

ADMINISTRATIVE DIRECTIVE 301

RATIONALE FOR THE POLICY ON ADMISSIONS

INTRODUCTION/PREAMBLE

The objective of Article 23 of the *Canadian Charter of Rights and Freedoms*;

The specific purpose of Article 23 of the *Charter* is to promote linguistic duality in Canada by guaranteeing official language minorities of Canada the right to primary and secondary instruction of their children in the language of the linguistic minority. Although Article 23 involves an individual right, the ultimate beneficiary of the Article is the minority official language community. Article 23 also includes a restorative element for the "wrongs of the past" when instruction in French was prohibited, thereby bringing about the assimilation of individuals and the decrease in vitality of the minority official language community.

Article 23 of the *Charter* grants parents or their representatives the right of governance in matters of education in French. The *Conseil scolaire Centre-Est* (hereinafter referred to as "CSCE") was established for this reason. One of the elements of management granted by Article 23 is the authority for CSCE to admit students in its schools. The restorative element of Article 23 authorizes CSCE to admit students who do not fit into the three categories that guarantee admission to a francophone school. This same authority also permits the admission of students at the levels of day care, preschool (ages 3 and 4) and kindergarten (age 5).

GENERAL GUIDELINES

1. CSCE can permit the admission of a child from the following categories:
 - 1.1 Francophone ancestry;
 - 1.2 The parent is a francophone immigrant or an immigrant who speaks neither French nor English; and,
 - 1.3 The parents are anglophone but wish to integrate the francophone minority community.
2. CSCE can permit the admission of a child from a category other than the three that guarantee admission as per Article 23, provided that this:
 - 2.1 Promotes the advancement of instruction of French as a first language;
 - 2.2 Helps further the growth and development of the minority language community; and,
 - 2.3 Does not threaten the survival of the majority language of the province.

3. The rights of the provincial government with regards to admission to a francophone school

Two factors would allow a provincial government to impose limits on the CSCE's rights to permit the admission of individuals who fall outside of the three categories expressed in Article 23. The first is that CSCE cannot transform a francophone school into an immersion school. The second is that CSCE cannot give permission for admission to individuals if this threatens the majority language of the province (Solski Decision, Supreme Court of Canada, 2005).

4. Factors to consider before giving permission for admission to a student who falls outside of the three categories articulated in Article 23

Permission for admission to a francophone school must take into consideration the best interests of the child, the classroom, the school and the francophone community. The following are the pertinent factors:

1. The well-being of the child;
2. The child's status of residency in Canada;
3. The child's competency in communicating in French;
4. The parents' competency in communicating in French;
5. The impact on the child and his/her siblings if unable to attend a francophone school;
6. Family support for linguistic and cultural learning;
7. Commitment of the parents with regard to instruction in French;
8. Commitment of the parents and child with respect to the francophone community;
9. Educational, cultural and linguistic impacts to the classroom and the school;
10. Growth and development of the francophone community;
11. The advancement of instruction in French as a first language;
12. The number of years since the school was established;
13. Availability of resources in francisation and cultural integration;
14. The linguistic and cultural challenges already present in the classroom and the school;
15. The percentage of exogamous couples whose children already attend the school;
16. Historical problems faced in obtaining a francophone school in the community;
17. The demographics of the francophone community;
18. Principles of equity, transparency and objectivity.

5. Definition of primary level

The inclusion of early childhood levels within CSCE favours refrancisation, recruitment and retention. The policy on admission must thereby consider this aspect. For this reason, CSCE defines the primary level to include preschool (3), preschool (4) and kindergarten.

The admission of students from outside the three categories of Article 23 ensures that the generations lost through assimilation are recovered. It also ensures that immigrants and anglophone parents who choose to integrate the francophone community are welcomed. It guarantees that instruction in French as a first language reflects Canada's multicultural diversity. It also guards against the loss of students due to assimilation and decrease in the birth rate.

THE RIGHT TO ADMISSION

1. Article 23 of the *Charter*

Article 23 guarantees admission to a francophone school to the children of the following three categories of Canadian citizens:

- 1.1 A parent whose first language learned and still understood is that of the francophone minority;
- 1.2 A parent who received primary level instruction in French in Canada; and,
- 1.3 The siblings of a child who received instruction at the primary or secondary levels in French in Canada.

2. Description of the three categories that guarantee admission as per Article 23

Category 1 – First language learned and still understood (Art. 23 (1) a))

The first category includes all persons responsible for raising the child. These can be the biological parent, a parent in a blended family, a grandparent or other member of the family who is responsible for the child. (See Article 2, "guardian", Education Act 1995.)

"First language learned" can include one parent who learned French concurrently with English or another language. This is often the case for exogamous couples or for new Canadians. Children of exogamous couples often learn French and English simultaneously, as first languages learned. The definition of "first language learned" must therefore encompass all these examples.

One parent must still understand French. There are many levels in the comprehension of a language, from basic knowledge to superior levels. The parent may understand oral French or written French. It is not required that the parent be able to speak French. A simple test will determine whether French is one of the first languages learned and still understood. Because of the restorative element included in Article 23, it is not required that there be a

high level of competency in French as a first language learned or a high level of oral or written comprehension.

