission, the Minister now has broad, plenary authority to intervene in the public interest to make orders concerning the disposal of property.

[1147] For the defendants, the relevant question is not how the *School Act* qualifies the powers of school boards, but what jurisdiction lies with the Minister. The defendants press that cl. 12 of Bill 11 simply added a new limit to the otherwise plenary power of school boards to deal with their properties without giving the Minister new jurisdiction to make limiting orders. The defendants point the Court to s. 168 of the *School Act*, which establishes the Minister's jurisdiction. In their submission, the Minister's jurisdiction pursuant to that provision is not unrestricted. They note, for example, that the Minister cannot order a school closure unless enrolment falls below eight students (s. 168(2)(g)). The defendants also point to comments made during the legislative debate concerning Bill 11, which tend to confirm that the legislature did not intend to expand the Minister's jurisdiction.

[1148] In *Conseil Scolaire Francophone de la Colombie-Britannique v. British Columbia (Education)*, 2013 BCSC 1242 (CanLII) [Association des Parents-Injunction Ruling], Mr. Justice Willcock considered an application in this case by the plaintiffs for an interim injunction requiring the Minister to order SD39-Vancouver to offer to lease the former J.W. Sexsmith Elementary to the CSF for a three-year period. The defendants argued there was no authority in the *School Act* for the Minister to make that order, and that the court should not issue a mandatory injunction directing the Minister to do something he is not empowered to do (at para. 19).

[1149] Mr. Justice Willcock explained that, in his view, the appropriate question at the first stage of the injunction test was "whether there is an arguable case [the plaintiffs] are entitled to a *Charter* remedy that would justify the issuance of the injunctions sought" (at para. 22). He went on to state (at para. 23):

> A mandatory injunction compelling the Minister of Education to order [SD39-Vancouver] to deal with property in the manner proposed in relation to short-term relief should not be issued if there is no statutory authority for the Minister to make such an order, and therefore no triable issue as to the plaintiff's right to seek that relief.

[1150] Mr. Justice Willcock considered the jurisdiction of the Minister set out in s. 168(1) of the School Act, and the Minister's powers under ss. 73, 74, 85 and 96 of the *School Act*. He accepted the submission by the defendants that the scheme of the *School Act* was such that SD39-Vancouver, like other school boards, holds its property with the powers and capacities of a natural person, and the Minister cannot order school boards to dispose of school property (at paras. 36-37):

> I accept the submissions of the Province and [SD39-Vancouver] with respect to the scope of the powers of the Minister of Education under the *School Act*. The scheme of the Act is clearly intended to give plenary powers to the boards, subject to the power of the Minister to intervene in the public interest in relation to certain actions. While the board's powers are described in broad terms, the Minister's powers are specifically enumerated.
>
> In my opinion, there is no statutory authority that would permit the Minister of Education to order [SD39-Vancouver] to offer to lease the Sexsmith property to the CSF. For that reason, I find there is no triable issue as to the plaintiffs' entitlement to the relief they seek in relation to the Sexsmith property.

[1151] As a result, he concluded that there was no triable issue in relation to the breach of the plaintiffs' claim for an order requiring SD39-Vancouver to dispose of property.

[1152] I agree with Mr. Justice Willcock's interpretation of the scheme of the *School Act*, and following the principles in *Re Hansard Spruce Mills Ltd.*, 1954 CanLII 253 (BC SC), [1954] 4 D.L.R. 590 (B.C.S.C.) at paras. 4-5 and *Chief Mountain v. British Columbia (Attorney General)*, 2011 BCSC 1394 (CanLII) at paras. 74-104, consider it appropriate to follow it.

[1153] As I see it, the Minister's jurisdiction to make orders is established in s. 168 of the *School Act*, which provides:

> (1) The minister, subject to this Act and the regulations,
>
> (a) has charge of the maintenance and management of all Provincial schools established under this Act,
>
> (b) must advise the Lieutenant Governor in Council on all matters relating to education in British Columbia,
>
> (c) may designate a member of the public service to act on behalf of the minister, and
>
> (d) may charge fees with respect to any goods or services provided by the minister or the ministry, and may establish different fees for different circumstances.
>
> (2) The minister may make orders for the purpose of carrying out any of the minister's powers, duties or functions under this Act and, without restriction, may make orders
>
> (a) governing the provision of educational programs,
>
> (b) subject to subsection (5), determining the general requirements for graduation from an educational program,
>
> (c) determining the general nature of educational programs for use in schools and francophone schools and specifying educational program guides,
>
> (d) preparing a process for the assessment of the effectiveness of educational programs and requiring a board or a francophone education authority to cause its schools to participate in the process for the purpose of comparison to provincial, national and international standards,
>
> (d.1) preparing a process for measuring individual student performance, and requiring a board or a francophone education authority to cause its schools to participate in the process for the purpose of assessing the effectiveness of educational programs,
>
> (e) governing educational resource materials in support of educational programs,
>
> (f) establishing and causing to be operated Provincial resource programs and Provincial schools in British Columbia,
>
> (g) requiring a board to close a school if the number of students attending the school falls below 8,
>
> (g.1) requiring a francophone education authority to close a francophone school if the number of francophone students falls below 8,
>
> (h) respecting distributed learning educational programs,
>
> (i) establishing committees and authorizing the payment of expenses to the members of the committees and other advisory bodies established under this Act,
>
> (j) governing fees that may be charged by a board or a francophone education authority, and those fees may be different for different circumstances,

(j.1) designating an educational activity or a category of educational activities for the purposes of section 168.1,

(j.2) establishing, for the purposes of section 168.1, the amount a student or a child registered under section 13 may be reimbursed, including

(i) setting the maximum amount that may be paid,

(ii) establishing a limit on the number of educational activities or categories of educational activities for which reimbursement may be made, and

(iii) setting different amounts and different limits for different educational activities or different categories of educational activities,

(k) respecting the use of student records, and records referred to in paragraph (d) of the definition of "student record", by boards and francophone education authorities,

(k.1) respecting the circumstances in which persons other than students and francophone students and their parents, and employees of boards and francophone education authorities, must have access to student records,

(l) establishing policies and procedures that are to be followed by boards and francophone education authorities in a tendering process related to a capital expenditure by the board or francophone education authority,

(m) [Repealed 2012-17-12.]

(n) respecting the appointment of auditors under section 158 (1) or, in the case of francophone education authorities, under section 166.37,

(o) respecting accounting, accounting records and financial reports and statements referred to in sections 156 (1), 157 (2) and 157.1,

(p) respecting the opening and closing of schools under section 73 (1) (a),

(q) respecting a board assisting in paying the cost of a person attending an educational institution outside of British Columbia under section 83 (b),

(r) [Repealed 2015-24-30.]

(s) respecting the appointment, remuneration and duties of a special advisor or special advisory committee,

(s. 1) establishing Provincial standards for a code of conduct required under section 85 (1.1),

(s.2) varying the dates in section 168.2 (3),

(s.3) for the purpose of section 86 (6), designating one or more persons, including a board, who provide procurement, managerial, administrative or other services as a designated service provider, specifying the service with respect to which a person is a designated service provider and specifying one or more boards with respect to which a person is a designated service provider, and

(t) that the minister otherwise considers advisable to effectively administer this Act or the regulations.

[1154] Nothing in that provision gives the Minister the power to make orders requiring school boards to dispose of land. That has not changed since Mr. Justice Willcock made his decision in Association des Parents-Injunction Ruling.

[1155] Sections 73, 74, 85 and 96 concern the powers of school boards in connection with the property they own. Due to c. 12 of Bill 11, the power of school boards to manage their property in s. 74(1), as amended, is now subject to valid ministerial orders in the same way that school boards' powers to establish and close schools (s. 73) and to acquire and dispose of land and improvements (s. 96(3)) always have been. The stipulation that those powers are "subject to an order by the Minister" does not expand the Minister's jurisdiction to make orders. It simply makes school boards' powers subject to a valid exercise of the Minister's power to issue orders pursuant to s. 168.

[1156] In reaching this conclusion, I am supported by the comments of Minister Fassbender in British Columbia, Legislative Assembly, Debates of the Legislative Assembly (Hansard), 40th Parl., 4th Sess., Vol. 26, No. 5 (13 May 2015). In the course of the legislative debate, Minister Peter Fassbender responded to a question from Mr. R. Flemming concerning the rationale for "a section that appears to give the Minister the ability to dispose much more easily of land that is held as an asset by 60 different school boards throughout the province of B.C." (at 8453-8454). Minister Fassbender responded as follows (at 8454):

> Hon. P. Fassbender: Indeed, this section — I have had a number of discussions and feedback from school districts.
>
> Let me make it very clear. Currently under the act the minister cannot order a board to dispose of property. That is in the purview of the board, and that does not change in the new act. The words "Management of schools and property" — that's the management of those schools and properties as it relates to any of the services to maintain those properties, to maintain the schools under the shared-services initiative.
>
> Again, as we move forward in consultation with districts, under the regulations there will be clarity in terms of what that does and does not mean. But it is very clear — and I stand here clearly saying — in other sections of the act that the minister will not have increased powers to order boards to dispose of property.
>
> [Emphasis added.]

