



Final Report

REVIEW OF THE MINISTERIAL DIRECTIVE – ENROLMENT OF STUDENTS IN FRENCH FIRST LANGUAGE EDUCATION PROGRAMS

June 30, 2016

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INTRODUCTION

Two public schools currently offer French first language education in the NWT under the Commission scolaire francophone des Territoires du Nord-Ouest (CSFTNO) [Francophone School Board of the Northwest Territories]. They are École Allain St-Cyr in Yellowknife and École Boréale in Hay River.

In 2008, the Minister of Education, Culture and Employment (Minister) implemented the *Ministerial Directive – Enrolment of Students in French First Language Education* (Directive). The Directive was designed to regulate the enrolment of students who do not have the right to minority language education under section 23 of the *Canadian Charter of Rights and Freedoms*. This group is referred throughout this review as “non-rights holders”.

During the second session of the 18th Legislative Assembly, the Minister announced that he had directed the Department of Education, Culture and Employment (ECE) to review the Directive and advise if any changes should be considered. The Minister indicated that effort would be made to complete the review by the end of the 2015-16 school year.

This report outlines the review process, provides a summary of the information gathered, an analysis of that information, and concludes with a list of recommendations to the Minister.

BACKGROUND

Canadian Charter of Rights and Freedoms

The requirement for French language education in the Northwest Territories stems from the *Canadian Charter of Rights and Freedoms*. Section 23 of the *Charter* establishes specific rights for minority language education in Canada.

23.(1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

The following interpretation of section 23 was provided by the Government of Canada.¹

This section of the Charter requires provincial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speak that language.

¹ Government of Canada, "Section 23 - Minority Language Educational Rights," July 30, 2013, <http://www.pch.gc.ca/eng/1356640308088/1356640399461>.

In nine provinces and in the Yukon and the Northwest Territories, most people speak English. In these areas, Canadian citizens have the right to have their children educated in French if any of the following three situations apply:

- *Their first language is French,*
- *They received their own primary education in Canada in French, or*
- *They have a child who has received or is receiving his or her education in French in Canada.*

In all cases, the right to receive an education in a minority language applies only when there is a sufficient number of eligible children to justify providing schooling in that language. Where those numbers do exist, governments must provide the necessary facilities.

French First Language Education in the NWT

Two public schools currently offer French first language education in the NWT under CSFTNO. French language education has been provided in Yellowknife since 1989 and began in modular classrooms adjacent to École J.H. Sissons School. École Allain St-Cyr was then built in 1999 and was planned as a phased construction project. French language education has been provided in Hay River since 1998 and was originally housed within Harry Camsell School. École Boréale was then built in 2005 to take over French first language education.

Ministerial Directive – Enrolment of Students in French First Language Education Programs

Prior to issuing the Directive regulating the enrolment of non-Rights Holders in 2008, the CSFTNO allowed non-rights holders to be enrolled in their schools in accordance with a CSFTNO admissions policy. The Directive, as set out below, has been in effect since July 7, 2008 and limits enrolment eligibility.²

Subsection 7(1)(u) of the Commission Scolaire Francophone, Territoires du Nord-Ouest Regulations provides that the Commission scolaire francophone, Territoires du Nord-Ouest shall, for the program of French first language instruction in the education districts within its jurisdiction, follow the directions of the Minister.

After careful consideration of issues that have arisen with respect to the enrolment of students in French first language education programs in the Northwest Territories, I hereby provide the following directive pursuant to my authority under the Education Act and subsection 7(1) of the Commission Scolaire Francophone, Territoires du Nord-Ouest Regulations.

- (1) Except as provided in paragraph (2), no new student shall be enrolled in a French first language education program unless the Commission scolaire francophone, Territoires*

² Government of the Northwest Territories, “Ministerial Directive – Enrolment of Students in French First Language Education Programs,” *Department of Education, Culture and Employment*, July 7, 2008, https://www.ece.gov.nt.ca/files/publications/directives/enrolment_of_students_-_ffl_08.pdf.

du Nord-Ouest (Commission scolaire) has verified that he or she is entitled to attend the education program under section 23 of the Canadian Charter of Rights and Freedoms.

