

Judicially Mediated Decentralization: The Charter, Federalism, and the Legacy of *Mahe v.*

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The adoption of the *Canadian Charter of Rights and Freedoms* in 1982 marked a pivotal moment in the evolution of Canadian federalism (The Constitution Act). Introduced under the leadership of Prime Minister Pierre Elliott Trudeau, the Charter redefined the traditional balance of power between federal and provincial governments by entrenching a broad spectrum of individual and collective rights within the Constitution (Leach, 1982). In doing so, it transferred a measure of political authority from elected legislatures to the judiciary, granting courts a central role in delineating the limits of governmental power and protecting citizens' rights from legislative overreach (p. 152).

While this shift has, at times, constrained provincial autonomy, it has also expanded the capacity of individuals and minority communities to assert constitutionally protected rights in areas traditionally governed by the provinces, such as education, health, and culture (Cameron & Simeon, 2002). The result is a new, rights-based form of decentralization within the Canadian federation, one driven less by intergovernmental negotiation than by judicial interpretation (p. 49).

This essay examines the implications of this transformation through a close analysis of *Mahe v. Alberta* (1990), a landmark Supreme Court of Canada decision interpreting Section 23 of the Charter as requiring provincial governments to share control of education with official-language minority communities (Richards, 1991). By tracing how *Mahe* redefined provincial authority and empowered linguistic minorities, this paper argues that the Charter has produced a form of judicially mediated decentralization in Canadian federalism, in transforming citizens and

minority groups from passive subjects of legislation into active participants in the constitutional order.

The Charter and Canadian Federalism

The Charter's framework of judicially enforceable rights provides the foundation for understanding how it has reshaped Canadian federalism by introducing a new, vertical distribution of authority between governments and citizens, echoing what Porter described as "The Vertical Mosaic" (Longstaff, 1967). Historically, Canadian federalism was defined by the division of powers outlined in the *Constitution Act, 1867* (p. 86). Section 91 assigned national matters to Parliament, while Section 92 granted provinces control over local issues, including property, civil rights, and education (Cameron & Simeon, 2002). This arrangement reflected a model of dual sovereignty, characterized by two levels of government, each with distinct powers within its respective jurisdiction (p. 49).

David Cameron and Richard Simeon (2002) later described this evolving system as one of "collaborative federalism," characterized by multiple actors negotiating shared policy responsibilities (p. 49). Yet, in practice, Canadian federalism developed along increasingly centralized lines, especially during the first half of the twentieth century (Leach, 1982). Economic crises and wartime responsibilities expanded the federal role, often at the expense of provincial autonomy (Cameron & Simeon, 2002). Within this earlier model, citizens and minority groups had limited constitutional recourse against provincial actions; jurisdictional disputes were primarily resolved through political negotiation rather than judicial review (p. 51).

This constitutional landscape shifted dramatically with the patriation of the Constitution and the entrenchment of the Charter in 1982 (Cameron & Simeon, 2002). By codifying a

comprehensive set of individual and collective rights, including language, mobility, equality, and fundamental freedoms, the Charter bound both federal and provincial governments to a shared rights-based standard (p. 55). This transformation marked a decisive departure from the Westminster model of parliamentary supremacy inherited from the *British North America Act, 1867*. For the first time, citizens possessed constitutionally protected rights enforceable against any level of government through the courts (p. 51).

The Charter's establishment of judicial review as a core mechanism of Canadian constitutionalism was equally transformative. Whereas earlier disputes concerned which level of government held jurisdiction (Richards, 1991), a horizontal question of power, Charter litigation asks whether any government has acted in a manner that infringes constitutionally guaranteed rights (p. 219). The judiciary thus emerged as an arbiter not only between federal and provincial governments but also between governments and citizens. This evolution reoriented Canadian federalism toward what Alan Cairns termed "citizenship federalism" (1988).

