



Case in Brief: **Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)**

Judgment of December 8, 2023 | On appeal from the Court of Appeal for the Northwest Territories
Neutral citation: 2023 SCC 31

The Supreme Court sets aside ministerial decisions refusing to admit children of non-rights holder parents to French schools in the Northwest Territories.

This case was about whether the refusal to admit children of non-rights holder parents to French-language schools in the Northwest Territories gave due consideration to the protections conferred by section 23 of the *Canadian Charter of Rights and Freedoms*.

Section 23 guarantees certain categories of Canadian citizens the right to instruction in the minority official language. The purpose of this provision is to prevent the erosion of official language communities as well as to redress past injustices and promote the development of these communities. “Rights holders” have this constitutional right by virtue of their mother tongue or their education. Canadian citizens of whom any child has received or is receiving primary or secondary school instruction in the minority official language have the right to have all their children receive instruction in that language. “Non-rights holders” are people who do not meet the requirements of section 23 and who therefore do not have this right. In 2016, the Northwest Territories adopted a ministerial directive on enrolment in French first language education programs that created categories of eligible non-rights holder parents, including “non-citizen francophone” and “new immigrant”.

In the Northwest Territories, two public schools currently offer a French first language education program. In 2018 and 2019, five non-rights holder parents applied to the Minister of Education, Culture and Employment for their children’s admission to a French first language education program. In each case, the Commission scolaire francophone des Territoires du Nord-Ouest recommended admission because it would promote the development of the Francophone community of the Northwest Territories. In spite of those recommendations, the Minister denied each of the applications. In her opinion, the parents did not meet the conditions established by the directive. She also refused to exercise her residual discretion to admit the children of the parents in question.

The parents and the Commission turned to the Supreme Court of the Northwest Territories. The judge set aside the Minister’s decisions and referred the applications for admission back to her for reconsideration, chiefly because the decisions did not reflect a proportionate balancing of the protections conferred by section 23 of the *Charter*. The Minister appealed the Supreme Court’s judgment to the Court of Appeal for the Northwest Territories, which restored the decisions that had been set aside. The majority of the Court of Appeal found that the Minister was not required to consider section 23 in exercising her discretion because the parents were not rights holders under this provision. The parents and the Commission appealed to the Supreme Court of Canada.

The Supreme Court of Canada has allowed the appeal.

The Minister had to consider section 23 of the *Charter* in exercising her discretion.

Justice Côté, who wrote the Court’s unanimous reasons, ruled that the Minister’s decisions had a significant impact on the values enshrined in section 23 of the *Charter*, particularly the preservation and development of minority language communities. It follows that these values must therefore always be taken into account, even when there is no direct infringement of the right guaranteed by s. 23.

Justice Côté concluded that the Minister had not proportionately balanced these values with the government’s interests. In exercising her discretion, the Minister had attached too much importance to her duty to make consistent decisions and to the cost of the contemplated services. Given the remedial nature of section 23, pedagogical requirements had to have more weight. The Minister’s decisions were therefore unreasonable. For these reasons, Justice Côté set aside the orders made by the Court of Appeal.

Breakdown of the decision: *Unanimous*: Justice [Côté](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Martin](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [First decision](#) (Supreme Court of the Northwest Territories) | [Second decision](#) (Supreme Court of the Northwest Territories) | [Appeal](#) (Court of Appeal for the Northwest Territories)
