

PLANNING FOR SCHOOL BUILDING EQUITY: THE BRITISH COLUMBIA EXPERIENCE

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ABSTRACT

Under Section 23 of the Canadian Charter of Rights and Freedoms, children of parents whose first language is French are provided separate schools and promise the same educational opportunity for these schools as the English Language schools. Because the Francophone schools have been established long after the common schools for all students in the Province have been, the Council Scholaire Francophone (CSF), which is the governing body of the Francophone schools has had a struggle finding adequate school buildings. Many of the Francophone students are in either rental school facilities or school buildings that have been abandoned by the English Language schools because they were obsolete. The parents complain that because the students are in rental facilities, long range planning is not possible. Other complaints were that the schools were old and did not look attractive and were not large enough to fully implement the curriculum. These problems and concerns lead to the filing of a complaint that the students of French Language parents were being discriminated against by the Ministry of Education. The Ministry of Education employed an expert witness to examine the complaints of the parents to see if there was a valid claim that the complaints were related to educational outcomes of students. The expert witness found that none of the parental complaints were related to research indicating the complaints would influence student educational outcomes. The initial legal complaint was adjudicated in favor of the Francophone parents and was then appealed to the British Columbia Supreme Court by the Ministry of Education. The appeal has not been settled as yet, but there are serious questions raised by the suite regarding the equity of the Ministry of Education actions.

INTRODUCTION

The British Columbia Government provides a dual enrollment system of schooling to educate their children and youth. This guarantee provides for a system of common schools for all students where English is the primary language in usage. The second educational system is for students whose primary language is French. Both educational systems are governed and funded by the Ministry of Education of the Provincial Government. Under Section 23 of the Canadian Clause of Rights and Freedom, French Language schools are maintained and financed by the Ministry of Education just as all other government sponsored schools are funded. French language schools are to receive equal financing and educational opportunity

Parents whose primary language in the home is French have the option of sending their child to the Francophone schools free of charge. In all areas and regions of the British Columbia Province a Francophone school is located to serve these students. Francophone schools serve students from kindergarten through high school graduation.

COUNCIL SCHOLAIRE FRANCOPHONE

The Conseil scolaire Francophone De La Colombie-Britannique (CSF) is the governing board for all Francophone schools in the Province. The CSF serves as the administrative and fiduciary agent for these schools. It has the responsibility for not only governing the schools, but also to find suitable housing for all Francophone students. This has not been an easy task because of the manner in which the Francophone schools have come into existence after Anglophone schools have already been established. This fact causes the CSF to obtain school housing that may not be in the best interests of the school children, at least in the opinion of the CSF and CSF parents.

Capital funding of the province is structured in such a manner that the capital projects of the CSF are prioritized along with all other capital requests from all of the school districts in the entire province. The CSF forwards their requests for capital needs to the Ministry of Education along with all of the other school districts in the province. The Ministry of Education places these requests into the list of capital needs for the entire province. The CSF requests are prioritized according to the

formula utilized to provide a reasonable relief to all school districts. The prioritization of these requests is based upon an equitable response to the needs in each school district. Because of this formula for prioritizing capital projects, the CSF claimed the Ministry of Education ignored the unique needs of the Francophone schools in starting the French language school system.

One part of this inequity is that the CSF may not expropriate land for a school in spite of the fact the English language schools have that power. Additionally, the CSF claim the system for expending capital funds takes into account irrelevant factors by weighing the CSF's capital project funding needs against those of the English language schools. Further, the English language schools have the ability to benefit from surplus capacity in the schools and thereby profit from leasing vacant school buildings or even disposing of school facilities (Second Further Amended Notice of Civil Claim, British Columbia Supreme Court, p 6).

Although the distribution of capital funds are on an equitable basis of need, there can be a difference in the capital needs of an existing school district and a school entity, such as the CSF, might have in starting an educational system without school facilities. Nevertheless, the distribution of capital funds is made based upon the prioritization formula utilized by the Ministry of Education. Whatever thought that was given to the needs of an educational enterprise that is just starting operation without existing buildings did not seem equitable to the CSF.

