

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA

B E T W E E N :

FREDERICK MOORE on behalf of JEFFERY P. MOORE

Appellant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS
REPRESENTED BY THE MINISTRY OF EDUCATION, BOARD OF EDUCATION OF SCHOOL DISTRICT
NO. 44 (NORTH VANCOUVER) FORMERLY KNOWN AS THE BOARD OF SCHOOL TRUSTEES OF
SCHOOL DISTRICT NO. 44 (NORTH VANCOUVER)**

Respondents

- and -

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PART I: OVERVIEW AND STATEMENT OF FACTS

1. The Intervener, Justice for Children and Youth (“JFCY”) has a long history of advocating for the rights of young people, including the rights of students in the Canadian public school system. JFCY intervened in *Eaton v. Brant County Board of Education*¹, which dealt with the rights of students with disabilities to access education effectively.
2. JFCY takes no position on the facts.

PART II: QUESTIONS IN ISSUE

3. JFCY submits the following:
 - (i) The *Canadian Charter of Rights and Freedoms* (the “Charter”)² provides minimum standards in the interpretation of provincial human rights legislation.
 - (ii) The service in issue is education.
 - (iii) To the extent that a comparator group contributes to the analysis, the appropriate comparator group is all students receiving education in the school board.
 - (iv) Jeffrey Moore was denied effective access to education on the basis of his disability.
 - (v) The analysis of undue hardship must consider all funding sources, and the long and short-term consequences.

PART III: STATEMENT OF ARGUMENT

Minimum Standards for Human Rights Legislation

4. There is no dispute that Canada’s provincial human rights legislations provide that people have the right to be free from discrimination based on disability, and that non-discrimination requires accommodation to the point of undue hardship.³

¹ *Eaton v. Brant County Board of Education* [1997] 1 S.C.R. 241 (S.C.C.). [JFCY Intervener’s Book of Authorities (“BOA”), Tab 1].

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11, at s. 15.

³ Some provincial human rights statutes (such as *Ontario Human Rights Code*, R.S.O. 1990, C.19, s. 11) contain the language of undue hardship, while others use comparable language like “bona fide and reasonable cause” (such as in Manitoba, *The Human Rights Code*, CCSM c H175, s. 13(1)).

5. When provinces are providing education they must respect denominational rights and to the extent not forbidden in domestic law, must do so in a manner consistent with the *Charter* and international obligations.
6. Section 15 of the *Charter* guarantees that all Canadians should have equal benefit of the law without discrimination. The obligation for provinces to provide education must be exercised in a way that gives students with and without disabilities equal access to effective education.
7. This provincial obligation is reinforced by Canada's commitment to the *United Nations Convention on the Rights of Persons with Disabilities* (the "UN Disability Convention")⁴ and to the *United Nations Convention of the Rights of the Child* (the "Convention"), which provides minimum standards for the education rights of children.⁵
8. The *Convention* is the most widely ratified and accepted human rights treaty. This Court has held that Canadian law must be interpreted in compliance with Canada's international treaty obligations⁶. As signatory to the *Convention*, Canada has undertaken to provide special protective treatment to children based on their vulnerability.
9. Specifically related to the education of children with disabilities is Article 23.3:

Recognizing the special needs of a disabled child, assistance extended ...shall be provided free of charge...and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development... (emphasis added).⁷
10. These international obligations, together with the *Charter*, require a liberal interpretation and analysis of federal and provincial human rights legislation so as to provide the broadest possible

⁴ *Convention on the Rights of Persons with Disabilities*, 30 March 2007, 2515 UNTS 3 (entered into force 3 March 2008, ratification by Canada 11 March 2010).

⁵ *Convention on the Rights of the Child*, 29 May 1990, 1577 UNTS 3 (entered into force 2 September 1990, ratification by Canada 13 December 1991).

⁶ *Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 at para 31. [BOA, Tab 2].

