

| July 2015

| **Investigation Report**
| **Centre Jules-Léger**



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I Foreword

During my career, I have had the good fortune to be involved in many different, often complex, cases that have enriched my perception of the difficulties inherent in living and thriving in a minority situation. But few cases have had as great an impact on me as this investigation into the governance of the Centre Jules-Léger. Its students have to deal not only with the difficulties associated with the French language, but more importantly with the fact that they are members of a double minority. Some of them have French and the *Langue des signes québécoise* (Quebec sign language) (LSQ) in common. Others also have severe learning disabilities. All of them are striving to be heard and understood, to learn in a safe environment, and not to be stigmatized when they return to their so-called regular schools. All of them are also trying to develop a sense of belonging to a community.

But which community? A declining Franco-Ontarian deaf community? A community that also includes all those teachers and other staff members who are so dedicated that many of them have made the Centre Jules-Léger their life's work? A community in which the students' parents will also have the opportunity to ensure that their children are educated and respected and grow up in a French-speaking environment full of hope? A strictly Ontarian community? Aren't there Francophone deaf students in other parts of Canada who could benefit from the Centre Jules-Léger's expertise and whose presence might recreate that much sought-after community?

I confess that I was deeply moved by all the meetings with students, parents, educators, administrators and members of non-profit organizations, many of whom are former students of the Centre Jules-Léger. Of course, the scope of our investigation was limited, and deliberately so, because performing an in-depth analysis of all the issues we heard about would have required expertise and knowledge that are beyond the purview of the Commissioner's Office.

I realize that many people will probably be disappointed with the investigation's conclusions. Our job was not to please everyone, but to answer the question asked about the Centre Jules-Léger's governance. We believe that we have answered it in the manner that is most appropriate, most mindful of parents' rights and most socially and economically responsible. I am also aware that all of

the Centre Jules-Léger's staff are interested only in the well-being of the children under their care. But in recent years, the perception that the decisions are being made elsewhere, the perception that staff are unable to help the Centre live up to its full potential, and the perception that nothing is going to change for the better have created a workplace atmosphere that is rather difficult to bear. I realize that they have hopes, and that is why the solutions proposed in this report will also have to address their legitimate concerns.

There is no shortage of issues. How can we alleviate the fact that, as a general rule, the parents want the best for their children, of course, but sometimes have to send them hundreds of kilometres away during the week? How can we assuage the perfectly legitimate fears of parents who are concerned that the Centre Jules-Léger will disappear or that amalgamation with a French-language school board will drown out their voices in a system that may not understand them? In this regard, many parents believe, wrongly I hope, that the school boards want to mould the child to the system and not the reverse, for the child's sake.

How can we ensure that a deaf child really learns LSQ if he or she cannot live in a community where learning is facilitated by the presence of other learners? Many parents feel not only that no French-language school board is equipped to provide LSQ courses, but also that the public servants who work for the boards are not sensitive to the special needs of the students and parents. These comments have a deep resonance, and the French-language school boards will have to be mindful of this mistrust.

How can we ensure that parents will have a real choice for their children, considering the resources available in the English-language system and the attraction of modern, well-supported facilities? On the other hand, it is important to add that parents may no longer be interested in encouraging the learning of LSQ, or even American Sign Language (ASL). Of course, figures do not lie: enrolment is declining at the Centre Jules-Léger. But we have to wonder why this is so. Is it because of existing administrative policies, such as the infamous 70-minute proximity rule mentioned so often in all our interviews? Or is it because the French-language school

boards are also becoming more effective both at coping with severe learning disabilities and at serving Francophone children who are deaf or hard of hearing? Or is it because of the lack of promotion and visibility of the Centre Jules-Léger's services? Or medical advances? Once again, the Commissioner's Office is not in a position to answer all these questions. Nor is that its mandate.

Moreover, there is a very clear perception that, having been around for so many years, mostly in a relative vacuum, the Centre Jules-Léger may have developed a culture of inertia that is ill-suited to the changes required in a modern, evolving society. This too is taken into consideration in the solutions proposed in this report.

Everyone wants to see the Centre Jules-Léger revitalized, returned to its status as a benchmark, a model for others. A place with a common vision, where employees will be allowed to innovate and be given sufficient freedom to make sometimes risky decisions, but always with the interests of their young charges foremost in their minds. I can only hope that the French-language school boards, through the *Conseil ontarien des directrices et directeurs de l'éducation de langue française* (CODELF), will be visionary, not just operationally effective. I hope, as indicated by the school board administrators, that there will be centralized decision-making, combined with decentralized services. I hope too that the renewed research mandate will be built around visionary, responsible management, which will make this institution into a true centre of excellence.

I am very grateful to Ms. Madeleine Champagne, an education consultant and former school board senior administrator. Her expertise and experience helped us ask good questions, make the proper observations and formulate relevant recommendations. However, any errors or omissions are entirely my responsibility.

Finally, I would like to express my sincere appreciation to all those who met with us, gave us their time, and shared with us their ideas and their abiding passions. To all those people, parents, students, former students, administrators and staff members, and members of the French-language school boards, thank you.



François Boileau

French Language Services Commissioner of Ontario

I Summary

For the last few years, the students of the Centre Jules-Léger in Ottawa and their parents have been questioning the Centre's governance model. They are demanding changes. This includes the students and parents of both of the Centre's schools: the provincial school for deaf, hard of hearing, blind and deaf-blind Francophone students, and the demonstration school for Francophone students with learning disabilities.

While they have access to specialized education in French, they have no power to make decisions concerning the Centre Jules-Léger. All decisions regarding student admission and program delivery are made by the Ministry of Education of Ontario or its representatives.

The central governance problem described in this investigation report lies in the fact that there is no autonomous management of the Centre by and for Francophones. In the current structure, there is no board of trustees that can manage the Centre, because it is not part of a French-language school board, but rather is controlled directly and ultimately by the Minister of Education of Ontario.

However, the Supreme Court of Canada has repeatedly concluded that Ontario's French-speaking community has a right to manage and control French-language education programs and facilities. In fact, this right is enshrined in section 23 of the *Canadian Charter of Rights and Freedoms*. As this investigation report shows, by failing to give some degree of management and control to the members of the communities served by the Centre Jules-Léger, the Ministry of Education is in breach of its obligations under section 23 of the *Charter*.

In these circumstances, the Commissioner recommends that the Centre Jules-Léger, a centre of excellence in special education, be governed by one of the 12 French-language school boards on a trustee basis. He further recommends that the Minister of Education of Ontario maintain the current range of programs at the Centre and officially recognize that the Centre must be under the control of Ontario's Francophones. To this end, the *Conseil ontarien des directrices et directeurs de l'éducation de langue française* (CODELF) could be ultimately responsible for selecting the trustee board responsible for the services currently provided by the Centre Jules-Léger.

To get us to that point, the Commissioner recommends that a transition committee be established. The committee will have to be in place by September 2015 and make its recommendations by December 2015. The Commissioner also insists that the committee's recommendations be favourably received and that the Minister of Education be responsive to the committee's financial requirements. The goal is to ensure that the Centre Jules-Léger and its renewed mandate are truly successful.

In addition, the Commissioner recommends that the opening of the new school year in September 2016 be carried out in an orderly manner under the aegis of the selected French-language school board to ensure that everything is ready for the students in September 2016. Clearly, then, decisions must be made quickly.

In the Commissioner's view, this French-language school board will have to be responsible for delivering programs and services for the province's Francophone children and for students of the province's French-language school boards. He further recommends that the school board be responsible for human resources, property management, finance, instruction and related services, curriculum, transportation, information technology, professional development training, and research and development, for both schools.

This report also documents the loss of the Centre Jules-Léger's research and development mandate in 1995. As a result, the Commissioner recommends that a research and development centre, including training and professional development, be established.

With regard to parents, the Commissioner concludes following this investigation that they have undeniable language rights under section 23 of the *Charter* and therefore that it is important to consult them. Consequently, he recommends that a school council be established for the parents of students attending the Centre Jules-Léger and that the students also be represented on the council.

Lastly, the special education advisory committee established in accordance with the *Education Act* plays an important role in every school board. Accordingly, the Commissioner recommends that persons who have the same exceptionalities as those served by the Centre Jules-Léger be represented on the special advisory committee of the French-language school board responsible for managing the Centre. Similarly, he recommends that a provincial special education advisory committee be established specifically to discuss issues relating to the Centre Jules-Léger.

This investigation report demonstrates that the Ontario government is in a position to grant the Francophone linguistic minority the rights as enshrined in the *Charter*. Consequently, the Commissioner is making these recommendations to provide the Centre Jules-Léger with an autonomous governance structure for the sake of the Francophones who will manage it.

Background

After receiving a series of complaints about the governance of the Centre Jules-Léger, the Office of the French Language Services Commissioner of Ontario launched an investigation on the subject. The main problem lies in the fact that the Centre Jules-Léger falls under the responsibility of two divisions of the Ministry of Education: the French-Language, Aboriginal Learning and Research Division for program matters and the Learning and Curriculum Division (English-language division) for all operational matters. Parents have no opportunity (except on an advisory basis) to exercise their democratic right to be represented in the decisions concerning their children's French-language education.

First of all, the Commissioner's Office would like to make it clear that it received full cooperation from the Ministry of Education in this investigation. Ministry officials facilitated the numerous consultations and delivered various relevant documents of use to the staff of the Commissioner's Office in a timely manner.

I 1.1 Complaints received

The Office of the French Language Services Commissioner of Ontario received more than twenty complaints about the governance of the Centre Jules-Léger. The complainants considered it unacceptable for [TRANSLATION] “the Centre Jules-Léger to be subordinate to the Provincial Schools Branch and ultimately to the authority of the Ontario government, through its Ministry of Education, which undermines this Franco-Ontarian educational institution’s integrity, mission, mandates, programs and leading practices and even the future of its unique and essential educational services for blind, deaf and deaf-blind students and students with learning disabilities and attention deficit disorders with or without hyperactivity.” They asked how it is that the Centre Jules-Léger’s provincial school and demonstration school are [TRANSLATION] “the last French-language schools of Ontario that have not yet acquired their management rights under section 23 of the *Canadian Charter of Rights and Freedoms*,” management by and for Francophones.

The complainants reported alleged cutbacks, withdrawal of services and loss of the Francophone and cultural identity of the Centre Jules-Léger’s schools since the Ministry of Education took charge of the Centre. They lamented the failure to recognize Francophone needs and realities, particularly those of the Francophone minority community that uses Quebec Sign Language (LSQ). This community is entitled to the same rights as all other Francophones as regards the vitality of their language, culture and community.

Some complainants mentioned the restrictions placed on the Centre Jules-Léger’s independence and autonomy. For example, the Centre was stripped of its research and development mandate and its mandate to provide professional development for the staff of French-language school boards when its partnership with the University of Ottawa ended. In addition, in their view, the Centre’s schools should operate in exactly the same way as the English-language provincial and demonstration schools. The fact that they do not, they said, is completely inconsistent with the history of French-language education and the constitutional right to an education by and for Francophones in keeping with their specific characteristics.

The complainants added that the proposal to transfer the Centre Jules-Léger to a French-language school board, as advocated in Recommendation 6-19 of the Commission on the Reform of Ontario’s Public Services (Drummond report, 2012), has nothing to do with respect for Francophone rights, but is based on strictly economic considerations with the aim of “restoring fiscal health.”

| Methodology

In its investigation, a team from the Office of the French Language Services Commissioner undertook a series of activities to obtain a clearer understanding of the situation. They are listed in the following section.

I 2.1 Steps taken

- **Analysis of the complaints received by the Office of the French Language Services Commissioner**
 - **Studies of relevant documents,¹ including the following reports:**
 - Leduc-Levesque – *Review of the Centre Jules-Léger: A new organizational structure for improved service* (2005)
 - Deloitte – *Provincial School Branch, Residential Services Review* (2008)
 - Bernard-Boulianne – *Fact-Finding Report: A review of concerns expressed by students of the Centre Jules-Léger* (2011)
 - Drummond Commission on the Reform of Ontario's Public Services, *Public Services for Ontarians: A Path to Sustainability and Excellence* (2012)
- Consultations with the following persons:
- **Complainants**
 - **Senior managers in the Ministry of Education:**
 - French-Language, Aboriginal Learning and Research Division
 - Learning and Curriculum Division
 - **Centre Jules-Léger administrators:**
 - two superintendents (current and previous)
 - the principals of the two schools
 - the program director (retired)
 - the residential service manager
 - **Members of the Centre Jules-Léger advisory council**
 - **Staff members of the Centre Jules-Léger:**
 - provincial school
 - demonstration school
 - **Students of the Centre Jules-Léger:**
 - provincial school
 - demonstration school
 - **Most of the directors of education of the French-language school boards and administrators responsible for special education services in the French-language school boards.**
 - **Representatives of the *Association ontarienne des sourd(e)s francophones (AOSF)***
 - **Representatives of the *Regroupement des parents et amis des enfants sourds et malentendants franco-ontariens (RESO)***

¹A non-exhaustive list of the documents consulted is provided in Appendix A.

