

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 account their education, professional background and training, knowledge of an official language, religion, family, and ability to make an economic contribution to Canada. Because economic factors have recently garnered proportionally more points, immigration from the 'Asian Tiger' countries has increased. Urban centers such as Vancouver report that English as a second language (ESL) students form 10% to 30% more of the student population in high schools (Naylor, 1994a; 1994b; McGivern & Eddy, 1999). While urban 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 specific period of time (Immigration Canada, 1993). Other urban centers are therefore receiving more independent immigrants. Additionally, in an effort to attract foreign dollars, many school divisions have begun recruiting international students to study in high schools, many of whom are expected to become Canadian citizens and sponsor their family's immigration. Finally, increasing numbers of ESL students are now born, as families elect to maintain their heritage languages in their homes and allow the schools to teach in 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, Ichikawa & Jamieson, 1999) however, indicate that successful graduation from high school, particularly university-track programs, remains the exception rather than the rule. Drop out rates of up to 74% for school ESL students have been recorded in Alberta and British Columbia (Watt & Roessingh, 1994; 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 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. In these documents, we feel, will reveal the institutional attitudes toward the students served by ESL teachers. To 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 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, inform educational practice, whether those who act as educational agents are conversant with them or not. However, policy 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 ask. In their broadest sense, policies are "statements of principle about what should happen" (Grundy, 1991, p. 22), yet, at times, it is necessary to consider 'business as usual' as de facto policy. Mary Ashworth 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 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 quality of programs, and

d) economic forces which would direct the presence or absence of an ESL program, the class 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 the 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 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 the 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 classroom teachers and regular classroom teachers. Policy, therefore, in this paper, refers both to standards of procedure and to what practices are recommended and/or permissible in the provision of ESL and second languages.

A formal written curriculum can also be viewed as a kind of policy. While some theorists such as Hill (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, 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 goals including, but not limited to, the role of administrators, the role of the teacher, pedagogical methods, 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, the frequency it meets, the range of levels and ages within the class, and the qualifications of the teachers (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 describes the essence, what is supposed to happen in a classroom (the subject of this archival analysis) and what 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 for them may be equitably distributed.

Ashworth (1988) has pointed out that there has been no consistency in describing students who receive 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. 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 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 and 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

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, student support for students with limited proficiency in English was extended to qualifying students in the French and Immersion Programs. Students up to the age of 21 may also be eligible for support if they are enrolled in 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 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 in Kindergarten) or three years or less in the Senior Years. These funding guidelines will be dealt with in this paper, but here it is important to point out that ESL students are defined by their eligibility for 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 English to prevent reaching [sic] his or her potential" (p. 5). While such a deficiency-based definition is 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 implicit criticism of 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 language spoken in the home (anonymous Winnipeg #1 school principal, personal communication, 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 provide 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 McKay's (1993) argument that the sociopolitical context can set literacy agendas for immigrants because of forces such as the naturalization requirements (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), the objectives section of the immigration policy which potentially establishes the language agenda for French 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 the following 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 of Canada; ...

Item (a) insinuates, but does not state, that the Government of Canada could direct newcomers to where to live, based on its perceived needs. Indeed, in the National Film Board film "Who gets in?" an immigration officer in Africa is seen explaining to accepted Convention Refugees where they will be sent to 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, which may arguably then have 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) a clear, purposeful explanation with freedom of choice.

Item (b) stresses that Canada is bilingual not multilingual, despite our policy of multiculturalism. It 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 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 granted admission to Canada. Such assimilationist policies directed toward a vibrant multiculturalism, but could be seen as supporting the interests of the dominant culture, leading to what Cassin (1980) has termed "multiculturalism."