⁷ *Convention*, *supra*, note 5, Article 23.3.

protection for a disabled child's right to be free from discrimination and to be able to access education "in a manner conducive to the child's achieving the fullest possible social integration and individual development."⁸

11. Human rights law is by nature remedial.⁹
12. Provincial and federal education and human rights statutes are subject to *Charter* scrutiny. Each statute may be measured against the minimum standards of substantive equality set by the *Charter*. In fact, they are broader in scope and application than the *Charter*. Generally, they apply to private individuals, such as landlords, employers, chiropractors and sports associations, not just to acts of government. Provisions that seem narrower than similar *Charter* provisions would at first blush seem to offend s.15 of *the Charter*, although it may be possible to save them under s. 1 of *the Charter*.
13. Education is provided and mandated by provinces. It is a service which must not be provided in a discriminatory way. It is provided through a provincial education statute and, generally, by a local government. These statutes and actions are subject to *Charter* scrutiny. In other words, there are national minimum standards to ensure that students with disabilities can effectively access the education that is, across Canada, their duty and right to obtain.
14. In this case, the Province of British Columbia, pursuant to the *School Act* required the Appellant, Jeffrey Moore to go to school and legislated that free education be available to all school-aged students in the Province.¹⁰ The Province set the formulae by which it funded local school districts. It prohibited school districts from funding themselves.¹¹

Definition of Service

15. British Columbia prohibits discrimination in "services customarily available to the public".

⁸ *The Convention, supra*, note 5, Article 23.

⁹ *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, at para 11 ("*Robichaud*") [BOA, Tab 3].

¹⁰ *School Act*, S.B.C. 1989, c.61, s. 94 [Appellant's Book of Authorities, Vol. II, Tab 39A].

¹¹ Tribunal Reasons, at paras 83-92 [Appellant's Appeal Record, Vol II, Tab 5].

16. Courts and Tribunals have consistently found that, in the context of accommodating student disabilities in public schools, the definition of service is “education services”.¹² Public education is a service customarily available to the public under the *Human Rights Code* of British Columbia¹³ (the “*B.C. Code*”).¹⁴ Special education is not. To hold otherwise is to undermine the remedial purpose of human rights legislation.¹⁵
17. JFCY submits that the Respondents have inappropriately conflated the “service” with the “accommodation” required in order for the Appellant to access the service. The Respondent District submits that the service could have been characterized as either education or special education and that either characterization would still lead to a finding that there was no discrimination. However, the District, while continuing to discuss the issue of “service”, then submits that the special education programs, such as Orton-Gillingham and phonemic awareness training that Jeffrey was seeking were not “customarily available to the public”.¹⁶
18. The “services” to which the Respondent District refers are actually disability accommodations that the Appellant required in order to access the service of education effectively. Whether or not such accommodations are customarily available to the public is irrelevant. It is not the general public that needs ramps to replace stairs. The service is not sign language interpreters¹⁷ or Braille textbooks.
19. When accommodations are NOT measured on a “customarily available” test, advances are made for others with similar disabilities. For example, a successful individual claim for

¹² *Campbell v. Toronto District School Board*, 2008 HRTO 62 (HRTO), at para 1 [BOA Tab 4]; *Sigrist v. London District Catholic School Board*, 2010 HRTO 1062 (HRTO), at para 40, 62 [BOA Tab 5]; *E.P. (Litigation Guardian of) v. Ottawa Catholic School Board* [2011] O.H.R.T.D. No. 661, at para 8 (“*E.P.*”) [BOA Tab 6]; *Habetler obo Habetler v. Sooke School District and B.C. (Ministry of Education)*, 2008 BCHRT 85 (HRTO), at para 10 [BOA Tab 7].

¹³ *Human Rights Code*, R.S.B.C., c.210, s.8(1)(a) [“The BC Code”].

¹⁴ *Habetler*, *supra*, note 11; *University of British Columbia v. Berg*, [1993] 2 SCR 353 (S.C.C.), at para 55, 64 [BOA Tab 8]

¹⁵ *Robichaud*, *supra*, note 9.

¹⁶ Factum of the Respondent District, at para 67 and following.