For greater clarity, a new student shall not be enrolled in a French first language education program if:

- (a) he or she is of francophone descent but unable to substantiate an entitlement to a French first language education under section 23 of the Charter of Rights and Freedoms; or*
- (b) he or she is not a Canadian citizen.*

- (2) The Minister may approve the enrolment of a student who is not entitled to attend the education program under section 23 of the Canadian Charter of Rights and Freedoms.*
- (3) The Commission scolaire must verify the eligibility of each new student to enroll in a French first language program must document its verification of eligibility process and maintain documentation submitted by a student's parent or guardian to prove eligibility. Student eligibility information shall be provided to the Department of Education, Culture and Employment within a reasonable time upon request.*
- (4) The Commission scolaire must provide the Department of Education, Culture and Employment with a written copy of the verification procedure used to verify eligibility of students to be enrolled in a French first language education program.*

Court Challenges and Rulings

In 2011, the CSFTNO and the Association des parents ayants droit de Yellowknife (APADY) [Association of rights holder Parents of Yellowknife] brought suit against the Government of the Northwest Territories (GNWT) on the grounds that (1) they had insufficient facilities and (2) they should be allowed to apply their own enrolment policy.

In 2012, the NWT Supreme Court declared the Directive to be unconstitutional. The GNWT appealed the 2012 decision of the NWT Supreme Court. On January 9, 2015, the NWT Court of Appeal released its decision, upholding the GNWT's right to limit enrolment in a French language school to rights holders as determined by section 23 of the *Charter*.

The CSFTNO and APADY sought leave to appeal the NWT Court of Appeal ruling to the Supreme Court of Canada. On October 29, 2015, the Supreme Court of Canada dismissed the application for leave to appeal without costs. This effectively ended the appeals process and affirmed the previous ruling of the NWT Court of Appeal.

REVIEW APPROACH

The review takes a policy evaluation approach, the stages of which are outlined below.

Gather Information

Recommended changes to the Directive were informed by the following information sources.

Legal Review

This included an examination of relevant legislation and case law. Sources included the *Canadian Charter of Rights and Freedoms*, NWT *Education Act*, education regulations, NWT Supreme Court ruling, NWT Court of Appeal ruling and legal rulings from other jurisdictions within Canada.

Jurisdictional Scan

This scan identified French first language school admission policies across Canada in order to develop an understanding of how minority language education obligations under the *Canadian Charter of Rights and Freedoms* have been interpreted under various political, social and demographic circumstances.

GNWT Policies

Additional GNWT policies were examined to determine consistency with the Directive. Particular attention was paid to policies around education and language.

Stakeholder Input

Records of past engagements were examined and additional input came from a series of recent meetings and online submissions.

Evaluate the Directive

The Directive was then evaluated based on four factors that represent the main constraints on its implementation, including technical feasibility, political viability, economic and financial possibility and administrative operability.

Technical Feasibility

This factor considers whether changes to the Directive can reasonably be achieved, as well the impact any changes may have on the overarching goal of the Directive.

Economic and Financial Impacts

This factor considers the direct and indirect costs associated with the Directive and any potential changes. This includes costs to the GNWT and other parties, such as Education Authorities.

Political Viability

This factor considers the impact an option will have on relevant stakeholders, such as ECE, Education Authorities, school administrators and NWT residents.

Administrative operability

This factor explores how possible it will be to actually implement the directive within the political, social, legal and administrative contexts.

Make Recommendations

The review concludes with a series of recommendations to the Minister. It is for the Minister to decide how to proceed in response to the review, including the timeline for any changes that may be required.

INFORMATION GATHERING

Legal Review

Section 23 of the *Canadian Charter of Rights and Freedoms* establishes specific rights for minority language education in Canada. In the case of the NWT, minority language education refers to the French first language education programs offered by the CSFTNO.

The first two subsections of section 23 set out the groups or individuals who are entitled to French first language education in the NWT: Canadian citizens who are 1) the children of parents whose first language learned and still understood is French, or who received their primary school instruction in Canada in French; and 2) the siblings of any child who has received primary or secondary school instruction in Canada. The third subsection sets out the scope of the protected rights. The rights apply only where the “numbers warrant” providing minority language education at public expense. The “numbers” refers to those citizens included as rights holders in the first two subsections.