As a result, the CSF had to obtain facilities by either purchasing abandoned school buildings or renting facilities. In the case of the abandoned school buildings, the buildings were thought obsolete for educational purposes by the English Language School Board. Some of the rented facilities have been in school buildings not in use by the public school district. In one case, the CSF school has been forced to rent space in an operating public school building. The latter have been classroom rentals in buildings where the English Language School has their operations. This situation is very unsatisfactory to the Francophone students in that the shared common core facilities are not readily available when the Francophone students need them. In addition the close association with English Language students does not bode well for a French Language school emphasis. Neither method of securing facilities has been successful according to the parents of students attending these schools. For these reasons, the CSF and CSF parents have felt they have not been treated fairly by the Ministry of Education in try to secure adequate school facilities for their children and filed suit in the courts to seek a remedy.

INITIATING A LEGAL COMPLAINT

The issue of inequity in school facilities stems from a complaint filed by Conseil scolaire Francophone De La Colombie-Britannique and the Federation Des Parents Francophones De Colombie-Britannique, and is based on Section 23 of the Canadian Charter of Rights and Freedoms. That section allows for separate schools for first language French students and that promises the same educational opportunity for the Conseil Scolaire Francophone (CSF) administered schools as the English language schools have.

Although there are school catchment areas in every part of the Providence, the parents in only 14 catchment areas schools filed legal action against the Ministry of Education claiming inequity.

The parents and the CSF initiated legal action claiming their students were housed in inadequate school buildings. The resolution of the legal action according to the parents and CSF would be for the Ministry of Education to provide more than \$286 million in funding for new schools claiming inequity in facilities housing students.

PARENTAL COMPLAINTS

As far as the legal suite, there was always the question of whether or not the parental complaints had any relationship to the educational outcomes of students. Of the total complaints (284) only 16 could conceivably be related to student educational outcomes. Close examination of these sixteen complaints, however, indicated that none of the complaints were even remotely associated with research findings that related to student educational outcomes.

For instance, one such complaint stated that the school site had an animal smell that was very distasteful. The school was located on a site next to a working farm and apparently fumes from manure and animals were carried onto the school site by wind.

Several other complaints were that the school building was not located centrally to the student population, which resulted in long bus rides for students. With the small Francophone student population spread over a large catchment area it would be natural for some students to have to ride the bus for a long period of time.

Parents also complained that the school facility housing the student body was a rented building and as a result parents and administration could not plan for future expansion of the Francophone program. Apparently the lease agreements were not long term which prevented the faculty and administration from formulating long term plans. Granted that short term leases do not facilitate long term educational program plans, there is no research to indicate that students housed in rented or leased facilities perform less well than if they were housed in facilities owned by the administration. Some parents also complained that the school signage was not prominent enough for people to see, while another complaint was that the buildings were old. Parents further complained that the school was not large enough to fully implement the curriculum. Other complaints were that there was no library space and there was no cafeteria in the school. The school is unattractive was another complaint with several schools.

INITIAL JUDGMENT

In the initial trial of this legal action, the courts sided with the parents and CSF claiming inequity and ruled that relief should be given to the parents and CSF. The judge indicated that the rights of the Francophone parents under Section 23 of the Clause of Rights and Freedom had been breached and that the Francophone students were not housed in adequate facilities. (L'Association des parents de l'école Rose-des-Vents, August 20, 2013)

In the Supreme Court of British Columbia, No. S103975 of the Vancouver Registry, paragraph 41 indicates "Right holder parents under section 23 of the *Charter* also have the right to the public funds required to ensure the Conseil's school facilities allow it to offer a standard of education equivalent to that offered and anticipated to be offered to students attending English language schools in the catchment areas of the Conseil."(p.6) The Ministry of Education appealed the case to the British Columbia Supreme Court.

THE EXPERT'S REPORT

To bolster their case, the CSF sought an expert's report on the influence educational facilities have upon student educational outcomes. The intent was to secure their position that school buildings do have an influence upon student learning and therefore inadequate school facilities were detrimental to the educational outcomes of the Francophone students. The CSF secured the services of Professor Lance Roberts at the University of Manitoba to prepare a report on the available research on the relationship between the condition of educational facilities and student educational outcomes.