¹⁷ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para 70-3 [Appellant’s BOA, Vol 1, Tab 19].

accommodation on public transit in Toronto encouraged the spread of an auditory technology to other municipalities.¹⁸

20. It is the individual's right not to be discriminated against (not a group or sub-group right) that is protected by the *B.C. Code*, the *Charter*, the *Convention* and the *UN Disability Convention*. The service in this case is education with the supports Jeffrey Moore needed to accommodate his disability. The accommodation question is whether providing the support needed by the individual would cause undue hardship.
21. In a review of other human rights service cases, on the issue of whether a person's disability was accommodated to the point of undue hardship, it is clear that the "service" in question is that which the general population has access to, whereas the accommodation is that which enables people with a particular disability to access that service.¹⁹

Comparator Group

22. The comparator analysis may be necessary in a *Charter* review but, as has been submitted, the *Charter* sets a minimum standard and is not necessary in a human rights case. If it is necessary as part of the *prima facie* test for discrimination, then for the purpose of substantive equality the comparator group is "all students", rather than "special needs students other than those with severe learning disabilities."

¹⁸ *Lepofsky v. Ontario Human Rights Commission*, 2005 HRTO 36 (HRTO) [BOA Tab 9]. After these decisions, many Canadian municipalities implemented auditory stop announcements on public transit, including: Brampton, Mississauga, Oakville, York Region, Thunder Bay, Toronto, London, Ottawa, Durham Region, Calgary, Vancouver and Winnipeg. See also: Ontario Human Rights Commission, " 'Next Stop, Accessibility' Report on Public Transit Stop Announcements in Ontario" (2008), at pp. 3, 10-18 [BOA Tab 10].

¹⁹ The service is public transportation; the accommodation is a bus floor that lowers: *Borutski v. Coast Mountain Bus Company*, 2008 BCHRT 291 (BCHRT) [BOA Tab 11], *Wozenilek v. Guelph (City)*, 2010 HRTO 1652 (HRTO) [BOA Tab 12]. The service is public libraries; the accommodation is effective supports for computer use: *MacDonald v. Cornwall Public Library*, 2011 HRTO 1323 (HRTO) [BOA Tab 13]. The service is education; the accommodation is special education supports: *E.P., supra*, note 12.

Finding of Discrimination

23. Jeffrey Moore was denied effective access to education because of his disability, contrary to the *BC Code*, when a) the Respondent Ministry failed to provide individual grants to Districts for the individual accommodations needed by each student with a disability that could not be accommodated by the per capita block grant, while knowing their needs were not being met, and b) when the Respondent District closed DC1, a program it believed would help Jeffrey effectively access education, instead offering him only supports that it knew could not be effective, indeed, advising him to pay for private school.²⁰
24. The result is that Jeffrey Moore was not able effectively to access education because of his particular disability. He experienced discrimination as a result of a funding model that made stereotypical assumptions about students with severe learning disabilities as a group and by a school District that decided to group all students with learning disabilities together with supports that the District knew would not help Jeffrey Moore to effectively access education. If the Province is correct in that a necessary comparator group is students in special education, it funded the District differently and worse than if Jeffrey had a different disability without taking his individual needs into account. The Province, through block grants funded the District no differently than if Jeffrey Moore had no disability.
25. The District treated Jeffrey Moore differently and worse than students in general education when it closed the DC1 program but preserved other programs, like Outdoor Education. It treated Jeffrey Moore differently and worse than students in special education when it ended the supports he needed while preserving the supports needed by students with mild and moderate learning disabilities.
26. Respondent Ministry argues²¹ that because the Appellant did not call evidence regarding the services being provided to other students, he is unable to prove that he experienced adverse treatment and that disability was a factor in that adverse treatment.

²⁰ Tribunal Reasons, at para 537 [Appellant's Application Record, Vol, II, Tab 5].

²¹ Respondent's Factum, at para 68 and 79.

