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**POLICIES AFFECTING ESL INSTRUCTION IN MANITOBA**

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Since the 1960s, potential newcomers to Canada have been assessed on a point system which takes into account their education, professional background and training, knowledge of an official language, resident family, and ability to make an economic contribution to Canada. Because economic factors have recently garnered proportionally more points, immigration from the ìAsian Tigerî countries has increased. Urban centers such as Vancouver report that English as a second language (ESL) students form 10% to 33% or more of the student population in high schools (Naylor, 1994a; 1994b; McGivern & Eddy, 1999). While Centers outside of Toronto, Vancouver and Montreal do not yet report such high numbers of ESL students, immigrant applicants are now able to gain points by volunteering to live in other areas for a specified period of time (Immigration Canada, 1993). Other urban centers are therefore receiving more independent class immigrants. Additionally, in an effort to attract foreign dollars, many school divisions have begun actively recruiting international students to study in high schools, many of whom are expected to become Canadian citizens and sponsor their familyís immigration. Finally, increasing numbers of ESL students are now Canadian born, as families elect to maintain their heritage languages in their homes and allow the schools to teach English. As a result of these and other factors, there are increased numbers of ESL students who have high educational attainments and expectations.

Tracking studies of high school ESL student achievement (Watt & Roessingh, 1994; 2000; Derwing, DeCorby, Ichikawa & Jamieson, 1999) however, indicate that successful graduation from high school, particularly in university-track programs, remains the exception rather than the rule. Drop out rates of up to 74% of high school ESL students have been recorded in Alberta and British Columbia (Watt & Roessingh, 1994; 2000; Eddy, 1999). One generally accepted rationale for such high drop out rates is that ESL students must learn the language of instruction, the academic language and genres required for content study, and the subject area content simultaneously (Watt & Roessingh, 2000). While tracking studies have not been completed in Manitoba, the drop out rate is, given the systemic structures in place, unlikely to be lower.

Given our concerns about these conditions, the purpose of this paper is to examine within an ideological framework of "advanc[ing] a more equal world" (Lather, 1991, p. 63) what exists in terms of policy and policy documents in Manitoba that may have an impact on ESL instruction and ESL student success. These documents, we feel, will reveal the institutional attitudes toward the students served by ESL teachers, and advance our position that a number of inconsistencies among the documents may limit rather than enhance the educational opportunities available to ESL students. It is the purpose of this paper not to single Manitoba out, but rather to invite educators across Canada and the United States to examine their federal, provincial/state, and local policies and make comparisons. With more, and more contextualized information, we hope, educators, stakeholders, and policy makers can begin a dialogue about best policies and practices for ESL students.

**Definitions**

Public K-12 ESL provision in Manitoba is the product of the provincial School Act, which is informed by the Canadian Charter of Rights and Freedoms, the federal and provincial Human Rights Acts, the Multiculturalism Act, and other related acts at both the federal and provincial levels. These, which constitute Policy, influence educational practice, whether those who act as educational agents are conversant with them or not. Policy, however, is not limited to law. Therefore, before the question "how might policy influence ESL instruction in Manitoba?" can be answered, it is necessary to understand what is meant by policy, and what is meant by ESL.

The first of these questions--"What is meant by policy"--if not easiest, is at least the most logical to answer. In their broadest sense, policies are "statements of principle about what should happen" (Grundy, 1992, p. 22), yet, at times, it is necessary to consider 'business as usual' as de facto policy. Mary Ashworth (1984) has identified several forces influencing ESL educational practice which help to pinpoint de facto policy. These include, but are not limited to:

a) national questions such as who, when, where, from where, how many, and under what circumstances, people are permitted to enter the country;

b) social issues such as whether integration or assimilation is stressed, the status of teachers, the tolerance for diversity in the community, the curriculum and support for programs;

c) institutional influences like the philosophy and goals informing practice, the design, length and quality of programs, and

d) economic forces which would direct the presence or absence of an ESL program, the class size, the number of teachers, and the community's attitude towards immigrants.

For the purposes of this paper, policy will be taken to include national, social, institutional, and economic forces implied by the statutes and acts of Canada's federal and provincial governments, as well as reports, commissioned papers, and policy statements. Because education is a provincial rather than a federal responsibility, we have chosen only those federal documents which we feel speak most directly to the education of non-English speaking children, and those most frequently cited in the literature in the field of Teaching ESL (TESL). We have similarly chosen provincial documents most likely to affect the teaching and learning of ESL in Manitoba, those on which we, the only two university faculty members in the field in this province, base our teacher education. Likely none of these documents have been read by the classroom teachers or administrators who are their agents. Policy will also be taken to mean local policy statements regarding the provision of, and philosophy guiding, ESL programming. These may have been read by ESL teachers and regular classroom teachers. Policy, therefore, in this paper, refers both to standard operating procedure and to what practices are recommended and/or permissible in the provision of ESL and other second languages.