Brief history of the Centre Jules-Léger

The brief history below is taken from the Leduc-Levesque report (*Review of the Centre Jules-Léger: A new organizational structure for improved service* – June 2005).

3.1 Genesis of the Centre Jules-Léger²

"The idea of establishing a demonstration school for students with severe learning disorders stemmed from the Ministry of Education's concern about the fact that many Ontario students were enrolling in private American schools that specialized in learning disabilities. [...] A 1976 decision by an Ontario court forced the provincial government to do something to meet this need. In the case of *David Bruyn v. the Government of Ontario*, the court ruled that it was the province's responsibility to provide special services for this school-age person and to reimburse the family for school services provided by the private school that their child attended."³

[...]

In 1977, the Special Education Branch of the Ministry of Education, in conjunction with the Children's Division of the Ministry of Community and Social Affairs, initiated discussions for the establishment of a provincial school for students with severe learning disabilities, whose condition was such that they needed to be in a residential facility, i.e., an institution that would provide 24-hour-a-day care. This led to a project to create the first residential facility specializing in learning disabilities. Initially, it was an experimental project with a threefold mandate: a school program, a residential program and a training program. This marked the establishment of the two demonstration schools, now known as the Trillium Demonstration School for English-speaking students and the Centre Jules-Léger for French-speaking students. From the very beginning, the Trillium School was co-located with the E.C. Drury Provincial School for the Deaf. Nevertheless, the Trillium operated as a separate organization [...]. It opened in September 1978."⁴

The Centre Jules-Léger opened its doors in 1979. "Since there were no French-language provincial schools, the Ministry of Education decided to form a partnership with an organization that was already serving the French-language school community in Ontario,"⁵ the University of Ottawa Faculty of Education. In addition to the three mandates mentioned previously, the Centre Jules-Léger

was assigned a fourth mandate, research and development. This mandate "was needed because there were very few French-language evaluation and learning materials in the learning disabilities field, especially in the minority-language education community."⁶

3.2 Development and evolution⁷

The Centre Jules-Léger marked its 35th anniversary in 2014. Various changes have taken place since its establishment. Between 1979 and 1995, responsibility for operating the Centre was delegated by the Ministry of Education to the University of Ottawa Faculty of Education. "In 1995, the Ministry of Education took over full responsibility for operating the Centre, assigning it to the Provincial Schools Branch."⁸ In June 2005 (when the Leduc-Levesque report was written), the Branch was still running it.⁹ It is worth noting that when the Ministry of Education assumed responsibility for the Centre Jules-Léger, the latter's research and development mandate was taken away.

In 2004, a movement known as SOS Centre Jules-Léger was formed to campaign for the constitutional rights of the parents of Centre Jules-Léger students: education for and by Francophones.

In accordance with the recommendations of the study conducted by Ronald Leduc and Denis Levesque, it was decided that the Centre Jules-Léger would report to the French-Language Education Policy and Programs Branch for program matters. An advisory council was also established. The council's mandate is to provide advice to the senior management of the French-Language, Aboriginal Learning and Research Division on the delivery of programs and services for Francophone students and to suggest appropriate means for consulting the Francophone community. (Some complainants noted that the council ignored the inquiries of Francophones. In addition, the fact that leadership is split between two divisions creates ambiguities and challenges in disseminating

² Robert Leduc and Denis Levesque, *Review of the Centre Jules-Léger: A new organizational structure for improved service*, 2005, p. 11.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*, p. 12.

⁸ *Ibid.*

⁹ *Ibid.*

information. The perception is that the divisions “pass the buck” to each other, and as a result, some questions go unanswered.)

In 2011, the Office of the French Language Services Commissioner received a complaint alleging that the Ministry of Education was not providing Francophone deaf, hard of hearing and deaf-blind students with appropriate programs and services equivalent to those provided to English-speaking students.

Again in 2013-2014, the Office had 22 complaints about the governance of the Centre Jules-Léger not meeting the requirements of section 23 of the *Canadian Charter of Rights and Freedoms*.

The range of programs and services offered has changed over the years. A very brief chronology is provided below.

Dates / Mandate
.....

1979 - 1986 A demonstration school offering, within its four mandates (provide a residential program, an academic program, a teacher training program, and a research and development program), educational and residential programs and services for students from French-language schools who have severe learning disabilities

1984 Mandate expanded to include students with language disorders, particularly aphasia

1986 Following a study of the needs of Francophone deaf students (1985), programs and services for this group were introduced, including services for pre-school children and their parents. (Note that such services had been available for Anglophones for some time.)

1988 Introduction of programs and services for deaf-blind students

1989 Establishment of the provincial school and deployment of services for the deaf-blind

1999 Introduction of programs and services for students with attention deficit hyperactivity disorders (ADHD)

2002 Services for deaf-blind students provided at École Marius-Barbeau in cooperation with the Conseil des écoles catholiques du Centre-Est (CECCE)

| The Facts

The Centre Jules-Léger is composed of two schools: the provincial school and the demonstration school.

I 4.1 Provincial school

The provincial school, established under section 13 of the *Education Act*¹⁰ and under *Regulation 296*, Ontario Schools for the Blind and the Deaf,¹¹ provides programs and services, including a French-language residential facility, for deaf,¹² hard of hearing, blind and deaf-blind students who are eligible to attend French-language school.

The provincial school's mission is to "provide quality education programs for Francophone students in Ontario who are deaf, hearing-impaired, blind, visually impaired or deaf-blind and for whom there are no appropriate programs in their community."¹³

The provincial school teaches its students Quebec Sign Language, French and English in an environment that promotes bilingualism and cultural diversity.¹⁴ The provincial school also provides a residential program for [TRANSLATION] "deaf and hard of hearing students and some deaf-blind students who might benefit from a sign-language immersion setting where Quebec Sign Language is preferred."¹⁵

Under *Regulation 296*, Ontario Schools for the Blind and the Deaf, a student is eligible for admission to the provincial school if he or she is under 21 years of age and "because of a visual or an auditory handicap, or both, as certified by a legally qualified medical practitioner, [he or she] is in need of a special educational program."¹⁶ To be eligible, the student must have a parent who resides in Ontario, or if 18 or over, he or she must be a resident of Ontario.¹⁷

The provincial school also provides consulting services for students registered in schools of Ontario's 12 French-language school boards in order to

1. provide support in assessing the needs of deaf students;¹⁸
2. provide services to school-age children, their parents and the school boards to which the children belong, including student assessments and Braille or large-print transcription of educational materials;¹⁹
3. provide support services to deaf and blind children, to parents, to French-language school boards and to early years centres;²⁰
4. provide pre-school services to parents of deaf and hard of hearing children, including home visits, in part [TRANSLATION] "to guide parents in selecting a mode of communication for their deaf or hard of hearing child";²¹
5. provide services to pre-school deaf-blind children and their families, including visits at home and in early years centres, concerning communication and sensory programming.²²

4.2 Demonstration school

The demonstration school was established under section 13 of the *Education Act* and *Regulation 181/98, Identification and Placement of Exceptional Pupils*.²³

The demonstration school is, in particular, a French-language residential facility for students eligible for French-language school in Ontario who have severe learning disorders or learning disabilities.

¹⁰ *Education Act*, R.S.O. 1990, c. E.2, s. 13(1), (2) and (4.1).

¹¹ *Ontario Regulation 296: Schools for the Blind and the Deaf, made under the Education Act*, s. 2(5).

¹² Deafness means different things to people with hearing limitations and to the hearing majority. The term "hearing majority" refers to people who, unlike those who are deaf, deafened or hard of hearing, to name only those groups, have completely functional hearing.

¹³ Jean-Luc Bernard and Jacqueline Boulianne, *Fact-Finding Report: A review of concerns expressed by students of the Centre Jules-Léger, submitted to the Ministry of Education of Ontario*, p. 10.

¹⁴ For more information: www.centrejulesleger.com/ecoleprov.htm (page consulted in July 2015).

¹⁵ *Ibid.*

¹⁶ *Ontario Regulation 296, op. cit.*, s. 3(1).

¹⁷ *Ibid.*, s. 3(1)(c) and (d).

¹⁸ According to the Centre Jules-Léger's website, the Centre's six consultants monitor 274 students during a school year, and 558 visits to Ontario schools are planned for a school year. The site does not specify the year concerned. For more information: www.centrejulesleger.com/ecoleprov.htm (page consulted in July 2015).

¹⁹ According to the Centre Jules-Léger's website, the Centre's three consultants monitor 98 students during a school year. The site does not specify the year concerned. For more information: www.centrejulesleger.com/ecoleprov.htm (page consulted in July 2015).

²⁰ According to the Centre Jules-Léger's website, the Centre's three consultants monitor 37 students during a school year. The site does not specify the year concerned. There is also a "satellite" class for deaf and blind students at École Marius-Barbeau in Ottawa. For more information: www.centrejulesleger.com/ecoleprov.htm (page consulted in July 2015).

²¹ According to the Centre Jules-Léger's website, the Centre's teacher serves 31 children across the province. The site does not specify the year concerned.

²² For additional details: www.centrejulesleger.com/ecoleprov.htm (page consulted in July 2015).

²³ *Ontario Regulation 181/98: Identification and Placement of Exceptional Pupils*, s. 18(2)(c).

The demonstration school's mandate is as follows:

[...] [TRANSLATION] treat each child's learning disability specifically with a view to making him or her a more effective learner. We base our approach to this objective on the findings of recent research in psycho-sociolinguistics and neurolinguistics. Accordingly, we favour instilling metacognitive processes that can activate learning processes that would otherwise be difficult for our students. When our goals are achieved, in both the school and the residence, the child will have learned how to learn and will then be better prepared to understand what he/she is taught when he/she returns to school after spending one year, and possibly up to two years, with us.²⁴

According to Ministry of Education Memorandum No. 89, which concerns residential facilities for children with learning disabilities, a student is eligible for admission to the demonstration school if the following conditions are met:

1. the student has a severe learning disability;
2. the student is "in need of a residential education program";
3. the student's admission was recommended by an Identification, Placement and Review Committee;²⁵
4. a mental health professional determined recently that the student is not in need of treatment for emotional or behavioural disorders; and
5. the student has met with a consultant from the demonstration school.²⁶

The term "learning disability" is defined as follows in Ministry of Education Memorandum No. 89:

A learning disorder evident in both academic and social situations that involves one or more of the processes necessary for the proper use of spoken language or the symbols of communication:

a. that is not primarily the result of

- impairment of vision
- impairment of hearing
- physical handicap
- mental retardation
- primary emotional disturbance
- cultural difference

b. that results in a significant discrepancy between academic achievement and assessed intellectual ability, with deficits in one or more of the following:

- receptive language (listening, reading)
- language processing (thinking, conceptualizing, integrating)
- expressive language (talking, spelling, writing)
- mathematical computations

c. that may be associated with

- a perceptual handicap
- a brain injury
- minimal brain dysfunction
- dyslexia
- developmental aphasia.²⁷

²⁴ For more information: www.centrejulesleger.com/ecoleapplication.htm (page consulted in July 2015).

²⁵ Policy/Program Memorandum No. 89, *The residential demonstration schools for students with learning disabilities: General information and details of the referral process*. For more information: Ministry of Education of Ontario <http://www.edu.gov.on.ca/extra/eng/ppm/89.html> (page consulted in July 2015).