The report Roberts (2013) prepared reviewed available research on the subject and concluded that the condition of the school building did in fact influence student achievement. Roberts also discussed the type of instrument utilized by researchers in assessing the condition of the school building. Roberts observed that the major problem with research on the relationship between school building condition and student achievement was the manner in which the school buildings were assessed.

He identified two different methods of assessing the condition of a school building. Roberts differentiated between the maintenance-type of instrument versus the mission-type of instrument. The former instrument measures all maintenance needs of a school building in order to help keep the building in good working condition. On the contrary, the mission-type of assessment instrument does provide the researcher with an assessment of those building elements that previous research has

indicated have an influence upon student achievement. The most important building elements or components that do influence is: complete control of the thermal environment, proper lighting, control of the acoustical environment, presence or absence of graffiti, proper furniture and equipment, and a sound building structure (Earthman, 2004).

The Roberts report was presented to the court and became part of the judiciary evidence to support the claims of the CSF and Francophone parents that the school building does influence student learning.

MINISTRY OF EDUCATION REPLY

The Ministry of Education secured an expert witness to reply to the claims of the Francophone parents and CSF. The Ministry of Education asked the expert witness to develop a report detailing the research related to a relationship between school building condition and student achievement and to then determine if the complaints of the parents had any basis of research to back up their complaint. This methodology entailed the review of numerous data sources to develop a data base on relevant research dealing with the relationship between school building condition and student achievement. Data sources such as the three clearinghouses related to school facilities – National Clearinghouse for Educational Facilities, the American Clearinghouse for Educational Facilities and the Educational Facility Clearinghouse, plus Google, EBSCO, and the Virginia Tech library were all explored to find relevant research findings.

The nature of all of the complaints was rather personal and dealt with how the school looked and did not really apply to educational attainment of students. The complaints were what parents had knowledge about, but did not address what should probably have been the main complaint about the buildings and student achievement.

The methodology used in determining if the parental complaint had standing and if the complaints were research based was a normative comparison to available research. On all complaints the experts looked for a research base to determine if the complaint had merit. When no research findings were available, the researchers provided an explanation as to this fact. Thus, the individual complaint was judged not to have a negative influence upon student educational outcomes. A report was developed on related research and then the individual complaints of the parents (284 complaints) were analyzed to determine if there was a research basis.

The report the expert witness prepared included the findings of 44 studies dealing directly with the relationship between school building condition and student achievement. The preponderance of the findings indicated a positive association between the two variables of building condition and student achievement. The conclusion of the report was that the condition of the school building does in fact influence student learning. Students in school buildings assessed as being in poor condition perform less well than students in buildings assessed as being in good condition. This conclusion supported the findings of Roberts in his report to the court.

Francophone Students Achievement

The CSF maintains a website advertising the Francophone schools, the programs offered, locations of schools, and achievement results of students attending Francophone schools. The contents of the web report the progress of students on the achievement tests who are attending these schools. The expert witness accessed the website to ascertain how well students in the Francophone school perform. According to the CSF, as indicated by their presence on the CSF website, the following statements, among others, are provided to the public.

* Students who finish their secondary studies at the CSF receive at least two diplomas and sometimes three. This is two more than a student receives in the regular Anglophone program.

* All the courses offered in the CSF administered schools are approved by the provincial Ministry of Education, by the same token as the programs offered in other schools of the province. The qualifying exams are prepared by the Ministry and are rigorously administered to the students of the CSF administered schools, which offer exactly the same programs of study as the Anglophone public schools of the province.

* However, an important point distinguishes CSF students: the grades determined by the Ministry indicate that students in the CSF are just as successful, if not more so, in the provincial exams as students in B.C. schools overall in a number of subjects, including mathematics, reading and writing.

