

S. 85-43

SIMON FRASER UNIVERSITY

MEMORANDUM

TO: Senate

FROM: Senate Undergraduate
Admissions Board

SUBJECT: English requirements for
non-native speakers

DATE: Sept. 17, 1985

Action arising from the SUAB meeting of 1 August 1985 gives rise to the following motion:

MOTION: "That Senate approve the changes to the English language requirements for non-native speakers of English who are applying for admission to undergraduate programs of the University, as given in SUAB 148"

SIMON FRASER UNIVERSITY

MEMORANDUM

TO: Senate Undergraduate
Admissions Board

FROM: N. Heath, Secretary
Senate Undergraduate
Admissions Board

SUBJECT: English requirements for
non-native speakers

DATE: July 29, 1985
Sept. 17, 1985 revised

At the meeting of Senate held on Monday, December 3, 1984, the following motion from the SUAB was referred back to the Board for further study:

"That the English as a Second Language (ESL) testing and remedial program approved by Senate 7 February 1983 (S.83-20) be extended to include those Permanent Residents of Canada (Landed Immigrants) for whom the Test of English as a Foreign Language is a condition of admission as determined by the Director of Admissions."

Senate suggested that a legal opinion be sought on whether or not the Charter of Rights would prevent the application of a regulation that differentiates between Canadian Citizens and Permanent Residents.

The purpose of this proposal is to revise current policies and practice relating to the English language requirements for non-native speakers of English, so as to apply criteria equally to all applicants, regardless of citizenship, immigration status or country of origin. (This proposal does not address the English language ability of native speakers of the language i.e. the so-called "literacy problem".)

A summary of the background and legal opinion is attached as Appendix A.

Currently, we distinguish between two groups of "Canadian" non-native English speakers. Canadian Citizens are never asked for TOEFL or the ESL test, whereas Permanent Residents are sometimes asked for TOEFL but not for the ESL test. This distinction is not described in the Calendar or other official publications. International students (i.e. neither Canadian Citizens nor Permanent Residents) may be required to sit both TOEFL

- i) achieve a satisfactory score on a standardized English test acceptable to the University; the Test of English as a Foreign Language (TOEFL) is one such test. The minimum score required for admission is 570.
- ii) take the SFU English Language Proficiency Test. Depending on the results of this diagnostic test, the applicant may be required to undertake, and successfully complete a prescribed semester of study in English language.

Further details about the above tests may be obtained from

TOEFL - Educational Testing Service, CN 6155, Princeton, N.J.
08541-6155, USA

English Language Proficiency Test - Director of Admissions,
Office of the Registrar, Simon Fraser University

Other acceptable English tests - Director of Admissions,
Office of the Registrar, Simon Fraser University.

The effects of these changes will be

- I) to require TOEFL and ESL test results from certain Canadian citizens who previously would have been exempt. Those affected will likely be some Francophones and new Canadians with English as a second language who have resided in Canada for less than five years.
 - II) to require Permanent Residents who were previously required to submit TOEFL results to also sit the ESL test.
 - III) to exempt from TOEFL and ESL a broader range of International students who have been educated in English and/or who have broad experience of working and studying in an English-speaking environment.
- DH

2. Amend paragraph 4, p. 18

From: English is the language of instruction and communication in the University. Accordingly, an applicant whose native language is not English must demonstrate a command of English sufficient to meet the demands of the classroom instruction and written assignments. Such applicants are required to take the Test of English as a Foreign Language (TOEFL) before applying. A score of 570 or higher on this test is required. This requirement also applies to some students who have attended secondary school in Canada. Exceptions to the 570 TOEFL score may be made by the Office of Admissions for students applying directly from third world countries, or for students holding scholarships through CIDA, for example. All new undergraduate International students who are granted admission and for whom the TOEFL was a requirement, must sit a special English Language Proficiency Test and may be required to undertake, and successfully complete, a semester of remedial work in English. (see "Applicants who are International Students" page 16).

To: English is the language of instruction and communication in the University. Accordingly, an applicant whose primary language is not English or whose previous education has been conducted in another language must demonstrate a command of English sufficient to meet the demands of classroom instruction, written assignments and participation in tutorials and discussions.

The University will take into account the following factors in assessing an applicant's facility in the English language:

- a) the primary language of the applicant (the language ordinarily spoken in the home and in the workplace);
- b) the duration of residency in an environment in which English is the predominant language;
- c) the duration of study and the language of instruction in any secondary and post-secondary educational institutions;
- d) the results obtained in any academic secondary and/or post-secondary courses in which a high standard of English is required for successful completion.