²⁶ *Ibid.*

²⁷ *Ibid.*

In establishing the demonstration school, the Ministry of Education of Ontario acknowledged that “[t]here exists [...] a small group of pupils with severe learning disabilities who require the facilities of a residential school.”²⁸ In addition, to carry out its mandate, the demonstration school limits enrolment to 40 students so that it can form a maximum of five groups of eight students.²⁹

4.3 Ontario’s english-language provincial and demonstration schools

1. Sir James Whitney School for the Deaf in Belleville
2. W. Ross Macdonald School for the Blind in Brantford
3. Ernest C. Drury School for the Deaf in Milton
4. Robarts School for the Deaf in London

The Ministry of Education also operates three English-language demonstration schools in Ontario for about 120 students:³⁰

1. Sagonaska Demonstration School in Belleville
2. Amethyst Demonstration School in London
3. Trillium Demonstration School in Milton

4.4 Current governance model of the Centre Jules-Léger

In 2014, the Centre Jules-Léger, which includes both the provincial school and the demonstration school, was managed by the Ministry of Education.³¹

The Ministry of Education established the Provincial Schools Authority:

*The Provincial Schools Authority [which includes the Centre Jules-Léger] was established to be the employer of record for teachers, principals and vice-principals in the Ministries of Education, and Community Safety and Correctional Services. It holds the contracts of these teachers, negotiates their collective agreement, handles grievance administration at the second step and arbitration stage, and advises ministries’ officials on administration of the collective agreement.*³²

The Centre Jules-Léger has two school principals, one for the provincial school, one for the demonstration school, and manager for the residential school, all of whom report to the Superintendent of the Centre Jules-Léger. The Superintendent of the Centre Jules-Léger reports to the Director of the French-Language Education Policy and Programs Branch, an employee of the Ministry of Education, regarding the Centre Jules-Léger’s programs, and to the Director of the Provincial Schools Branch regarding the Centre Jules-Léger’s finances and administrative support.³³ A chart showing the Centre Jules-Léger’s governance model is provided in Appendix B.

²⁸ *Ibid.*

²⁹ *Supra* note 24.

³⁰ For more information: http://www.psbnet.ca/eng/schools/sagonaska/general_information.html (page consulted in July 2015).

³¹ *Education Act, op. cit.*, s. 8(3), 13(3), 13(4.1) and 13(7).

³² Available online: <http://www.pas.gov.on.ca/scripts/en/boardDetails.asp?boardID=753> (page consulted in July 2015).

³³ Ronald Leduc and Denis Levesque, *supra* note 2, p. 25.

I 4.5 Statistical information on student enrolment

According to senior officials of the Ministry of Education, there were 13 students (10 day students and three students in residence) enrolled in the provincial school in 2014-2015.³⁴ The Centre Jules-Léger website also provides enrolment figures for the various services in the provincial school, but does not specify the year to which they apply.

According to the information received from the Ministry of Education, about 38 students were enrolled full time in the demonstration school in the 2014-2015 school year.³⁵

However, regardless of the number of students who have passed through the Centre Jules-Léger over the years, regardless of the Centre's current enrolment and regardless of its future enrolment, school management rights exist. The students receive services that address their needs and exceptionalities, and these services must be provided under management by and for Francophones.

³⁴ See Appendix E.

³⁵ *Ibid.*

Various issues that will not be addressed

Some of the questions raised by complainants or in consultations with the various stakeholders, though very interesting and significant, cannot be taken into consideration in the conclusions or recommendations resulting from the investigation. This is because some of the subjects touched on are outside the mandate of the Commissioner's Office. In fact, in the discussions, the Commissioner was very clear and specific on this point. He stressed that he had neither the jurisdiction nor the expertise to make recommendations on the most effective educational approaches or to take a position on working conditions. Nor does he intend to carry out a comparative analysis of provincial schools' programs, services and resources, or a comprehensive financial analysis. Similarly, the Commissioner did not allow himself to be drawn into the debate on the status of the Centre Jules-Léger's residences, recognizing that both sides' positions are strongly held and have merit. It is outside the purview of the Commissioner's Office to deal with union matters and other human resources policies in this investigation into the governance of the Centre Jules-Léger. The focus for the Commissioner's Office is governance by and for Francophones and due regard for parents' democratic right to be represented in major decisions concerning their children's French-language education: the direction of the programs and services intended for the group being served and the operation of the institution providing the service.

| 6

| Governance: a few concepts

I 6.1

Governance in the context of French-language education in Ontario

To answer the question of whether the current governance model of the Centre Jules-Léger, both the provincial school and the demonstration school, undermines the French-language educational institution's integrity, mission, mandates and programs, we should define the term "governance".

In 2011, the Ministry of Education adopted the Consultation Policy on Governance of French-Language Education in recognition of the specific importance of consulting with its French-language education partners on proposed amendments to the *Education Act* or its regulations.³⁶ The Policy's purpose is to "describe how to proceed when it is decided that a consultation will take place in order to identify the facts and issues raised by the proposal in relation to matters of governance of French-language education."³⁷ For the purpose of the Policy, the Ministry of Education of Ontario defined governance as follows: "management and control over the linguistic and cultural aspects of French-language education."³⁸ While Merriam-Webster defines governance as "the way that a city, company, etc., is controlled by the people who run it",³⁹ in the context of French-language education, governance is more closely related to autonomy, which is "the power or right of a country, group, etc., to govern itself".⁴⁰

[...] governance is the exercise of authority, direction, and accountability to serve the higher moral purpose of public education. A governance structure defines the roles, relationships, and behavioural parameters for the board and its staff. In education, the true test of any board's governance structure is its effectiveness in promoting and sustaining a board's achievement standards, accomplishing goals designed to bring positive results to communities, and demonstrating accountability.⁴¹

"Setting the conditions that will provide a high-quality education for every student to succeed in school and in life is the absolute first priority of a school board."⁴²

Canadian courts have considered many times how the expression "management and control" should be interpreted in the context of French-language education. The linguistic minority's right to be managed and controlled by representatives of the French-speaking community was recognized for education purposes in the 1984 *Reference re Education Act of Ontario*,⁴³ but it was in the context of *Mahé v. Alberta*,⁴⁴ in 1990, that the Supreme Court of Canada provided a definitive interpretation of this right which is enshrined in section 23 of the *Charter*.

³⁶ Consultation Policy on Governance of French-Language Education, July 2011, p. 2. Available online: www.edu.gov.on.ca/eng/amenagement/ConsultEducation.pdf (page consulted in July 2015).

³⁷ *Ibid.*, p. 4.

³⁸ *Ibid.*

³⁹ Available online: www.merriam-webster.com/dictionary/governance (page consulted in July 2015).

⁴⁰ *Ibid.*

⁴¹ Ontario Education Services Corporation, *Good Governance: A Guide for Trustees, School Boards, Directors of Education and Communities*, 2014, p. 24.

⁴² *Ibid.*, p. 2.

⁴³ *Reference re Education Act of Ontario and Minority Language Education Rights*, (1984) 47 O.R. (2d) 1, CanLII 1832, p. 58 (CA).

⁴⁴ *Mahé v. Alberta*, [1990] 1 S.C.R. 342.

6.1.1 Scope of power for the representatives of French-speaking communities

In *Mahé*, the Supreme Court of Canada reiterated the importance of the right of “management and control” for French-speaking communities.

The Supreme Court of Canada recognized that French-speaking communities are entitled, where there are sufficient numbers of children eligible for French-language school, to have their own facilities. Incidentally, the representatives of the French-speaking communities should have a measure of management and control of these facilities.⁴⁵ This power is necessary to:

*[...] preserve and promote minority language and culture throughout Canada. Such management and control is vital to ensure that their language and culture flourish. It is necessary because a variety of management issues in education, e.g., curricula, hiring, expenditures, can affect linguistic and cultural concerns. I think it incontrovertible that the health and survival of the minority language and culture can be affected in subtle but important ways by decisions relating to these issues.*⁴⁶

According to the Supreme Court of Canada, this power is also necessary because Ontario’s English-speaking majority cannot take account of the French-speaking minority’s needs, both linguistically and culturally: “the majority cannot be expected to understand and appreciate all of the diverse ways in which educational practices may influence the language and culture of the minority.”⁴⁷

6.1.2 Cultural mandate of French-language schools

According to the Supreme Court of Canada, the purpose of section 23 of the *Charter* is to “preserve and promote the two official languages of Canada, and their respective cultures.”⁴⁸ The importance of French-language schools in transmitting the French language and French culture is fundamental:

*[A]ny broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.*⁴⁹

Quite recently, in *Rose-des-vents*, the Supreme Court of Canada further clarified its thinking on this matter as follows:

*Section 23 is concerned with the preservation of culture as well as language. As the Royal Commission on Bilingualism and Biculturalism noted, “[l]anguage and culture are not synonymous, but the vitality of the language is a necessary condition for the complete preservation of a culture” (Report of the Royal Commission on Bilingualism and Biculturalism, Book II, Education (1968), at p. 8).*⁵⁰

Thus, French-language schools “themselves provide community centres where the promotion and preservation of minority-language culture can occur; they provide needed locations where the minority community can meet and facilities which they can use to express their culture.”⁵¹

⁴⁵ *Ibid.*, p. 370.

⁴⁶ *Ibid.*, p. 371-372.

⁴⁷ *Ibid.*, p. 372.

⁴⁸ *Ibid.*, p. 362.

⁴⁹ *Ibid.*, p. 362; see also *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, pp. 748 and 749.

⁵⁰ *Association des parents de l'école Rose-des-vents v. British Columbia (Education)*, 2015 SCC 21, para. 26.

⁵¹ *Mahé v. Alberta, op. cit.*, p. 363.

I 6.1.3 Limit on the power to manage and control the linguistic and cultural aspects: the “numbers warrant” provision

The rights enshrined in section 23 of the *Charter* are individual rights, in the sense that they guarantee individuals the right to educate their children in the minority language, but they are also collective rights in the sense that they are intended to protect linguistic minority communities.⁵²

The collective nature of section 23 of the *Charter* is particularly evident in the fact that the degree of management and control of the linguistic and cultural aspects of French-language education guaranteed by the *Charter* depends on the number of children eligible to attend French-language school.⁵³ In some circumstances, the degree of management and control warranted by the number of eligible students leads to the establishment of an independent French-language school board. On the other hand,

*where the number of students enrolled in minority schools is relatively small, the ability of an independent board to fulfill this purpose may be reduced and other approaches may be appropriate whereby the minority is able to identify with the school [...].*⁵⁴

To determine whether the numbers warrant some of the governance models envisaged by section 23 of the *Charter*, Canadian courts decided to use the criterion of “the number of persons who will eventually take advantage of the contemplated programme or facility.”⁵⁵ Clearly, it is impossible to determine exactly how many people will take advantage of the services offered in French. Canadian courts base their consideration of the “numbers warrant” issue on the “known demand,”⁵⁶ that is, the number of students who are already taking advantage of the existing French-language services, and also on “the total number of persons who potentially could take advantage”⁵⁷ of the educational services.

It is important to note that the exclusive power to manage and control matters affecting or concerning the minority language and culture is only a minimum;⁵⁸ the Ontario government can decide to grant more rights to the minority than are enshrined in the *Charter*.

I 6.2 Rights and roles of french-language minority education stakeholders

The principle of management and control of the linguistic and cultural aspects of French-language education by the French-speaking minority community therefore creates rights for the members of Ontario’s French-speaking minority community, for the 12 French-language school boards established to represent the interests of the members of Ontario’s French-speaking community, and for the Ministry of Education of Ontario, all of which can be defined as the “stakeholders” of French-language education in Ontario. **Moreover, the principle of management and control of the linguistic and cultural aspects of French-language education implies that the members of the French-speaking minority community play an important role in educating the children who are eligible to attend French-language school.**

Canadian laws, regulations and courts have so far given French-language education stakeholders the rights and roles listed below.

⁵² *Solski (Tutor of) v. Quebec (Attorney General)*, [2005] 1 S.C.R. 201, paras. 23 and 33.

⁵³ *Mahé v. Alberta*, *op. cit.*, p. 374.

⁵⁴ *Ibid.*

⁵⁵ *Mahé v. Alberta*, *op. cit.*, p. 384; *Reference re Public Schools Act (Man.)*, s. 79(3), (4) and (7), [1993] 1 S.C.R. 839, p. 850; *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, para. 32.

⁵⁶ *Mahé v. Alberta*, *op. cit.*, p. 384.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p. 379.

| 6.2.1 Members of Ontario's French-speaking community

1. The right to have their children receive elementary and secondary school instruction in French.⁵⁹
2. Where numbers warrant, the right to minority-language educational facilities.⁶⁰
3. Where numbers warrant, the right to have French-language education provided in facilities located where the children reside.⁶¹
4. The right to have educational programs of equivalent quality to those available to the majority, and even the right to application of the principle of substantive equivalence.⁶²
5. The right to facilities of equivalent quality to those available to the majority.⁶³
6. The right of democratic participation, hence the right to vote in elections of the elected representatives of their region's French-language school board.⁶⁴
7. The right to special education services for children with learning disabilities in their language of instruction.⁶⁵

| 6.2.2 Ontario's 12 French- language school boards

Make the decisions necessary to transmit language and culture to children who are eligible to attend French-language school in Ontario.⁶⁶

1. The exclusive right to manage expenditures, establish and implement programs of instruction in French, hire administrative and teaching staff, and make agreements for education and services for minority-language students.⁶⁷
2. The exclusive right to determine the location and size of French-language schools and the academic organization within French-language schools.⁶⁸
3. The exclusive right to manage admissions to French-language schools.⁶⁹

⁵⁹ *Canadian Charter of Rights and Freedoms*, s. 23(1), Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11; *Education Act*, R.S.O. 1990, c. E.2, s. 21.