[1157] Since the Minister has no jurisdiction or authority to order school boards to dispose of property, I will not make declarations requiring the Minister to transfer or otherwise deal with school board property in favour of the CSF. Such a remedy would have no practical effect.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

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75. Provision of educational program

75. (1) Subject to the other provisions of this Act and the regulations and to any orders of the minister under this Act, a board must make available an educational program to all persons of school age who enroll in a school in the district.

75. (2) A board may provide an educational program to persons referred to in subsection (1)

[…]

(b) with the consent of a parent of the person referred to in subsection (1), in another school district or in a francophone school district.

75. (3) A board complies with subsection (1) if

[…]

(c) with the agreement of one or more other boards or a francophone education authority, and with any consent required under subsection (2) (b), the educational program is provided

(i) in full by another board or by the francophone education authority, or

(ii) in part by one or more other boards or the francophone education authority, and the remainder of the educational program, if any, is provided by the board.

79.1 Transmitting records

79.1 (1) Despite section 79 (1), if a francophone education authority enters into an agreement with a board or with another francophone education authority for the provision of services, including the provision of all or part of an educational program or a francophone educational program, each party to the agreement must provide to the other party access to information in those student records that are necessary for the other party to satisfactorily perform the contract.

79.1 (2) Despite section 79 (1), if a student is enrolled with more than one board, each board must provide to the other access to information in those student records that is necessary for the other board to satisfactorily perform its obligations under this Act.

79.1 (3) Despite section 79 (1), if a student is enrolled

(a) in an independent school, but takes one or more courses through a school or francophone school by means of distributed learning, or

(b) in a school or francophone school, but takes one or more courses through an independent school by means of distributed learning,

each board, francophone education authority and authority of an independent school with which the student is enrolled must provide to the other access to information in those student records and permanent student records that is necessary for the other board, francophone education authority or authority of the independent school to satisfactorily perform its obligations under this Act or the *Independent School Act*, as applicable.

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86. Agreements

86 (1.1) A board may, subject to this Act, the regulations and the orders of the minister, enter into an agreement with a francophone education authority to provide all or part of a francophone educational program and health and support services, including busing and educational resources, to one or more francophone students enrolled with that authority.

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89. School medical officer

89. (1) Each regional health board under the *Health Authorities Act* must designate a school medical officer for each school district.

89. (2) The minister of health may appoint persons other than school medical officers to perform any duties that he or she considers advisable in respect of the health inspection of schools, francophone schools and the students and francophone students of those schools.

89. (3) A school medical officer designated under subsection (1) has the same rights, powers and duties in respect of francophone schools located in the school district as that medical officer has for other schools in that district.

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92. Board may require employee to undergo examination

92. (5) An employee who fails to take an examination required under subsection (2) or who is suspended under subsection (4) must not be offered or accept a position with a board or a francophone education authority until the employee submits to the board or francophone education authority a medical certificate satisfactory to the board or francophone education authority or, if the employee is a certificate holder, satisfactory to the director of certification..

92. (6) An employee who is granted a superannuation allowance on medical evidence of total and permanent disability must not be offered or accept a position with a board or a francophone education authority until he or she submits to the minister a medical certificate, satisfactory to the minister, that the disability no longer exists.

95.24 Corporate name

95.24 (1) The name of a company incorporated under this Part by a board, except a company incorporated by a francophone education authority, must be "School District No. X Business Company", where X is the school district number in the name of the board.

95.24 (2) The name of a company incorporated under this Part by a francophone education authority must be "Entreprise compagnie du X", where X is the name of the francophone education authority incorporating the company.

95.24 (3) Subject to section 95.81, a person must not use in British Columbia any name of which "School District" or "Francophone Education Authority" or any abbreviation of

them, is part unless the name is in the form required by this section 95.24 and is used by a company the share of which is owned by the board or Francophone Education Authority indicated by the name.

Part 8 – Finance

Division 1 – Provincial Funding

129. Taxation of school property

129. (1) In this section, "property" means property as defined in the *Assessment Act*.

129. (2) Despite any other enactment, property in which a board has an ownership interest Is exempt from taxation if it is

> **[…]**
>
> **(e.1) leased by the board to a francophone education authority and used in whole or in part for a francophone school including any purpose ancillary to the operation of the francophone school, or**

Part 8.1 – Francophone Education Authorities

Division 1 – Interpretation

166.1 Definitions

166.1 In this Part:

"authority" means a francophone education authority;

"board of regional trustees" means the board of regional trustees of a francophone education authority constituted under this Part;

"francophone catchment area" means, in relation to a francophone school, the geographical area established under section 166.251 as the francophone catchment area for the francophone school;

"general election" means an election referred to in section 166.18;

"member" means a person who is admitted as a member of a francophone education authority under this Part;

"president" means the president of a francophone education authority elected under this Part;

"regional trustee" means an elected or appointed trustee of a francophone education authority.

Division 2 — Establishment and Membership

166.12 Establishment of francophone education authorities

166.12 (1) The Lieutenant Governor in Council may, by regulation,

(a) establish a francophone education authority,

(b) assign a name to a francophone education authority, and

(c) prescribe an area, to be known as a francophone school district, over which a francophone education authority has jurisdiction.

166.12 (2) A francophone education authority established under subsection (1) is a corporation consisting of those persons admitted as members under section 166.13.

166.12 (2.1) A francophone education authority is responsible for the improvement of francophone student achievement in the francophone school district.

166.12 (3) For the purposes of carrying out its powers, functions and duties under this Act, a francophone education authority has the power and capacity of a natural person of full capacity.

166.12 (4) The francophone education authority known as the Autorite Scolaire established under B.C. Reg. 457/95, the *Francophone Education Regulation*, is continued as a francophone education authority under the name "Conseil Scolaire Francophone de la Colombie-Britannique".

166.12 (5) The authority continued under subsection (4) is a corporation consisting of its members in good standing on the day this section comes into force and those other members admitted in accordance with this Part.

166.12 (6) On the day they take office, the regional trustees of a francophone education authority continued under subsection (4) who are elected in the general election of regional trustees constitute the board of regional trustees of that authority.

166.12 (7) The Lieutenant Governor in Council may, by regulation,

(a) alter the boundaries of the area prescribed under subsection (1) (c),

(b) change the name of a francophone education authority, or

(c) abolish a francophone education authority.

166.12 (8) A variation in the membership of a francophone education authority that occurs as a result of an alteration under subsection (7) (a) does not abolish the francophone education authority.

166.12 (9) The assets of a francophone education authority, including funds, must be disposed of as directed by the Lieutenant Governor in Council, having regard to the rights of creditors, if, under subsection (7)

(a) the area over which the francophone education authority has jurisdiction is reduced,

(b) all or part of the area over which the francophone education authority has jurisdiction is included in the area over which another francophone education authority has jurisdiction, or

(c) the francophone education authority is abolished.

166.12 (10) Without limiting subsection (9), the Lieutenant Governor in Council may make provision for

(a) the use and administration of property used and administered by the francophone education authority but not vested in the authority,

(b) the transfer and payment of the liabilities of the francophone education authority and for raising funds necessary for payment of those liabilities, or

(c) the use and expenditure of the proceeds of the sale of any asset of the francophone education authority.

166.12 (11) Section 31 (4) applies for the purposes of this Part.

166.13 Membership in a francophone education authority

166.13 (1) Any eligible person, and any immigrant parent, who is resident in an area prescribed by regulation of the Lieutenant Governor in Council may apply to become a member of a francophone education authority by providing to the authority an affirmation in the prescribed form.

166.13 (2) A francophone education authority

(a) must admit as a member an eligible person who applies under subsection (1), and

(b) may admit as a member an immigrant parent who applies under subsection (1).

166.13 (3) A francophone education authority must not charge its members any membership dues or other fees or assessments related to acquiring or maintaining membership in the authority.

166.13 (4) A person is not disqualified from being a member of a francophone education authority merely because the person

(a) voted in a trustee election, or

(b) was nominated for, was elected or appointed to or holds office as a trustee.

166.13 (5) A person ceases to be a member of a francophone education authority if the person

(a) is no longer an eligible person or an immigrant parent,

(b) is no longer resident in the area prescribed under subsection (1), or

(c) delivers his or her resignation in writing to the secrétaire trésorier of the authority or mails or delivers it to the address of the authority.

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[431] On the other hand, there is some merit to the idea that a minority board's right to management and control ought to include a responsibility to effectively manage its resources. Minority boards have exclusive jurisdiction over matters pertaining to language and culture. They override the Province's plenary jurisdiction over education in that respect. Governments must not interfere with those decisions, at risk of violating s. 23 [of the *Canadian Charter of Rights and Freedoms*].

[432] This is particularly so in this case because the CSF [Conseil scolaire francophone] is a representative body. It was established to give effect to s. 23 of the *Charter*, and in that way is intended to give rightsholder parents a measure of management and control over the linguistic and cultural aspects of minority language education.

[433] This is accomplished through democratic participation. Pursuant to s. 166.13 of the *School Act*, rightsholders are entitled to apply to the CSF to become members, and the CSF must admit them. Section 166.14 of the *School Act* gives all rightsholder members of the CSF the right to vote in the CSF's election of regional trustees. The trustees then carry out the management and control function of the school board.

