

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

**“Evaluating *Nguyen v Quebec* and Bill 115: Section 23 of the *Canadian Charter*”**

In this impact study, the author Suzanne M. Birks resumed the effects of *Nguyen v Quebec* as being an attempt by the Quebec Government to finesse the discussion regarding the access to the publicly funded English-language schooling and subsidised English schools. In order to fully understand the effects of *Nguyen v Quebec*, the author analyses the problematic nature of Section 23 of the *Canadian Charter of Rights and Freedoms (Charter)*.

The author concludes that the language rulings from the Supreme Court of Canada have not been enough to move the question of access to English-language schools beyond a stalemate. The impasse which has now taken hold has been made substantially more severe in the wake of the 2009 Supreme Court of Canada ruling in *Nguyen* and the Quebec National Assembly’s response to the decision in the form of Bill 115. The central feature of Bill 115 is a regulatory measure so opaque and complex that it can be used to keep student transfers from a private educational facility into the publicly funded English school system to minuscule levels.

The author explains that the judgement, *Nguyen v. Quebec*, struck down certain provisions of Bill 104 as unconstitutional, restricting the increase in the number of people who could enroll their children in the publicly funded English school system. In the view of the Supreme Court, such prohibitive measures, along with their resulting effects, were disproportionate and unnecessary to protect the French language.

As part of the challenge of being a member of the minority language community, the Court appeared to uphold the right of parents to retain some degree of free choice in the selection of school systems. It was not automatic free choice, but for those who had demonstrated a genuine commitment to the minority language by, among other things, educating their children privately in unsubsidised English schools, it was possible to gain access to the publicly funded English system. In the wake of these three cases (*Gosselin, Solski, Nguyen*), but particularly *Nguyen*, the guarantee of access to a minority official-language school was to be determined on the basis of demonstrated “genuine commitment” to the minority language. So long as applicant parents could show commitment to the minority language, and this amounted basically to showing good faith over an unspecified period of time, a right related to Section 23 of the *Charter* was acquired. Moreover, that right, once acquired under section 23(2), becomes hereditary, undermining the most fundamental language principle of la *Charte de la langue française*, that French is the language of education and integration for all newcomers.