Category 2 — A Canadian parent who received instruction at the primary level in French in Canada (Art.23 (1) b))

The term "primary" is not defined in Article 23 of the *Charter*. As an element of management, CSCE defines "primary level" to include preschool (3), preschool (4) and kindergarten. It is sufficient that one of the parents received at least part of their instruction in French at the primary level in Canada, in a public school, a private school or at home.

Normally, "instruction in French" would exclude instruction in a French immersion school (see Article 1, French First Language Education Regulations R-166-96, as amended). However, in certain situations, this will satisfy the criteria of primary level in French as a first language when circumstances show that no French as a first language school was available or that a bilingual school served the francophone community at that time.

It is not required that the parents received all their primary level instruction in French in Canada. Keeping the restorative element of Article 23 in mind, all the reasons that a parent would not have received the whole of their instruction at the primary level in French must be taken into account. Did the family move? Was there no primary level francophone school available for each year of their schooling? Did the parents transfer to an immersion school or an English-language school for valid reasons? Are there genuine links to the francophone community?

This category requires that instruction at the primary level in French be received in Canada. It must therefore be determined where the instruction at the primary level was received. Because Article 23 has a restorative element, the regulations should include permission for admission for those children whose Canadian parents received their instruction at the primary level outside of Canada.

Category 3 – A Canadian parent who has one child who received or is receiving his/her instruction at the primary or secondary level in French in Canada (Art. 23 (2))

The aim of this third category is to ensure the linguistic continuity of the child and the family and to recognize the right to mobility everywhere in Canada.

Taking the restorative element of Article 23 into consideration, it is not required that this child has received his/her instruction in French during all primary or secondary levels. It is also not necessary that the child received the major part of his/her instruction in a French school. The siblings of a child who is receiving or has received his/her instruction at the

primary or secondary levels in French can be biological, from a blended family or a child who was taken into care.

The whole of the child's situation must be considered, including the following factors:

- 1.1. The time spent in each program;
- 1.2. The stage of the child's education at which the choice of language of instruction was made;
- 1.3. The programs presently being offered or that were on offer at the time the choice was made;
- 1.4. The presence of learning disabilities; and
- 1.5. Other difficulties present for the child and/or the family.

The relevance of each factor varies according to the facts of each case. The situation and the educational experience of the child in question can also bring other factors to light. That the child is or was legally registered at a francophone school must also be taken into account.

The objective is to make a qualitative evaluation of the child's circumstances in addition to making a quantitative evaluation of the time spent in instruction in French. It must be determined that there is genuine proof of commitment to instruction in French, and if so, admission could be granted. (Solski Decision, Supreme Court of Canada, 2005.) It is not required that the child be part of the minority community.

PERMISSION FOR ADMISSION

One of the elements of governance is to grant admission to persons from outside the three categories that guarantee admission as per Article 23. The restorative element of Article 23 is also reflected here. Therefore, the persons in the following categories may request permission for admission of their children to CSCE:

Francophone ancestry category:

1. Canadian parents must be able to prove that they have a Canadian francophone ancestor.
2. The aim is to recover the francophone generations lost by assimilation since 1867, thus recognizing the restorative element of Article 23.

Immigrant category:

1. Non-Canadian parents who reside in the province and who speak French, or speak neither English nor French, and choose to integrate the francophone community may also request admission for their children.
2. The object is to integrate non-Canadian citizens to the francophone community, thereby ensuring the vitality of the community and its multicultural diversity within the linguistic duality.

Anglophone category:

1. Anglophone parents who choose to integrate the francophone community may request admission for their children.
2. The aim is to integrate the few anglophone parents who choose the francophone community. This situation may arise when the only school available to them in their neighbourhood or their town is the francophone school.
3. This situation may be the case of parents who speak French without it being their first language learned, and did not receive instruction at the primary or secondary levels in French as a first language in Canada, but for valid reasons, choose to integrate the francophone community. Such a request sometimes comes from parents who studied at an immersion school or learned French by other means, such as at the postsecondary level, or by having worked in a francophone country.
4. Such a request can also be made by anglophone parents whose child participates in a francisation program in a French-language school at the level of day care, of preschool (3) and preschool (4). The child must be functional in French before being admitted to kindergarten.
5. CSCE may receive a request for admission when anglophone parents wish to transfer their child to a francophone school from an immersion school. The parents and child must undertake to integrate the francophone community and meet the other requirements required by the regulations.
6. The number of students in this category must not exceed the established target of 10% of the total population (preschool to Grade 12) of the school. This is key for the linguistic and cultural integrity of the French-language school and to ensure that it does not become an immersion school.
7. In order to grant permission for admission, CSCE must consider several factors to determine if the parent will have sufficient links to the francophone community.

Summary of the reasons for giving permission for admission

In order to decide to grant permission for admission to a child whose parent falls within the three categories mentioned above, CSCE must consider both the quantitative and qualitative elements in their evaluation of the links existing between the child and the francophone community. The following is a summary of reasons to grant permission for admission:

- 1.1. Admission is consistent with the mission of the francophone school;
- 1.2. Admission conforms with the growth and development of the francophone community;
- 1.3. Admission does not threaten the survival of the majority provincial language; and
- 1.4. Admission is in the best interest of the family and the child.