[434] In that way, while the CSF is responsible for meeting the requirements of s. 23, it is also the representative of the very rightsholders to which it owes its duty. It is both the holder and the guarantor of rights. It is hard to conceive of the CSF suing itself for a breach of its own rights.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

Division 4 — Francophone Educational Programs

166.24 Enrollment in a francophone educational program

166.24 (1) An eligible child of school age who is resident in a francophone school district, on application to the francophone education authority for that district, is entitled to enroll in a francophone educational program provided by the authority.

166.24 (2) On application to a francophone education authority, an eligible child of school age who is resident in British Columbia is entitled to enroll in a francophone educational program provided by the francophone education authority if the francophone education authority determines that space and facilities are available for the child at the school in which the francophone educational program is provided.

166.24 (3) A francophone education authority, on receiving an application, may enroll an immigrant child of school age who is resident in British Columbia in a francophone educational program provided by the authority.

166.24 (4) An application to enroll a child under subsections (1) to (3) must include a signed affirmation, in the prescribed form, of one of the parents of the child unless at least one of the parents of the child is a member in good standing of the francophone education authority at the time that the application to enroll is made.

166.24 (5) If a francophone education authority enters into an agreement with a board by which the board agrees to provide all or any part of a francophone educational program to a francophone student, that francophone student is, for all purposes of this Act other than Part 8 of this Act and Division 7 of this Part, deemed to be enrolled with the board with respect to that portion of the francophone educational program provided by the board.

166.24 (6) If a board enters into an agreement with a francophone education authority by which the authority agrees to provide all or any part of a francophone educational program to an eligible child or immigrant child who is resident outside the francophone school district for that authority and who is enrolled with the board, that child is, for all purposes of this Act other than Part 8 of this Act and Division 7 of this Part, deemed to be enrolled with the francophone education authority with respect to that portion of the francophone educational program provided by the authority.

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[73] Still other provinces have given limited authority to minority language school boards to admit the children of non-rights holders. In British Columbia, the French-language school board has the discretion to admit the child of an immigrant who, if the parent were a Canadian citizen, would be a s. 23 rights holder: *School Act*, R.S.B.C. 1996, c. 412, s. 1266.24.

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e) Children of Immigrant Rightsholders

[570] Section 23 [of the *Canadian Charter of Rights and Freedoms*] affords minority language education rights to "citizens of Canada". All of Dr. Landry's data is based on the 2011 census, which did not ask a citizenship question. Thus, Dr. Landry's data will tend to include persons that are not strictly rightsholders because they are not citizens. However, based on his research, Dr. Landry estimated that about 93% to 97% of the persons included in his tallies are the children of Canadian citizens.

[571] The plaintiffs urge that in B.C., the relevant number of rightsholders in any event includes children of immigrant parents that would be rightsholders if they were citizens ("Immigrant Rightsholders"), as they are entitled under the *School Act* to enrol their children in a CSF [Conseil scolaire francophone] school. Thus, the plaintiffs say that the "numbers" that "warrant" must include both the number of children whose parents have rights under s. 23 of the *Charter* and the number of children of Immigrant Rightsholders who will eventually take advantage of the contemplated programme or facility.

[572] The defendants urge that the analysis should not include Immigrant Rightsholders. In the defendants' submission, the mere fact that the *School Act* permits the CSF to admit children of

Immigrant Rightsholders does not mean that the Province is constitutionally obligated to provide facilities for them. In their submission, the mere fact of conferring that discretion does not change the wording of the *Charter* and the obligation on government, which is more restrictive. They note that the Court in NWT-CA [*Northwest Territories (Attorney General) v. Association des parents ayants droits de Yellowknife*, 2015 NWTCA 2] concluded at paras. 41-45 that the trial judge erred by concluding that some persons who do not have rights under s. 23 could be included in the numbers warrant analysis.

[573] Pursuant to s. 166.24(1) of the *School Act*, the CSF is required to admit "eligible children" to its programmes. "Eligible child" is defined in s. 1 to mean "a child who has an eligible parent". Eligible parent is defined to mean an individual who has the right to have his or her children receive primary and secondary instruction in French in British Columbia pursuant to s. 23: that is, Mother-Tongue, Education and Sibling Rightsholders. Thus, the CSF has a mandatory duty to admit children of s. 23 rightsholders to its programmes.

[574] The CSF also has a discretion to admit immigrant children to its programme pursuant to s. 166.24. An immigrant child is defined in s. 1 of the *School Act* to mean a child who has an immigrant parent. Immigrant parent is defined as "an immigrant" who would be a s. 23 rightsholder "if the person were a citizen of Canada".

[…]

[578] I agree with the Court of Appeal for the Northwest Territories that the words chosen by the drafters of the *Charter* ought to be given some meaning. While courts do generally take a purposive approach to interpreting all *Charter* rights, including s. 23, this approach cannot change the precise words of the *Charter* concerning to whom its protection is offered. Like all interpretive principles, the purposive approach should be used to enhance our understanding of inherently malleable rights. In this case, there is no ambiguity about to whom the malleable right of minority language education is afforded. Section 23 clearly only extends minority language education rights to Canadian citizens.

[579] Section 23(3) gives Mother-Tongue, Education and Sibling Rightsholders the right to have their children receive instruction in French where the numbers so warrant. Similarly, the right to have them receive that instruction in minority language educational facilities is given "where the number of those children so warrants", referring to children of citizen rightsholders. Citizenship is a necessary condition for a person to be a rightsholder. Thus, the children of Immigrant Rightsholders are not to be included among the children that can reasonably be expected to attend the programme.

[580] Section 166.24 *School Act* gives the CSF the discretionary power to admit the children of Immigrant Rightsholders. By granting that discretion to the CSF, the Ministry does not elevate those students to the category of children of rightsholders. The *School Act* is not a constitutional instrument. While, as a matter of practice, it might be advisable for the Ministry to build sufficient space for the CSF to admit the full range of students that it is both entitled and required to admit, the Constitution does not technically require the Ministry to provide services out of public funds for those students.

[581] But in any event, we must be practical. As mentioned previously, since the focus of the analysis is on the number of children that are actually likely to attend a given programme, it is not essential that the outer bounds of the number of rightsholders are stated with total precision. In this case, the vast majority of children included in Dr. Landry's tallies are rightsholders: about 97% of the children of Mother-Tongue Rightsholders. Thus, the number of children of Immigrant Rightsholders included in his data is very small. It would also be unduly onerous for the CSF to be expected to parse out those students from the total populations of children identified by Dr.

Landry. It is sufficient for the Court to bear in mind that the total universe of children included in the evidence likely includes some persons that are not strictly rightsholders due to the inclusion of some non-citizens.

[…]

a) The *School Act* and the Integrity of Minority Schools

[699] The integrity of minority schools is essential to their operation. Minority language education is meant to take place in the language of the minority. It is not intended to teach outsiders the language of the minority.

[700] Dr. Landry alluded to this issue in his evidence concerning Exogamy. He agreed that even the admission of children of Exogamous couples, whose language skills are underdeveloped, runs the risk of "watering down" minority language schools or turning them into French immersion schools. (Of course, many children living in Exogamous households have the right to attend Francophone schools no matter their proficiency in the French language.)

[701] The question whether non-rightsholders should nevertheless be admitted to minority language schools was considered in 1991 by the Minority Language Education Task Force, which recommended that some children who were not strictly eligible to attend minority language schools pursuant to the Charter should be allowed to attend CSF schools. The Task Force thought that minority language school boards should have the flexibility to allow such students through the use of an admissions committee.

[702] In particular, the Task Force Report identified the children of French-speaking immigrants as persons who might be admitted. The Province ultimately enacted Part 8.1 of the *School Act*, which contained provisions permitting the CSF to admit the children of Immigrant Rightsholders. As discussed previously, the effect of ss. 166.25, 166.24 and 1 of the *School Act* is that only children of rightsholders, or the children of Immigrant Rightsholders, are eligible to attend CSF schools.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

166.241 Priority of enrollment

166.241 (1) In this section:

"francophone catchment area child" means an eligible child

(a) of school age, and

(b) resident in the francophone catchment area of the francophone school;

"francophone non-catchment area child" means an eligible child

(a) of school age,

(b) resident in the francophone school district, and

(c) not resident in the francophone catchment area of the francophone school;

"francophone non-school district child" means an eligible child

(a) of school age,

(b) resident in British Columbia, and

(c) not resident in the francophone school district;

"francophone school district child" means a francophone catchment area child or a francophone non-catchment area child;

"previous school year" means the school year previous to the year for which the person is applying to enroll in a francophone educational program.

166.241 (2) A francophone education authority must enroll all eligible children who exercise their entitlement to enroll in a francophone educational program under section 166.24 (1).

166.241 (3) A francophone education authority may refuse to enroll a francophone non-school district child under section 166.24 (2) if the child is

(a) a francophone student suspended by a francophone education authority under section 85 (2) (d), or

(b) a francophone student to whom a francophone education authority has refused to offer a francophone educational program under section 85 (3).

166.241 (4) A francophone education authority

(a) for each school year, must establish a date by which an application to enroll an eligible child in a francophone educational program must be received by the francophone education authority for the purposes of this section,

(b) in respect of the date referred to in paragraph (a), may establish different dates for different grades, francophone educational programs, francophone schools or children defined in subsection (1), and

(c) may dispense with the application referred to in paragraph (a) and establish an alternative procedure to enroll a francophone school district child who was enrolled in a francophone educational program in the francophone school district in the previous school year.