⁶⁰ *Canadian Charter of Rights and Freedoms*, s. 23(3)(b), Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

⁶¹ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, para. 52 and 55.

⁶² *Marchand v. Simcoe County Board of Education et al.*, (1986) 55 O.R. (2d) 638, p. 660 (H.C.); *Reference re Education Act of Ontario and Minority Language Education Rights*, *op. cit.*; *Mahé v. Alberta*, *op. cit.*, p. 378; and *Association des parents de l'école Rose-des-vents v. British Columbia* (Education), 2015 SCC 21, para. 41.

⁶³ *Association des parents de l'École Rose-des-vents v. Conseil scolaire francophone de la Colombie-Britannique*, *op. cit.*, para. 128-135.

⁶⁴ It is legitimate to interpret the right to vote of the members of Ontario's French-speaking community in light of decisions interpreting the right to vote enshrined in section 3 of the *Charter*. For example, see *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, p. 183: "It is my conclusion that the purpose of the right to vote enshrined in s. 3 of the *Charter* is not equality of voting power *per se*, but the right to 'effective representation'. Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative; as noted in *Dixon v. British Columbia (Attorney General)*, [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles – legislative and what has been termed the 'ombudsman role'."

⁶⁵ *Education Act*, *supra* note 10, s. 8(3).

⁶⁶ *Mahé v. Alberta*, *op. cit.*, p. 377.

⁶⁷ *Ibid.*, p. 394 and p. 395.

⁶⁸ *Arsenault-Cameron v. Prince Edward Island*, *op. cit.*, para. 50.

⁶⁹ *Reference re Education Act of Ontario and Minority Language Education Rights*, *op. cit.*, p. 57 (CA); *Commission scolaire francophone, Territoires du Nord-Ouest et al. c. Procureur général des Territoires du Nord-Ouest*, 2012 NWTSC 44 cor 1, para. 657; *Commission scolaire francophone du Yukon No. 23 v. Attorney General of the Yukon Territory*, 2011 YKSC 57, paras. 762-764. These three decisions were reversed on appeal on the question of admissions management. The Yukon case was appealed to the Supreme Court of Canada by the *Commission scolaire francophone du Yukon*, in part on the question of admissions management. This case has been under advisement since January 21, 2015.

I 6.2.3 Ministry of Education of Ontario

1. Finance French-language instruction out of public funds⁷⁰
2. Oversee the content and quality of the French-language programs in so far as that oversight does not interfere with the “linguistic and cultural concerns” of the French-speaking community⁷¹
3. Put in place structures, policies and regulations that address the needs of Ontario’s French-speaking community⁷² while ensuring that Francophone students’ educational experience is substantively equivalent to that of majority students⁷³
4. Fund special education services for children with learning disabilities in their language of instruction⁷⁴

In this particular case, although the members of the French-speaking community have access to special education in French in a separate facility, the Centre Jules-Léger, they do not have the power to make the decisions of the Centre Jules-Léger (both the provincial school and the demonstration school) relating to language and culture. As explained above, the decisions concerning the hiring of Centre Jules-Léger staff, the admission of Centre Jules-Léger students and the programs offered at the Centre Jules-Léger are made by the Ministry of Education or its representatives.

At present, the Centre Jules-Léger’s governance model is inconsistent with the division of French-language education stakeholders’ roles and obligations as recognized by education laws and court decisions interpreting section 23 of the *Charter*.

⁷⁰ *Canadian Charter of Rights and Freedoms*, *op. cit.*

⁷¹ *Arsenault-Cameron v. Prince Edward Island*, *op. cit.*, para. 53.

⁷² *Ibid.*, para. 43; *Mahé v. Alberta*, *op. cit.*, p. 393.

⁷³ *Association des parents de l’école Rose-des-vents v. British Columbia (Education)*, *op. cit.*, para 41.

⁷⁴ *Education Act*, *supra* note 10, s. 8(3).

Incompatible model with section 23 of the *Charter*

In 1979, the Ontario government established a facility to provide special education programs for the French-speaking minority, the Centre Jules-Léger, which is composed of a provincial school and a demonstration school. As explained previously, the members of Ontario's French-speaking community do not manage the Centre Jules-Léger. In fact, it is managed exclusively by the Ministry of Education of Ontario.

By virtue of this government decision to establish a facility for the minority, the representatives of Ontario's French-speaking community "have the right to a degree of governance of th[is] facilit[y]. This right of management and control is present independent of the existence of a minority language board [...]."⁷⁵ Hence, the fact that the Centre Jules-Léger is not managed by a school board in no way diminishes the constitutional right of the members of the French-speaking community to participate in its management and control.

Consequently, the matter at hand is not to determine whether numbers warrant the establishment of a minority facility to provide French-language services to children with disabilities, but rather to determine what degree of management and control is warranted by the number of students who may take advantage of the services of the Centre Jules-Léger, both the provincial school and the demonstration school.

⁷⁵ *Arsenault-Cameron v. Prince Edward Island*, *op. cit.*, para. 42.

7.1 Some observations

For the last several years, the parents and students of the Centre Jules-Léger, both the provincial school for deaf, hard of hearing, blind and deaf-blind students and the demonstration school for students with learning disabilities, have been questioning the Centre's governance model and demanding changes.

In a study conducted by Ronald Leduc and Denis Levesque in June 2005, 50 parents⁷⁶ and 29 students⁷⁷ of the Centre Jules-Léger, both the provincial school and the demonstration school, completed a questionnaire on the Centre Jules-Léger's services and identified the Centre's strengths and weaknesses. Governance was a recurring theme in this survey.⁷⁸ Among the observations documented in the Leduc-Levesque report were the following:

- a. "The Centre [Jules-Léger] has experienced the effects of outside management by the Provincial Schools Branch (PSB)."
- b. "The Centre [Jules-Léger]'s governance is not linked closely enough to the French school system."
- c. "Everyone agrees that what is needed is governance by and for Francophones."⁷⁹

In addition, in February 2011, the students of the provincial school for deaf, hard of hearing, blind and deaf-blind students, one of the Centre Jules-Léger's two schools, held demonstrations to demand the following:

- a. "instruction in LSQ [Quebec Sign Language] and French of sufficient quality to meet the needs of the deaf and hard of hearing";⁸⁰

- b. "a school leadership that is sensitive to the language, culture and needs of the deaf";⁸¹
- c. "promotion of the school so as to increase enrolment in and access to the Centre Jules-Léger, a unique school in French Ontario".⁸²

Lastly, in 2014, the CODELF examined the matter of the Centre Jules-Léger's governance at the request of the Office of the French Language Services Commissioner. The CODELF is interested in the management of the Centre Jules-Léger because students enrolled in the schools of its members are admitted to the Centre while its members have no control over the Centre's admission decisions and, most importantly, have no say in the education of students who are admitted to the Centre.⁸³ It is partly for these reasons that Ontario's French-language school boards would like to have complete governance of the Centre.⁸⁴

⁷⁶ Ronald Leduc and Denis Levesque, *supra* note 2, p. 46.

⁷⁷ *Ibid.*, p. 42.

⁷⁸ *Ibid.*, p. 51.

⁷⁹ *Ibid.*, p. 53.

⁸⁰ Jean-Luc Bernard and Jacqueline Boulianne, *supra* note 13, p. 9.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Supra* note 1.

⁸⁴ *Ibid.*

I Recommendation 1

Given that the principle of management and control of the linguistic and cultural aspects of French-language education implies that the members of the French-speaking minority community play an important role in educating children who are eligible to attend French-language school,

Given that the Ministry of Education is aware of its constitutional obligations under section 23 of the Canadian Charter of Rights and Freedoms, including the obligation to give representatives of Ontario's French-speaking community management and control of matters relating to language and culture,

Given that at present and since 1995, under the governance model of the Centre Jules-Léger, management and control of demonstration school and provincial school matters relating to language and culture is vested in the Ministry of Education,

Given that the governance model of the Centre Jules-Léger violates section 23 of the Canadian Charter of Rights and Freedoms,

Given that the current governance model of the Centre Jules-Léger is inconsistent with the objectives of Ontario's Aménagement Linguistique Policy, particularly the objectives to "promote, enhance, and expand the use of the French language in all spheres of activity" and "reduce the potential for assimilation by creating and maintaining alliances with parents", and

Given that any child could, for various reasons, develop during his or her early years a condition that would warrant recourse to the services offered by the Centre Jules-Léger,

The Commissioner recommends that the Ontario Minister of Education officially recognize that the governance of the Centre Jules-Léger should be in the hands of Ontario's Francophones.

I 7.2 Undermining the integrity and the mission of the two schools

The Centre Jules-Léger's current governance model, under which both the provincial school and the demonstration school are managed by the Ministry of Education, undermines the integrity and the mission of the Centre Jules-Léger.

As French-language schools, the two schools that form the Centre Jules-Léger have as one of their mandates the transmission of the French language and French culture.⁸⁵

The provincial school also has a mandate to transmit the language and culture of the deaf,⁸⁶ including Quebec Sign Language. Quebec Sign Language is a language in its own right, distinct from French and English.⁸⁷ In 1968, the Royal Commission on Bilingualism and Biculturalism made the following observation: "Language is also the key to cultural development. Language and culture are not synonymous, but the vitality of the language is a necessary condition for the complete preservation of a culture."⁸⁸ Following the adoption of the *Charter*, the Supreme Court of Canada ruled that language is more than a means of communication: "[I]t colours the content and meaning of expression. It is a means by which a people may express its cultural identity."⁸⁹ It is true that neither the Royal Commission nor the Supreme Court of Canada in the *Ford* and *Mahé* cases mentioned Quebec Sign Language, but LSQ, as a language, entails the creation of its own culture, a culture that is distinct from French-language culture.⁹⁰ Thus, since French-language school is the French-speaking community's primary instrument for transmitting the French language and French culture, it must be recognized that the provincial school plays the same role for Quebec Sign Language and its associated culture.

The Supreme Court of Canada has recognized the fundamental role of French-language schools in the promotion and preservation of French-language culture. The provincial school plays a fundamental role in the promotion and preservation of deaf culture. Moreover, the provincial school is the only school that fulfils this role. For example, the provincial school is one of the few meeting places for members of the Quebec Sign Language community⁹¹ in Ontario.

This twofold cultural mandate as an agent for the promotion and preservation not only of the French language and French culture but also of Quebec Sign Language and deaf culture must be taken into account in the Centre Jules-Léger's governance model, even though only the cultural mandate of the French-language school is protected by the *Charter*.

In fact, there are strong connections between the French language and Quebec Sign Language, and between the associated cultures, since children who use LSQ come from families who belong to the French-speaking community, and since those children generally receive a bilingual education through which they learn both LSQ and French.

To echo the terms used by the Supreme Court of Canada in *Mahé* and *Solski*, the right of management and control allows the members of the minority communities to identify with their schools.⁹² In the case of the Centre Jules-Léger, since the members of the minority communities do not manage or control matters relating to language and culture, such as the hiring of the Centre's employees and the Centre's expenditures, the members of the communities served by the Centre cannot fully identify with their school.

⁸⁵ *Mahé v. Alberta*, *op. cit.*, p. 362 and p. 363.

⁸⁶ For more on this issue, see Émilie Moniz and Mark Power "Les langues des signes au Canada: entre droits linguistiques et droits de la personne" in *McGill Journal of Law and Health*, vol.8:1, 2014, pp. 43-78; Jean-Luc Bernard and Jacqueline Boulianne, *supra* note 13, p. 10.

⁸⁷ For more information: <http://www.cad.ca/language.php> (page consulted in July 2015).

⁸⁸ Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism*, Book II: Education, Ottawa, Queen's Printer, 1968, p. 8.

⁸⁹ *Ford v. Quebec (Attorney General)*, *op. cit.*, pp. 748 and 749.

⁹⁰ *Supra* note 86.

⁹¹ *Mahé v. Alberta*, *op. cit.*, p. 363.

⁹² *Solski (Tutor of) v. Quebec (Attorney General)*, *supra* note 52, para. 50.