27. JFCY disagrees. Students without disabilities could access the curriculum and progress in their learning without the need for accommodations in the form of special education. Students with different disabilities, such as mild learning disabilities or hearing impairments could access the curriculum and progress in their education without the need for the accommodation needed by Jeffrey Moore. Moore, because of his disability, was not able to access the provincial curriculum without special education accommodation appropriate to him. The majority of the student population does not require special education accommodation.
28. In *Eaton*²², the court found that the Ontario decision-making process was not discriminatory when it placed Emily Eaton in a special education class, because the process required the consideration of her individual needs and strengths rather than being based on stereotypical assumptions. The British Columbia funding model assumes that all students with severe learning disabilities are high-incidence and low-cost; Jeffrey Moore's disability is not high incidence and the low-cost support offered by the District could not meet his needs, as the District knew.
29. The program that Jeffrey Moore was offered was not adequate based on his needs and potential, according to the District's evidence. The District psychologist said he required intensive remediation through the DC1. If the accommodations actually provided were inadequate to allow Jeffrey to reach his potential—when compared to other students—then he has met his onus and established *prima facie* discrimination.
30. DC1 or comparable intensive remediation was determined by District experts working with Jeffrey Moore in the education system as necessary and appropriate to allow him to reach his potential.
31. In fact, at a significant cost, Jeffrey Moore's family paid for private education because the District said it could not provide appropriate accommodation (DC1 or equivalent). To fulfil the substantive purpose of the *BC Code* and the *Convention* and the Provincial duty to provide free

²² *Eaton*, *supra*, note 1, at para 75-77 [BOA, Tab 1].

public education to all students, appropriate accommodations must be provided for each student with a disability. This is also necessary to ensure *the BC Code* and *School Act* are interpreted in a manner consistent with *the Charter* to guarantee the Appellant equal benefit of his duty to go to school and right to an education. This interpretation is also consistent with the *Convention*, which provides that education be “compulsory and available free to all.”²³

Undue Hardship

32. What is the test for determining undue hardship in the context of human rights cases involving public education of children?
33. Undue hardship is not defined in the *BC Code*, but in other provincial human rights codes²⁴ and in relevant case law. The *BC Code* provides that Respondents can rebut a finding of *prima facie* discrimination on the basis of a *bona fide* and reasonable justification.²⁵ This is an undue hardship test: It is a defence to a *prima facie* finding of discrimination if the Respondent cannot accommodate a person with the characteristics of the claimant without incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.²⁶
34. The factor that is relevant to this case is the question of *excessive* cost.
35. When assessing the available financial resources, one cannot consider only the “pot” of money one has designated as available for students with learning disabilities in particular programs (or special education in general), but all the money available for education from the Province through school boards, or all the money available to the District since all allocations within that larger “pot” of money are policy choices which must be made in a non-discriminatory way to provide substantive equality and maximize the potential of all students.

²³ *The Convention, supra*, note 5, Article 28.1(a).

²⁴ *Ontario Human Rights Code, supra*, note 3, s. 11(2): “considering the cost, outside sources of funding, if any, and health and safety requirements, if any”.

²⁵ *BC Code, supra* note 13, s. 8(1).

²⁶ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868, at para 32 [Appellant’s BOA, Vol. 1, Tab 8].

36. Canada's international obligation is to ensure that all children, including those with disabilities have the right to education "progressively and on the basis of equal opportunity"²⁷, subject to available resources.²⁸
37. JFCY submits that in order to comply with the *Convention* (and *the Charter*), the "available resources" must take into account all resources available to the Provincial funder which is obliged to ensure equal effective access to education for all students in British Columbia. What curriculum it chooses and its choices about the mandatory requirements for graduation may be policy choices, but the "pot" of funding for supporting the needs of students with disabilities cannot be too small to give those students substantive equality with equal opportunity to access education. All funds available for education generally must be considered in determining whether there is undue hardship. The Respondents have not pointed to any cuts to specific programs or services that would have had as severe an impact on the general student population as the cuts in this case had on the Appellant.
38. In assessing financial considerations in the undue hardship analysis it must be remembered that students with disabilities should have the same opportunities to succeed to their full potential as students without disabilities.
39. Since government funding is not raised or spent on a day-to-day basis, tribunals and courts must also consider both short and long-term costs of providing adequate accommodation. Since provincial legislation requires young people to attend school, it will be rare for government to argue undue hardship successfully.
40. If the funding that will be required over the long-term for a period of a student's education reduces the number of years or level of support the student will need to complete his or her education, the long-term costs and savings must be considered in a determination of undue hardship. For example, if provision of a specialized program to help students with autism

²⁷ The *Convention*, *supra*, note 5, Articles 28.1.

²⁸ The *Convention*, *supra*, note 5, Article 23.

reduces the need for long-term supervision, it is the total, long-term costs and benefits that are relevant.