* The graduation rate for students in the CSF administered schools is between 85 and 89 %, which is some 10 % higher than the provincial average. This means that students who finish their secondary studies at the CSF administered schools have as much chance, if not more, than students from other schools in the province, to be accepted into the university of their choice. In addition, they have ready access to Francophone universities around the world. (<http://www.csf.bc.ca/informations/foire-aux-questions/reussite-scolaire-eng/> retrieved January 13, 2014)

These statements would indicate that in spite of the complaints of the parents, students in the Francophone schools do well on their achievement tests, even though the school buildings in which these students are located do not seem to provide the kind of learning environment that parents think is suitable for their children.

QUESTIONS FOR THE COURT

The question the court had to address was the seriousness of the parent's complaints and the equity of the school facilities. But the real question seems to be the equity of the process of formulating a new school system and then housing the students in suitable facilities. How does an agency of the government go about providing adequate school facilities for a new school system within an existing school system? The question of how to house a new student body in an adequate building when none is available is the problem the court had to address.

Several questions are still not resolved. These questions center around the equity of the system used to provide the CSF with initial funds to adequately house the students. To try to establish a new school organization within an existing school system and then house it properly in any neighborhood is an extremely difficult task. Normally established neighborhoods do not have large tracts of land available upon which to place a new school building. Neither was there, in the case of the 14 catchment areas, vacant school buildings that were available to the CSF, unless the school building had been abandoned because the building was deemed obsolete. Further, buildings with a large square footage that could be converted to a school building were not readily available in established neighborhoods where students were located.

The problem is further complicated by the scarcity of students who would benefit from a Francophone school. The enrollments in the several Francophone school organizations vary greatly, but all student bodies are small. The smallest school organization serves 32 students in école de Permberton. The largest school organization, Viktor Brodeur, serves 695 students, K-12. None of the school organizations could be considered large. As result of the scarcity of French speaking children, these students have to travel long distances to the local school. In some cases students ride a school bus for over an hour. The long bus trip for students was a consistent complaint of parents.

The first question concerns the suitability of the facilities that are currently utilized by CSF to house the student population. None of the complaints actually stated that the school building was unsuitable for the education of students because of lack of thermal control, poor lighting, uncontrolled acoustical environment, unsuitable furniture and equipment, the presence of graffiti in the building and a structure that was not sound which are essential building elements necessary for successful student progress (Earthman, 2004). The complaints were of the nature of superficial complaints related to the parents being unsatisfied with the housing arrangement.

Complaints about rental facilities speak to the desire of parents and CSF to own their school. Somehow renting a school facility is deemed less desirable than owning the building in which the students are housed. There may be something to that argument, but the complaints do not relate to student educational outcomes. In fact, the CSF states on their web site that the Francophone students perform better on the provincial academic assessment than do students in the English Language schools. This fact cannot be used as evidence that the facilities utilized to house the Francophone students are not suitable for them. Apparently the facilities in which the students are housed do not hinder them in their educational outcomes.

Although there are some alternative ways to housing student populations in the absence of standard brick and mortar school buildings, none seemed to be employed by the CSF for whatever reason. Conversion of existing commercial buildings to school use is one such alternative. This alternative has been quite successful in other localities, such as the school district of Philadelphia (Philadelphia Public Schools, 1970). In all probability, there also may not have been any suitable buildings for educational conversion in the fourteen catchment areas of the Francophone Schools when they were initially established. Some of the Francophone schools in the 14 catchment areas were located in rural areas and there were no facilities that could be converted satisfactorily to educational purposes. In one catchment area the Francophone school had to rent facilities in an operating English language school. The school rented six classrooms and jointly used the support facilities. This arrangement proved unsatisfactory for the Francophone school.

The second major question centers on the method of acquiring suitable student housing. As stated earlier, there are normally no vacant school buildings in the community that can be used by the CSF to house a student body. Neither were there vacant commercial or religious buildings that can be easily converted to educational spaces. There were few options available to the CSF to properly house the Francophone students in all of the regions of the Providence.

Questions for the Court

The legal action and subsequent court decisions had to address the complaints of the Plaintiffs, but the court also had to address other questions. These questions concerned how to provide equitable, but separate, school facilities for a minority population of students within the frame work of an existing school system.