I Recommendation 2

The Commissioner recommends to the Minister of Education that programs currently offered at Centre Jules-Léger should be maintained.

It follows from this observation that a governance model under which the Ministry of Education manages the minority's schools undermines their mission to transmit the language and culture of the communities they serve. For this reason, the Supreme Court of Canada repeatedly concluded that Ontario's French-speaking community had a right to manage and control French-language education programs and facilities, a right enshrined in section 23 of the *Charter*. By failing to give some degree of management and control to the members of the communities served by the Centre Jules-Léger, the Ministry of Education is in breach of its obligations under section 23 of the *Charter*.

This conclusion is true despite the Ministry's argument that all Ministry employees responsible for managing the Centre Jules-Léger are members of the French-speaking community. Needless to say, this in no way changes the fact that the members of the deaf community are not represented in the Centre Jules-Léger's governance model. The language of work of the Ministry of Education of Ontario is English. Moreover, even though it is true that the Centre Jules-Léger is managed by Ministry of Education employees, the ultimate authority for the management of the Centre's two schools is vested in the Minister of Education.⁹³

⁹³ *Education Act*, *supra* note 31.

7.3 Where numbers warrant: Foresight and analysis

The fact that the current governance model undermines the Centre Jules-Léger's integrity and mission is only part of the equation. What also determines the degree of management and control given to members of the communities served by the Centre Jules-Léger is the number of students who will eventually take advantage of the programs offered by the Centre Jules-Léger, both the provincial school and the demonstration school.

Statistics Canada conducts the Canadian Survey on Disability "to provide information about Canadian adults whose daily activities are limited because of a long-term condition or health-related problem."⁹⁴ In 2006, the Canadian Survey on Disability was administered to a small sample of children aged 5 to 18 who were identified as limited by a health problem, including seeing conditions, hearing conditions and learning disorders.⁹⁵ The term "hearing conditions" is broadly defined by Statistics Canada. It includes persons who are completely deaf, deafened or hard of hearing or have implants.⁹⁶ A deafened person is someone who once had functional hearing but suffered some hearing loss for one reason or another. "Hard of hearing" refers to someone who can hear but does not have completely functional hearing. A person with an implant is someone who has received a cochlear implant, an electronic device surgically implanted in the ear to help a deaf person hear.⁹⁷ According to Statistics Canada, the number of children aged 5 to 18 who live in Ontario, have at least one parent whose first language is French, speak French often at home or have some knowledge of French, and were identified in the Canadian Survey on Disability as being limited by a health problem warranting admission to the provincial school or the demonstration school is too small to serve as the basis for a report. According to Statistics Canada, the number of potential students of the provincial school, the school for deaf, hard of hearing, blind and deaf-blind students, is less than 20.

However, it is important to understand that Statistics Canada's data understates the number of students eligible to attend French-language school, in particular because only children with at least one parent whose first language is French are counted and this is only one of the three classes of students eligible to attend French-language school in Ontario identified by section 23 of the *Charter*. In addition, the 2006 Canadian Survey on Disability covered only a sample of the Canadian population. The fact that the 2006 Canadian Survey on Disability covered only children identified by their parents as being limited by a disability, which is not the case for all deaf, blind or deaf-blind persons, must also be taken into account.

Unfortunately, it was impossible in this survey to identify the total number of persons who might eventually take advantage of the Centre Jules-Léger's services, even though the Ministry of Education and Ontario's 12 French-language school boards were sent emails inquiring about the number of potential students. From the responses received, it was possible to determine only part of the Centre Jules-Léger's *known* demand in the 2014-2015 school year, that is, the current enrolment, but not the number of students who might *eventually* take advantage of the Centre Jules-Léger's services.

Yet, according to the Supreme Court of Canada, it is the Ontario government's responsibility to identify the potential demand for the Centre Jules-Léger. That is,

*The province has the duty to actively promote educational services in the minority language and to assist in determining potential demand. [...] The province cannot avoid its constitutional duty by citing insufficient proof of numbers, especially if it is not prepared to conduct its own studies or to obtain and present other evidence of known and potential demand.*⁹⁸

⁹⁴ Available online: <http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SurvId=1330116&Instald=1330126%20SDDS=3251> (page consulted in July 2015).

⁹⁵ For more information: http://www23.statcan.gc.ca/imdb-bmdi/instrument/3251_Q3_V1-eng.htm (page consulted in July 2015).

⁹⁶ Statistics Canada, *Participation and Activity Limitation Survey 2006: Facts on Hearing Limitations*, Ottawa, 2006, p. 1.

⁹⁷ For more information: www.canadianaudiologist.ca/a-brief-history-of-the-cochlear-implant (page consulted in July 2015).

⁹⁸ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, para. 34.

First, it is important to consider the fact that Statistics Canada underestimates the number of students eligible to attend the provincial school and the demonstration school. Second, it must be borne in mind that the Ministry of Education of Ontario established the provincial schools and the demonstration schools with the knowledge that very few students would be enrolled in them full time,⁹⁹ but also that it is the Ministry's responsibility to determine how many students might eventually take advantage of the Centre Jules-Léger's services, which does not appear to have been done.¹⁰⁰ Third, analysis of the numbers justifies some degree of management and control for the members of the French-speaking community, even though the Centre Jules-Léger's potential enrolment is low.

This conclusion is also supported by the fact that children born with a seeing or hearing impairment or a learning disorder are not the only ones who might take advantage of the Centre Jules-Léger's services: any child could, for various reasons, develop a condition during his or her early years that would warrant making use of the services offered by the Centre Jules-Léger.

In any event, the Ontario government decided to open and maintain a French-language school for the deaf or blind in accordance with section 13(4) of the *Education Act*, as well as a French-language demonstration school under section 13(4.1) of the *Act*. Moreover, the Ontario government assumed the obligation to encourage the placement outside regular classrooms of exceptional children who require such placement.¹⁰¹

⁹⁹ Policy/Program Memorandum No. 89, *supra* note 25.

¹⁰⁰ *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, para. 34; *Lavoie v. Nova Scotia (Attorney General)*, 1988 CanLII 3950, p. 7.

¹⁰¹ *Education Act*, *supra* note 10; in general, see *Farnham (Re)*, 2005 SKPC 122, paras. 13 and 49. The *Farnham (Re)* case shows the importance of having a school for deaf children, particularly as regards language development in the children. The judge in this case criticized the Saskatchewan government for closing the province's school for the deaf and for the fact that the Saskatchewan government's programs focused on integrating deaf children into the province's regular classrooms.

I 7.4 Where numbers warrant: Analysis of the degree of management and control of linguistic and cultural matters

The number of children involved does not necessarily warrant the establishment of a French-language school board to manage just the Centre Jules-Léger. Indeed, on the sliding scale mentioned by the Supreme Court of Canada in *Mahé*, the establishment of a school board is the highest degree of management and control,¹⁰² and therefore “[o]ther degrees of management and control may be required in situations where the numbers do not justify granting full rights of management and control.”¹⁰³

However, the *Education Act* provides for the establishment of a “school authority”, which is defined as follows:

- a. a board of a district school area, or
- b. a board of a rural separate school, or
- c. a board of a combined separate school zone, [...].¹⁰⁴

According to the *Education Act*, a school authority is similar to a school board, since a “board” is defined as “a district school board or a school authority”.¹⁰⁵ With the school authority concept, the *Act* recognizes and accepts the fact that the members of a community, even a very small community, have an interest in managing their school. The school authority concept is also recognition of the importance of giving the key interested parties a degree of management and control, at the micro level. This is also what the complainants want. It seems clear, however, that the Ministry of Education has been trying to distance itself from the idea of school authorities in recent years. In practice, this governance model may appear attractive at first glance, but it would mean ignoring the intrinsic connections that must bring the Centre Jules-Léger’s two schools and Ontario’s 12 French-language school boards closer together.

¹⁰² *Mahé v. Alberta, op. cit.*, p. 379 and p. 380.

¹⁰³ *Ibid.*, p. 380.

¹⁰⁴ *Education Act, op. cit.*, s. 1.

¹⁰⁵ *Ibid.*

I 7.5 Management by a French-language school board

Following an analysis of a variety of possible models for the governance of Centre Jules-Léger by and for Francophones, including the school authority solution suggested by the complainants, it turned out that transferring governance to one of the 12 French-language school boards was the most appropriate and efficient model at the present time. As indicated below, it is based on existing successful models. It assures the cooperation between the 12 French-language boards that is desired and encouraged by the Ministry of Education.

Ideally, the preferred governance model would involve assigning responsibility for managing the Centre Jules-Léger directly to the CODELF rather than to the Minister of Education. But since the CODELF, unlike the Council of Ontario Directors of Education (CODE), is not based in legislation, this cannot be recommended. In this context, it is recommended that the Centre Jules-Léger, a centre of excellence in special education, be governed by one of the 12 French-language school boards as a “trustee” that will make all strategic and operational decisions concerning the Centre and assume the management of day-to-day operations (finance, human resources, IT resources, property management, maintenance, etc.), including supervision of the Centre’s programs and staff. This strategy is based on pragmatic values and promotes effective rationalization of human resources and their skills. The decision-making and bureaucratic levels are limited, while the province-wide vision is maintained. To this end, the Ministry of Education would transfer the governance of the provincial school and the demonstration school to this trustee French-language board, which, like the Minister of Education, would oversee both the demonstration school and the provincial school. The CODELF would be ultimately responsible for selecting the trustee board that would take care of the day-to-day management of the Centre Jules-Léger’s two schools. In fact, the CODELF would act like a typical board of directors, leaving the selected French-language school board with complete freedom of action, because in the end, that school board will be the Centre Jules-Léger’s real manager on a daily basis.

This governance model is based in part on the governance model of the *Consortium d’apprentissage virtuel de langue française de l’Ontario* (Ontario consortium for French-language e-learning). In 2006, the CODELF supported the recommendation to establish the *Consortium d’apprentissage virtuel de langue française de l’Ontario*. The Consortium offers online courses in French to all students enrolled in a French-language school in Ontario, regardless of their background and religious denomination. The CODELF delegated the Consortium’s day-to-day management to a *trustee* board, the *Conseil des écoles catholiques du Centre-Est*. However, all of the Consortium’s legal and operational decisions are made by the CODELF, on the recommendation of the 12 members of the implementation committee, on which each school board has one representative.

In fact, other Ontario-wide projects are also managed in this way, such as the *Conseil de liaison pour les leaders provinciaux pour la pédagogie* (liaison council for provincial leaders for education), managed by the *Conseil scolaire de district catholique de l’Est ontarien* (CSDCEO), and the alliance of special education leaders, managed by the *Conseil scolaire Viamonde*.

Alberta’s French-language school boards established the *Fédération des conseils scolaires francophones* (federation of French-language school boards), which meets at least once a year to discuss topics of concern to all boards. In addition, the federation oversees three joint programs, which are managed by a trustee board but benefit the students of all of the province’s French-language boards.

For example, the *Réseau d’adaptation scolaire* (school adjustment network) manages specialized French-language services available to students in Alberta’s French-language boards. The *Fédération des conseils scolaires francophones* manages this network, but responsibility for the network’s day-to-day management was assigned to a *trustee* board, the *Conseil scolaire francophone*

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Centre-Nord. This board makes decisions concerning the network, hires its staff and manages its budget. In addition, the board's collective agreement covers the network's employees. The directors general of the other French-language school board are also involved in the network's governance through meetings of the "management committee" and the "leadership committee". The management committee consists of the four directors general of Alberta's French-language school boards and meets twice a year, in part to ask the network's director and the trustee board any questions they may have. The leadership committee is composed of the assistant directors general of the four French-language boards and meets four times a year, in particular to determine the network's strategic plan. In addition, the network's director submits an annual report to the elected officials of all the French-language school boards at the annual general meeting of the *Fédération des conseils scolaires francophones de l'Alberta*.¹⁰⁶

Given that the Centre Jules-Léger is serving Francophone students,

Given that provincial status does not relieve a school board of its responsibilities to its students,

- A. **The Commissioner recommends that the Minister of Education ensure that the Centre Jules-Léger (operational structure and program implementation) is under the management of one of Ontario's 12 French-language school boards.**
- B. **The Commissioner recommends that this French-language school board be responsible for delivering programs and services for the province's Francophone children and for students of the province's French-language school boards.**
- C. **The Commissioner further recommends that this French-language school board be responsible for human resources, property management, finance, instruction and related services, curriculum, transport, IT Services professional development training for both schools and research and development.**

¹⁰⁶ This information was provided by Henri Lemire, Executive Director of the Conseil scolaire francophone Centre-Nord, in an interview on February 9, 2015.

