



May 8, 2015

The Honourable Peter Fassbender  
Minister of Education  
PO Box 9045 Stn Prov Govt  
Victoria, BC V8W 9E2

**Re: The Conseil scolaire francophone de la Colombie-Britannique's interest and position vis-à-vis the Education Statutes Amendment Act, 2015**

Dear Minister Fassbender:

The Conseil scolaire francophone de la Colombie-Britannique ("CSF") has followed the introduction of Bill 11, the *Education Statutes Amendment Act, 2015* ("Bill 11") and debate at second reading, with great interest. As British Columbia's only French-language school district, mandated with implementing the constitutional promise of minority official language education enshrined in section 23 of the *Canadian Charter of Rights and Freedoms* ("Charter"), the CSF has a particular interest in participating in any legislative debate that might alter the statutory balance struck between the Ministry of Education and the CSF in managing British Columbia's French-language education system.

Bill 11 represents the most significant changes to British Columbia's education system since the implementation of your government's New Era commitments following the 2001 election. While British Columbia has long operated with a system of delegated management of education-related matters by local school districts, the implementation of your government's New Era commitments saw school districts gain greater autonomy over the management of their affairs.

While this trend towards greater independence was a novel policy initiative for British-Columbia's 59 English-language school districts, it was certainly in keeping with your government's constitutional obligations towards the CSF, which has been invested with the constitutional authority to manage and control British Columbia's French-language education system. The CSF's power of management and control is intrinsically linked to its mission of turning the tide of the assimilation of British Columbia's French-language community. As the Supreme Court of Canada held in *Mahé v Alberta*, the French-language community must hold the ability to manage and control the French-language education system, which "is necessary because a variety of management issues in education, e.g. curricula, hiring, expenditures, can affect linguistic and cultural concerns."<sup>1</sup>

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<sup>1</sup> *Mahé v Alberta*, [1990] 1 SCR 342 at p 372.

**Bill 11 should be amended as many proposed provisions ought not to apply to the CSF; in any event, the CSF wishes to remind you that the implementation of Bill 11 must balance the respective roles of the Ministry of Education and the CSF in delivering French-language education**

Bill 11 proposes several modifications to the *School Act* and the *Teachers Act* that would return a measure of discretion to your Ministry and to Cabinet with regard to the management and control of British Columbia's K-12 education system. In particular, this renewed authority arises through your increased capacity to issue and enforce administrative directives, to designate service providers, to enforce the recommendations of special advisers, to manage school district property, and to set standards for teacher training. While the CSF understands from your closing speech at second reading (on May 7, 2015) that your government's intent is to increase flexibility in British Columbia's public education sector, it is apparent from the wording of the bill that some of this flexibility will come at the cost of the autonomy your government implemented with its New Era reforms in 2002.

As the Supreme Court of Canada recognized many years ago in *Arsenault Cameron v Prince Edward Island*, the delivery of constitutionally guaranteed minority official language education is a shared enterprise, with complementary roles for both your Ministry and the CSF. As the Court held in that case,

“[w]here a minority language board has been established in furtherance of s. 23, it is up to the board, as it represents the minority official language community, to decide what is more appropriate from a cultural and linguistic perspective. The principal role of the Minister is to develop institutional structures and specific regulations and policies to deal with the unique blend of linguistic dynamics that has developed in the province.”<sup>2</sup>

Part 8.1 of the *School Act* is the most important “institutional structure” that the province has established in fulfilment of its role under section 23 of the *Charter*; as such, any changes to those provisions, or to the *School Act* as a whole, are of great importance to British Columbia's French-language community.

The Court also held that, in fulfilling its part of the relationship described above, “[t]he province has a legitimate interest in the content and qualitative standards of educational programs for the official language communities and it can impose appropriate programs in so far as they do not interfere with the legitimate linguistic and cultural concerns of the minority.”<sup>3</sup> Given the unique balance between your Ministry and the CSF as a minority language school board, the amendments you have proposed to the *School Act*, which do not take the CSF's unique circumstances into account, ought not apply to the CSF. The CSF requests that Bill 11 be amended accordingly.