A formal written curriculum can also be viewed as a kind of policy. While some theorists such as Hirsch (1987) have identified curriculum as a "set" of knowledge or facts to be learned, it is possible to view curriculum as incorporating other elements as well. Formal curricula describe the nature of knowledge, the canons, paradigms and perspectives that are institutionalized and practised within a school. When viewed with a wide-angle lens, curriculum incorporates a wide variety of practices as well as pedagogical guidelines including, but not limited to, the role of administrators, the role of the teacher, pedagogical methodology, classroom texts, and classroom practice. In ESL terms, this means the theoretical model on which the curriculum is based, curriculum design, the linguistic and cultural content, classroom method, classroom techniques, the degree of emphasis placed on listening, reading, writing, and speaking, the availability of print and non-print materials, the adequacy of funding, the length of the program, the size of a class and the frequency it meets, the range of levels and ages within the class, and the qualifications of the teaching staff (Ashworth, 1985, p. 71-2). Supported by public tax monies, curriculum must legitimate the socially acceptable (not always the dominant) political, economic and cultural values in society. Curriculum is, in essence, what is supposed to happen in a classroom (the subject of this archival analysis) and what actually happens in a classroom (the subject of the subsequent research project). Curriculum, therefore, can be viewed as policy.

Finally, we need to know what ESL is, or rather, what an ESL student is. Such definitions themselves constitute policy; ESL students must be specifically described in order that any additional funding accorded to them may be equitably distributed.

Ashworth (1988) has pointed out that there has been no consistency in describing students who need instruction in ESL. Attempts to define ESL students begin with the label used for them. In Canada, the terminology used to describe ESL students has shifted from "immigrant" to "New Canadian" to "ESL/D" (English as a Second Language/Dialect) (pp. 47-8) in the attempt to find terms that are less offensive and that, at the same time, provide more accurate, more inclusive descriptions of students. As Toohey (1992) points out, however, even ESL, when applied to specific students "requires us to emphasize particular characteristics of such students and to ignore others" (p. 87). The use of such labels also encourages us to forget that ESL students are more than just language learners. Moreover, referring to these students as ESL/D learners is not in keeping with current educational theory and practice which stress the education of the "whole child."
Currently, in a 1998 document entitled Planning for Success: Developing an English as a Second Language Protocol: A Resource for Kindergarten to Senior 4 Schools, [K-12] published by Manitoba Education and Training, ESL students are not defined. Instead, the document outlines second language learning theory, programming practices (aims and types), funding guidelines, reception and placement practices, and instructional and evaluation approaches. It is in the funding guidelines that the closest thing to a definition of ESL learners can be found.

Since [1981], the guidelines have been expanded to address the needs of other students with limited proficiency in English. In 1986, eligibility for ESL support was extended to include Canadian students who have not attended school in Canada, Canadian-born students who have not attended school in Canada, Canadian-born students enrolled in Kindergarten to Grade 2 who have come from homes where neither English nor French is usually spoken, and Hutterian students in Kindergarten to Grade 2. In 1991, support for students with limited proficiency in English was extended to qualifying students in the Francais and French Immersion Programs. Students up to the age of 21 may also be eligible for support if they are enrolled in a Senior Years school and meet all other criteria. (Manitoba Education and Training, 1998, p. 127)

The document goes on to say that ESL support is provided for students, "for whom English is a second or additional language," (p. 1.27); however, it must be noted that this does not include Manitoba's English Language Enrichment for Native Students (ELENS), students who belong to one of Manitoba's First Nations' language groups for whom there is a different funding formula. ESL students must meet two further criteria: They must be refugees, landed immigrants, or Canadian Citizens who have not attended a regular English Program in a school in Canada (p. 1.27), though nowhere does it define what is meant by a "regular English program," and they must be enrolled in Kindergarten or Grade 1 to Senior 4, where they received English language instruction for three years or less in Early or Middle Years (providing one of those years is Kindergarten) or three years or less in the Senior Years. These funding guidelines will be dealt with later in this paper, but here it is important to point out that ESL students are defined by their eligibility for additional funding, and not by their English language ability, their abilities to speak other languages, their educational background, their potential, and without reference to the substantial body of second language acquisition and ESL literature that exists with regard to initial assessment.

It is interesting to compare this with the situation in British Columbia, for example. In the 1994 Ministry of Education document entitled Supporting Learners of English: Information for School and District Administrators, an ESL student is defined as "one whose use of English is sufficiently different from standard English to prevent reaching [sic] his or her potential" (p. 5). While such a deficiency-based definition is also problematic, the BC definition at least makes some attempt to acknowledge the purpose of ESL instruction--to enable students to reach their potential--and defines students in terms of their English language ability, rather than the length of time they have spent in school. Lack of a language-based definition for Manitoba's ESL students may result in failure to identify students in need of language instruction and support.

Moreover, in BC, the same document states that "some First Nations students may also be classified as requiring ESL...[and] can be funded under two categories: First Nations and ESL" (pp. 5-6), an impossibility in Manitoba, whose First Nations (ELENS) students must fall two years behind in English Language Arts and Mathematical development in order to be considered eligible for additional funding, no matter what the language spoken in the home (anonymous Winnipeg #1 school principal, personal communication, January, 2000). ELENS is therefore viewed as remediation, even if the child speaks Cree or Ojibway as a first language. We do not suggest that immigrant and First Nation children should be categorized together under the umbrella term "ESL," but rather to suggest that some adequate language-based definitions might lead to more parity in treatment, and to a more level playing field for all.

**Federal provisions affecting ESL instruction in Manitoba**

One of the first things that becomes apparent in the Canadian context is the verity of McKayís (1993) claim that ìthe sociopolitical context can set literacy agendas for immigrants because of forces such as entry and naturalization requirementsî (p. 25). While the 1967 Canadian Immigration Act awards points to immigrants who speak English if they enter the country with an independent classification (McKay, 1993, p. 34), it is the objectives section of the immigration policy which potentially establishes the language agenda for non-English or non-French-speaking immigrants.