I 7.6 Creation of a centre of excellence in special education

In view of the significant differences in the student populations being served and the instructional approaches required, the Commissioner recommends that two schools be maintained in a centre of excellence.

In the Commissioner's view, the centre of excellence could combine various key elements:

- a. a school for deaf, hard of hearing and deaf-blind children;
- b. a school for children with learning disabilities and perhaps other exceptionalities (as determined by the CODELF on the basis of emerging needs);
- c. services for children who do not attend school but have similar needs; and
- d. a research and development centre that would also coordinate training and professional development.

Francophone rights are respected because governance is provided by Francophones for Francophones and by Francophone leaders who understand and respect the French language, French culture and French-language minority education. Since the students receiving instruction or services from the Centre Jules-Léger are from the 12 French-language school boards, their language, culture, realities and rights will be respected. This structure entrenches the provincial scope. While a *trustee* board takes care of day-to-day operational management, the CODELF will be able to guide decision-making that will, in particular, take local needs into account. Implementation of this model is also fairly straightforward, in view of similar experiences in other areas, and can be carried out fairly quickly.

This provincial leadership will provide first-rate support for the Centre Jules-Léger's centre of excellence mission. The complementary relationship between the special education staff of the school

boards and the Centre Jules-Léger will encourage the formation of a provincial special education learning community that will improve service to all Francophone students in the province.

The annual development of a Centre Jules-Léger special education plan will increase the coverage of programs and services, which will be leading edge and will help all stakeholders to stay on course and coordinate programs and services.

The centre of excellence, more a concept than necessarily a physical place, would open up the possibility of returning to the Centre Jules-Léger's original mandate of research and development. The idea of collaborating with universities would be welcome because it is part of the practices already in place in the French-language school boards. In discussions with the school boards, one participant noted that the goal may be centralization of decision-making with decentralization of service delivery. Another participant suggested a hybrid model with a residential centre (central administration) that would serve students with very severe exceptionalities and regional and local supports by "mobile team" experts to assist school boards, schools, parents and students.

The fact that day-to-day management is assigned to one trustee French-language school board reduces bureaucracy and promotes effective and efficient management. The infrastructure for operational management by a school board is well established, well tested and robust. A school board generally has administrative directives and policies that promote equity and consistency in decisions and actions.

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The Commissioner recommends to the Minister of Education that the Centre Jules-Léger also have a research and development centre that would include training and professional development.

I 7.7 The important role of parents

Under the *Education Act*, a school board must establish a school council for each of its schools,¹⁰⁷ whose mission is to “improve pupil achievement”¹⁰⁸ and “enhance the accountability of the education system to parents”¹⁰⁹ while encouraging parents’ active participation in their children’s education.¹¹⁰ Both the provincial school and the demonstration school have a school council.

A school board is required to consult school councils on the following matters in particular:

1. “The establishment or amendment of board policies and guidelines that relate to pupil achievement or to the accountability of the education system to parents,”
2. “The development of implementation plans for new education initiatives that relate to pupil achievement or to the accountability of the education system to parents,”
3. “Board action plans for improvement, based on the Education Quality and Accountability Office’s reports on the results of tests of pupils, and the communication of those plans to the public,”
4. “The process and criteria applicable to the selection and placement of principals and vice-principals.”¹¹¹

The school council in turn is required to consult the parents of students attending the school regarding matters being considered by the board.¹¹²

In view of the unique nature of the Centre Jules-Léger’s student body, especially the students of the provincial school, it might be wise to consider getting them directly involved in the school council. Normally, of course, students can form a student council for their school, which is still highly desirable. Nevertheless, in meetings with current and former students of the provincial school, among others, it seemed as if, in some cases, even members of their

families might not grasp all the nuances of deaf culture’s specific needs. Hence, formal representation on this school council, beyond what is already mandated, might be an option to consider.

I Recommendation 5

Given that the Education Act requires each school board to establish a school council,

Given that the right of management and control enshrined in section 23 of the Charter belongs to “minority language parents”,

Given that the specific context of the provincial school may generate among the students of both schools an interest in becoming involved in this school council in order to express their own particular views,

The Commissioner recommends that the Minister of Education require the establishment of a school council for Centre Jules-Léger parents and that this council include student representatives.

¹⁰⁷ *Education Act, op. cit., subpara. 170(1) 17.1.*

¹⁰⁸ *Ontario Regulation 612/00: School Councils and Parent Involvement Committees, made under the Education Act, s. 2(1).*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid., para. 19(1).* According to section 19, this is not a complete list.

¹¹² *Ibid., s. 23.*

I 7.8 Establishment of a special education advisory committee

Under the *Education Act*, every school board (and every school authority) is required to establish a “special education advisory committee”.¹¹³ Of course, the French-language school board that is selected also has its own special education advisory committee, as it should.

The special education advisory committee, as per the *Education Act*, plays an important role in a school board with regard to special education. It makes recommendations to the school board’s trustees concerning “any matter affecting the establishment, development and delivery of special education programs and services for exceptional pupils of the board.”¹¹⁴ The school board’s trustees are not obliged to accept the committee’s recommendations, but they must give the committee an opportunity to be heard before making a decision on its recommendations.¹¹⁵

The membership of the special education advisory committee is determined by law (*Regulation 464/97*). Needless to say, the trustee French-language school board gives priority to representatives of associations engaged in meeting the educational needs of children who are benefiting or may benefit from the Centre Jules-Léger’s programs and services (associations that look out for the interests of deaf, hard of hearing, blind and deaf-blind children and children with severe learning disabilities). It is important for representatives of the Centre Jules-Léger’s two schools to sit on the trustee French-language school board’s special education advisory committee so that they can express the two schools’ particular point of view.

The Commissioner also believes that this special education advisory committee should be informed by a perspective that is specific to the Centre Jules-Léger and those who sit on the committee on the Centre’s behalf. In addition, aside from the members listed in the *Act*, “and the 12 French-language school boards, representatives of parents, students, universities and colleges could be added to a

provincial special education advisory committee. This committee would include various perspectives, such as those of associations advocating for the views of the parents of the children they represent and those of special education leaders and researchers.

The special education advisory committee will continue to make recommendations to the trustee board, in accordance with the *Regulation*, on all matters affecting the establishment, development and delivery of special education programs and services for exceptional students served by the Centre Jules-Léger. The committee will also assist in reviewing the special education plan that the trustee board would develop each year. In addition, the committee will take part in the annual budget process and review the financial statements.

Matters affecting the special education programs and services for exceptional children form the core mandate of the provincial school for deaf, hard of hearing, blind and deaf-blind students and of the demonstration school for students with learning disabilities. In Ontario, the norm is to integrate students with learning or other disabilities into the schools of the French-language boards, but the Centre Jules-Léger’s two schools exist to meet the needs of students who do not benefit from being in a “regular” classroom.¹¹⁶ The provincial school also provides consulting services for students enrolled in the schools of the French-language boards.¹¹⁷ Thus, with the establishment of this new centre of excellence in special education, it would be possible to create a genuine learning community made up of all stakeholders, not only from the Centre Jules-Léger but also from the school boards, which also have a great deal of expertise to offer.

¹¹³ *Ontario Regulation 464/97: Special Education Advisory Committees, made under the Education Act*, s. 3(1).

¹¹⁴ *Ibid.*, s. 11(1).

¹¹⁵ *Ibid.*, s. 11(2).

¹¹⁶ *Education Act, op. cit.*, s. 8(3); For more information: <http://www.edu.gov.on.ca/eng/general/elemsec/speced/guide/specedhandbooke.pdf> (page consulted in July 2015).

¹¹⁷ *Supra* note 14.

The establishment of a special education advisory committee will provide a comprehensive picture of the programs and services, the annual special education plan and the budget priorities. Many collaborators will have an opportunity to influence decisions in a legislated framework. It is a chance, as indicated in the handbook entitled *Special Education: A Guide for Educators* (2001), for the representatives of local associations to express the views and concerns of the parents and children being served. In this manner, the Centre Jules-Léger will reap the same benefits that all the other French-language school boards get from the special education advisory committee's input to special education programs and services.

I Recommendation 6

Given that every school board must have a special education advisory committee,

Given that the particular situation of the Centre Jules-Léger, because of its provincial mandate and its clientele, justifies the Centre's presence on the special education advisory committee of the trustee French-language school board,

- A. The Commissioner recommends that the Minister of Education ensure that exceptionalities represented by the Centre Jules-Léger, are represented on the special education advisory committee of the French-language school board responsible for managing the Centre Jules-Léger.**

- B. The Commissioner also recommends that a provincial special education advisory committee be established specifically to discuss issues relating to the Centre Jules-Léger.**

I 7.9 Transition committee

With the present budget difficulties facing school boards, especially the French-language boards, few of them would volunteer to take on the management of the Centre Jules-Léger on a simple promise to transfer the funds currently allocated by the Ministry of Education. Such a transfer cannot be made with a snap of the fingers, in any case. To cite just one example, albeit a complex one, the staff of the Centre Jules-Léger is, at the moment, Ontario Public Service employees. All those employees cannot be transferred as a group in the naïve belief that it will have no impact on the trustee French-language school board that will be chosen. The constraints, in terms of finance, logistics, curriculum, instruction in the two schools, human resources and other considerations, are both enormous and complex.

The Ministry of Education will inevitably have to hold discussions with all of the province's French-language school boards, not just those in the National Capital Region, where the Centre Jules-Léger is physically located. During the consultations, the message conveyed by the school boards' senior administrators was particularly clear about the fact that the provincial model would have to be revised to reflect local and regional needs. It was also stated that the French-language school board that takes responsibility for the education provided by the Centre Jules-Léger has to develop a delivery model that can include various models, such as a section 23 program and an alternative school.

In the same vein, it is also important to consult the parents of Centre Jules-Léger students. After all, as demonstrated above, they have undeniable language rights under section 23 of the *Charter*. Moreover, the *Education Act*, particularly section 8(3), clearly indicates that it is the Minister's role to ensure that the school boards provide special education programs and services at no cost to their exceptional students in accordance with the *Act* and regulations. Since the Centre Jules-Léger's future and governance concern the parents first and foremost, they must be consulted. Similarly, consultations with the students would also be appropriate to obtain their views.

Let us be clear. All these consultations must focus only on steps and winning conditions for a successful transfer to the trustee French language school board. An absolute priority is a smooth return for students of both schools in September 2016.

High-level discussions will of course have to take place within the Ministry of Education, particularly with the school boards. To simplify the process and especially to ensure that everything is in place for a smooth return to school for students in September 2016, the Commissioner recommends that a transition committee be established.

Its primary mandate would be to act as an intermediary between the Ministry and the school boards. The transition committee should be small, with no more than three members, to keep the focus on efficiency. The members will have to have relevant experience in high-level strategic positions with the French-language school boards. It would also be a good idea to ensure that both public and Catholic French-language boards are represented. The Commissioner would be happy if the members had experience in programs and services, special education programs, training, personnel supervision, parent and student relations, finance, property management, human resources, budgeting, information technology and transportation.

To ensure that everything is ready by September 2016, the transition committee must be on the job by September 2015, with the objective of completing the work by the end of December 2015. The committee members may also benefit from the impressive collection of reference materials already available, in the form of reports and other documents mentioned in this investigation report.

Important decisions need to be made. And relatively quickly.

Both the Ministry and the French-language school boards must therefore be attentive to the transition committee's recommendations. The Commissioner cannot recommend that the Ministry implement all of the transition committee's conclusions without asking any questions. However, he hopes that the members of the transition committee will be chosen with full confidence in them. The details associated with administrative matters, human resources, curriculum and instruction are legion. It will be necessary to act swiftly, effectively and efficiently. The Commissioner is confident that, if the transition committee members are selected carefully, it is possible to achieve a smooth return to school for students in September 2016, without affecting the start of school in September 2015, of course.