Finally, item (h) in part explains why, in times of economic recession, right wing political organizations 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' 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 Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and my duties as a Canadian citizen. (Section 24)

When immigrants wish to become citizens of Canada, they must meet language requirements outlined in s. 5 (1) (d) of the Citizenship Act, which states that citizenship will be granted to those who demonstrate adequate knowledge of one of the official languages of Canada." There is no indication in the Act as to what an adequate knowledge of one of the official languages is. Does adequate mean well enough to function in daily life? Or does it mean "equal access to opportunity, to participation in all aspects of the life of the community?" (A 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 support for immigrant families. It would therefore be of benefit to the federal government to define a lower standard rather than a high one, in order that some responsibility be waived, and perhaps the provinces' decreased 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 in 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 12% of the programs were designed "to help their students participate in Canadian society" (p. 197) she concludes, promotes a passive and apathetic view of citizenship by failing to help new Canadians 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 the same 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 a first language and a second language during their schooling at public expense. At the other extreme, 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 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 as to mandate the provision of exceptional services if children are to be educated in their second (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 enforcement 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 to achieve true equality it will frequently be necessary to make distinctions." In other words, the annotations to the Charter stipulate that being equal 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 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 students are viewed as a label affixed by people who are not part of the group. ESL/D students become a member of a 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 opportunities 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 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. Ni* 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 educational opportunities. The court ruled that, there is no equality of treatment merely by providing students with 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 before a child can effectively participate in the education program he must have already acquired the 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 a similar 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 needs of national origin-minority group children must be designed to meet such language skill needs 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, the 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 ESL program 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 in the best interests of children.

Moreover, a ruling of this nature could also be used in arguments against the Manitoba Senior Year designations, in which ESL students can graduate from High School with "E" designation after their 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 admission 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 languages after beginning public schooling in English (Kouritzin, 1999; Wong Fillmore, 1991; Grunc 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 Human Rights Act would result if educational institutions did not provide language support for all children's first languages. Indeed, Section 27 stipulates that the Charter of Rights and Freedoms must be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada. 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 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 not resolved (Flaherty & Woods, 1992, p. 183). Even at that time, the provinces indicated that millions of dollars were being spent on education for immigrant children, that figure being exclusive of transportation, training, consultants, administration, materials, and curriculum development (p. 18). In 1992, Flaherty & Woods argue, "both the federal and provincial levels of government accept that the problem exists, 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 guaranteed because some provinces reserve the right to place earmarked federal funds into general revenues, and 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 first-born and 'visible' second-generation immigrants to Canada approaches levels equal to or higher than the French and even English Canadians from old stocks, the concerns of groups other than the 'founders' need urgent attention" (p. 134). The consistent federal refusal to fund ESL sends a message that the majority languages are of more importance than minority languages. When school boards must pressure the federal government for additional resources, petitioners are encouraged to dramatize their 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, mutual 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 (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 should 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 throughout 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 person shall be denied "any service, accommodation, 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 deny services to 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 D. Decorby, Ichikawa, & Jamieson, 1999). According to one Calgary study, 74% of students in need of assistance when entering Junior High School dropped out of school before completion. Of those who completed 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 attend predominantly 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.) 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 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.

"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 s (2); or

(d) failure to make reasonable accommodation for the special needs of any individual or group, if the 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, colour and perceived race; (b) nationality or national origin; and (c) ethnic background or origin. If accommodation for ESL students is not considered reasonable, that is, if it does not support the intent 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 other laws of the province" (preamble, section (d)). We suggest that the Manitoba Human Rights code can be violated, because children who speak a language other than English when they begin schooling in only programs require 4-10 years of language support, or perhaps throughout public schooling, if they do not reach the peer-level norms of native speakers of English (e.g., Collier, 1987; Cummins, 1984; Ram 1992).

Moreover, Part II, section 11 states that it is not considered to be discrimination to "plan, advertise or implement an affirmative action program or other special program" that in some way grants differential treatment to members of a group identified in subsection 9(2). This section of the Human Rights Act is often 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 classes ghettoize students and keep them from reaching their potential. This is an argument which works in 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 (Har 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 which do not award academic credit to the students for the language and content learning they have done in their first language 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 M. 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 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 she must be a Canadian citizen of the age of majority who has resided in the school division or district less than six months, and who is not disqualified by law. The nomination must be in the form and as prescribed in The Local Authorities Election Act. If nominated, candidates must "run," meaning they must speak in English in public. If they then win, they have to swear an oath of office in which they swear fidelity to the Queen of England/Canada.

