

Languages Rights' Real “MVP”: Section 23 and Minority- Language Education

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Minority-language education: a historical debate in Canada

Protests against Regulation 17, Ottawa, 1916



*Signature of the Constitutional proclamation
Ottawa, April 17, 1982*

Up next:

- 1) An overview of the Supreme Court s.23 jurisprudence since 1982
- 2) Challenges to the implementation of policy changes dictated by the jurisprudence
 - Adversarial nature of litigation
 - Reluctance of provincial governments
- 3) A foray into the future of section 23
 - The strive for « institutional completeness » in education
 - Indigenous language education rights



Minority Language Education Rights

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. (93)

Continuity of language instruction

(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.

Application where numbers warrant

(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

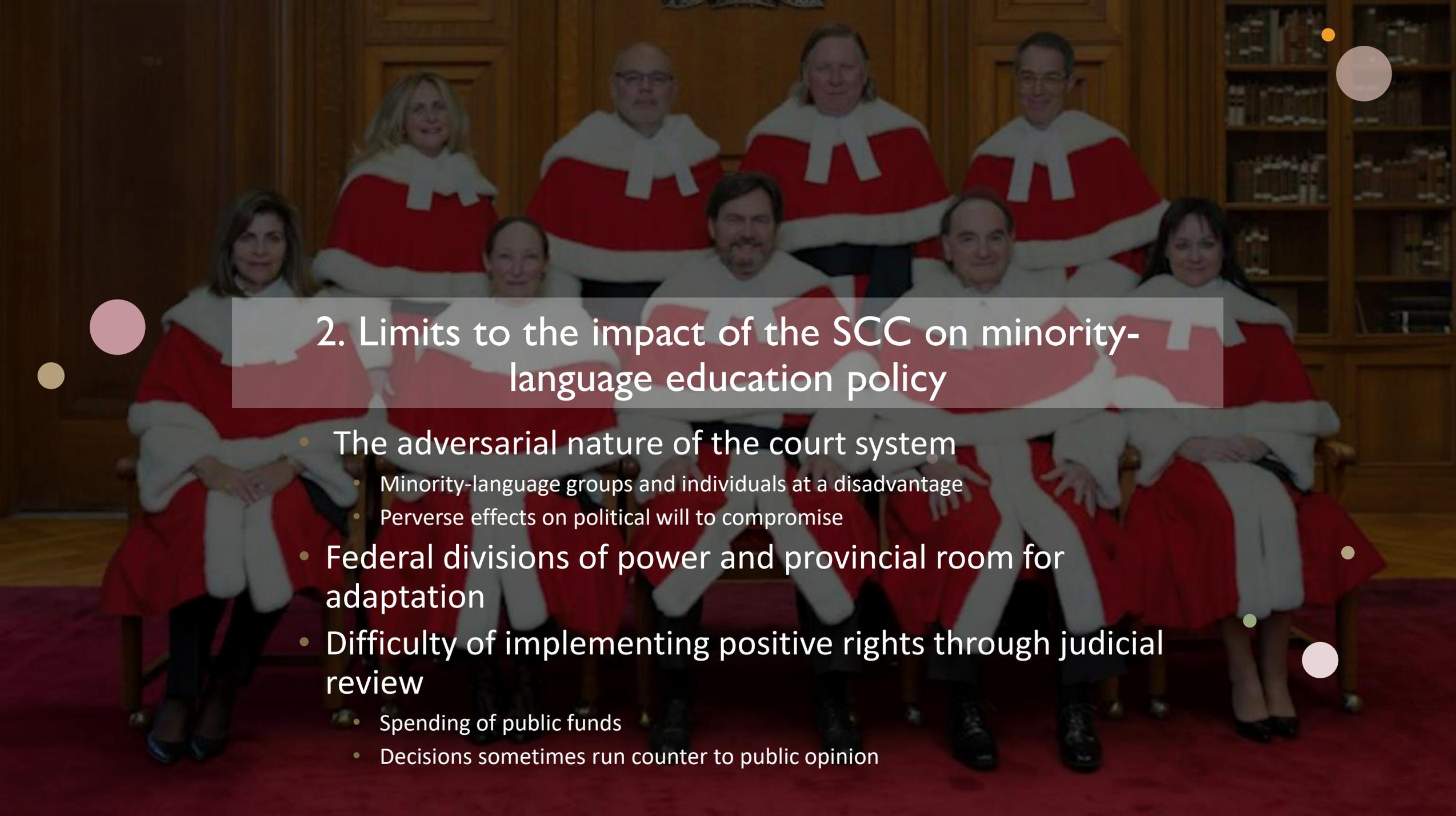
(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(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.

1. Section 23 Supreme Court jurisprudence since 1982

- 1984: *Quebec v. Quebec Protestant School Boards*
- 1990: *Mahe v. Alberta*
- 1993: *Reference re Public Schools Act (Manitoba)*
- 2000: *Arsenault-Cameron v. Prince Edward Island*
- 2003: *Doucet-Boudreau v. Nova Scotia*
- 2005: *Solski v. Quebec*
- 2005: *Gosselin v. Quebec*
- 2009: *Nguyen v. Quebec*
- 2015: *Rose-des-Vents v. British Columbia*
- 2015: *Yukon Francophone School Board #23 v. Yukon*
- 2020: *Commission scolaire francophone de Colombie-Britannique v. British Columbia*



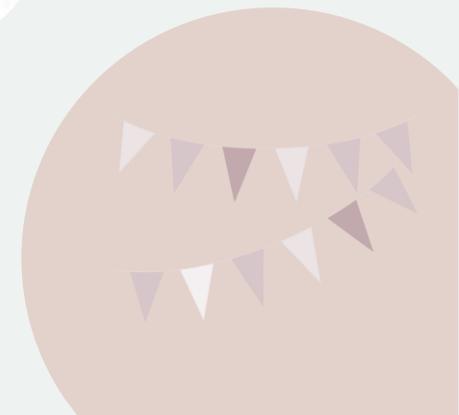
A group of judges in red and white robes sitting in a courtroom. The judges are arranged in two rows, with four in the back row and five in the front row. They are all wearing traditional judicial robes. The background shows a wooden panelled wall and a bookshelf filled with books.

2. Limits to the impact of the SCC on minority-language education policy

- The adversarial nature of the court system
 - Minority-language groups and individuals at a disadvantage
 - Perverse effects on political will to compromise
- Federal divisions of power and provincial room for adaptation
- Difficulty of implementing positive rights through judicial review
 - Spending of public funds
 - Decisions sometimes run counter to public opinion

3. The future of section 23

- Seeking “institutional completeness” in the domain of minority-language education
 - Securing full range of services, from pre-kindergarten to postsecondary
- Indigenous language education: the possibility of *Charter* convergence
 - Protection through s. 35?



The slide features a light green background with decorative circles in the corners. The top-left corner has a large pink circle, a small orange circle, a small grey circle, and a small brown circle. The top-right corner has a large green circle, a small orange circle, and a large brown circle. The bottom-right corner has a small green circle, a small brown circle, a large pink circle, and a large green circle.

Thank you! / Merci!

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