



Blog: Decision in the Rose-des-Vents case

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After a long and complex legal battle, Francophone parents of Vancouver in British Columbia have been successful with the Supreme Court of Canada's ruling in the *Rose-des-Vents* case.

In a unanimous decision, the highest court of the country restored the trial decision rendered by Justice Willcock of the Supreme Court of British Columbia, who ruled in 2012 that the rights guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms (Charter)* to parents of *Rose-des-Vents* students had been violated when the province refused to provide school facilities of equivalent quality to those offered to students of the Anglophone majority. In 2013, the Court of Appeal of British Columbia set aside the trial judgment.

In addition to reiterating the principles established in the case law on section 23 of the *Charter*, the Supreme Court of Canada in *Rose-des-Vents* adopts a new vocabulary in the field of constitutional education rights of children of official language minority communities. While the Court in *Mahé*, *Arsenault-Cameron* and *Doucet-Boudreau* developed the principle of "equal quality" of education, in *Rose-des-Vents*, the Court based its reasoning on the principle of "substantive equivalence" of minority language education with that of the majority to uphold the rights guaranteed under section 23.

Under the criterion of substantive equivalence, the Court held that what is paramount to evaluate "is that the educational experience of the children of s. 23 rights holders [...] be of meaningfully similar quality to the educational experience of majority language students." This approach allows the Court to correct some confusion created by the criterion of equal quality education. Indeed, the Court had to clarify in *Mahé* that the criterion of equal quality does not mean that the education offered to the minority must be identical to that of the majority.

With the criterion of equivalence, the Court adopts a result-based approach measured on the basis of the "educational experience" of the students. Thus, once the level of services available to rights holders is established (according to the sliding scale established in *Mahé*), the costs and practical considerations should not be part of the equation. In other words, the Court in *Rose-des-Vents* argues that when the numbers warrant the provision of equivalent education services, the province cannot justify a refusal to provide educational facilities on the basis of costs or practical considerations.

The decision in *Rose-des-Vents* ushers in a new generation of case law on the interpretation of the rights guaranteed by section 23 of the *Charter*.