In any event, the new powers that would be granted to the Minister and to Cabinet by Bill 11 can only be exercised with due consideration to the unique nature and distinct needs of the CSF and the community it serves. This basic principle was central to the Supreme Court of Canada's decision in *Arsenault-Cameron v Prince Edward Island*, where the Court held that:

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<sup>2</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 43.

<sup>3</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 53.

- a. “When the Minister exercises his discretion [...] his discretion is limited by the remedial aspect of s. 23, the specific needs of the minority language community and the exclusive right of representatives of the minority to the management of minority language instruction and facilities.”<sup>4</sup>
- b. “[The provincial government’s] discretion is however subject to the positive obligation on government to alter or develop “major institutional structures” to effectively ensure the provision of minority language instruction and facilities and parental control on the scale warranted by the relevant number of children of the minority”.<sup>5</sup>

In your closing speech at second reading, you indicated your government’s willingness to work with school districts by not mandating that boards enter into shared services or alternative service delivery agreements with other boards or other public sector entities. The CSF expects that the same careful approach will be taken to the CSF’s unique and distinct needs.

***The new powers proposed to be provided to the Ministry under Bill 11 should be used to remove limits on the CSF’s growth resulting from the conduct of English-language school districts***

The CSF wishes to commend your government on its decision to increase the binding force of your Ministry’s administrative directors and the recommendations of Special Advisers, vis-à-vis English-language school boards. As you are aware, the CSF is often at the mercy of these school districts, whether in its quest for sites for new and replacement schools, or in its status as a tenant in otherwise vacant space in particular English-language school districts, for the time it is available.

In your closing speech at second reading, you recognized that in British Columbia’s K to 12 education sector, one size cannot fit all. You cited this reality as one of the bases for the measures in Bill 11, such that geographic differences and local community initiatives can be taken into account. The changes made by Bill 11 will also present your Ministry with further mechanisms to take the CSF’s unique circumstances and needs into account.

After many long years, the CSF is of the view that these additions to the *School Act* provide a starting point for establishing the much needed “process or mechanism that will insure both a successful start-up and the long term sustainability for Francophone education programs”,<sup>6</sup> which were called for by Mr. Justice Vickers in his 1998 decision in *Association des parents francophones de la Colombie-Britannique v British Columbia*.

Nearly 17 years after Mr. Justice Vickers’ 1998 decision, the CSF remains in its start-up phase. The dependence of the CSF on English-language school boards lies at the heart of many of the issues raised in the comprehensive action the CSF has brought against your government alongside the Fédération des parents francophones de la Colombie-Britannique, and others. As the Supreme Court of Canada held last

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<sup>4</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 44.

<sup>5</sup> *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 52.

<sup>6</sup> *Association des parents francophones de la Colombie-Britannique v British Columbia* (1998), 167 DLR (4th) 534 at para 52 (BCSC).

week in its decision in *Association des parents de l'école Rose-des-vents et al v British Columbia (Minister of Education)*, "[l]eft neglected, the right to minority language education could be lost altogether in a given community. Thus, there is a critical need both for vigilant implementation of s. 23 rights, and for timely compliance in remedying violations."<sup>7</sup> Accordingly, these measures are a welcome, if overdue, change to the *School Act*.

In addition, the increased scope and enforceability of administrative directives could assist the CSF in situations where it is forced to lease educational space from English-language school boards, both with regards to the terms of the leasing arrangement and the amount charged as rent to the province by English-language school boards.

Currently, the CSF operates educational programs in space leased from eleven English-language school districts. These lease-based programs house a total of 1,217 (23%) of the CSF's students. As you are no doubt aware, there have been considerable difficulties with a number of these leasing arrangements, not the least of which have to do with the cost of these leases. In fact, the cost of these leases recently led your Ministry to issue a freeze on the funding that would be provided to the CSF to lease space from English-language school districts.