In *Northwest Territories (Attorney General) v Commission scolaire francophone, Territoires du Nord-Ouest*, 2015 NWTCA 1, the Northwest Territories Court of Appeal (NWTCA) considered the question of the government’s scope of discretion for admissions to French first language schools. In its decision, the court found that section 23 of the *Charter* does not give authority to the CSFTNO to control admissions to French first language schools and does not provide the right to admit non-rights holders. An application for leave to appeal the NWTCA decision to the Supreme Court of Canada (SCC) was denied.

Soon after the NWTCA decision was released, the SCC released its decision in a similar case from the Yukon, *Yukon Francophone School Board v Yukon (Attorney General)* [2015] 2 S.C.R., which looked at whether a minority language school board has the ability to unilaterally decide to admit students who are not covered by section 23 of the *Charter*. The SCC upheld the Yukon Court of Appeal’s decision which found that a minority school board cannot unilaterally decide whom to admit to its schools. The court clarified that a province or territory could choose to delegate the function of setting admission criteria for children of non-rights holders to a school board and that this delegation could include granting wide discretion to admit the children of non-rights holders.

As a result of these decisions, it is clearly within the GNWT’s discretion to delegate the authority to admit non-rights holders to the minority language schools; however, the GNWT may impose limits on any potential delegation. As government has an obligation to provide minority language education from public funds where the numbers warrant, the GNWT must ensure that admission of non-rights holders to French first language schools does not have an adverse effect on their essential francophone character.

Jurisdictional Scan

In order to better understand how other jurisdictions across Canada meet the requirements of section 23, information on the governance structure and admission policies surrounding French first language schools across Canada has been reviewed. This jurisdictional scan included only publicly available information. The information provided in this report includes an overview of how other jurisdictions manage admissions (Table 1) and a selection of notable findings from the jurisdictional scan.

The governance of French first language schools across Canada has been broadly similar. All jurisdictions maintain a consistent interpretation of section 23, including the definition of rights holder eligible for admission to French first language schools. Most jurisdictions also allow for the admission of non-rights holders when:

1. The right to a minority education has been considered to have been violated in the past; or
2. Children have grandparents who are rights holders.

Authority to make the decision to admit non-rights holders is most often granted to school boards, but typically under a narrowly prescribed process laid out by the Ministry of Education in each jurisdiction. School boards are mainly required to protect the quality of French education and cultural identity within their schools. The exception to this is Ontario, where there is a much greater number of boards (12) and schools (425). Here, the devolution of responsibility to local authorities appears driven by demographic and geographic circumstances that do not exist in other jurisdictions.

Despite broader similarities, there remains a great deal of variation in the details of how jurisdictions administer school admissions. Nearly all have school boards or education councils that exclusively govern French first language schools, as is the case in the NWT. However, some maintain special admission committees and their decisions follow provincial and locally-established criteria, while others allow senior administrators to manage the process directly. Examples are listed below.

- Alberta has established francophone school authorities to allow francophone communities to administer their own schools following a broad set of rules. Admission exceptions are considered and must be approved by each authority.
- Saskatchewan has established a single French language school board and allows primarily for the admission of rights holders. There is a process to accept applications from non-rights holders and the board's website suggests this is common. However, admission criteria for non-rights holders were not publicly available.

- Newfoundland and Labrador and Nova Scotia have multiple French language school boards. Internal decisions do not appear to be linked to provincial policies and are made on a case-by-case basis at the discretion of each board. However, it appears that, despite a lack of formal policy or regulatory guidelines, public communication materials reflect the same principles as jurisdictions that take a more narrow approach to regulating admissions.
- New Brunswick, Ontario, Manitoba and British Columbia have established rules governing French first language schools through provincial legislation and/or policy. These do provide for exceptions that allow students not covered under section 23 of the *Charter* to be admitted. Although these jurisdictions have devolved responsibility for admissions to local education authorities, this responsibility remains limited.
- PEI appears to be discouraging exceptions to the admission of rights holders and there is little information on what circumstances, if any, permit such exceptions.
- In the Yukon, where the authority has not been delegated to the French first language school board, the board remains bound to the narrow definition under section 23. There is the possibility of exemption only for those immigrants to Canada who would qualify if they were citizens.
- Across Canada the extension of admission to French first language Schools for non-citizen francophone immigrants is predominantly based in policy rather than legislation. Some jurisdictions appear to have aligned admission policies with the spirit of section 23, rather than a strict interpretation. For example, in British Columbia, Ontario, Manitoba, Nova Scotia and Nunavut the education legislation within the jurisdiction includes a provision which extends the section 23 definition of "beneficiary" to include non-citizen francophone immigrants. Other jurisdictions, in practice, admit non-citizens who would become rights holders should they obtain citizenship.
- Generally, jurisdictions across Canada are operating under the spirit of section 23, rather than a strict interpretation. The primary function of the schools remains dependent on a consistent linguistic and cultural environment, but the sustainability of the school and broader community is dependent on the ability to expand.