In the next section of the paper, we will look at the federal Immigration Act, Citizenship Act, Charter of Rights and Freedoms and at funding allocations, with a view to deconstructing their texts. It is important to note, however, that this section will describe what is potentially possible and not necessarily the present circumstances. In other words, the following sections do not comprise a case study, but a politically motivated close reading of archival documents.

**Immigration Act**

The objectives stated in Part I (3) stress that the immigration policy is designed and administered in such a way as

(a) to support the attainment of such demographic goals as may be established by the Government of Canada in respect of the size, rate of growth, structure, and geographic distribution of the Canadian population;

(b) to enrich and strengthen the cultural and social fabric of Canada, taking into account the federal and bilingual character of Canada;....

(d) to encourage and facilitate the adaptation of persons who have been granted admission as permanent residents to Canadian society by promoting cooperation between the Government of Canada and other levels of government and non-governmental agencies in Canada...;

(h) to foster the development of a strong and viable economy and the prosperity of all regions in Canada;...

Item (a) insinuates, but does not state, that the Government of Canada could direct newcomers to Canada where to live, based on its perceived needs. Indeed, in the National Film Board film "Who gets in?" the senior immigration officer in Africa is seen explaining to accepted Convention Refugees where they will be residing in Canada, a scenario that is not mirrored by immigration officers in Hong Kong who are recruiting wealthy entrepreneurs who wish to establish businesses in Vancouver, BC. This may be problematic given that each province interprets and administers ESL instruction in a different manner. Assigning a sponsored immigrant family to a specific locale is also determining the type and duration of ESL programming they will receive, arguably then having an impact on their upward economic mobility. Let us say, for instance, that one family is sent to Winnipeg, Manitoba where the provision of adult ESL may be very good but where the provision of K-12 ESL may not, while another family is sent to Vancouver, British Columbia where K-12 ESL provision is very good, but the adult ESL provision much less so. Someone (and, we might add, someone without familiarity with ESL education) is deciding for these families how and quite possibly whether they will successfully integrate into Canadian society. To remediate this, there needs to be (a) equity of treatment across the provinces, and/or (b) clear, purposeful explanation with freedom of choice.

Item (b) stresses that Canada is bilingual not multilingual, despite our policy of multiculturalism. It also establishes that immigrants who speak one of the official languages are of more value than those who do not. Because language is associated with strengthening and enriching the social fabric of Canada, it could be interpreted as implying that immigrants who are not bilingual, or at least fluent in one of the official languages, may weaken the country.

Item (d) promotes assimilation and adaptation of newcomers to Canada to mainstream society and is therefore a fairly strong statement about ESL instruction. This item clearly states that adaptation of individuals will be encouraged and facilitated, presumably through education. Adaptation then is a responsibility for those who have been ìgrantedî admission to Canada. Such assimilationist policies are not directed toward a vibrant multiculturalism, but could be seen as supporting the interests of the dominant culture, leading to what Cassin (1980) has termed ìmultisubculturalism."

Finally, item (h) in part explains why, in times of economic recession, right wing political organizations often call for restrictions on immigration. Immigrants are meant to bolster the economy, and make all Canadians prosperous. If Canada is not prosperous, then immigrants could be seen as not fulfilling their function.
It is our contention that such attitudes, by failing to recognize the inherent value of all immigrants and their contributions to society, may promote a distrust of, and antagonism toward, immigrants, impeding their ability to integrate effectively.

**Citizenship Act**

After a minimum of three years residence in Canada, immigrant families can apply to become Canadian citizens. They become citizens of Canada after taking the oath of citizenship which reads:
I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen. (Section 24)

When immigrants wish to become citizens of Canada, they must meet language requirements outlined in Part I, 5 (1) (d) of the Citizenship Act, which states that citizenship will be granted to those who demonstrate ìan adequate knowledge of one of the official languages of Canada." There is no indication in the Citizenship Act what an ìadequateî knowledge of one of the official languages is. Does adequate mean well enough so that there is "equal access to opportunity, to participation in all aspects of the life of the community?î (Manitoba's Policy for a Multicultural Society: Building Pride, Equality and Partnership p. 6) or does it mean well enough to wash floors at Burger King? In fact, the more strenuous the definition were to be, the more liable the Government of Canada which administers the Act would be to ensure adequate language education and support for immigrant families. It would therefore be of benefit to the federal government to define adequate ëdowní rather than ëupí, in order that some responsibility be waived, and perhaps the provinces' demands for increased federal funding to support ESL education in schools be diminished.

According to Derwing (1992), the language requirements considered to be "adequate" are "a sufficient command of vocabulary in one of the official languages to function in daily life" and "an ability to comprehend and produce simple statements in the past, present and future tenses" (p. 194). Even with this additional information there is a lot of leeway for the citizenship judiciary. Words such as "sufficient," "function," and "daily life" are context-bound, and need further refinement to be useful as tools for planning and programming. In a national survey of language and citizenship programs for adults, Derwing found that only 12% of the programs were designed "to help their students participate in Canadian society" (p. 197). This, she concludes, promotes a passive and apathetic view of citizenship by failing to help new Canadians to develop the language and knowledge to actively participate in society.