First, the eligibility criteria presuppose a trustee's fluency and literacy in English. Given that trustees are elected in a school district, and given that majority language voters are unlikely to opt for the existence of minority language education programs in their districts particularly during times of fiscal distress given that the people who most desperately need to be represented are, by definition of the requirement, incapable of representing themselves (i.e., they are not citizens for at least three years after arriving 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 communication), yet this is not reflected in the composition of the various school boards. Arguably, 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) 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 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 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 institutions so that these institutions are representative of the community except, we suppose, in the case of the Public School Act? Failures to live up to these stated policies may be seen in Manitoba in the School Act, the non-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 post-secondary 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. The government must, therefore, enable all students to develop those abilities and competencies which will promote

social participation and equal status for themselves and their ethnocultural groups. Students whose tongue is neither English nor French must be assisted in the development of linguistic proficiency in Canada's official languages. (p. 2)

This is of interest because it is more encompassing than the Charter of Rights and Freedoms (above 14), and because it includes the right not merely to equal benefit and equal protection under the law but to equal and meaningful roles in society. It also includes language as one of the factors which cannot be used for discriminatory 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 in Manitoba, 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 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 language study. (p. 2) This establishes the need for provision of instruction in English (presumably as a 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 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 credentials from all three of Manitoba's largest universities without instruction on the needs of ESL students. At the University of Manitoba, students in the new after-degree program in the early years stream must take a one credit hour (13 hour) course in ESL instruction. This is a step in the right direction. It is 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 such. 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 reports and 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 teachable 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" subject. 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 1985 (Tavares, personal communication). Funding is granted to non-First Nations' students (separately from First Nations students who have been receiving English language instruction for two years or less at the elementary level or 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 not sufficient for quality ESL programming unless the school has enormous numbers of ESL students. To support entire classrooms at various grade levels, an argument backed up by the few superintendents

principals who have been interviewed on record (Federkevic, 1994). As Flaherty and Woods (1992) 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, from which it looks at identification, reception, assessment/diagnosis, placement/learning plan, instructional programming, curriculum content, evaluation/testing, integration/monitoring and reporting. It states 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. 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 a 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 few examples of exemplary practices in Manitoba, in Canada, and around the world. We suggest that a balanced 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 students, and are not required to have an ESL policy (Tavares, personal communication). Although they are required to file annual reports about their ESL funding, there is no one assigned to read them; 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 report, the schools contacted do not either. This does not seem to have changed in the six years since the 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 a few 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, 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, a study 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 political context (and lack thereof) for the provision of ESL in 16 school districts in British Columbia, ensuring that all regions of 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. We feel that this is needed in Manitoba. Further, we would like to see in-depth analyses of several existing ESL programs that exist in Manitoba (Kouritzin, 2002). Like Mary Ashworth (2000), we would like to "examine those options that represent...poor teaching practice," as well as "those practices whose only merit is to identify 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 we consider educationally sound" (p. 13).

At the present time, there is no specific published ESL policy in Manitoba, though there are many provincial, national, provincial, and local, that could potentially influence the provision of second language instruction.

K-12 public schools. In times of such rapid change, we feel that ad hoc policy is not good enough. 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 20 years into the new millennium. First, in documents such as the provincial and federal Human Rights Act, the failure to specify language as a prohibited ground 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 fulfills an 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 policies of the dominant majority in Canada. Those people likely to be most affected by policy have not had a say 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 to be a matter of personal opinion; the personal opinion of a White, middle-class, majority-language, employed trustee is unlikely to reflect the personal opinion of a recent refugee family whose only children are their children.

In a free and democratic society, the people seek to define their rights and responsibilities through 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 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 like to see the various teachers' associations to recognize ESL as a teachable subject area, similar in status to 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 or national accreditation standards. We also recommend that once ESL students are mainstreamed into 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 own experiences. Curriculum needs to access students' prior knowledge, extend concepts and vocabulary, 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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