Summary

41. On a standard set by the *BC Code*, and as informed by the *Charter* and international law, the Respondents failed to accommodate the Appellant's disability in way that allowed him effective access to an education.
42. If young people are to grow up and enjoy their rights in Canadian society with a sense of self-worth and the dignity that stems from equality, they must first not be denied effective equality as children, especially at school, a place where the public objective is to educate them to be responsible and productive citizens.

PART V: ORDER SOUGHT

43. JFCY requests that a) it be granted the right to make oral submissions at the hearing of these appeals; and b) that the appeals be allowed.

All of which is respectfully submitted this 5th day of March, 2012

SIGNED BY:

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<p>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.</p> <p>SCHEDULE B CONSTITUTION ACT, 1982</p> <p>PART I CANADIAN CHARTER OF RIGHTS AND FREEDOMS</p> <p>Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:</p> <p>Guarantee of Rights and Freedoms</p> <p>1. The <i>Canadian Charter of Rights and Freedoms</i> guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.</p> <p>[...]</p> <p>Equality Rights</p> <p>15. (1) 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.</p> <p>(2) Subsection (1) does not preclude any law, program or</p>	<p>La Charte canadienne des droits et libertés</p> <p>ANNEXE B LOI CONSTITUTIONNELLE DE 1982</p> <p>PARTIE I CHARTE CANADIENNE DES DROITS ET LIBERTÉS</p> <p>Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :</p> <p>Garantie des droits et libertés</p> <p>1. La <i>Charte canadienne des droits et libertés</i> garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.</p> <p>[...]</p> <p>Droits à l'égalité</p> <p>15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</p> <p>(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes</p>
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<p>activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability</p>	<p>ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.</p>
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Human Rights Code, R.S.B.C., c.210, s.8(1)(a)

Discrimination in accommodation, service and facility

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

(2) A person does not contravene this section by discriminating

(a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or

(b) on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

Human Rights Code, CCSM c H175, s13(1)

Discrimination in service, accommodation, etc.

13(1) No person shall discriminate with respect to any service, accommodation, facility, good, right, licence, benefit, program or privilege available or accessible to the public or to a section of the public, unless bona fide and reasonable cause exists for the discrimination.

Ontario Human Rights Code, R.S.O. 1990, C.19, s. 11

Constructive discrimination

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

Idem

(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1); 2002, c. 18, Sched. C, s. 2 (1); 2009, c. 33, Sched. 2, s. 35 (1).

Idem

(3) The Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2); 2002, c. 18, Sched. C, s. 2 (2); 2009, c. 33, Sched. 2, s. 35 (2).

School Act, S.B.C. 1989 c. 61, s. 94

"(1) Subject to the other provisions of this Act and the regulations and to any orders of the minister under this Act, a board shall make available an educational program to all persons of school age resident in its district who enroll in schools in the district.

(2) A board may provide an educational program to persons referred to in subsection (1) in its own school district or elsewhere.

(3) A board complies with subsection (1) if

(a) the educational program is provided by the board,

(b) with the approval of the minister, the educational program is provided by a Provincial school, or

(c) with the agreement of another board, the educational program is provided by that other Board.

(4) A board may assign and reassign students to specific schools or to educational programs referred to in the subsection (3)."

(5) Unless the board of the school district in which a person of school age resides objects, any other board may make available to that person an educational program.

(6) A board may recognize as part of a student's educational program an educational activity that is not provided by the board.

(7) Subject to the regulations, a board is responsible for evaluating all of the educational programs and services provided by the board, including services provided pursuant to an agreement under section 104(1)(a).

(8) A board may permit a person who is older than school age to attend an educational program in accordance with any terms and conditions specified by the board.

Convention on the Rights of Persons with Disabilities, 30 March 2007, 2515 UNTS 3 (entered into force 3 March 2008)

Article 1 - Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Convention relative aux droits des personnes handicapées, Adoptée et ouverte à la signature, ratification et adhésion par l'Assemblée générale dans sa résolution 3 March 2008

Article premier

Objet

La présente Convention a pour objet de promouvoir, protéger et assurer la pleine et égale jouissance de tous les droits de l'homme et de toutes les libertés fondamentales par les personnes handicapées et de promouvoir le respect de leur dignité intrinsèque.