I Recommendation 7

Given that it would be irresponsible to ask a French-language school board to take charge of the Centre Jules-Léger immediately, because the constraints are so formidable in many respects, including finance, logistics, curriculum, instruction in the two schools, and human resources,

Given that the French-language school boards will have to be consulted in the new governance of the Centre Jules-Léger,

Given that the parents of Centre Jules-Léger students will also have to be consulted,

Given that high-level discussions will have to take place within the Ministry of Education with an interlocutor serving as intermediary between the French-language school boards and the Ministry of Education,

Given that a short transition period is necessary for the changes in the Centre Jules-Léger's governance,

Given that the Ministry of Education has already received some reports on the needs and future of the Centre Jules-Léger,

Given that the proposed transition committee should have no more than two or three members, people who have worked in high-level strategic positions with the French-language public

and Catholic school boards and have experience in programs and services, training, personnel supervision, parent and student relations, finance, property management, human resources, budgeting, information technology and transportation;

- A. The Commissioner recommends that the Minister of Education establish a transition committee responsible for ensuring a smooth, orderly transition; the committee's mandate would run from September to December 2015;**
- B. The Commissioner recommends that the Minister of Education ensure that an orderly return to school at the Centre Jules-Léger, under the aegis of the French-language school board responsible for the Centre Jules-Léger, is planned for September 2016, and that everything is in place to facilitate the intake of students and the start of the school year.**

I 7.10 Need for sufficient funding

The greatest challenge in this model lies in the need to ensure that the funding required for the governance of the Centre Jules-Léger will be available to the trustee French-language school board. **The needs of exceptional students are not only substantial but also constantly growing, and the necessary resources must be guaranteed in the near, medium and long term.** It is also essential to add recurring funding for training and professional development for the staff of the Centre Jules-Léger and the French-language school boards, and for organizational research and development. It would not be responsible to simply transfer the existing funding, with the hope that everything will be fine, and then move on.

From the CODELF's brief to the Commissioner and from meetings with senior administrators of the French-language school boards, it is clear that there are specific challenges inherent in French-language education, such as the following:

- the boards' large areas of jurisdiction,
- the dispersion of the Francophone population,
- assimilation,
- the shortage of qualified Francophone staff and rehabilitation and other equipment,
- some English-language medical authorities' lack of knowledge about French-language educational services,
- the lack of personnel trained in LSQ,
- highly diverse regional characteristics (for example, the multiethnic situation in some boards).

Unfortunately, according to the participants, the criteria that apply to the majority seldom take the above-mentioned difficulties into account. Equity of services as opposed to equality at all costs is questioned. And with the recent Supreme Court decision in the *Rose-des-vents* case, substantive equivalence should now be part of the discussion.¹¹⁸

The Commissioner would like to see a dynamic, flexible, innovative, 21st century-style model. The provision of highly specialized services to children with very serious needs is not only a well-established right but first and foremost a necessity, since without those services, families will inevitably turn to services provided promptly in English, which will lead them toward the ever-present danger of assimilation.

As the Supreme Court of Canada so cogently put it in the *Rose-des-vents* decision of April 2015:

*One distinctive feature of s. 23 is that it is particularly vulnerable to government inaction or delay. Delay in implementing this entitlement or in addressing s. 23 violations can result in assimilation and can undermine access to the right itself. As this Court has noted before, for every school year that governments do not meet their obligations under s. 23, there is an increased likelihood of assimilation and cultural erosion (Doucet-Boudreau, at para. 29). Left neglected, the right to minority language education could be lost altogether in a given community. Thus, there is a critical need both for vigilant implementation of s. 23 rights, and for timely compliance in remedying violations.*¹¹⁹

The complexity of the additional qualification programs for teaching the deaf and hard of hearing should not be underestimated.

¹¹⁸ *Association des parents de l'école Rose-des-vents v. British Columbia (Education)*, op.cit., para. 26.

¹¹⁹ *Ibid.*, para. 28.

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One comment made in the Commissioner's consultation was, "Governance yes, but not at any price. There are regions where French-language services are becoming hard to find." The intent behind this remark is to ensure that the decisions made regarding the governance of the Centre Jules-Léger do not have the effect of depriving students of critical services.

All this will inevitably cost money. It should be borne in mind that purely financial considerations cannot be used to justify a refusal to remedy violations of constitutional language rights, as the Supreme Court of Canada points out.¹²⁰

Once the decision is made, an in-depth analysis of the needs and the best options will have to be carried out under the leadership of the trustee French-language school board. In discussions, the French-language school board administrators indicated that they even anticipated the possibility of a gradual, step-by-step approach, with temporary start-up measures. "Adequate funding of the Centre Jules-Léger will remain a crucial element in these discussions."¹²¹

It would be an act of bad faith to suggest that the Ministry of Education is not already doing its share in funding French-language education in the province in all of its many dimensions, as demonstrated by a recent investigation on French-language schools in the Greater Toronto Area.¹²² To its credit, the Ministry recognizes the above-mentioned principle of substantive equality, as articulated by the Supreme Court of Canada.

Nevertheless, if the Centre Jules-Léger is to be given every chance of success in its new mandate as a centre of excellence in special education, it will be essential to sit down with the school boards and listen to their suggestions concerning pragmatic, promising solutions for children and their parents.

Given that Francophones in Ontario are entitled to receive programs and services based on the principle of substantive equivalence,

Given that simple transfers of existing funding for the administration of the Centre Jules-Léger in its current form to the trustee French-language school board would not be sufficient for the fulfilment of the Centre's new mandate,

Given that determination of the exact funding will depend on a carefully thought-out, transparent, fully discussed analysis by the transition committee,

- A. The Commissioner recommends to the Minister of Education that the transition committee's recommendations be favourably received.**
- B. The Commissioner recommends that the Minister of Education be attentive to the transition committee's funding requests to ensure the genuine success of the Centre Jules-Léger and its new mandate.**

¹²⁰ *Ibid.*, particularly para. 51.

¹²¹ Conseil ontarien des directrices et directeurs de l'éducation de langue française, *Brief — Centre Jules-Léger Gouvernance : Position du CODELF*, 2014, p. 2.

¹²² Office of the French Language Services Commissioner, *Investigation Report — French-language schools in the Greater Toronto Area: When the most elementary becomes secondary*, Toronto, 2011.

| Conclusion

Section 23 of the *Charter* guarantees the members of Ontario's French-speaking community the right of management and control; in other words, the members of Ontario's French-speaking community must be able to make decisions affecting education, programs, services, language and culture at the Centre Jules-Léger.

However, since 1995, the Centre Jules-Léger has been managed by the Ministry of Education; the Ministry has exclusive responsibility for hiring the Centre's staff, managing the Centre's expenditures and setting the Centre's instructional and cultural directions.

Hence, on the basis of an analysis of section 23 of the *Charter* and decisions interpreting that section, the Centre Jules-Léger's governance model not only violates section 23 of the *Charter* but also undermines the Centre Jules-Léger's integrity and cultural mission.

The number of students who might take advantage of the services of the Centre Jules-Léger, both the provincial school for deaf, hard of hearing, blind and deaf-blind students and the demonstration school for students with severe learning disabilities, warrants an appropriate degree of management and control. On the other hand, the numbers do not necessarily warrant the establishment of an independent school board, which is the highest degree of management and control guaranteed by section 23 of the *Charter*.

One of the 12 French-language school boards should be the trustee board assigned to manage the Centre Jules-Léger. This board would be in the best position to make decisions on the management of this centre of excellence in special education.

I Appendix A

List of documents consulted

Documents obtained from the Ministry of Education

Reports

- The Leduc-Levesque report: *Review of the Centre Jules-Léger: A new organizational structure for improved service* (2005)
- The Bernard-Boulianne report: *Fact-Finding Report: A review of concerns expressed by students of the Centre Jules-Léger* (2011)
- Office of the French Language Services Commissioner: *Ministry of Education response to a complaint filed with the Office of the French Language Services Commissioner* (2011)

Survey

- Satisfaction survey of Centre Jules-Léger parents (2014)

Correspondence between the Ministry and various stakeholders

- Teachers, other educational staff, interpreters working at the Centre Jules-Léger school for the deaf and hard of hearing (2011)

Action plans

- *Administrative Changes* (2005)
- *Centre Jules-Léger's Action Plan, September 2011 Survey, Level of Program Satisfaction by parents and students*
- *Employee Engagement Action Plan, November*
- *Centre Jules-Léger Action Plan, Last Update* (2011)
- *Action plan to address students' concerns* (2011-2012)

Other documents

- Deloitte report: *Provincial School Branch, Residential Services Review* (2008)
- Drummond report: *Commission on the Reform of Ontario's Public Services, Public Services for Ontarians: A Path to Sustainability and Excellence* (2012)
- Ontario Education Services Corporation. *Good Governance for School Boards: Trustee Professional Development Program* (2014)

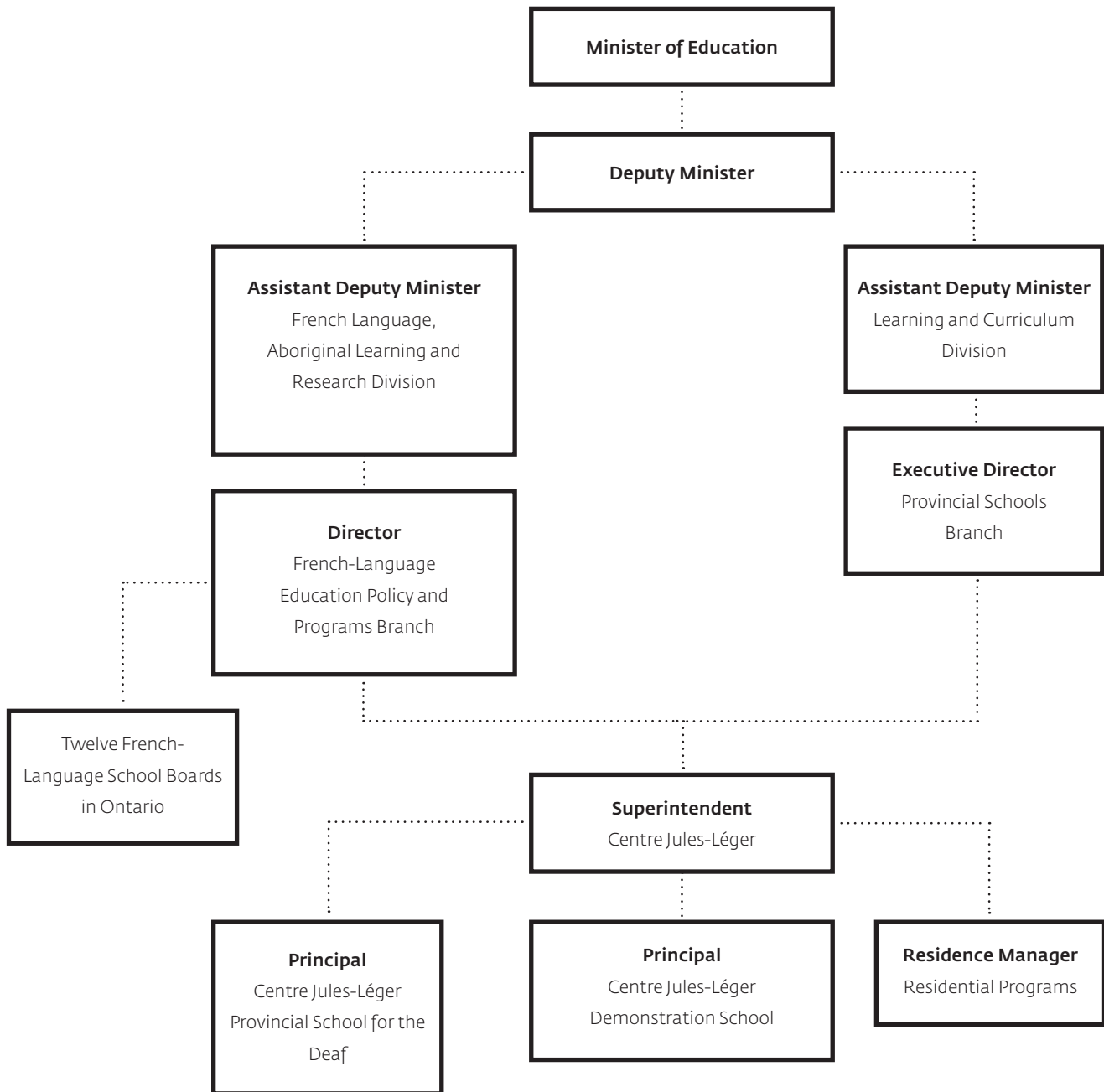
Brief

- Centre Jules-Léger Gouvernance : Position du CODELF (2014)

I Appendix B

Centre Jules-Léger

Governance model for the 2014-2015 school year



I Appendix C

Resolution requested by the complainants

The complainants suggested how they would like to see the issue of the Centre Jules-Léger's governance resolved.