166.241 (5) If a francophone education authority establishes an alternative application procedure under subsection (4) (c), the enrollment of a francophone school district child remains subject to the priorities set out in this section.

166.241 (6) If a francophone education authority determines that space and facilities are available at the francophone school in which the francophone educational program is made available, an eligible child whose application was received by the francophone education authority by the date established under subsection (4) is entitled to enroll in that educational program in the following descending order of priority:

(a) a francophone catchment area child who, in the previous school year, attended the francophone school at which the francophone educational program is made available;

(b) a francophone catchment area child;

(c) a francophone non-catchment area child;

(d) a francophone non-school district child.

166.241 (6.1) Despite subsection (6), a francophone education authority may, subject to subsection (6.2), give priority to

(a) a francophone catchment area child as if that child were a child described in subsection (6) (a) if, in the previous school year, the child attended a francophone school from which the francophone education authority reassigns francophone students progressing through their francophone educational program to the francophone school at which the francophone educational program is made available,

(b) a francophone non-catchment area child or a francophone non-school district child as if the child were a child described in subsection (6) (a) or (b) if the child, in the previous school year,

(i) attended the francophone school at which the francophone educational program is made available, or

(ii) attended a francophone school from which the board reassigns francophone students progressing through their francophone educational program to the francophone school at which the francophone educational program is made available, and

(c) a sibling of a child described in subsection (6) (a) or paragraph (b) (i) of this subsection as if the sibling were a child described in subsection (6) (a) or (b) if the sibling is an eligible child who does not attend francophone school or attends a different francophone school at the time the application under subsection (4) is made.

166.241 (6.2) The francophone education authority must establish rules governing the exercise of its discretion under subsection (6.1) and must make those rules publicly available.

166.241 (7) If a francophone education authority determines that space and facilities are available at the francophone school in which the francophone educational program is made available, a francophone non-school district child referred to in subsection (6) is entitled to enroll in a francophone educational program in priority to a francophone school district child whose application was received by the francophone education authority after the date established under subsection (4).

166.241 (8) A francophone education authority must establish rules for determining priority between 2 or more persons having the same priority under this section.

166.241 (9) For the purposes of this section, an eligible child's residency is determined as of the date the application to enroll the child is submitted to the francophone education authority.

166.25 Provision of francophone educational programs

166.25 (1) Subject to the other provisions of this Act and the regulations and to any orders of the minister under this Act, a francophone education authority must make a francophone educational program available to all persons who enroll with the authority under section 166.24.

166.25 (2) The francophone educational program to be provided under subsection (1) may be provided

> **(a) in the francophone school district, or**
>
> **(b) with the consent of a parent of the person referred to in subsection (1), in another francophone school district or in a school district.**

166.25 (3) A francophone education authority may provide the francophone educational program referred to in subsection (1) in one or more of the following ways:

> **(a) all or any part of the francophone educational program is provided directly by the francophone education authority;**
>
> **(b) with the agreement of another francophone education authority and with any consent required under subsection (2) (b), all or any part of the francophone educational program is provided by that other francophone education authority;**
>
> **(c) with the agreement of a board of a school district and with any consent required under subsection (2) (b), all or any part of the francophone educational program is provided by that board.**

166.25 (4) Subject to section 166.241, a francophone education authority may assign and reassign to specific francophone schools or to specific francophone educational programs the children enrolled in a francophone educational program provided by it.

166.25 (5) A francophone education authority may recognize, as part of a francophone educational program provided by it, an educational activity that is not provided by the francophone education authority.

166.25 (6) Subject to the regulations, a francophone education authority

> **(a) is responsible for evaluating all of the francophone educational programs and services that it provides, including services provided on its behalf, and**
>
> **(b) must have francophone students assessed and evaluated by a certificate holder.**

166.25 (7) A francophone education authority may, in accordance with any terms and conditions specified by the authority, permit a person who is older than school age but who is the child of an eligible parent or immigrant parent

(a) to attend a francophone educational program provided by the authority, or

(b) to enroll and receive instruction in a francophone educational program sufficient to meet the general requirements for graduation.

166.25 (8) The only educational programs that a francophone education authority may provide are francophone educational programs.

166.25 (9) A francophone education authority must not provide a francophone educational program to any person other than

(a) a person who is enrolled with the francophone education authority under section 166.24, or

(b) a person permitted to attend the program under subsection (7).

166.25 (10) A board must not provide a francophone educational program to a student resident in a francophone school district other than a student who is deemed to be enrolled with the board under section 166.24 (5).

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[3] I find that s. 166.25(9) of the *School Act*, R.S.B.C. 1996, c. 412 which restricts admission to CSF [Conseil scolaire francophone] schools to s. 23 rightsholders and the children of non-citizens who would otherwise be rightsholders is not contrary to s. 23 of the *Charter*. That questions was decided in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 (CanLII), and I am bound by that decision.

[…]

e) Does Section 23 Protect an Expanded Admissions Policy?

i. Submissions

[737] The defendants argue that the *School Act* validly restricts admission to rightsholders and Immigrant Rightsholders. Pointing to Yukon-SCC, the defendants say that the plaintiffs are required to comply with that provision. In the defendants' submission, the CSF took the law into its own hands and promulgated a policy that was *ultra vires* the *School Act* while the issue was contested before the Court.

[…]

ii. Discussion

[746] There is no doubt that the CSF acted in breach of the *School Act* by admitting children to its programmes whose parents were not rightsholders or Immigrant Rightsholders. The plaintiffs do not appear to contest that this is the case. While many other provinces have enacted legislation that explicitly allows minority school boards to admit the children of non-rightsholders, British Columbia has done so in a limited way, allowing only the admission of children of Immigrant Rightsholders. By admitting children pursuant to the Descendant and Francophile Clauses, the CSF acted in breach of the *School Act*.

[…]

[766] I acknowledge that the plaintiffs argued that an Expanded Admissions Policy is vital to ensuring the continued success and viability of British Columbia's minority schools. This is inconsistent with their argument in the rest of the case, where they urge that the CSF can expect great increases in enrolment. In my view, based on the totality of the evidence in this case, there is no threat to the continued viability of any CSF programmes that would require the admission of non-rightsholders to CSF schools.

[767] Although the defendants plead an injunction in connection with the admission of non-rightsholders, they agree that given that the CSF has discontinued its Expanded Admission Policy, an injunction is no longer necessary. A declaration that the legislative provision is valid would suffice as a remedy from the defendants' perspective. I therefore declare that s. 166.25(9) of the *School Act* is a valid exercise of the Province's constitutional jurisdiction over education.

[…]

[6835] With respect to the breaches concerning the Ministry's capital planning framework, I declare as follows:

a) Section 166.25(9) of the *School Act* is a valid exercise of the Province's constitutional jurisdiction over education.

[…]

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

166.251 Francophone catchment areas

166.251 (1) A francophone education authority must establish, for each francophone school in its francophone school district, a francophone catchment area consisting of a geographical area around the francophone school that includes all or part of the francophone school district.

166.251 (2) A francophone education authority may amend the francophone catchment area established for a francophone school under subsection (1).

Division 5 — Personnel

166.28 Francophone school personnel

166.28 (1) Sections 15 to 21 and 25 to 29 apply for the purposes of this Part.

166.28 (2) A francophone education authority must, for the first school year in which it intends to employ persons as francophone teachers to provide a francophone educational program to francophone students, attempt, on terms and conditions the board of regional trustees considers appropriate, to fill any available teaching positions with individuals who

(a) are teachers employed by a board of education,

(b) are or were, in the immediately preceding school year, employed by a board of education to teach a francophone educational program in the francophone school district over which the authority is responsible, and

(c) are, in the opinion of the board of regional trustees, qualified and suitable for the available positions.

Division 6 — School Property

166.29 Acquisition and disposal of land and improvements

166.29 (1) Section 96 (1), (2) (a) and (b) and (3) and sections 97 to 100.1 apply for the purposes of this Part.

166.29 (2) A francophone education authority and a board may, with the prior approval of the minister, enter into an agreement for the transfer of assets that are used by one of the parties but that are vested in the other party.

166.29 (3) A francophone education authority and the board of a school district located in the francophone school district may, with the prior approval of the minister, enter into an agreement for the purposes of

(a) the construction, maintenance, operation and use of facilities to be used jointly by the authority and the board, or

(b) contributing to the cost of the construction, maintenance or operation of the facilities referred to in paragraph (a).

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[5624] In September 1998, Mr. Justice Vickers heard a second challenge to the creation of the FEA [Francophone Education Authority], focused on whether the 1997 amendments to the *School Act* met the Province's constitutional obligations. In Vickers #2, Vickers J. considered whether the amended legislation adequately provided for the transfer of assets to the CSF [Conseil scolaire francophone]. The proceedings turned on s. 166.29 of the *School Act*. That section read in part as follows:

[…]

[5625] The FPFCB [Fédération des parents francophones de Colombie-Britannique] argued that s. 166.29 was contrary to s. 23 [of the *Canadian Charter of Rights and Freedoms*] because it left the transfer of assets to negotiation between the parties, placing the CSF at the mercy of majority boards, which might result in the CSF paying high rents, lacking control over shared facilities, and suffering from impermanent school programmes. They also expressed concern that the arrangement would always leave Francophone students with second-rate facilities.