Table 1 . Admission to French first language schools in Canada

Jurisdiction	Non-rights holder admission approval	Provincial statutes that guide admission	Criteria for admission and additional considerations
Newfoundland and Labrador	Boards	<i>Schools Act</i>	<ul style="list-style-type: none"> • If the right to a minority education has been considered to have been violated in the past • A newcomer to the province who has already started his/her primary studies in French • The child's sibling is enrolled in a French first language program. • Grandparent is fluent in French
Nova Scotia	Boards	<i>Education Act</i>	<ul style="list-style-type: none"> • Non-citizens who would be rights holders if they were citizens • International exchange students • Grandparent is fluent in French
Prince Edward Island	Lieutenant Governor in Council	<i>School Act</i>	<ul style="list-style-type: none"> • It does not compromise the integrity of the program or rights of other children.
New Brunswick	District Education Councils	<i>Education Act</i>	<ul style="list-style-type: none"> • Exceptions are dealt with through a provincial policy that ensures linguistic proficiency.
Ontario	Boards	<i>Education Act</i>	<ul style="list-style-type: none"> • Boards have an admission committee and are required to establish policies to determine criteria for admission of non-rights holders • Section 23 of the Education Act sets out additional admission criteria
Manitoba	Boards	<i>The Public Schools Act and The Education Administration Act</i>	<ul style="list-style-type: none"> • Provincial policy allows admission of those with French roots and that want to re-introduce French culture to the family • Immigrants
Saskatchewan	Divisions	<i>Education Act</i>	<ul style="list-style-type: none"> • Immigrants and lost heritage are specific situations identified for consideration
Alberta	Boards	<i>School Act</i>	<ul style="list-style-type: none"> • Parents who wish to re-claim their lost heritage
British Columbia	Boards/ Minister	<i>School Act</i>	<ul style="list-style-type: none"> • Provincial policy extends admission to non-citizens who would be rights holders if they were citizens
Yukon	Government of Yukon	<i>Education Act</i>	<ul style="list-style-type: none"> • The Board does not have the authority to extend admission beyond section 23 rights holders
Nunavut	District Education Councils and Government of Nunavut	<i>Education Act</i>	<ul style="list-style-type: none"> • There is a provision for exceptions with respect to qualifying non-citizens who would be rights holders if they were citizens

GNWT Legislation and Policies

The language rights in the *Canadian Charter of Rights and Freedoms* are presented in two parts, the *Official Languages of Canada* (Sections 16-22) and *Minority Language Education Rights* (section 23). The principle underlying both parts is that government is responsible for ensuring linguistic minorities, particularly French-speaking minorities outside of Quebec, are not forced to assimilate. This is considered a positive right; one which requires action in the form of institutional support and, in some cases, active intervention to ensure the preservation of French language and francophone culture. In all provinces and territories there exists legislation and policies that support this principle.

In June of 1984, the Legislative Assembly of the NWT first passed its own *Official Languages Act*.³ Modeled on the federal *Act* of the same name, the NWT *Official Languages Act* guarantees equal status for the use of French and English by members of the public using government programs and services, and officially recognized the Aboriginal languages in use in the NWT.

Although the *Official Languages Act* does not address the issue of French language schools, the underlying principle of the language provisions in the *Charter* is reflected. For instance, it recognizes that preserving the use of Official Languages, and enhancing those languages, is a shared responsibility of language communities, the Legislative Assembly and the GNWT.⁴ The *Act* also states that any member of the public in the NWT has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where (a) there is a significant demand for communications with and services from the office in that language or (b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French.⁵

While ensuring reasonable access to its programs and services in both official French and English, the GNWT adheres to three fundamental principles outlined by its own Official Languages Policy:

- A government's ability to communicate in the official languages of the public it serves is an important part of the operation of good government;
- In order to understand and benefit from government's programs and services, the public requires information in the official languages; and

³ Government of the Northwest Territories, "Official Languages Policy," January 22, 1998, https://www.ece.gov.nt.ca/files/T1.02.01_Policy.pdf.

