

Summary by the Language Rights Support Program of the impact study entitled:

**“Constitutional Protection for English Language School Boards in Quebec – Who Has Management and Control?”**

This impact study examines the degree of management and control bestowed upon minority language communities when managing their own school boards, as well as whether these school boards are subject to any form of majority or government control. The author determines whether Section 23 of the *Canadian Charter of Rights and Freedom (Charter)* can result in substantive equality in that context. A substantive equality approach recognizes that a pattern of disadvantage and oppression exists in society and requires that law makers and government officials take this into account in their actions.

The author, M. Michael N. Bergman, firstly defines Section 23 of the *Charter* as the only constitutional section which imposes on the government an explicit obligation to take measure or action to achieve the objective of the law. It guarantees the right to a homogenous instruction in the language of the minority. The proactive nature of Section 23 encourages the creation and maintenance of publicly funded minority education systems which better respond to the goal of cultivating strong French and English minority communities. According to the author, the exact scope of minority communities’ rights as set out in Section 23 is unknown.

The author notes that indeed, the degree of management and control differs depending on the size and needs of the minority language community. Section 23 guarantees only legal rights and services deemed appropriate in order to achieve adequate minority language instruction for the given number of students involved. This approach determines the minimum level of management and control for minority language communities under section 23. Following this reasoning, the author concludes that the Anglophone communities as language minorities would have a minimum entitlement to an independent school board. The Court is clear on the question of control: a minority community can only flourish if it has full control over its education system.

M. Bergman finally addresses the issue of fulfilling the purpose of section 23, which often requires creating inequality between the majority and minority language groups. In order to fully insulate the minority language education system from majority intervention, the Courts have acknowledged and endorsed the idea of substantive equality which means unequal treatment for minority and majority language education systems, resulting in strengthening both the majority and minority languages and cultural identities.

The author finally suggests the possibility that a government may be able to dissolve the school boards of the majority but cannot dissolve the school boards of the minority, due to the aforementioned concept of unequal treatment.