The Citizenship Act does not only make stipulations, however; it also makes promises. Part I, 6 guarantees that a citizen, whether or not born in Canada, is entitled to all rights, powers and privileges and is subject to all obligations, duties and liabilities to which a person who is a citizen... is entitled or subject and has a like status to that of such a person.

The majority of citizens in Canada are either French- or English- speaking, and therefore have the right and privilege of being educated in their native tongues. They also have the right and privilege of developing both a first language and a second language during their schooling at public expense. At the other extreme, ESL is not, for the most part, an accredited course of studies. ESL students, even Canadian citizens, do not have the right to be educated in their first languages, unless they are Francophone and therefore do not have the same rights, powers, and privileges of other citizens. It is one of the often-noted ironies in the field of TESL, that young ESL students are encouraged to lose their first languages, only to be taught them as second languages in high school.

**Rights, Obligations, and Freedoms**

While minority language education is not considered a right in Canada, there are several sections of the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act which could be interpreted so as to mandate the provision of exceptional services if children are to be educated in their second (or third or fourth) language. Section 15 (1) of the Charter of Rights and Freedoms states that
Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The annotations for this section make it very clear in order ìto achieve true equality it will frequently be necessary to make distinctions." In other words, the annotations to the Charter stipulate that being treated equally does not mean being treated the same. The annotations become even stronger when they state that,
discrimination exists where a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual group, has the effect of imposing burdens, obligations or disadvantages not imposed upon others, or withholding or limiting access to opportunities, benefits and advantages available to other members of society.

The annotations stipulate that discrimination need not be intentional to violate the Charter. "ESL/D" could be viewed as a label affixed by people who are not part of the group. ESL/D students become members of the group on the basis of a personal characteristic, in this case, inability to speak fluent English . ESL students have the additional burden of learning a second language and being educated in a second language because of this characteristic marking. We also argue that they have limited access to educational and other benefits as a result of being part of that group. This could therefore be seen as discriminatory, a violation of the Charter.
Devine (cited in Rivers & Associates, 1991), a Vancouver lawyer, has suggested that educational institutions may be held responsible if English-speaking and non-English speaking students do not receive the same benefits from the educational institution. She claims that failure to provide adequate English language instruction may violate Section 15 of the Charter. Devine cites, as an example, the 1974 Lau vs. Nichols case in the United States in which the U.S. Supreme Court ruled that the San Francisco Unified School District's failure to provide ESL instruction to non-English-speaking children violated their right to equal benefit from education. The court ruled that, there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that before a child can effectively participate in the education program he must have already acquired these basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. (414 U.S. 563, 94 S. Ct. 786: \*566)

In the Lau vs. Nichols decision the key words are "meaningful education" and what the ruling views as the four components of meaningful education: facilities, textbooks, teachers, and curriculum. While Lau vs. Nichols is an American ruling and therefore not directly applicable to the Canadian context, on the basis of the similar wording of Canadian policies, we agree with Devine (cited in Rivers and Associates, 1991) that an equal ruling could be made in Canada, were students (or rather, their representatives) to argue that they were being denied access to opportunities benefits and advantages available to others.

In the Lau vs. Nichols ruling, the Supreme Court Justices further stated that,
'Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.'

Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational deadend or permanent track.. (414 U.S. 563, 94 S. Ct. 786: \*566)

One reason that this part of the ruling is of particular interest to us is that, were a similar ruling adopted in Canada, this seemingly could be used to argue against time limits for ESL services. In Manitoba, there is no time limit for ESL assistance other than the age cap for high school completion, but the additional funding provided to schools is only in effect for two years. According to McGivern and Eddy (1999), a five-year cap on services in British Columbia has been established (though they do not state whether this is a funding cap, or a time-on-task cap), and they argue, on the basis of established research, that even five years is not in the best interests of children.

Moreover, a ruling of this nature could also be used in arguments against the Manitoba Senior Years' course designations, in which ESL students can graduate from High School with "E" designation after their courses, meaning that the course has been modified for ESL students. While this serves students in the sense that they can then graduate from high school, "E" designated courses will not enable the students to gain access to tertiary institutions. The designation purportedly used to help them, then, ghettoizes them in terms of their future goals.

Furthermore, given what is known about the possibility for minority language children to lose their first languages after beginning public schooling in English (Kouritzin, 1999; Wong Fillmore, 1991; Grundy, 1992; Skutnabb-Kangas, 1981, 2000), and even to remain unable to express themselves fully in any language (Lambert, 1975), it could be argued that violations of Section 15 of the Charter and Part I (5) of the Canadian Human Rights Act would result if educational institutions did not provide language support for all childrenís first languages. Indeed, Section 27 stipulates that the Charter of Rights and Freedoms must ìbe interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." To permit the loss of a first language is not to preserve, much less to enhance, a multicultural heritage.

**Federal Funding**

The federal government, despite its responsibility for immigration, and despite frequent appeals from the provinces (Ashworth, 1988; 1992; Burnaby, 1992; Flaherty & Woods, 1992) has steadfastly refused to allocate funds for the schooling of immigrant children, arguing that education is the domain of the provinces. The federal government does, however, fund language instruction for adults in an effort to help them find employment. In 1980 The Honourable Donald Macdonald established a Task Force on Citizenship and Language Agreements/Programs, and, in the final meeting, the schooling of immigrant children was discussed but not resolved (Flaherty & Woods, 1992, p. 183). Even at that time, the provinces indicated that 50 to 60 million dollars was being spent on education for immigrant children, that figure being exclusive of transportation, training, consultants, administration, materials, and curriculum development (p. 183). As of 1992, Flaherty & Woods argue, "both the federal and provincial levels of government accept that there is a problem, but the political will to redress it is still lacking" (p. 182).