[5626] Mr. Justice Vickers conceded that s. 166.29 was not reassuring to rightsholder parents (at para. 37). Nevertheless, he concluded that although the provision was permissive rather than mandatory, it could be interpreted as placing an affirmative obligation on government to ensure an appropriate conclusion to any agreement negotiated between a majority board and the CSF (at paras. 39-42). He acknowledged it was possible that the Minister might, at some future date, exercise his discretion in a manner that would infringe s. 23. However, he held that the possibility was only incidental to the purpose of the discretion, which is to ensure that all eligible students receive a Francophone education (at para. 44).

[5627] Mr. Justice Vickers confirmed that to prevent assimilation, standalone schools should be provided where the numbers warrant. Where the numbers dictate a shared facility, every effort should be made to provide sufficient management and control of its programme to the CSF (at para. 45). Nevertheless, he was satisfied that ownership was not the only way to provide for management and control of a school programme (at para. 46). Thus, he concluded that failure to provide for ownership of school property, in whole or in part, did not make the legislation flawed. He pointed out that in some circumstances, flexibility in ownership might better serve the parties (at para. 47).

[5628] Mr. Justice Vickers went on to conclude, however, that a dispute resolution mechanism was required to resolve issues that might arise between the CSF and majority boards in connection with the use and lease of facilities. The Province went on to enact the Education Mediation Regulation to respond to Mr. Justice Vickers's concerns. I discuss this in more detail in Chapter XLIII, Duty to Assist the CSF and the Education Mediation Regulation.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

Association des parents francophones de la Colombie Britannique v. British Columbia, 1998 CanLII 3969 (BC SC)

[37] The plaintiffs and all Francophone parents seek some certainty in the Francophone education program. The language of s. 166.29 is not reassuring in that regard. The use of the word "may" is permissive. In *L'Association des Parents Francophones de la Colombie-Britannique v. British Columbia*, I discussed the subject of mandatory funding beginning at page 373. In that case the regulation used the words, "the minister may provide . . . a grant." This language was contrasted with and of the *School Act* which stated that the minister "shall allocate to each board" funds in a particular manner. At page 374, I said the following:

> It is the use of the word "may," the discretion by itself, and not the manner in which the discretion is exercised which makes the choice of words inappropriate. I do not assume the Minister would exercise his discretion in an unconstitutional manner. The plaintiffs do not complain that he has done so. However they should not have to wait for an inappropriate use of ministerial discretion to challenge a word that in and of itself makes the provision unconstitutional. In my view the use of the word "may" does not meet the constitutional obligation of the Province to provide funding to meet its s. 23 [of the *Canadian Charter of Rights and Freedoms*] obligations.

[38] The context of those remarks must be taken into account. It was the contrast in language which created the difficulty. By looking at the specific language used, it was clear the minister was entitled to exercise his discretion in an unconstitutional manner.

[39] Section 166.29 has no similar contrast in language. This section, read together with s. 23 of the *Charter* can be interpreted in a constitutional manner. It is s. 23 of the *Charter* that places the obligation on government to ensure that Francophone children receive education in French. […]

[42] […] Read together with s. 23 of the *Charter*, it [s. 166.29] places an affirmative obligation on government to ensure there is an appropriate conclusion to any agreement negotiated between a majority board and the C.S.F. It would be wrong for the court to assume that any minister would exercise his or her discretion in an unconstitutional manner.

[43] The right which the plaintiffs possess is not a right to any particular legislative scheme. Rather, the court must ensure that government has the widest possible discretion in selecting the means by which the obligations imposed by s. 23 are to be met: *Mahe* at 392.

[…]

[46] Ownership of a facility, in whole or in part, is not the only way to provide for management and control of a school program. It is extremely difficult to see how the use of 25 per cent of a facility and the consequent transfer of 25 per cent ownership in the land and physical structure would do anything to ensure better management and control of a school program.

Division 7 — Finance

166.39 Right of action preserved

166.39 This Act must not be construed to prevent a member of a francophone education authority, or a group of members of that authority, from exercising any right to take action for recovery on behalf of the authority.

Division 8 — General

166.4 Additional powers and duties of a francophone education authority

166.4 (3) A francophone education authority may, subject to this Act, the regulations and the orders of the minister, enter into an agreement with a board to provide all or part of a francophone educational program and health and support services, including busing and educational resources, to one or more students enrolled with the board.

166.4 (4) A francophone education authority may provide all or part of an educational program by means of distributed learning only with the prior agreement of the minister.

166.43 Indemnification against proceedings

166.43 (1) The board of regional trustees of a francophone education authority may, by bylaw, provide that the francophone education authority

> **(a) will indemnify a regional trustee, officer or employee of the francophone education authority**
>
> > **(i) against a claim for damages against that regional trustee, officer or employee arising out of the performance of his or her duties, or**

(ii) if an inquiry under the *Public Inquiry Act* or other proceeding involves the administration and conduct of the business of the francophone education authority, and

(b) may pay legal costs incurred in proceedings arising out of the claim or inquiry or other proceeding.

166.43 (2) The board of regional trustees of a francophone education authority may, by an affirmative vote of not less than 2/3 of all of the regional trustees of the authority, cause the francophone education authority to pay

(a) any sum required to indemnify a regional trustee, officer or employee of the francophone education authority if a prosecution arises out of the performance of his or her duties, and

(b) costs necessarily incurred.

166.43 (3) Despite subsection (2), a francophone education authority must not pay a fine imposed on a regional trustee, officer or employee as a result of his or her conviction.

166.43 (4) A francophone education authority must not seek indemnity against a regional trustee, officer or employee of the francophone education authority in respect of any action of the regional trustee, officer or employee that results in a claim for damages against the francophone education authority, but the francophone education authority may seek indemnity

(a) against a regional trustee, officer or employee if the claim for damages arises out of the gross negligence of the regional trustee, officer or employee, or

(b) against an officer or employee if, in relation to the action that gave rise to the claim for damages, the officer or employee willfully acted contrary to

(i) the terms of his or her employment, or

(ii) an order of a superior.

166.431 Appointment of special advisor to a francophone school district

166.431 (1) The minister, by order, may appoint a special advisor to a francophone school district, for a term determined by the minister,

(a) to review the progress of the francophone education authority in respect of its achievement contract or to inspect and evaluate any other matters as directed by the minister, or

(b) to assist the francophone education authority in the conduct of the affairs of the francophone school district in respect of any educational, financial or community matters.

166.431 (2) The special advisor must submit a report to the minister in respect of anything resulting from carrying out his or her duties under subsection (1).

166.431 (3) With the approval of the minister, the special advisor appointed under subsection (1) may

(a) appoint a deputy special advisor and other employees necessary for performing the duties of the special advisor,

(b) engage and retain specialists and consultants to carry out the duties of the special advisor, as required, and

(c) determine the remuneration of persons appointed or retained under paragraphs (a) and (b).

166.431 (4) The minister, by order, may require the francophone education authority to pay

(a) the remuneration of the special advisor appointed under subsection (1) to the francophone school district and any person appointed or retained under subsection (3) (a) and (b), at the rate determined by the minister, and

(b) the expenses of the special advisor.

166.431 (5) The minister may provide a direction to the special advisor or to the francophone education authority respecting the duties of the special advisor.

166.432 Powers of special advisor to a francophone school district

166.432 A special advisor appointed under section 166.431 may

(a) attend any meeting of the francophone education authority,

(b) enter a school building or any other building used in conjunction with the school or offices of the francophone education authority, or any part of them, for the purposes of performing his or her duties, and

(c) inspect any record of the francophone education authority.

166.433 Responsibilities of the francophone education authority

166.433 A francophone education authority and its employees must assist a special advisor in the carrying out of the duties of the special advisor.

166.44 Appointment of official trustee

166.44 (1) The Lieutenant Governor in Council may appoint an official trustee to conduct the affairs of a francophone education authority if the Lieutenant Governor in Council is of the opinion that

(a) there has been a default in a payment on the due date of either interest or principal of a debenture guaranteed under this Part or a failure to comply to the satisfaction of the minister with a condition governing the guarantee,

(b) the authority is in serious financial jeopardy,

(c) there is substantial non-compliance with this Act or the regulations or any rules or orders made under this Act,

(c.1) [Repealed 2012-3-20.]

(d) there is substantial non-performance of the duties of the authority, or

(e) there is a risk to student achievement in the district and it is in the public interest to do so.

166.44 (2) On the appointment of an official trustee to conduct the affairs of a francophone education authority, the regional trustees of the authority cease to hold office.

166.44 (3) The Lieutenant Governor in Council may remove an official trustee and

(a) order that elections of regional trustees be held for the authority in accordance with the regulations made under section 166.18, or

(b) appoint regional trustees to hold office for the term set by the Lieutenant Governor in Council.

166.45 Powers of official trustee

166.45 (1) An official trustee appointed under section 166.44

(a) has the powers and duties conferred by this Act on a francophone education authority, and

(b) must be remunerated out of the funds of the francophone education authority in respect of which the official trustee is appointed or otherwise as the Lieutenant Governor in Council determines.