⁴ Northwest Territories, *Official Languages Act, R.S.N.W.T. 1988, c.O-1*, 1988, 4, <https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.a.pdf>.

⁵ *Ibid.*, sec. 11.

- A government's provision of services in its official languages recognizes and supports the efforts of communities in maintaining and developing those languages.⁶

The *Education Act* also recognizes the “rights and freedoms of every individual and English and French linguistic minorities as set out in sections 15 and 23 of the *Constitution Act, 1982*.⁷ The *Education Act* requires that “students whose parents have a right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in French are entitled to receive that instruction in accordance with the regulations wherever in the Territories that right applies.”⁸

Under the *Government Institution Regulations* stemming from the *Official Languages Act*, both Hay River and Yellowknife are among locations recognized as having “significant demand for communications with services to the public in both English and French.”⁹

Stakeholder Input

Since implementation of the Directive in 2008, ECE has had multiple interactions with various groups and members of the public regarding French first language school enrolment. These have come in the form of meetings between senior officials on the Directive, discussion about the Directive at regularly scheduled meetings of senior officials and program staff, and in correspondence between ECE and stakeholders.

As a part of this review, the most recent stakeholder engagement built upon past dialogue between ECE and stakeholders. The engagement process was designed to help focus the discussion and provide greater clarity regarding the needs of those impacted by the Directive. Input was received through the following engagements:

May 24, 2016: Conseil scolaire francophone des Territoires du Nord Ouest (CSFTNO)
 May 25, 2016: YK1 School Board
 May 30, 2016: Yellowknife Catholic School Board
 May 30, 2016: Yellowknife public meeting (French)
 May 31, 2016: Yellowknife public meeting (English)
 June 6, 2016: Hay River District Education Authority (HRDEA)
 June 7, 2016: École Boréale stakeholders (organized by CSFTNO)

⁶ Government of the Northwest Territories, “Official Languages Policy.”

⁷ Northwest Territories, *Education Act, S.N.W.T. 1995, c.28, 1996, 15,*
<https://www.justice.gov.nt.ca/en/files/legislation/education/education.a.pdf>.

⁸ *Ibid.*, sec. 72.

⁹ Northwest Territories, *Government Institution Regulations, R-082-2006, 2006, sec. 2,*
<https://www.justice.gov.nt.ca/en/files/legislation/official-languages/official-languages.r3.pdf>.

The meetings were each approximately 2.5 hours in length. Engagements were facilitated by Tait Communications and Consulting. ECE staff were present at each meeting to introduce the review and to serve as observers, but they did not participate in the discussion. ECE provided an opportunity for written submissions by residents of both communities following the same questions as the engagement meetings.

A total of 137 submissions were received through the online process. Of these, 113 were completed in English and 24 in French. Online contributors were predominantly from Hay River (109) compared with Yellowknife (24). Four respondents did not declare their place of residence.

All stakeholder input was considered during this review. However, what resonated most was the great insight stakeholders provided in terms of the functional problems faced when implementing the Directive and the detrimental effects this has had on some aspects of the community and education system. Stakeholders also provided insight into the potential value of the Directive and its role in sustaining an important community within the NWT and Canada.

The Function of French First Language Schools

There are two overlapping views on the intended role of French first language schools that were made apparent during the stakeholder engagement meetings and through online submissions.

First, some viewed the French first language schools more narrowly as being a requirement under section 23 of the *Charter*. In meeting this requirement, the schools serve the community of French language rights holders by maintaining linguistic and cultural homogeneity. This protects the francophone community from having to assimilate to the surrounding English-speaking community when accessing K-12 public education.

There was a second perspective on the role of French first language schools, namely that they are an instrument of community sustainability and growth. Following this perspective, some participants felt that the opportunity to incorporate non-rights holders into schools is essential to the sustainability of the school and, to some extent, the community. Some added that, given the cultural diversity of Canada generally, it is natural to allow the admission of French-speaking students from other cultures. This was seen by some as beneficial to the both the growth of the French first language community and the social development of students.