Using the above factors, applicants who, in the judgement of the University, do not have sufficient experience or skills in written and spoken English will be required to:

and the ESL test. The University's lawyers suggest that discrimination in policy and practice between these groups of applicants could be held to be unconstitutional.

The proposals set out below would, if approved, apply equally to

- Canadian Citizens
- Permanent Residents
- International (Visa) Students

They would become effective for all new admissions to the Fall Semester 1986 provided that final approval is given by December 1985.

Changes to Calendar

1. Delete following paragraphs on p. 16 1985-86 Calendar under the heading Applicants who are International Students

Every new undergraduate International student whose native language is not English, is required to take the Test of English as a Foreign Language (TOEFL) and obtain a minimum score of 570. In addition each student who is granted admission and for whom the TOEFL was a requirement of admission, must sit a special English Language Proficiency Test before he/she commences academic studies. Based on the results of the Test, the student may be required to undertake, and successfully complete, a semester of remedial work in English.

The English Language Remedial Program operates on a cost recovery basis and, therefore, the students will be required to pay the appropriate fees. At the time of publication, the estimated fees for 1985 are:

English Language Proficiency Test..... \$30.00
English Language Remedial Program \$300.00 per course

(Full-time enrolment in the Remedial Program would involve 4 courses for one semester).

Work undertaken in the English Language Remedial Program does not count for credit toward a degree, diploma, or certificate program at Simon Fraser University.

Further details on the English Language Proficiency Test and Remedial Program will be provided upon application.

APPENDIX A

The following are extracts from a letter from Catherine Best of Shrum, Liddle & Heberton, legal counsel for the University.

BACKGROUND FACTS

The facts upon which this opinion is based are as follows:

1. The University administers an examination entitled Test of English as a Foreign Language ("TOEFL") as a requirement of admission for applicants who are not Canadian citizens and whose native language is not English. We understand that as the TOEFL examination is presently administered, Canadian citizens are never required to write TOEFL. Any visa student whose mother tongue is not English is required to write TOEFL. Permanent residents whose mother tongue is not English are asked to write TOEFL unless they have completed a considerable amount of secondary or post-secondary education in an English-speaking institution, including work requiring writing skills.
2. The Senate resolution approving the ESL Program states "that an ESL Testing and Remedial Program be established in cooperation with Douglas College as per the attached SUAB proposal." The SUAB proposal states that the ESL examination will be administered to all new undergraduate international students for whom TOEFL is a requirement for admission. It does not expressly extend the ESL Program to permanent residents of Canada.
3. The University administration has considered both TOEFL and the ESL Program to be applicable to permanent residents, and has required permanent residents with insufficient exposure to English to write the ESL examination.
4. A student challenged this requirement, on the basis that the resolution adopted by the Senate did not specifically include permanent residents in the ESL Program. As a result of this challenge the University has treated the ESL Program as voluntary for permanent residents, pending passage of a new motion by Senate expressly extending the ESL Program to permanent residents.
5. A motion was put before the Senate on November 16, 1984 to extend the ESL Program to include those permanent residents of Canada for whom TOEFL is a condition of admission as determined by the Director of Admissions. This motion was referred back to the SUAB with a request that a legal opinion be obtained.

SUMMARY

The mandatory application by the University of the ESL Program to permanent residents and international students, but not to Canadian citizens, raises the possibility of a constitutional challenge of the ESL Program under the Human Rights Act, the University Act, and the Charter. It is possible, if not likely, that some of the international students and permanent residents who would be required to take the ESL Program under the existing and proposed senate resolutions have more facility with the English language than many Francophone Canadians. This is a clear example of the factual basis upon which the existing and proposed policy could be challenged as unconstitutional.

The Canadian case law provides little guidance as to the likely outcome of such a challenge. The strongest basis for a successful constitutional challenge is the equality provision of the Charter. Considering the broad interpretation which the Courts have been giving to the Charter, and on the basis of the American case law, we are of the opinion that Section 15 of the Charter may be interpreted so as to give rights to aliens as well as to permanent residents and Canadian citizens, and that in some instances, classifications made solely on the basis of alienage may be unconstitutional under the Charter.

It is our opinion that the University could avoid a successful challenge under the Charter, the Human Rights Act, the Canadian Bill of Rights and the University Act by determining who should write the ESL examination on a functional basis, applied to every applicant to the University.

We therefore recommend that a set of criteria be created and applied to every applicant to the University. The criteria might include the following considerations:

- (1) language usually spoken in the home;
- (2) language of elementary and secondary school education;
- (3) language and duration of previous post-secondary education; and
- (4) language used in previous work experience and duration of that experience.