[TRANSLATION] "Pursuant to section 23 of the *Canadian Charter of Rights and Freedoms* and the *Mahé* decision, the Ontario government should acknowledge the following:

- That the parents of students attending the Centre Jules-Léger's schools, or representatives elected or appointed by them, have the right to manage and control their institution. That the management right is an automatic individual right. A parent cannot be stripped of his or her management right simply because the majority of Francophones would like to waive that right.
 - That all Francophone parents in the province who have deaf, blind or deaf-blind children or children with severe learning disabilities or attention deficit disorders with or without hyperactivity are entitled to have their children educated at the Centre Jules-Léger.
 - That the children attending the Centre Jules-Léger are entitled to receive instruction that provides them with the same opportunities as Anglophones have; in other words, that the instruction provided in the Centre Jules-Léger's schools is equivalent in quality to the instruction provided to Anglophones, even though the programs and service are not identical.
 - That the Centre Jules-Léger's schools must be financed out of public funds. This funding must be sufficient to ensure equivalent quality and to rectify the historic wrongs caused by assimilation. It must be at least equivalent to the funding allocated to the schools of the majority. To restore equity, the Centre Jules-Léger's schools are entitled to receive a higher per-pupil amount than is received by the schools of the majority. This right does not imply the responsibility to levy additional education taxes or funding.
- That the parents of students attending the Centre Jules-Léger's schools are entitled to their education system, with organizational structures, a province-wide jurisdiction and services that are different from those of the majority. This French-language school system must meet the needs and address the realities of the parents of students attending the Centre Jules-Léger's schools, a provincial reality associated with special education.

[...]The only governance model that is acceptable and capable of meeting the specific needs of the parents of students attending the Centre Jules-Léger's schools is a non-denominational French-language school authority with province-wide jurisdiction. What is completely unacceptable to these parents is the status quo or transfer to the jurisdiction and stewardship of an established district school board. [...]The recognition, application and maintenance of the rights of Francophone parents of students attending the Centre Jules-Léger's schools do not depend on the state of the province's economy or of the country's economy."

Parents pointed out the importance of socializing deaf and hard of hearing children in their culture and language in keeping with the Ministry of Education's expectations set out in the Aménagement Linguistique Policy. "My son needs to acquire a language and a community." The Francophone deaf population is a minority within a minority and needs to be governed by an entity that understands the needs and realities of a minority community and has substantial experience in French-language minority education.

Meetings with the complainants

During the consultations, the participants essentially repeated the above-mentioned ideas. They added that the advisory committees at the local level (school councils) and provincial level (advisory council) do not really work, because little or no consideration is given to parents' main concerns. Their questions go unanswered most of the time.

They made suggestions concerning what they believe is the most appropriate governance model.

- For them, governance by and for Francophones is certainly desirable, but not at the cost of dismantling the Centre Jules-Léger. They hope to keep the Centre Jules-Léger, because for them, the expertise is there. They are afraid that if the programs and services are provided in the school boards, the quality will be diluted. In their view, the dispersion of experts is very problematic. They also feel that this state of affairs could cause Francophone students to transfer to English-language boards, which, because of the critical mass of students they serve, may enjoy more services and greater resources. In addition, since the number of Francophone experts is limited, there is a risk that students in some areas will not have access to them. The equity of a high-quality French-language education for all young Franco-Ontarians would be in jeopardy.
- One of the crucial elements for the complainants is the need to form a critical mass of Francophone deaf and hard of hearing students in order to ensure socialization in French and the building of a vibrant, dynamic community. The possibility of bringing in students from other provinces would foster interactions between significant numbers of young people.
- More flexible application of the 70-minute travel time limit to take Francophone population dispersion into account would give more students access to the residence program, help improve communication in French (LSQ), facilitate identity-building and ensure the vitality of this Francophone community, as specified in the Aménagement Linguistique Policy.

Other groups consulted

Several of the groups consulted supported the complainants' ideas about the need for governance of the Centre Jules-Léger by and for Francophones:

- constitutional law – section 23 of the *Canadian Charter of Rights and Freedoms*,
- respect for cultural identity and language – *Aménagement Linguistique Policy*,
- governance and management for and by Francophones who know the minority community's situation, with real autonomy and decision-making power,
- resources tailored to reflect Francophone reality, including the reality of the deaf.

I Annexe D

Special education advisory committee

Reference: Ontario Regulation 464/97

Responsabilité du Conseil scolaire et composition du CCED :

Every district school board shall establish a special education advisory committee that shall consist of

- one representative from each of the local associations* (no more than 12 representatives) that operates locally within the area of jurisdiction of the board, as nominated by the local association and appointed by the board;

* **Local association: an association or organization of parents that operates locally within the area of jurisdiction of a board and that is affiliated with an association or organization that is not an association or organization of professional educators but that is incorporated and operates throughout Ontario to further the interests and well-being of one or more groups of exceptional children or adults.**

- one alternate for each local association representative, as nominated by the local association and appointed by the board;
- members of the board (the lesser of the following: three, and 25% of the total number of members of the board, rounded down to the nearest whole number);
- one or two persons to represent the interests of Indian pupils;
- one or more additional members who are neither representatives of a local association nor members of the board or another committee of the board.

An employee of the board cannot be nominated by a local association or appointed by the board.

Every school authority, other than a board established under section 68 of the Act, shall establish a special education advisory committee that shall consist of

- two representatives from the local associations that operate locally within the area of jurisdiction of the board, as nominated by the local association and appointed by the board;
- one alternate for each local association representative, as nominated by the local association and appointed by the board;
- one member from among the board's own members, as appointed by the board;
- one alternate, as appointed by the board from among its own members;
- one or two persons to represent the interests of Indian pupils;
- where no local associations have been established, instead of the members and alternates, the board shall appoint two members and two alternates who are not members of the board.

To be a member of the special education advisory committee, a person must be qualified to vote for members of that board and be resident in its area of jurisdiction.

A member of a special education advisory committee shall vacate his or her seat if he or she

- is convicted of an indictable offence;
- absents himself or herself without being authorized by resolution entered in the minutes from three consecutive regular meetings of the committee;
- ceases to hold the qualifications to be appointed to the committee.

Term of office:

The term of office of the members of the board and until a new board is organized.

Quorum:

A majority of the members of a special education advisory committee constitutes a quorum. A vote of a majority of the members present at a meeting is necessary to bind the committee. Every member present at a meeting, or his or her alternate when attending the meeting in his or her place, is entitled to one vote. The chair may vote with the other members of the committee. Any motion on which there is an equality of votes is lost.

Other responsibilities of the board:

- **Within a reasonable time after the committee is appointed, the board shall provide the members of the committee and their alternates with information and orientation respecting**

- the role of the committee and of the board in relation to special education;
- Ministry and board policies relating to special education.

- **Make available to the special education advisory committee the personnel and facilities that the board considers necessary for the proper functioning of the committee.**

Role and responsibilities of the special education advisory committee:

- meet at least ten times in each school year;
- make recommendations to the board concerning any matter affecting the establishment, development and delivery of special education programs and services for exceptional pupils of the board;
- have the opportunity to be heard by the board before the board makes a decision on a decision of the committee;
- have the opportunity to participate in the review of its special education plan;
- have the opportunity to participate in the board's budget process;
- have the opportunity to review the financial statements of the board.



| Appendix E

**Provincial and demonstration
schools enrolment statistics
2004-2014**

School	September 2004			September 2005			September 2006			September 2007		
	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total
Sir James Whitrey - Deaf (Belleville)	50	31	81	51	35	86	52	33	85	45	30	75
E.C. Drury - Deaf (Milton)	173	75	248	159	86	245	154	87	241	163	66	229
Robarts - Deaf (London)	30	13	43	26	13	39	31	15	46	26	14	40
Total	253	119	372	236	134	370	237	135	372	234	110	344
W. Ross Macdonald - Blind (Brantford)	51	139	190	57	126	183	52	134	186	53	120	173
W. Ross Macdonald - Deaf-Blind (Brantford)	6	24	30	6	25	31	7	28	35	8	29	37
Total	57	163	220	63	151	214	59	162	221	61	149	210
Sagonaska - Learning disabilities (Belleville)	4	43	47	0	45	45	3	39	42	3	40	43
Trillium - Learning disabilities (Milton)	5	39	44	4	40	44	5	37	42	3	36	39
Armedyst - Learning disabilities (London)	0	59	59	0	57	57	0	52	52	0	41	41
Total	9	141	150	4	142	146	8	128	136	6	117	123
Centre Jules-Léger - Learning disabilities	0	38	38	0	38	38	0	36	36	0	38	38
Centre Jules-Léger - Deaf	22	17	39	22	18	40	19	16	35	13	16	29
Centre Jules-Léger - Deaf-blind (provincial schools)	0	0	0	0	0	0	0	0	0	0	0	0
Total	22	55	77	22	56	78	19	52	71	13	54	67
Deaf-blind (French Language DSB - Marius Barbeau program)	0	3	3	1	2	3	2	1	3	2	1	3
Total - including Marius Barbeau program			822			811			803			747

Source: Ministry of Education of Ontario, June 12, 2015.
Note: Figures represent a point in time in each school year. Enrollment may fluctuate slightly within each school year as new students are admitted or students leave the schools.

School	Septembre 2008			Septembre 2009			Septembre 2010			Septembre 2011		
	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total
Sir James Whitrey - Deaf (Belleville)	46	27	73	42	28	70	38	39	77	33	42	75
E.C. Drury - Deaf (Milton)	151	54	205	150	58	208	148	59	207	147	58	205
Robarts - Deaf (London)	27	16	43	32	14	46	28	13	41	25	9	34
Total	224	97	321	224	100	324	214	111	325	205	109	314
W. Ross Macdonald - Blind (Brantford)	53	130	183	49	128	177	38	139	177	52	113	165
W. Ross Macdonald - Deaf-Blind (Brantford)	9	28	37	9	28	37	11	28	39	13	25	38
Total	62	158	220	58	156	214	49	167	216	65	138	203
Sagonaska - Learning disabilities (Belleville)	1	38	39	0	33	33	0	32	32	0	34	34
Trillium - Learning disabilities (Milton)	4	32	36	1	36	37	0	36	36	0	31	31
Armethyst - Learning disabilities (London)	0	46	46	0	42	42	0	44	44	0	45	45
Total	5	116	121	1	111	112	0	112	112	0	110	110
Centre Jules-Léger - Learning disabilities	0	38	38	0	36	36	0	38	38	0	39	39
Centre Jules-Léger - Deaf	13	17	30	11	17	28	14	11	25	16	5	21
Centre Jules-Léger - Deaf-blind (provincial schools)	0	0	0	0	0	0	0	0	0	0	0	0
Total	13	55	68	11	53	64	14	49	63	16	44	60
Deaf-blind (French language DSB - Marius Barbeau program)	1	1	2	1	1	2	11	0	11	10	0	10
Total - including Marius Barbeau program			732			716			727			697

Source: Ministry of Education of Ontario, June 12, 2015.
Note: Figures represent a point in time in each school year. Enrollment may fluctuate slightly within each school year as new students are admitted or students leave the schools.

School	Septembre 2012			Septembre 2013			Septembre 2014		
	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total	Day Students Only	Residential Students Only	Total
Sir James Whitrey - Deaf (Belleville)	33	40	73	35	33	68	33	41	74
E.C. Drury - Deaf (Milton)	124	49	173	124	40	164	127	33	160
Robarts - Deaf (London)	27	3	30	25	2	27	22	1	23
Total	184	92	276	184	75	259	182	75	257
W. Ross Macdonald - Blind (Brantford)	56	119	175	51	110	161	58	93	151
W. Ross Macdonald - Deaf-blind (Brantford)	14	25	39	9	24	33	10	20	30
Total	70	144	214	60	134	194	68	113	181
Sagonaska - Learning disabilities (Belleville)	0	40	40	0	39	39	0	39	39
Trillium - Learning disabilities (Milton)	0	38	38	0	40	40	0	40	40
Armethyst - Learning disabilities (London)	0	39	39	0	38	38	0	38	38
Total	0	117	117	0	117	117	0	117	117
Centre Jules-Léger - Learning disabilities	0	39	39	0	39	39	0	38	38
Centre Jules-Léger - Deaf	12	2	14	14	3	17	10	3	13
Centre Jules-Léger - Deaf-blind (provincial schools)	0	0	0	0	0	0	0	0	0
Total	12	41	53	14	42	56	10	41	51
Deaf-blind (French Language DSB - Marius Barbeau program)	11	0	11	11	0	11	11	0	11
Total - including Marius Barbeau program			671			637			617

Source: Ministry of Education of Ontario, June 12, 2015.
Note: Figures represent a point in time in each school year. Enrollment may fluctuate slightly within each school year as new students are admitted or students leave the schools.