Despite some similarities between these perspectives, they remain fundamentally opposed. Advocates of a narrow interpretation of section 23, at least in the context of the NWT, are concerned with the creation of parallel school systems that compete for students within a small population. It has been argued that a narrow interpretation of section 23 protects surrounding schools from losing students who are not rights holders. Furthermore, the loss of these students undermines the sustainability of a French immersion system which, in turn, reduces the options for

French language programming outside the French first language school system. Some stakeholders believe admitting non-rights holders to French first language schools will result in an 'all-or-nothing' approach to French education that robs students of an alternative option to acquire French as a second language.

Proponents of a broader view on the role of French first language schools noted that some rights holders do attend English or French immersion schools and that this puts the systems in competition, regardless of the admission policy for French first language schools. They also highlighted that several other jurisdictions in Canada treat section 23 as a starting point from which the French first language schools system can begin to explore a variety of opportunities to grow their enrolment.

The Role of the Territorial Government

Some stakeholders were concerned that, by implementing the Directive, the GNWT has taken more direct involvement than is warranted given screening processes that exist within the CSFTNO. This concern appeared rooted in a broader interpretation of the role of French first language schools, namely that they are an instrument of growth in the overall community. In their view, the creation of the Directive in 2008 was simply to restrict enrolment in an attempt to limit the redirection of resources away from English education programming.

A second perspective on the role of the government is that the implementation of the Directive is a necessary step in managing the overall education system in the NWT. This perspective stems from the belief that, given the operational limitations of a small and dispersed population in the NWT, the government must play a more direct role in ensuring equity and stability in the education system. Whereas those who take a broader view on the role of French first language schools see the Directive as added bureaucracy, those who support a narrow view see merit in the government maintaining an active role.

Uncertainty and Misunderstanding

The call for stakeholder engagement was well received, both in terms of attendance at meetings and online submissions. Many respondents demonstrated a good understanding of the Directive and its intent. However, the review has also exposed some uncertainty and misunderstanding surrounding the Directive. For example, some believed that the Directive was created solely to save money. Although the allocation of resources is tied to student enrolment, the function of the Directive is based on practices in other jurisdictions and addresses a broad range of concerns related to the administration of student enrolment.

People's understanding of common practice among other Canadian jurisdictions also varied greatly with some seeing the approach taken by the NWT as entirely unique. However, as noted in the Jurisdiction Scan section of this review, provincial-level legislation, regulation or policy restricting

the enrolment of French first language students is common across Canada. What typically varies are the details regarding the number of exceptions allowed and how they are defined.

Another apparent misunderstanding was around the number of non-rights holders admitted since 2008. Some believed the government has allowed for the admission of none; others believed there have been one or two. In fact, between 2008 and 2015, ECE records indicate that 28 requests to admit a non-rights holder were received from the CSFTNO. Of these, 10 were approved and 18 were denied. There was also a great deal of uncertainty around how the current admission system works for non-rights holders, particularly the relationship between CSFTNO and ECE.

RESULTS OF EVALUATION

Technical Feasibility

The Directive remains an appropriate and justified means of stemming the migration of non-rights holders away from English or French immersion schools to French first language schools. Although it is unrealistic to think that removing the Directive would result in a rapid migration of students, experience prior to the Directive did demonstrate that French first language schools will likely grow substantially over a period of several years. As was the case leading up to 2008, such growth will eventually bring calls for the diversion of resources to French first language schools to the detriment of neighboring English and French immersion schools.

The ability to admit non-Right Holders to a school is currently permitted with the consent of the Minister, allowing for some flexibility. However, the mechanism for obtaining the Minister's consent for admission is not defined by a formal policy, nor does the current process provide a final decision in a timely manner. In short, ECE's role in regulating the admission of non-rights holders has lacked transparency and is perceived to be largely ineffective in admitting non-rights holders who otherwise fit the CSFTNO admission criteria.

The argument that a strict enforcement of section 23 admission criteria prevents the cultural diversity in French first language schools does have some merit. Section 23 was clearly not intended to fully insulate rights holders from all aspects of their surrounding environment. However, maintaining homogeneity does require some protection.