1. How does an agency of the government establish equity in the allocation of capital funds?
2. What are the rules for establishing a new school system within the bounds of existing educational organizations?
3. What should be the basis of equitable treatment when a new school system is organized?
4. How could the Ministry of Education have provided equality to both the Francophone and Anglophone Schools with limited resources in this situation?
5. Is there a way now to ameliorate the situation without the vast expenditure of funds requested by the CSF?

On September 26, 2016, the Supreme Court of British Columbia handed down its decision in this case. The most important court decisions that were handed down were the following:

The CSF has the jurisdiction pursuant to s. 23 of the Charter to establish a secondary school programme (for children age 14-17) in Whistler with heterogeneous instructional space for about 30 students (Conseil-scolaire francophone de la Colombie-Britannique v. British Columbia (Education) Page 1588).

Ecole Elementarie du Pacifique does not allow the CSF to offer a global educational experience that is equivalent to that in smaller elementary schools in SD-Sunshine Coast and proportionate to the facilities in larger comparator schools (Conseil-scolaire francophone de la Columbia-Britannique v. British Columbia (Education) Page 1587).

The Ministry's policy freezing CSF lease funding at 2014/14 levels is contrary to s. 23 of the Charter, and therefore of no force and effect (Page 1590).

The Ministry's policy of not funding Expansion Projects and evaluating the CSF's request for capital projects against those of Majority School Boards with greater capital resources than the CSF unjustifiably infringes s. 23 of the charter (Page 1590)

The Ministry's failure to collect information regarding the potential demand for minority language education in British Colombia.....constitutes an unjustifiable violation of s. 23 of the Charter (Page 1590).

To rectify the above abuses, the court requested the Ministry of Education to “create a long-term, rolling Capital Envelope to provide the CSF with secure funding to address its need for capital projects across the Province.” Page 1591)

The Ministry must also create policy or enact legislation to either resolve or ensure the Ministry’s active participation in the resilient of issues concerning the CSF’s need for space and the types of disputes that arise between the CSF and majority school boards (Page 1591)

Regarding the first decision about the authority to establish new Francophone schools, two other areas were designated for new schools. The second decision addressed the need for expanded existing schools. Seven other individual schools were named to be in such a condition. This meant that these schools would have to either find new locations other than what they now have or improve or enlarge the exist facilities of these school organizations.

The next three decisions relate to policies of the Ministry of Education. The Ministry previously apparently had a hands-off policy regarding the negotiation and approval of rental agreements. Now the Ministry must assist the CSF in such arrangements and must also provide assistance in resolving problems between the CSF and the local school board. Also the freezing of rental funds was declared unequal and the Ministry must cease doing this.

One important decision is that the Ministry can no longer evaluate the request of the CSF for capital project funding the same way that it does for the Majority schools. This is important for the CSF because their capital project funding needs are not exactly the same as those of the Majority schools, where the local school board has powers to acquiring sites and expanding their facilities that the CSF does not have.

Like most court decisions regarding school facilities, there is never an absolute winner. In most cases each party secured something, but not everything requested. The CSF initially requested a payment of \$286 million to provide new facilities for each of the 14 catchment areas in the legal action. This was not granted, so the Ministry was saved from addressing this sizeable financial demand on the Province. The CSF, on the other hand, did secure some financial assistance in providing more equitable school facilities and a secure stream of funding from the Ministry. The court stated the Ministry needs to establish a rolling Expansion Envelope to provide the CSF with a more secure funding stream. Lastly, the CSF received the assurance that the Ministry would be more proactive in its relations with the CSF in helping them secure rental agreements and in solving problems with the local school boards. Perhaps the most important request of the court is that the needs of the CSF would not be evaluated in the same manner as the Majority Schools.

Whether or not the decisions of the court will satisfy all of the wants and needs of both parties, only time will determine. Starting a new educational organization after one has already been established is a very unique problem for educators. How does one governmental agency provide parity to both parties with limited resources without disadvantaging either party is the question that educators confronted in this situation?

It is mere speculation to state that there might have been some bias in the policies of the Ministry of Education. If there was any bias, the court decision in some fashion tried to compensate for that. There might also be the belief that the Ministry did not have any prior experience in dealing with a separate educational organization and did not account for that in their policies and dealing with the CSF.

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