By the end of the 2017/2018 school year the CSF will have had to negotiate new leases with all of its "landlord" English-language school districts. If the *status quo* is maintained, the CSF expects increases in the amount of its rents, across the board. This is a challenge that could be avoided through the proper use of the Ministry's proposed new power to issue administrative directives to school districts.

Bill 11, in proposing to amend subsection 74(1) of the *School Act*, which would make the capacity of English-language school districts to manage their property subject to your orders, also has the potential to provide great assistance in the CSF's search for sites on which to construct French-language schools. While the CSF was able to identify a number of sites for the construction of such schools in the 2013 and 2014 Project Identification Reports it submitted to your Ministry, there are some areas of the province in which the most advantageous sites are owned by English-language school districts, who refuse to dispose of these sites to the CSF. In some areas, it appears the only available sites may be held by English-language school districts.

For instance, the CSF has long been seeking a newly constructed French-language elementary school in Vancouver, east of Main Street and north of 33<sup>rd</sup> Avenue. This new school would relieve serious overcrowding at École élémentaire Anne-Hébert, which has an operating capacity of 244 students (76K + 168E), with 8 portables located on site. There are currently 393 K-6 students enrolled at École élémentaire Anne-Hébert (161% of operating capacity), and the CSF projects that at least 415 students (170% of operating capacity) will be enrolled for the 2015/2016 school year.

The CSF has, to this point, been unable to identify a site for sale and on which it could construct such a new school in Vancouver, east of Main Street and north of 33<sup>rd</sup> Avenue to relieve the serious overcrowding at École élémentaire Anne-Hébert. In the meantime, the CSF understands that vacancies in schools of the

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<sup>7</sup> *Association des parents de l'école Rose-des-vents et al v British Columbia (Minister of Education)*, 2015 SCC 21 at para 28.

Vancouver Board of Education have risen to 9,000 students. The CSF understands that most of the Vancouver Board of Education's empty seats are located east of Main Street.

There are currently 393 students enrolled at École élémentaire Anne-Hébert, a K-6 school serving all of Vancouver, east of Main Street, as well as western Burnaby and western New Westminster. The transfer to the CSF of any of a number of school properties presently owned by the Vancouver Board of Education, pursuant to your new power to make orders under subsection 74(1) of the *School Act*, would finally provide the CSF with a site on which to construct a new French-language K-6 school to help accommodate the over-population at École élémentaire Anne-Hébert.

Additionally, your Ministry's new powers under Bill 11 should be exercised without delay once this legislation is enacted in order to remedy the inadequacies declared by the Supreme Court of British Columbia, and confirmed by the Supreme Court of Canada, in Vancouver, west of Main Street. On April 24, 2015, the Supreme Court of Canada confirmed the declaration issued in *Association des parents de l'école Rose-des-vents et al v British Columbia (Education)*, where the court held that: "[a]s this Court noted in *Doucet-Boudreau*, "[f]or every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation", which undermines the remedial goals of s. 23 (para 29). The situation is urgent."<sup>8</sup>

***The CSF is disappointed that Bill 11 has not been referred to the Select Standing Committee on Education***

The changes that your government has brought forward to the *School Act* are of great importance. The CSF is eager to participate in this debate. As such, the CSF is disappointed that your government did not support the motion to refer Bill 11 to the Select Standing Committee on Education, which would have provided the greater education sector with an opportunity to weigh in on the bill, its contents, and required amendments before the bill receives third reading and Royal Assent prior to the end of this legislative session.

The CSF understands, based on your closing speech at second reading, that the eventual passage of Bill 11 will be followed by "a robust consultation process on all of the elements that are in the bill." The CSF looks forward to taking part in that consultation process at the earliest opportunity.

Sincerely,



Roger Hébert  
President

cc: Bertrand Dupain, Superintendent of Schools, Conseil scolaire francophone  
Shanna Mason, Assistant Deputy Minister, Ministry of Education  
Joel Palmer, Executive Director, Capital Planning Branch, Ministry of Education

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<sup>8</sup> *Association des parents de l'école Rose-des-vents v British Columbia (Education)*, 2015 SCC 21 at para 68.