CSFTNO currently takes steps through their own application process to ensure new students are able to integrate effectively. However, the ability to selectively admit students from among the population of non-rights holders risks the perception that French first language schools are comparable to private schools. This perception, whether justified or not, undermines public confidence that government-funded schools are free and accessible to all. The further French first language schools stray from their role as defined under section 23, the more likely it is that they will be seen as an exclusive and/or superior system of education, rather than simply offering a different language environment.

Economic and Financial Impacts

Education systems in all Canadian jurisdictions face tough financial choices. Resources are always limited, particularly given the tremendous challenges education systems seek to overcome. French first language schools are not immune to these challenges. They must accept that drawing from such a small and dispersed population will continue to challenge the sustainability of their student population, just as it has for nearly all schools across the NWT.

Data from the 2011 census show that, in Hay River, 100 individuals identified French as their mother tongue out of a population of 3,606 (2.8%).¹⁰ In Yellowknife, 810 individuals identified French as their mother tongue out of a population of 19,234 (4.2%).¹¹ The term “Mother tongue” refers to the “first language learned at home in childhood and still understood by the individual.”¹² In comparison, the 2015-16 French first language school enrolment in Hay River was 87 out of a community-wide enrolment of 649 (13.1%). In Yellowknife, the 2015-16 French first language school enrolment was 134 out of a community-wide enrolment of 3,280 (4.0%). Table 2 provides a breakdown of enrolment by school in Yellowknife and Hay River.

Table 2. Student Enrolments

Education Body	School	Community	Grades	Student Enrolment (Head Count)	
				2014-15	2015-16
CSFTNO	École Boréale	Hay River	K-12	87	85
	École Allain St-Cyr	Yellowknife	K-12	134	133
HRDEA	Harry Camsell School	Hay River	K-3	161	162
	Princess Alexandra School	Hay River	4-7	150	159
YK1	Diamond Jenness School	Hay River	8-12	237	243
	École J.H. Sissons School	Yellowknife	K-5	236	250
YCS	N.J. Macpherson School	Yellowknife	K-5	260	274
	Mildred Hall Elementary School	Yellowknife	K-8	216	231
YK1	Range Lake North School	Yellowknife	K-8	307	303
	École William McDonald School	Yellowknife	6-8	170	177
YCS	École Sir John Franklin High School	Yellowknife	9-12	645	641
	École St. Joseph School	Yellowknife	K-8	521	461
YCS	Weledeh Catholic School	Yellowknife	K-8	402	355
	École St. Patrick High School	Yellowknife	9-12	403	495

¹⁰ Statistics Canada, “Hay River, Northwest Territories (Code 6105016) and Region 5, Northwest Territories (Code 6105) (Table)” (Ottawa, February 8, 2012), <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/index.cfm?Lang=E>.

¹¹ Statistics Canada, “Yellowknife, Northwest Territories (Code 6106023) and Northwest Territories (Code 61) (Table)” (Ottawa, February 8, 2012), <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/prof/index.cfm?Lang=E>.

¹² Statistics Canada, “Mother Tongue - 2011 Census Dictionary,” accessed July 4, 2016, <https://www12.statcan.gc.ca/census-recensement/2011/ref/dict/pop095-eng.cfm>.

In accordance with the Education Funding Framework, ECE provides approximately \$150 million annually to Education Authorities to deliver education programming for Junior Kindergarten to Grade 12. Funding is based on the school funding formula that is driven primarily by enrolment. It is worth noting that from September 2010 to September 2015 student enrolment decreased by 329 students (4.1%) throughout the NWT, resulting in a corresponding decrease in funding.

However, equality means that French first language schools should also have the opportunity to draw some non-rights holders into their schools to a similar extent as the surrounding schools are able draw rights holders into theirs. Although any increase in resources to French first language schools must be driven primarily by the increased enrolment of rights holders, rather than by the increased acceptance of non-rights holders, it is reasonable for schools to allow the admission of a proportionally small number of non-Right Holders as a means of maintaining the feasibility of existing programming.

The lack of communication from the government with regard to the intent and role of the Directive continues to undermine its acceptance among stakeholders. It is not surprising some residents, particularly those in the Francophone community, view the Directive as a highly restrictive and even punitive measure on the part of government.