From this perspective, the Charter introduces a rights-based, vertical decentralization that extends beyond the traditional federal–provincial axis. Authority now flows downward, empowering individuals and minority communities to assert autonomy within policy domains once controlled exclusively by legislatures (Longstaff, 1967). Courts have become the primary mediators of this constitutional dialogue, striking a balance between collective governance and individual rights, and redistributing power from governments to rights-holders (Richards, 1991). As illustrated in *Mahe v. Alberta* (1990), this judicially mediated decentralization compels provinces to recognize constitutionally protected forms of minority participation and self-governance within their jurisdictions, fundamentally reconfiguring the structure and practice of Canadian federalism (Banting, 2005).

Case Study: *Mahe v. Alberta* (1990)

The Supreme Court of Canada's decision in *Mahe v. Alberta* (1990) stands as a landmark example of how the Charter can reshape provincial authority through judicial interpretation (p. 9). The case arose when a group of Francophone parents in Edmonton, Jean-Claude Mahe, Angeline Martel, and Paul Dubé, challenged Alberta's education system, arguing that it failed to uphold their children's constitutional rights under Section 23 of the Canadian Charter of Rights and Freedoms (p. 29). This provision guarantees the rights to minority-language education for English and French-speaking minorities across Canada (p. 30).

At the time, Alberta provided French-language instruction but denied French-speaking parents meaningful participation in managing those programs (Richards, 1991). The parents contended that this omission violated their right to an education system that reflected and preserved their linguistic and cultural identity (p. 221).

The central issue before the Court was whether Section 23 guaranteed only access to minority-language instruction or whether it also encompassed a broader right to manage and control minority-language educational institutions (Richards, 1991). In a unanimous decision, the Supreme Court concluded that Section 23 necessarily implies a right to institutional control (*Mahe vs Alberta*, p. 9). The Court reasoned that meaningful protection of linguistic and cultural identity requires more than classroom instruction; it demands governance by the minority community itself (p. 9). Accordingly, the Court held that "where numbers warrant," provinces must establish distinct administrative and governance structures, such as Francophone school boards, to ensure that minority parents exercise genuine authority over curriculum, staffing, and cultural preservation (p. 3).

The *Mahe* decision generated far-reaching constitutional implications by recalibrating the relationship between provincial authority and Charter rights (Richards, 1991). Education, long entrenched as a core domain of provincial jurisdiction under Section 93 of the *Constitution Act, 1867*, was rendered subject to constitutional constraints articulated through the Charter's minority-language guarantees (*Mahe vs Alberta*, 1990). As Trudeau (1968) argued, linguistic equality required constitutional entrenchment that would "irrevocably bind" both levels of government to uphold "absolute judicial equality" between English and French (p. 50).

In operationalizing this vision, *Mahe* compelled provinces to create and finance minority-language school governance structures, constraining provincial discretion in educational policy and transferring administrative power to constitutionally protected minority communities (Richards, 1991). This judicially mandated reconfiguration of authority illustrates how the Charter transforms Canadian federalism: by embedding minority rights within provincial frameworks, the Court effectively decentralized decision-making within the provinces themselves (p. 219).

Beyond its legal dimensions, *Mahe* transformed the practical landscape of Canadian federalism by institutionalizing community-level governance (Richards, 1991). It led to the creation of Francophone school boards across several provinces, demonstrating the Charter's capacity to empower citizens and minority groups as autonomous constitutional actors (p. 221). Judicial interpretation thus became the mechanism through which the Charter redistributed power within the federation; not between Ottawa and the provinces, but between governments and citizens themselves (*Mahe vs Alberta*, 1990).

Viewed through this lens, *Mahe v. Alberta* represents a precise instance of the Charter facilitating a nontraditional form of decentralization (Richards, 1991). By enabling French-

speaking minorities to exercise control over their educational institutions, the decision extended the logic of federalism downward, recognizing community autonomy within provincial boundaries (Leach, 1982). In doing so, the Supreme Court advanced the linguistic and cultural objectives of Section 23 and reimagined Canadian federalism as a system of shared, participatory constitutional authority mediated through rights rather than intergovernmental power (*Mahe vs Alberta*, 1990).

