

MEMORANDUM

FROM: Mark Power, Jean-Pierre Hachey and Marc-André Roy

DATE: November 25, 2016

SUBJECT: Changes to the federal census questionnaire needed to more accurately determine the number of children with at least one parent entitled to enrol them in a French-language school outside Quebec under section 23 of the *Canadian Charter of Rights and Freedoms* (“the Charter”)

Summary of the issue and solution: The federal census is the primary and best source of data to enable French-language school boards outside Quebec, and their respective provincial and territorial governments, to determine the number of children with at least one parent entitled to enrol them in a French-language school as guaranteed by section 23 of the Charter. Unfortunately, the census underestimates this number, since it encourages parents with more than one mother tongue to indicate that they only have one, and it does not ask any questions about the education received by the parents or their children. The federal government should start looking now at how to adjust the census questionnaire in order to resolve these issues in the 2021 census given the time it takes to develop and test new questions.

The issue: The federal census is the primary and best source of data for estimating the number of children with at least one parent entitled to enrol them in a French-language school outside Quebec. While the census is the best source of data on the number of these children, there are major weaknesses that end up underestimating this number.

There are three categories of parents entitled to enrol their children in a French-language school outside Quebec¹:

1. parents whose mother tongue is French (paragraph 23(1)(a) of the Charter) ;
2. parents who received a significant part of their primary school education in a French-language school (paragraph 23(1)(b) of the Charter); and
3. parents of any child who attended or is attending a French-language school (subsection 23(2) of the Charter).

For the first category (mother tongue, paragraph 23(1)(a) of the Charter), the census underestimates the number of parents with French as one of their mother tongues, since it discourages multiple responses to this question (it discourages a respondent who learned English and French simultaneously from reporting more than one first language). As for the second and third categories, the census does not ask any question that could be used to estimate the number of children with a parent entitled to enrol them

¹ Only the second and third categories listed here apply in Quebec, where exceptionally the criterion regarding a parent’s mother tongue does not entitle them to enrol their child in a minority-language school (English-language school in Quebec).

in a French-language school because of the education received by the parent (paragraph 23(1)(b) of the Charter) or one of that parent's children (subsection 23(2) of the Charter).

These weaknesses in the census are significant, and they will worsen as the number of exogamous families, where one parent is francophone and the other is anglophone (or allophone), continues to grow.

The fact that the census question (and accompanying instructions) on mother tongue discourages multiple responses is significant, since parents whose mother tongue is both English and French often live in English-dominant environments (in their community, at work or at home) and will often tend to give English as their mother tongue if they feel they have to choose between English and French. As well, when filling out the census for the household, anglophone (or allophone) spouses of such parents tend to give only the dominant language of the household (English) as the mother tongue of their bilingual spouse.

By not asking any questions about either the parent's or the children's language of education, the census disregards the fact that many children of exogamous couples learn this language only once they are in school, not at home as a mother tongue. When these children become adults, they are then entitled to enrol their own children in a French-language school, although the census does not count them. It also disregards the fact that French-language schools in several provinces and territories may accept students whose parents are not rights holders under section 23 of the Charter, and thereby grant rights under section 23 (to the parent, to have their other children educated in French (subsection 23(2)), and to the child, to have their own children educated in French (paragraph 23(1)(b)). Lastly, it disregards the fact that many individuals whose mother tongue is not French but who were educated in French in Quebec (where attending English-language school is difficult) then move elsewhere in Canada, where they are entitled to enrol their children in a French-language school.

The Supreme Court of Canada has repeatedly affirmed that section 23 rights apply only where numbers warrant. To determine whether there is a sufficient number of students to warrant providing minority-language education, francophone school boards absolutely must have more comprehensive data to give them a better idea of the number and distribution of their potential students. The current census questions do not allow them to do this. School boards and provincial and territorial governments must have better information to give them a better appreciation of the extent of their constitutional obligations under section 23 of the Charter. The data that the census is not currently capturing will become increasingly important with each census because of the growing number of exogamous couples. The mother tongue of their children will most often be either both English and French or only English (French-language school plays a major role in passing French language and culture on to these children). An ever-increasing number of rights holders under section 23 risk not being identified as such by the census (parents whose mother tongues are both English and French) or not being identifiable (parents whose mother tongue is not French despite them or their children having been educated in French).

Action required: the federal government—including the Minister of Innovation, Science and Economic Development (the Hon. Navdeep Bains) and the Minister of Canadian Heritage (the Hon. Mélanie Joly)—

should start looking now at how to adjust the census questionnaire in order to resolve these issues in the 2021 census. This would certainly constitute a positive measure to enhance the vitality of official-language minority communities under Part VII of the *Official Languages Act*. The government must start the process as soon as possible to give Statistics Canada enough time to develop and test the new required questions so that they can be included in the 2021 census.