166.45 (2) In the exercise of a power or performance of a duty conferred under this Act on a francophone education authority, an official trustee, with the approval of the minister, may deviate in matters of procedure and in the form of any notice or statement under this Act as the official trustee considers necessary for the more effective exercise of that power or duty.

166.45 (3) The Lieutenant Governor in Council may make regulations to adapt this Act to the conduct of the affairs of francophone education authorities to which official trustees are appointed.

Part 9 – General

Division 1 – Ministry of Education

168. Jurisdiction of minister

168. (2) The minister may make orders for the purpose of carrying out any of the minister's powers, duties or functions under this Act and, without restriction, may make orders.

> **[…]**
>
> **(c) determining the general nature of educational programs for use in schools and francophone schools and specifying educational program guides,**
>
> **(d) preparing a process for the assessment of the effectiveness of educational programs and requiring a board or a francophone education authority to cause its schools to participate in the process for the purpose of comparison to provincial, national and international standards,**
>
> **(d.1) preparing a process for measuring individual student performance, and requiring a board or a francophone education authority to cause its schools to participate in the process for the purpose of assessing the effectiveness of educational programs,**
>
> **[…]**
>
> **(g.1) requiring a francophone education authority to close a francophone school if the number of francophone students falls below 8,**
>
> **[…]**
>
> **(j) governing fees that may be charged by a board or a francophone education authority, and those fees may be different for different circumstances,**

ANNOTATIONS

Conseil-scolaire francophone de la Colombie-Britannique v. British Columbia (Education), 2016 BCSC 1764 (CanLII)

f) The Effect of the CSF's [Conseil scolaire francophone] Having Admitted Non-Rightsholders

[768] The final question is what should be done about the non-rightsholders that have already been admitted to CSF programmes. The defendants argue that the Province should not be required to build facilities on the basis of students who were admitted in contravention of the *School Act*. They say that non-rightsholders ought to be excluded from the calculation of the number of students likely to enrol in a programme.

[…]

[1144] I have already explained that I do not consider the Province to have delayed implementing s. 23 of the [*Canadian*] *Charter* [*of Rights and Freedoms*] in British Columbia. In light of the importance of leaving some latitude to government, absent evidence leading me to believe that a declaration would not be effective, I will typically make an affirmative declaration of rights rather than compel the defendants to take specific actions.

Foremost among these, the plaintiffs ask the Court to issue declarations requiring the Minister to order the transfer school board property to the CSF pursuant to the newly amended s. 74 of the *School Act*, which provides:

[…]

[1145] In Mr. Miller's discovery and the Province's case, Ministry officials maintained that the Minister had no power to compel school boards to dispose of property to the CSF. The legislative history reveals that s. 74 was amended by Bill 11-2015, *Education Statutes Amendment Act*, 4th Sess., 40th Leg., BC, 2015 [Bill 11], Cl. 12. Bill 11 passed third reading on May 14, 2015, and came into force on July 1, 2015, when this Court was not sitting. The defendants closed their case in the middle of August 2015.

[1146] The plaintiffs say the amendments to s. 74(1) changed the nature of the powers the Minister has in connection with property owned and managed by school boards. In the plaintiffs' submission, the Minister now has broad, plenary authority to intervene in the public interest to make orders concerning the disposal of property.

[1147] For the defendants, the relevant question is not how the *School Act* qualifies the powers of school boards, but what jurisdiction lies with the Minister. The defendants press that cl. 12 of Bill 11 simply added a new limit to the otherwise plenary power of school boards to deal with their properties without giving the Minister new jurisdiction to make limiting orders. The defendants point the Court to s. 168 of the *School Act*, which establishes the Minister's jurisdiction. In their submission, the Minister's jurisdiction pursuant to that provision is not unrestricted. They note, for example, that the Minister cannot order a school closure unless enrolment falls below eight students (s. 168(2)(g)). The defendants also point to comments made during the legislative debate concerning Bill 11, which tend to confirm that the legislature did not intend to expand the Minister's jurisdiction.

[1148] In *Conseil Scolaire Francophone de la Colombie-Britannique v. British Columbia (Education)*, 2013 BCSC 1242 (CanLII) [Association des Parents-Injunction Ruling], Mr. Justice Willcock considered an application in this case by the plaintiffs for an interim injunction requiring the Minister to order SD39-Vancouver to offer to lease the former J.W. Sexsmith Elementary to the CSF for a three-year period. The defendants argued there was no authority in the *School Act* for the Minister to make that order, and that the court should not issue a mandatory injunction directing the Minister to do something he is not empowered to do (at para. 19).

[1149] Mr. Justice Willcock explained that, in his view, the appropriate question at the first stage of the injunction test was "whether there is an arguable case [the plaintiffs] are entitled to a *Charter* remedy that would justify the issuance of the injunctions sought" (at para. 22). He went on to state (at para. 23):

> A mandatory injunction compelling the Minister of Education to order [SD39-Vancouver] to deal with property in the manner proposed in relation to short-term relief should not be issued if there is no statutory authority for the Minister to make such an order, and therefore no triable issue as to the plaintiff's right to seek that relief.

[1150] Mr. Justice Willcock considered the jurisdiction of the Minister set out in s. 168(1) of the School Act, and the Minister's powers under ss. 73, 74, 85 and 96 of the *School Act*. He accepted the submission by the defendants that the scheme of the *School Act* was such that SD39-Vancouver, like other school boards, holds its property with the powers and capacities of a natural person, and the Minister cannot order school boards to dispose of school property (at paras. 36-37):

> I accept the submissions of the Province and [SD39-Vancouver] with respect to the scope of the powers of the Minister of Education under the *School Act*. The scheme of the Act is clearly intended to give plenary powers to the boards, subject to the power of the Minister to intervene in the public interest in relation to certain actions. While the board's powers are described in broad terms, the Minister's powers are specifically enumerated.

In my opinion, there is no statutory authority that would permit the Minister of Education to order [SD39-Vancouver] to offer to lease the Sexsmith property to the CSF. For that reason, I find there is no triable issue as to the plaintiffs' entitlement to the relief they seek in relation to the Sexsmith property.

[1151] As a result, he concluded that there was no triable issue in relation to the breach of the plaintiffs' claim for an order requiring SD39-Vancouver to dispose of property.

[1152] I agree with Mr. Justice Willcock's interpretation of the scheme of the *School Act*, and following the principles in *Re Hansard Spruce Mills Ltd.*, 1954 CanLII 253 (BC SC), [1954] 4 D.L.R. 590 (B.C.S.C.) at paras. 4-5 and *Chief Mountain v. British Columbia (Attorney General)*, 2011 BCSC 1394 (CanLII) at paras. 74-104, consider it appropriate to follow it.

[1153] As I see it, the Minister's jurisdiction to make orders is established in s. 168 of the *School Act*, which provides:

> […]

[1154] Nothing in that provision gives the Minister the power to make orders requiring school boards to dispose of land. That has not changed since Mr. Justice Willcock made his decision in Association des Parents-Injunction Ruling.

[1155] Sections 73, 74, 85 and 96 concern the powers of school boards in connection with the property they own. Due to c. 12 of Bill 11, the power of school boards to manage their property in s. 74(1), as amended, is now subject to valid ministerial orders in the same way that school boards' powers to establish and close schools (s. 73) and to acquire and dispose of land and improvements (s. 96(3)) always have been. The stipulation that those powers are "subject to an order by the Minister" does not expand the Minister's jurisdiction to make orders. It simply makes school boards' powers subject to a valid exercise of the Minister's power to issue orders pursuant to s. 168.

[1156] In reaching this conclusion, I am supported by the comments of Minister Fassbender in British Columbia, Legislative Assembly, Debates of the Legislative Assembly (Hansard), 40th Parl., 4th Sess., Vol. 26, No. 5 (13 May 2015). In the course of the legislative debate, Minister Peter Fassbender responded to a question from Mr. R. Flemming concerning the rationale for "a section that appears to give the Minister the ability to dispose much more easily of land that is held as an asset by 60 different school boards throughout the province of B.C." (at 8453-8454). Minister Fassbender responded as follows (at 8454):

> Hon. P. Fassbender: Indeed, this section — I have had a number of discussions and feedback from school districts.
>
> Let me make it very clear. Currently under the act the minister cannot order a board to dispose of property. That is in the purview of the board, and that does not change in the new act. The words "Management of schools and property" — that's the management of those schools and properties as it relates to any of the services to maintain those properties, to maintain the schools under the shared-services initiative.

> Again, as we move forward in consultation with districts, under the regulations there will be clarity in terms of what that does and does not mean. But it is very clear — and I stand here clearly saying — in other sections of the act that the minister will not have increased powers to order boards to dispose of property.
>
> [Emphasis added.]

[1157] Since the Minister has no jurisdiction or authority to order school boards to dispose of property, I will not make declarations requiring the Minister to transfer or otherwise deal with school board property in favour of the CSF. Such a remedy would have no practical effect.

N.B. – This decision is currently under appeal before the British Columbia Court of Appeal.