Some, for example Ashworth (1992), do not believe that the federal government should contribute to the education of immigrant children. Her argument is pragmatic rather than ideological, however; Ashworth points out that federal funding is fundamentally unstable. She notes that federal funding cannot be relied on, that some provinces reserve the right to place earmarked federal funds into general revenues, and that federal involvement may encourage provincial governments to "wash their hands of what is their responsibility" (p. 46).
Burnaby (1992) does not specifically state whether she supports federal funding for ESL; however, she points out that the federal government has been overwhelmed by the French/English debates in Canada and has therefore largely ignored education for other language groups. She argues that "as the number of foreign-born and 'visible' second-generation immigrants to Canada approaches levels equal to or higher than those of French and even English Canadians from old stocks, the concerns of groups other than the 'founding nations' need urgent attention" (p. 134). The consistent federal refusal to fund ESL sends a message that the official languages are of more importance than minority languages. When school boards must pressure provinces to pressure the federal government for additional resources, petitioners are encouraged to dramatize demographics, to encourage publicity, and to establish ESL as a problem. Failure to adequately fund ESL programs results in ESL being viewed as a problem, which may fail to promote racial harmony, multilingual respect, or peaceful and vibrant multiculturalism.

**Provincial provisions affecting ESL instruction**

In this section of the paper, several provincial documents including the Manitoba Human Rights Act (which apparently must be officially referred to as chapter H175 in the Continuing Consolidation of the Statutes of Manitoba), the Manitoba Public Schools Act, the Multiculturalism Act, and several provincial curriculum/resource documents will be examined for their potential impact on ESL provision. Again, it must be noted that the following sections represent one possible reading of these documents, and do not constitute a case study. It is also important to note that Manitoba is currently conducting a review of ESL provision in the province, with a view to better meeting the needs of the students.

**Manitoba Human Rights Act**

The Manitoba Human Rights Act Part II, 13 (1) states that without a bona fide and reasonable cause no one shall be denied "any service, accomodation, facility, good, right, licence, benefit, program or privilege available to the public or to a section of the public." What might constitute a "reasonable cause" to the families whose children are designated "ESL" and who then experience their education in such a way that they become "fall outs," "push outs," or "drop outs"? (Watt & Roessingh, 1994a, 1994b; see also Derwing, Decorby, Ichikawa, & Jamieson, 1999). According to one Calgary study, 74% of students in need of ESL assistance when entering Junior High School dropped out of school before completion. Of those who entered Junior High as "Beginner ESL 95.5% dropped out; "Intermediate ESL, 70%; Advanced ESL, 50% (Watt & Roessingh, 1994b). Most graduates do not attend tertiary institutions. Those who do predominantly enter technical/vocational programs rather than universities. Most of those students then drop out (Watt & Roessingh, 1994b). A 1991-1996 study of the Edmonton Catholic Regional Division (Derwing, et al., 1999) did not find quite as high a non-completion rate, but the 54% completion rate in that study was still below the provincial average of 70%. These figures are from studies done in Alberta; no tracking studies have been conducted in the province of Manitoba. It could be argued, if these figures are fairly representative of the prairie provinces (or all of Canada), that the majority of ESL students are indeed being discriminated against with respect to service, benefit, program, and privilege available or accessible to the public. Section 13(2) of the Act adds force to this argument by excluding exceptions for those under the age of majority (directly affecting K-12 students) while section 43(2) establishes guidelines for remediation and compensation for "benefits lost by reason of the contravention."
Part II 9 (1) of the Manitoba Human Rights Act defines discrimination. Discrimination means:
(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or ....
(d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

The applicable characteristics for application of the definition of discrimination include (a) ancestry, including colour and perceived race; (b) nationality or national origin;, and (c) ethnic background or origin. If the accommodation for ESL students is not considered reasonable, that is, if it does not support the intention of the Human Rights Code to "provide for affirmative action programs and other special programs designed to overcome this historic disadvantage" (preamble to the code, section (c)), then there is an argument that Manitoba public schools are violating the Manitoba Human Rights code, a significant problem given that "the human rights of Manitobans are of such fundamental importance that they merit paramount status over all other laws of the province" (preamble, section (d)). We suggest that the Manitoba Human Rights code may be violated, because children who speak a language other than English when they begin schooling in English-only programs require 4-10 years of language support, or perhaps throughout public schooling, if they are to reach the peer-level norms of native speakers of English (e.g., Collier, 1987; Cummins, 1984; Ramirez, 1992).

Moreover, Part II, section 11 states that it is not considered to be discrimination to "plan, advertise, adopt or implement an affirmative action program or other special program" that in some way grants differentiated treatment to members of a group identified in subsection 9(2). This section of the Human Rights Act can be seen to defend segregated ESL instruction.