From Political Intent to Constitutional Evolution: The Expanding Legacy of *Mahe v. Alberta*

Although Pierre Elliott Trudeau's purpose in advancing the Charter was partly to constrain provincial autonomy, particularly in Quebec, and to reinforce a unified federal framework, the legacy of *Mahe v. Alberta* (1990) extended far beyond this initial intent (Trudeau, 1968). The decision established a constitutional foundation for independent Francophone school boards, transforming Section 23 into a vehicle for community self-governance and the preservation of cultural heritage (Richards, 1991). Through the court's appellate interpretation, Section 23 was reaffirmed not only as a guarantee of minority-language education but also as a protection for minority management and institutional autonomy (*Mahe vs Alberta*, 1990).

Mahe also reinforced a dynamic, "living tree" interpretation of language rights, requiring provinces to adapt to evolving demographic and community needs (Klaudt, 2018, p. 187). This principle reflects Trudeau's conception of the Constitution as a living framework capable of growth and adaptation to serve collective needs over time (The Constitution Act, 1982). As stated by Pierre Elliot Trudeau, in *Federalism, Nationalism, and Reason*, "As we ask ourselves... it becomes apparent that more than language and culture, more than history and

geography, even more than force and power, the foundation the nation is the will (p. 187).

Similar interpretive flexibility has shaped judicial readings of other Charter provisions, such as Section 15 (equality rights) and Section 7 (life, liberty, and security of the person), compelling provinces to reform their policies in areas like healthcare and social welfare (Banting, 2005).

Thus, when the Charter limits provincial sovereignty while empowering community actors, it produces a subtle but profound form of decentralization (Richards, 1991). As Cairns argues, the Charter reconfigures Canadian federalism by empowering individuals and minority groups at the expense of traditional governmental hierarchies (1988). Though *Mahe* does not advance decentralization in the conventional federal–provincial sense, it embodies internal decentralization within provincial jurisdictions: by mandating minority-run school boards, the Court effectively constitutionalized community-based governance (Richards, 1991).

The broader outcome of *Mahe* underscores that the judiciary, not only legislatures, can drive federal transformation (Richards, 1991). By requiring provinces to accommodate minority communities in flexible, locally responsive ways, the Supreme Court introduced a new decentralizing dynamic into the federation (p. 191). *Mahe* thus exemplifies what Cairns described as citizenship federalism, wherein linguistic minorities become constitutional stakeholders rather than passive beneficiaries of legislative power (1988). This shift supports a more polycentric form of governance, distributing authority among multiple constitutional actors (Banting, 2005). Subsequent cases, such as *Arsenault-Cameron v. Prince Edward Island* (2000) and *Doucet-Boudreau v. Nova Scotia (Minister of Education)* (2003), expanded *Mahe's* recognition that minority-language education rights are substantive rather than symbolic, requiring governments to act promptly and concretely to fulfill their Section 23 obligations (Mahe vs Alberta, 1990).

Conclusion

The evolution of Canadian federalism since 1982 reveals that the *Charter of Rights and Freedoms* have done more than entrench rights; it has reshaped the architecture of Canadian governance (Klaudt, 2018). Through judicial interpretation, particularly in *Mahe v. Alberta* (1990), the Charter has facilitated a subtle yet profound form of constitutional decentralization, transferring elements of authority from provincial governments to individuals and minority communities (Richards, 1991). By affirming that Section 23 encompasses not only instruction in the minority language but also management and control of educational institutions, the Supreme Court institutionalized community-level governance within provincial domains (*Mahe vs Alberta*, 1990).

Mahe exemplifies the Charter as a "living tree," requiring provinces to adapt their policies to meet demographic and community needs, and in demonstrating how judicial interpretation can transform minority groups into active constitutional stakeholders (Klaudt, 2018). This form of internal decentralization channels authority downward within provincial jurisdictions, creating localized, participatory governance while preserving the broader federal structure (Banting, 2005). Far from simply centralizing judicial power, these outcomes reconfigure Canadian federalism into a multilayered system where courts mediate between governments and citizens, and rights-holders themselves exercise tangible constitutional authority (Richards, 1991). Ultimately, *Mahe* demonstrates that the Charter's most significant contribution lies in expanding the meaning of autonomy by ensuring that constitutional authority is shared not only among governments but also among the citizens and communities whose rights it was designed to protect (*Mahe vs Alberta*, 1990).

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