Division 5 – Lieutenant Governor in Council Regulations and Orders

175. Power to make regulations and orders

175. (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

175. (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

> **[…]**
>
> **(c.1) prescribing the duties of the secrétaire trésorier of a francophone education authority and employees of a francophone education authority who are certificate holders;**
>
> **[…]**
>
> **(n) respecting the evaluation of francophone educational programs and services provided by a francophone education authority for the purposes of section 166.25 (6);**
>
> **[…]**
>
> **(p) respecting the assessment and evaluation of francophone students by a certificate holder;**

175. (6) Without limiting subsections (1) to (5.1), the Lieutenant Governor in Council may make regulations for the purposes of Part 8.1, including regulations

> **[…]**
>
> **(d) respecting the election of regional trustees of francophone education authorities for the purposes of section 166.18,**
>
> **(e) prescribing the number of regional trustees for a francophone education authority for the purposes of section 166.18 (2),**

[…]

(h) prescribing additional duties of the directeur général of a francophone education authority for the purposes of section 166.27 (2) (c),

[…]

(j) respecting any matter or thing that the Lieutenant Governor in Council considers necessary or advisable to facilitate the establishment and operation of francophone education authorities.

175. (10) If a regulation made under subsection (6) (e)

(a) increases the number of regional trustees of a francophone education authority, the regulation may determine the manner in which and the times at which the new regional trustees under the regulation are to be appointed or elected, or

(b) reduces the number of regional trustees of a francophone education authority, the regulation becomes effective for the following general election of regional trustees of the authority.

Conseil scolaire francophone de la Colombie-Britannique Regulation – School Act, B.C. Reg. 213/99

1. Definition

1. In this regulation, "Conseil scolaire" means the Conseil Scolaire Francophone de la Colombie-Britannique continued under section 166.12 of the *School Act*.

---

3. Francophone school district

3. The area of the francophone school district over which the Conseil scolaire has jurisdiction under section 166.12 of the *School Act* is the total area of the wards established under section 5.

---

4. Membership area

4. The area prescribed for the purposes of section 166.13 (1) of the *School Act* is the total area of the wards established under section 5.

---

5. Wards

5. (1) For the purposes of electing the regional trustees of the Conseil scolaire under Part 8.1 of the *School Act*, the following wards are established:

(a) Northern B.C. (Nord de la C.-B.);

(b) South East of B.C. (Sud-Est de la C.-B.);

(c) Vancouver Island North (Nord de l'île de Vancouver);

(d) Vancouver Island South (Sud de l'île de Vancouver);

(e) Greater Vancouver (Le grand Vancouver);

(f) Fraser Valley (Vallée du Fraser);

(g) South Coast of B.C. (Côte Sud de la C.-B.).

5. (2) The area of a ward referred to in subsection (1) is the area that comprises the school districts set out in Schedule A for that ward.

[B.C. Reg. 388/2007, Sch. 1, s. 1 (b).]

---

6. Number of regional trustees in wards

6. The members of the Conseil scolaire who are entitled to vote and who are resident in a ward referred to in section 5 are entitled to elect from among themselves one regional trustee.

[B.C. Reg. 388/2007, Sch. 1, s. 1 (c).]

Francophone Education Authorities Regulation – School Act, B.C. Reg. 212/99

1. Definition

1. In this regulation, "Act" means the *School Act*.

Part 1 — Qualifications for Holding Office

2. Who may hold office as regional trustee

2. (1) Except as provided in this Part, a person is qualified to be elected or appointed to and hold office as a regional trustee of a francophone education authority if, at the relevant time, the person meets all of the following requirements:

(a) the person must be an individual who is, or who will be at the time of voting or on the effective date of the appointment, as applicable, age 18 or older;

(b) the person must be a Canadian citizen;

(c) the person must have been a member of the francophone education authority for at least 120 days preceding the relevant time;

(d) the person must not be disqualified by the Act or any other enactment from being elected or appointed to or holding office as a regional trustee of a francophone education authority, or be otherwise disqualified by law.

2. (2) At any one time, a person is not eligible to be elected as a regional trustee for more than one ward established under section 166.14 (8) of the Act.

[am. B.C. Regs. 388/2007, Sch. 3, s. 1 (b); 145/2014, s. 1.]

---

3. Disqualifications from regional trusteeship

3. Without limiting section 2 (1) (d), the following persons are disqualified from being elected to or holding office as a regional trustee of a francophone education authority:

(a) a person who is disqualified under section 4 as an employee of a francophone education authority, except as authorized under that section;

(b) a person who is disqualified under section 166.18 (6) [unexcused absence from board meetings] or 166.19 (3) [failure to make oath or affirmation of office] of the Act;

(c) a person who is disqualified under the *Local Elections Campaign Financing Act*

(i) from holding office on a local authority, or

(ii) as that Act applies under Division 4 [Campaign Financing] of Part 2 of this regulation;

(d) a person who is disqualified from holding office under Division 17 [Election Offences] of Part 3 of the *Local Government Act* as it applies under that Act, the Act or any other Act.

[am. B.C. Regs. 388/2007, Sch. 3, s. 1 (b) and (c); 147/2008, Sch. 1, s. 1; 145/2014, s. 2.]

---

4. Disqualification of employees from regional trusteeship

4. (1) In this section, "employee" means an employee or salaried officer of a francophone education authority.

4. (2) Unless the requirements of this section are met, an employee of a francophone education authority is disqualified from being elected to or holding office as a regional trustee of the same francophone education authority.

Part 2 — Elections

Division 1 — Call for Candidates

6. Request for candidates

6. (1) In every year in which regional trustees of a francophone education authority are to be elected, the secrétaire trésorier of the authority must, at least 115 days before election day, provide notice to the members requesting that members who are prepared to stand for election as regional trustees declare their intention to do so.

6. (2) The notice referred to in subsection (1) must be provided by publication in a newspaper.

[en. B.C. Reg. 262/2005, s. 1; am. B.C. Regs. 262/2005, s. 5 (a); 388/2007, Sch. 3, s. 1 (a) and (c).]

School Regulation – School Act, B.C. Reg. 265/89

14. Indian language instruction

14. A board shall provide instruction in an Indian language if

> **(a) the board and the council of a band have entered into an agreement under section 86 (3) of the Act for the provisions of an Indian language program, and**
>
> **(b) the minister has approved the Indian language program.**

Securities Act, R.S.B.C. 1996, c. 418

175. Extrajurisdictional evidence

175. (6) The letter of request must have attached to it […]

> **(c) a translation of the letter of request and any interrogatories into the appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.**

N.B. – A number of national and multilateral instruments are made and updated under the *Securities Act* that contain provisions outlining the language(s) in which certification and disclosure documents are drafted and distributed. For example the *National Instrument 41-101 General Prospectus Requirements*, B.C. Reg. 59/2008 includes the following provision:

Language

2.2 (1) An issuer must file a prospectus and any other document required to be filed under this Instrument or NI 44-101 in French or in English.

(2) In Québec, a prospectus and any document required to be incorporated by reference into a prospectus must be in French or in French and English.

(3) Despite subsection (1), if an issuer files a document only in French or only in English but delivers to an investor or prospective investor a version of the document in the other language, the issuer must file that other version not later than when it is first delivered to the investor or prospective investor.

(4) If an issuer files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the issuer must

(a) attach a certificate as to the accuracy of the translation to the filed document, and

(b) make a copy of the document in the original language available on request.

Other national and multilateral instruments with similar provisions include the following:

National Instrument 81-106 Investment Fund Continuous Disclosure, B.C. Reg. 218/2005, s. 1.4

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, B.C. Reg. 327/2008, s. 7.2

National Instrument 51-102 Continuous Disclosure Obligations, B.C. Reg. 110/2004, ss. 3.1 and 3.2

National Instrument 45-106 prospectus and Registration Exemptions, B.C. Reg. 227/2009, s. 2.1

National Instrument 81-101: Mutual Fund Prospectus Disclosure, B.C. Reg. 1/2000, s. 2.7

National Instrument 43-101 Standards of Disclosure for Mineral Projects, B.C. Reg. 86/2011, s. 4.3

National Instrument 71-101 the Multijurisdictional Disclosure System, B.C. Reg. 343/98, ss. 6.14 and 12.12

National Instrument 54-101 Communication With Beneficial Owners of Securities of a Reporting Issuer, B.C. Reg. 154/2002, s. 3.3

National Instrument 55-102 System for Electronic Disclosure By Insiders (SEDI), B.C. Reg. 230/2001, Form 55-102F1

Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids, B.C. Reg. 21/2008, ss. 2.9, 2.14, 3.1, 4.4 and 4.10

Multilateral Instrument 11-102 Passport System, B.C. Reg. 58/2008, s. 1.2

Settlement of International Investment Disputes Act, S.B.C. 2006, c. 16

Schedule (Section 1) – Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

[…]

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

Tla'amin Final Agreement Act, S.B.C. 2013, c. 2

Schedule – Tla'amin Final Agreement Act

Preamble

Whereas:

> **[…]**
>
> **L. Tla'amin people are Coast Salich people who speak the Tla'amin language and who assert their heritage, history and culture, including their language and religion, are tied to the lands and waters surrounding the northern Gulf of Georgia;**
>
> **[…]**

Now therefore the parties agree as follows:

Tsawwassen First Nation Final Agreement Act, S.B.C. 2007, c. 39

Chapter 2 – General Provisions

22. For greater certainty, the powers of Tsawwassen Government to make laws, set out in this Agreement, do not include the power to make laws in respect of criminal law, criminal procedure, Intellectual Property, the official languages of Canada, aeronautics, navigation and shipping, or labour relations and working conditions.