In Canada, arguments claiming that ESL classes are discriminatory are sometimes used to promote mainstreaming at the expense of segregated ESL provision. Often the reasoning is that segregated ESL classes ghettoize students and keep them from reaching their potential. This is an argument which cuts two ways. Handscombe (1989) points out that separate ESL provision has an impact on how newcomers are received by others in the school, denies ESL students contact with fluent English speakers, and makes it less likely that language acquisition and academic knowledge are developed in tandem (p. 30). On the other hand, mainstreaming can be discriminatory because it is a "sink or swim" approach to language instruction, providing no opportunity to take risks or rehearse unfamiliar ideas in a protected environment (Handscombe, 1989, p. 30). Total mainstreaming, or mainstreaming without sufficient support are clearly not workable alternatives. Total ESL, or ESL classes that do not fuse language learning with content learning while giving academic credit to the students for the language and content learning they have done in their first languages, are also not workable alternatives.

**Manitoba Public School Act**

At first glance, the Public School Act appears to be a very liberal document. Section 79(2) empowers school boards to provide educational programs in other languages within the following guidelines:
(a) for instruction in religion during a period authorized for such instruction;
(b) during a period authorized by the minister for teaching the language;
(c) before and after the regular school hours prescribed in the regulations and applicable to that school;
(d) in compliance with the regulations as a language of instruction, for transitional purposes;
(e) in compliance with the regulations, as a language of instruction for not more than 50% of the regular school hours as determined by the minister.

This means that there is provision for minority language support, but clearly not for complete minority language instruction, even though Canada has signed the UNESCO agreement stating that all children have the right to be educated in their first languages. The Act makes provision for some limited minority language instruction if the school board and trustees feel that it is warranted. There is also to be appointed a Languages of Instruction Advisory Committee which will make recommendations on languages of instruction, but it is, by its composition, exclusively concerned with the provision of French.

Therefore, it is the section on the election of school trustees that is of concern in this respect. As Mary Ashworth (1985) has pointed out, while educators can influence to some degree the content of what is taught and the method by which it is taught, it is the public, through its elected or appointed officials, that ultimately determines the purpose and direction of education. (p. 50).

In order to become a school trustee, a Manitoban must first be eligible for nomination, meaning that he or she must be a Canadian citizen of the age of majority who has resided in the school division or district for not less than six months, and who is not disqualified by law. The nomination must be in the form and manner prescribed in The local Authorities Election Act. If nominated, candidates must "run," meaning they will have to speak in English in public. If they then win, they have to swear an oath of office in which they once again swear fidelity to the Queen of England/Canada.

First, the eligibility criteria presuppose a trusteeís fluency and literacy in English. Given that trustees need to be elected in a school district, and given that majority language voters are unlikely to opt for the experience of minority language education programs in their districts particularly during times of fiscal distress, and given that the people who most desperately need to be represented are, by definition of the requirements of trustee, incapable of representing themselves (i.e., they are not citizens for at least three years after arrival in Canada), it may be unlikely that the provisions for minority language education or for minority language teaching assistants will be acted upon. Those people most affected by decisions will have had no chance to vote, much less to run.

Furthermore, "administrators and trustees are responsible for the hiring and firing of teachers as well as the setting of policy" (Ashworth, 1992, p. 47), meaning that trustees exert considerable influence. Arguably, those who control who teaches what to whom thereby impact the curriculum. Currently in Manitoba, for example, 55% of the population are from non-English and non-French backgrounds (Tavares, 2000, personal communication), yet this is not reflected in the composition of the various school boards. Arguably then, the trustees cannot be said to represent those whom they serve. Of the four "key players" (teachers, administrators, students, and parents) identified by Handscombe (1989) who must be actively involved in determining which policies should govern teaching and learning, two of them (students and parents) do not appear to have official representation when the education of ESL students is decided upon.

**Manitoba's Policy for a Multicultural Society**

The 1990 Policy for a Multicultural Society in Manitoba establishes ideals that appear to be incompatible with the Public School Act. The goals of this act include giving persons of various backgrounds:
(a) the freedom and opportunity to express and foster their cultural heritage; and
(b) the freedom and opportunity to participate in the broader life of society; and
(c) the responsibility to abide by and contribute to the laws and aspirations that unite society.
It has three fundamental principles: (1) that the cultural diversity of Manitoba is a strength and a source of pride to Manitobans, (2) that Manitobans, regardless of culture, religion or racial background, have a right to equal access to opportunity, to participation in all aspects of the life of the community, and to respect for their cultural values, and (3) that the opportunities of the multicultural society will best be realized through partnerships within communities and with government.

Several things are noteworthy about the three major principles. First, under principle 1, is the guarantee that "Government will encourage the retention of languages...throughout our multicultural community." Under principle 2 are guarantees that the provincial government will "actively support those who are addressing particular concerns, such as overcoming language or literacy barriers," that it will "strive to prevent all forms of discrimination through education," and that it "will ensure that the multicultural nature of our society is reflected in its hiring practices, and in appointments to Boards, Commissions, and other provincial offices so that these institutions are representative of the community except, we suppose, in the case of the School Act? Failures to live up to these stated policies may be seen in Manitoba in the School Act, the non- support minority language instruction, insufficient ESL instruction, the lack of requirements for qualified ESL teachers, and the rush to "mainstream" ESL students.