Even if communication is improved and supports are increased, it is likely that some level of tension will continue to divide parts of the community for the foreseeable future. This is made clear by some of the comments made during stakeholder engagements, particularly from CSFTNO. Such tension is not surprising given the prolonged uncertainty of the legal process and the frustration felt in the wake of the Supreme Court of Canada's decision not to hear the final appeal.

For rifts in the community to heal, the interests of all parties must be taken into account. This will require an approach that better supports the sustainability of French first language schools, but in a way that maintains their distinct function within the overall education system. Despite ongoing concerns, the Directive is seen by many as a way of ensuring consistency in enrolments. CSFTNO does exist to meet the requirements of section 23 of the *Charter* and the other education bodies are valid in their concerns that loosening the admission policy risks deviating from this goal. If opportunities for non-rights holders to enroll are increased, such allowances must ensure that subsequent shifts in student numbers are not detrimental to the sustainability of surrounding schools, or the perception of competitive systems is likely to increase.

Although not directly related, the ongoing efforts of Aboriginal communities to revitalize and preserve their own language and culture must not be ignored when considering the special role of French first language schools in the NWT. With nine Aboriginal languages recognized as official languages of the NWT it is essential that, in meeting the requirements of section 23, the GNWT does

not appear to give priority to one official language over others. This is not necessarily a question of resources, but rather equity in policy.

Allowances given to French first language schools in support of language revitalization should align with the government's policy on Aboriginal languages, or else there is a risk the latter will be seen as a lower priority for government. Although the needs of French and Aboriginal peoples in the NWT are defined in different ways by different pieces of legislation, one language does not take precedence over the other when it comes to revitalization – their revitalization and preservation is simply approached in different ways. This kind of policy equity should be apparent in any approach to regulating French first language school admissions.

Administrative Operability

First and foremost, the admission for French first language schools must align with the underlying principle of section 23 of the *Charter*, namely that government ensure the preservation of French language and francophone culture. The law and subsequent court decisions have established that government has the right to control enrolments based on this need.

An inherent part of revitalization is allowing for population growth. Natural growth of the NWT rights holder population and the migration of rights holders from other communities may not be sufficient to maintain a level of population sufficient for supporting French first language schools, particularly in Hay River. It is important to note that, under section 23, governments are only required to support a French first language school when there are a sufficient number of eligible children to justify schooling in that language. However, as reflected in the Official Languages Policy, the GNWT recognizes and supports the efforts of communities in maintaining and developing each of the official languages. As such, it is in the interest of the GNWT and the people of the NWT to ensure student populations are sustained in the existing French first language schools.

The NWT stands out from most other jurisdictions in Canada, due to its extremely small and dispersed population. This reality cannot be ignored during the administration of the overall education system. Although there is much to learn from the practices in other jurisdictions, the NWT remains unique in both the challenges it faces and its ability to respond.

RECOMMENDATIONS

ECE recommends the Minister issue a revised Directive that will continue to prescribe a process of admissions to French first language (i.e. section 23) schools in the NWT, and that the revised Directive:

1. Reaffirm that rights holders are to be granted unconditional admission to a school;
2. Allow for the sustainment and growth of the French first language communities by allowing the admission of non-rights holders to existing schools in the following categories:
 - (a) Children of parents who would have been rights holders but for their parent's or grandparent's lack of opportunity to attend a French first language school,
 - (b) Those who meet the criteria of section 23 of the *Charter* but are not Canadian citizens, and
 - (c) Immigrants to Canada, who upon arrival, do not speak English or French and are enrolling in a Canadian school for the first time; and
3. Stipulate that if a school is at or exceeds 85% capacity, per the NWT Schools Capital Standards and Criteria, additional non-rights holders will not be admitted.

Furthermore, it is recommended that the Minister direct ECE to:

4. Establish a comprehensive policy detailing ECE's role in the French first language school admission process, including:
 - (a) A process by which CSFTNO can convey the applications for admission of non-rights holders to a designated point of contact within ECE;
 - (b) A service standard that requires a response to parents within a fixed number of days from the date an application is received from CSFTNO, and
 - (c) A clearly defined set of criteria and processes that will be used to screen applications;
5. Develop and implement a formal appeals process for parents of children that are denied admission by CSFTNO; and
6. Establish and implement a communications plan to help parents better understand the opportunities, requirements and application processes for NWT schools.

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