Official Languages

66. For greater certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement.

Veterinarians Act, S.B.C. 2010, c. 15

47. Prohibitions regarding registration and use of titles

47. (2) A person who is not a registrant must not use

[…]

(b) any title, name description or abbreviation of a name or title, or an equivalent of a name or title in another language, in any manner that reasonably suggests that the person

(i) is a registrant, or

(ii) practices veterinary medicine.

Victims of Crime Act, R.S.B.C. 1996, c. 478

8. Goals

8. To the extent that it is practicable, the government must promote the following goals:

[…]

(g) to afford victims throughout British Columbia equal access to

[…]

(ii) interpreters for speakers of any language;

Wills, Estates and Succession Act, S.B.C. 2009, c. 13

Schedule 2 (Section 83) – Convention Providing A Uniform Law On The Form Of An International Will

Article I

[…]

(2) Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

[…]

Article XVI

(1) The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

[…]

Annex – Uniform Law On The Form Of An International Will

Article 3

(1) The will shall be made in writing.

(2) It need not be written by the testator himself.

(3) It may be written in any language, by hand or by any other means.

Yale First Nation Final Agreement Act, S.B.C. 2011, c. 11

Schedule

25.1 Eligibility Criteria

25.1.2 In determining whether an individual has a demonstrated attachment under 25.1.1a the Enrolment Committee, or a body established under 25.7, will take into account all relevant factors, including:

> **[…]**
>
> **d. cultural, linguistic, and spiritual ties between the individual and Yale First Nation; and**

British Columbia – Other Regulations

Child Care Licensing Regulation – Community Care and Assisted Living Act, B.C. Reg. 332/2007

2. Care programs

2. (2) For the purpose of paragraph (a) of the definition of "care" in section 1 of the Act, Child-minding is a prescribed program if all of the following conditions are met:

(a) child-minding services are provided by a person who, with funds provided for this purpose under a funding agreement with the government of Canada or the government of British Columbia, operates a program that provides services to immigrants in respect of English as a Second Language, settlement or labour market integration;

[…]

[am. B.C. Regs. 202/2011, s. 2; 121/2013; 178/2016, Sch. 1, s. 2.]

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57. Records for each child

57. (2.2) A licensee who provides a care program described as Child-minding must have written agreements with a parent of each child that the parent

(a) is engaged in a program that, under contract to the government, provides services to immigrants in respect of English as a Second Language, settlement or labour market integration on the same premises as where the child-minding service operates,

[…]

[am. B.C. Reg. 202/2011, s. 19.]

Schedule G (Section 44 [program of activities])

[…]

3. A licensee must ensure that a program of activities is provided that encourages the language development of children, including

(a) modelling of good language and listening skills,

(b) providing opportunities for children to develop receptive and expressive language skills, and

(c) providing activities that encourage communication.

Children's Commission Regulation – Office for Children and Youth Act, B.C. Reg. 250/97

Part 2 – Complaints

Division 1 – Tribunal Division Panels

6. Criteria for appointment to roster of panel members

6. To be eligible for appointment to the roster of panel members, a person must demonstrate an understanding of

> **[…]**
>
> **(e) the characteristics of British Columbia's diverse cultural, racial, linguistic and religious communities and the unique issues that affect aboriginal children, their families and communities, and**

Direction to the British Columbia Utilities Commission Respecting the Iskut Extension Project – Utilities Commission Act, B.C. Reg. 137/2013

Section 10 – Dispute Resolution

10.5 Arbitration. If a Dispute is not resolved during the Mediation Period, or the Parties fail to appoint a mediator within the 14 day period provided for in Section 10.3(a), any Party may refer the Dispute for final resolution to arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules for Domestic Commercial Arbitration Proceedings. The number of arbitrators shall be three. The place of arbitration shall be Vancouver, British Columbia, Canada. The language used shall be English.

Drug Schedules Regulation – Pharmacy Operations and Drug Scheduling Act, B.C. Reg. 9/98

2. Sale of drugs

2. (1) Drugs listed in Schedules I, IA, II, III and IV must be sold from licensed pharmacies.

2. (2) Unscheduled drugs may be sold from non-pharmacy outlets.

2. (3) The various schedules are differentiated as follows:

> **Schedule I (Prescription): Schedule I drugs require a prescription for sale and are provided to the public by a pharmacist following the diagnosis and professional intervention of a practitioner. The sale is controlled in a regulated environment as defined by provincial pharmacy legislation. Entries followed by a "V" superscript may be sold without having received a prescription if**
>
> > **(a) the drug is in a form not suitable for human use, or**
> >
> > **(b) the main panel of the manufacturer's inner label and the manufacturer's outer label carry, in both official languages, the statement "For Veterinary Use Only" or "For Agricultural Use Only" immediately following or preceding the brand name, proper name or common name, in type size not less than one-half as large as the largest type on the label, and the product is sold in the original manufacturer's container.**

Freedom of Information and Protection of Privacy Regulation – Freedom of Information and Protection of Privacy Act, B.C. Reg. 155/2012

2. Oral requests

2. An applicant may make an oral request for access to a record if

(a) the applicant's ability to read or write English is limited, or

Hearing Aid Regulation – Hearing Aid Act, B.C. Reg. 196/2001

3. Registration

3. (1) An applicant must submit to the board

[…]

(g) proof, to the satisfaction of the board, of

(i) effective September, 1996, completion of second year post-secondary education or the equivalent level,

(ii) proficiency in the use of the English or French language,

Personal Property Security Regulation – Personal Property Security Act, B.C. Reg. 227/2002

8. Entering the name of business debtors

8. (1) If the debtor is a business debtor, the following entries are required in accordance with this section:

(a) if the debtor is a corporation, the corporation's name is to be entered;

[…]

8. (5) Despite subsection (1) (a), if the debtor is a corporation and the name of the corporation is in 2 or more of an English form, a French form and a combined English-French form, all of the forms of the debtor's name must be entered separately.

Private Training Regulation – Private Training Act, B.C. Reg. 153/2016

13. Information and records required for decision whether to approve program of instruction

13. (1) For the purposes of section 12 (2) (a) [program approval process] of the Act, an institution must submit the following additional information and records to the registrar in respect of the program of instruction:

[…]

(i) the language of instruction of the program;

---

14. Considerations for approval

14. The registrar must take into account the following considerations when deciding whether to approve a program of instruction:

[…]

(d) whether the course materials are relevant to the program and in the language in which the program is provided or in a language appropriate for the program;

---

21. Instructor qualification compliance standards

21. (1) In addition to the other staffing and instructor compliance standards prescribed under this Division, the instructor qualification compliance standards set out in this section are prescribed for a certified institution in relation to approved programs of instruction.

21. (2) Subject to subsection (3), a certified institution must ensure all of the following in relation to an instructor of an approved program of instruction:

(a) the instructor of an academic course, other than a language course or an aboriginal culture course, must have a relevant post-secondary degree in the subject area of the course;

[…]

(c) the instructor of a language course, other than an aboriginal language course, must have one of the following:

(i) a post-secondary degree in language instruction;

(ii) a certificate or diploma in language instruction and 2 years of work experience teaching a language;

(iii) 10 years of work experience teaching a language;

(iv) a certificate or diploma in language instruction and a post-secondary degree;

---

24. Form and content of student enrolment contract

24. (1) In addition to other student enrolment contract compliance standards prescribed under this Division, the student enrolment contract compliance standards set out in this section are prescribed for a certified institution in relation to approved programs of instruction.

24. (2) A certified institution must ensure that a student enrolment contract

> **[…]**
>
> **(c) includes the information set out in subsections (3) to (6).**

[…]

24. (4) For the purposes of subsection (2) (c), a student enrolment contract must include all of the following information in relation to programs of instruction:

> **[….]**
>
> **(f) the language in which the program will be provided;**

---

56. Changes requiring notice

56. (2) For the purposes of section 14 (1) (a) [certain changes require notice or consent] of the Act, the following classes of change are prescribed as requiring notification:

> **[…]**
>
> **(o) in relation to an approved program of instruction, a change in the language of instruction.**

Security Services Regulation – Security Services Act, B.C. Reg. 207/2008

3. Qualifications for a licence

3. (4) An applicant is qualified for a security worker licence of the type described in item 1 of the table if the applicant

> **(a) has sufficient fluency in the English language to be able to converse in English with the public while carrying out his or her duties, and**

[…]

3. (6) An applicant is qualified for a security worker licence of the type described in item 4 of the table if the applicant

> **(a) has sufficient fluency in the English language to be able to converse in English with the public while carrying out his or her duties, and**

[…]

3. (8) An applicant is qualified for a security worker licence of the type described in item 8 or 9 of the table if the applicant has sufficient fluency in the English language to converse with members of the public while carrying out his or her duties.

[…]

3. (10) An applicant is qualified for a security worker licence of the type described in item 12 of the table if the applicant

> **(a) has sufficient fluency in the English language to converse with members of the public while carrying out his or her duties, and**

[…]

3. (11) An applicant is qualified for a security worker licence of the type described in item 13 of the table if the applicant

> **(a) has sufficient fluency in the English language to converse with members of the public while carrying out his or her duties, and**

[…]

[am. B.C. Reg. 101/2009, s. 2.]