**Multicultural Education Policy**

When these policies are translated into the 1992 Multicultural Education policy, we find that the multicultural policies are to be enacted largely through public education, not just at the K-12 level, but also at the tertiary levels. The policy statement has three thrusts: (1) education for full participation in Society, (2) education for cultural and linguistic development, and (3) education for intercultural understanding (p. 1). For our purposes, the first two thrusts are of most importance. The first reads:
All students, regardless of race, colour, gender, language, cultural heritage, religion, ethnicity, physical capabilities or intellectual potential, have a right to equal and meaningful roles in Canadian society. Education must, therefore, enable all students to develop those abilities and competencies which will promote effective social participation and equal status for themselves and their ethnocultural groups. Students whose mother tongue is neither English nor French must be assisted in the development of linguistic proficiency in either of Canada's official languages. (p. 2)

This is of interest because it is more encompassing than the Charter of Rights and Freedoms (above, pp. 13-14), and because it includes the right not merely to equal benefit and equal protection under the law, but also to equal and meaningful roles in society. It also includes language as one of the factors which cannot be used for disciminatory purposes, and states explicitly that educational institutions must "assist... in the development of linguistic proficiency in either of Canada's official languages." It seems clear that instruction in English as a second language is mandated.

The second thrust of the policy is articulated thus:
Education must assist students from different cultural backgrounds to develop self-esteem and a strong sense of personal identity as Canadians and as members of their ethnocultural group through an awareness of their own cultural, linguistic and historical heritage. Integral to this commitment under the law is the provision, through the school curriculum, of instruction in both English and French, as well as opportunities for heritage language study. (p. 2) This establishes the need for provision of instruction in English (presumably as the subject rather than the medium of instruction) as well as for heritage language instruction.

The failing of this policy is that it lacks teeth. In the multicultural education section, the policy states that Manitoba Education and Training will "continue to provide support for heritage and second language education" (p. 5) in terms of consulting, program development and funding, "assist in the development of programs for students with limited proficiency in either of Canada's official languages" (p. 5). The policy later reads that School Divisions are encouraged to comply with several initiative ideas, Post-secondary institutions are encouraged to comply, and ethnocultural communities are encouraged to get involved in school programming and practices. There is little imperative in the language of the policy.

**Instructor qualification**

Additionally, although qualified teachers who can speak the target language are required in heritage language programs, the same does not hold true of ESL teachers. At the present time, it is possible to obtain teaching credentials from all three of Manitoba's largest universities without instruction on the needs of ESL learners. At the University of Manitoba, students in the new after-degree program in the early years stream now must take a one credit hour (13 hour) course in ESL instruction. This is a step in the right direction. It is also possible to be employed as an ESL teacher (or more likely teacher's aide because ESL is not regarded as a "teachable" subject area in the province) without specific ESL training (Federkevic, 1994; Tavares, personal communication). This inadequacy in terms of quality of instruction is critical; as professionals thoroughly familiar with the literature on ESL instruction, we must recommend that no teachers of ESL be hired or retained who do not have ESL credentials.

**K-12 ESL curriculum/policy**

There is no official ESL curriculum in Manitoba. We therefore cannot look at the ESL curriculum as a policy. In the absence of any ESL curriculum, the K-12 Curriculum (the aggregate of many curricula) will continue to be the basis for ESL instruction. Instead of ESL curricula, there are a series of position statements or resource books designed for ESL, which will be examined in greater detail below. Lack of an official statement of curriculum for ESL ensures that ESL is not a recognized subject, and indeed, it is not one of the teaching subject areas which can be declared for certification to teach in Manitoba schools, even though French as a second language (our other official language) is a "teachable" . Lack of a curriculum and lack of recognition can devalue the subject, the teachers who teach it, and the students who study it.

**K - 12 Funding**

Manitoba's ESL funding policies are not generous, not based on research, and have not changed since 1986 (Tavares, personal communication). Funding is granted to non-First Nations' students (separately funded) who have been receiving English language instruction for two years or less at the elementary level (plus up to one year of kindergarten) or three years or less at the secondary level. The amount payable to a school division is the lesser of $660 for each pupil or the net cost directly related to ESL instruction. This is clearly not sufficient for quality ESL programming unless the school has enormous numbers of ESL students and can support entire classrooms at various grade levels, an argument backed up by the few superintendants and principals who have been interviewed on record (Federkevic, 1994). As Flaherty and Woods (1992) point out, when funds and resources are inadequate, school boards must sometimes "make difficult political decisions about which students will receive ESL and who will not" (p. 186).

**Resource books for ESL Instruction**

In 1998, Manitoba Education and Training produced Planning for success: Developing an English as a second language protocol. This document gives a brief overview of second language acquisition research, following which it looks at identification, reception, assessment/diagnosis, placement/learning plan, instructional programming, curriculum content, evaluation/testing, integration/monitoring and reporting. It states that there are three major aims of ESL programming:

* To provide ESL students with specialized educational programming and supports for English language acquisition as long as they require them
* To create a learning environment that builds on ESL students' first language and culture and encourages a positive self-image, and
* To introduce new ESL students and their families to the new Canadian school and community. (p. I.24)
The foundations section of the document is weak. The research is outdated, poorly summarized, and limited. Because of its omissions, the sourcebook has limited the options for teachers. The document appears to assert that there is one best way for teaching ESL students, and that teaching ESL is technique rather than teacher knowledge, teacher awareness, teacher reflection, and teacher sensitivity as these interact with learners from various educational and cultural backgrounds. There are a variety of exemplary practices in Manitoba, in Canada, and around the world. We suggest that a balance in presentation is warranted.

**School board policies and initiatives affecting ESL instruction**

Individual school boards in Manitoba have a fair degree of autonomy with regard to the education of ESL students, and are not required to have an ESL policy (Tavares, personal communication). Although technically they are required to file annual reports about their ESL funding, there is no one assigned to read them, so this is not really a requirement. According to the TESL Manitoba Action Committee report (Federkevic, 1994), none of the school divisions contacted (admittedly few) have an official written policy for the implementation of ESL funds from the Department of Education, or, we might add, for ESL instruction. According to the same report, the schools contacted do not either. This does not seem to have changed in the six years since this report was written. We are aware that there are exceptions. In fact, one of the authors is well-acquainted with a school that has an exceptional ESL program, one of the best in the country. Although there are some best practice schools, in Manitoba, there are few, if any, enduring policies. Moreover, no provisions have been made for literacy development in students' first languages at the division or school level (with, again, at least one notable exception). Lack of clarity, lack of uniformity, and lack of information available to immigrants may constitute a barrier to the eventual success of ESL learners.

**Conclusion**

While policy and principles tell one story, people tell another. We propose that, in the K-12 context, studies be undertaken similar to that done by the Teachers' Federation in British Columbia (BCTF), and on a larger scale than that of the TESL Manitoba Action Committee. The BCTF examined demographics and policies (or lack thereof) for the provision of ESL in 16 school districts in British Columbia, ensuring that all regions in the province were represented (1994a). The BCTF also conducted focus group sessions with ESL/ESD teachers (1993b), with classroom teachers (1993a), and with the parents of ESL/ESD students (1993c), and administered one large-scale (261 responses) survey of ESL/ESD teachers throughout the province (1994b). We feel that this is needed in Manitoba. Further, we would like to see in-depth analyses of several exceptional programs that exist in Manitoba (Kouritzin, 2002). Like Mary Ashworth (2000), we would like to "exclude options that represent...poor teaching practice," as well as "those practices whose only merit is to illustrate what should not be done." As she goes on to argue, "after all, these practices may have changed for the better since the day I first came across them and, as far as possible, I want to highlight features that I consider educationally sound" (p. 13).

At the present time, there is no specific published ESL policy in Manitoba, though there are many policies, national, provincial, and local, that could potentially influence the provision of second language instruction in K-12 public schools. In times of such rapid change, we feel that ad hoc policy is not good enough. In fact, as many of us are becoming aware, language minority students are becoming the mainstream, therefore a clear and thoughtful statement of ESL/D policy is warranted, if not mandatory.

We must question what ends are served by the failure to have a clearly articulated policy still in 2002, two years into the new millenium. First, in documents such as the provincial and federal Human Rights Acts, failure to specify language as a prohibited grounds for discrimination, not only allows for discrimination in public service or under the law on the basis of language, but could also result in discriminatory practices based on race.

Failure to clearly articulate an ESL policy and to support it with sufficient resources also results in the marginalization of the profession and of the students. Currently, ESL programs are often regarded as remedial classes, while ESL professionals are not accorded the same respect as their regular classroom colleagues. Often public school ESL teachers are given second rate facilities, second rate jobs, or they are otherwise marginalized. In some schools ESL students are mainstreamed, ready or not. This even fails the outdated goal of assimilation, much less the current goal of integration.

Furthermore, those policies which may have an impact on language teaching and learning are the product of the dominant majority in Canada. Those people likely to be most affected by policy have not had a hand in making it. Therefore, rather than legislating that certain programs must exist, provision has been made for such programs to be instituted if they are deemed warranted. Whether or not they are warranted is likely to be a matter of personal opinion; the personal opinion of a White, middle-class, majority-language, educated, employed trustee is unlikely to reflect the personal opinion of a recent refugee family whose only investments are their children.

In a free and democratic society, the people seek to define their rights and responsibilities through the political systems, seek justice and redress in the judicial systems, and both of these are made possible through the educational systems. In terms of recommendations, therefore, we suggest that policy makers, administrators, and educators ask themselves to consider ESL learners' rights and responsibilities in the political arena, in the judicial arena, and in the educational arena.

In the political arena, we suggest that a means be found to ensure that ESL learners' are represented on school boards, and that cooperation among federal, provincial, and local governments be encouraged in order to support K-12 education, similar to, for example, the cooperative relationship established in support of adult education in Manitoba. In the judicial arena, we suggest that it is time for the rights of ESL students and immigrant families from all nations to be defined in the courts. In the educational arena, we would urge the various teachers' associations to recognize ESL as a teachable subject area, similar in status to the subjects of French, Cree, German, Spanish, and other heritage, Aboriginal, or international languages. We would also strongly recommend that all ESL teachers be qualified to teach ESL, certified by TESL Canada's national accreditation standards. We also recommend that once ESL students are mainstreamed into regular classrooms, they be supported financially and in terms of curriculum adjustments, throughout their educational lives if necessary, recognizing the expertise and meaningfulness that comes from their lived experiences. Curriculum needs to access students' prior knowledge, extend concepts and vocabulary learned, employ interesting, practical and authentic printed matter, allow for individualized instruction, promote the use of various media, and allow students control and responsibility for their own learning. Finally, we suggest that it is time for those educators involved with teaching ESL become aligned with teachers of French, Aboriginal languages, heritage languages, and international languages, in cooperative goal setting and strategizing.

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