Par personnes handicapées on entend des personnes qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres.

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take

appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Convention relative aux droits de l'enfant

Adoptée et ouverte à la signature, ratification et adhésion par l'Assemblée générale dans sa résolution 44/25 du 20 novembre 1989

Article 23

1. Les Etats parties reconnaissent que les enfants mentalement ou physiquement handicapés doivent mener une vie pleine et décente, dans des conditions qui garantissent leur dignité, favorisent leur autonomie et facilitent leur participation active à la vie de la collectivité.

2. Les Etats parties reconnaissent le droit à des enfants handicapés de bénéficier de soins spéciaux et encouragent et assurent, dans la mesure des ressources disponibles, l'octroi, sur demande, aux enfants handicapés remplissant les conditions requises et à ceux qui en ont la charge, d'une aide adaptée à l'état de l'enfant et à la situation de ses parents ou de ceux à qui il est confié.

3. Eu égard aux besoins particuliers des enfants handicapés, l'aide fournie conformément au paragraphe 2 du présent article est gratuite chaque fois qu'il est possible, compte tenu des ressources financières de leurs parents ou de ceux à qui l'enfant est confié, et elle est conçue de telle sorte que les enfants handicapés aient effectivement accès à l'éducation, à la formation, aux soins de santé, à la rééducation, à la préparation à l'emploi et aux activités récréatives, et bénéficient de ces services de façon propre à assurer une intégration sociale aussi complète que possible et leur épanouissement personnel, y compris dans le domaine culturel et spirituel.

4. Dans un esprit de coopération internationale, les Etats parties favorisent l'échange d'informations pertinentes dans le domaine des soins de santé préventifs et du traitement médical, psychologique et fonctionnel des enfants handicapés, y compris par la diffusion d'informations concernant les méthodes de rééducation et les services de formation professionnelle, ainsi que l'accès à ces données, en vue de permettre aux Etats parties d'améliorer leurs capacités et leurs compétences et d'élargir leur expérience dans ces domaines. A cet égard, il est tenu particulièrement compte des besoins des pays en développement.

Article 28

1. Les Etats parties reconnaissent le droit de l'enfant à l'éducation, et en particulier, en vue d'assurer l'exercice de ce droit progressivement et sur la base de l'égalité des chances :

- a) Ils rendent l'enseignement primaire obligatoire et gratuit pour tous;
- b) Ils encouragent l'organisation de différentes formes d'enseignement secondaire, tant général que professionnel, les rendent ouvertes et accessibles à tout enfant, et prennent des mesures appropriées, telles que l'instauration de la gratuité de l'enseignement et l'offre d'une aide financière en cas de besoin;
- c) Ils assurent à tous l'accès à l'enseignement supérieur, en fonction des capacités de chacun, par tous les moyens appropriés;
- d) Ils rendent ouvertes et accessibles à tout enfant l'information et l'orientation scolaires et professionnelles;
- e) Ils prennent des mesures pour encourager la régularité de la fréquentation scolaire et la réduction des taux d'abandon scolaire.

2. Les Etats parties prennent toutes les mesures appropriées pour veiller à ce que la discipline scolaire soit appliquée d'une manière compatible avec la dignité de l'enfant en tant qu'être humain et conformément à la présente Convention.

3. Les Etats parties favorisent et encouragent la coopération internationale dans le domaine de l'éducation, en vue notamment de contribuer à éliminer l'ignorance et l'analphabétisme dans le monde et de faciliter l'accès aux connaissances scientifiques et techniques et aux méthodes d'enseignement modernes. A cet égard, il est tenu particulièrement compte des besoins des pays en développement.

Article 29 Observation générale sur son application

1. Les Etats parties conviennent que l'éducation de l'enfant doit viser à :

- a) Favoriser l'épanouissement de la personnalité de l'enfant et le développement de ses dons et de ses aptitudes mentales et physiques, dans toute la mesure de leurs potentialités;
- b) Inculquer à l'enfant le respect des droits de l'homme et des libertés fondamentales, et des principes consacrés dans la Charte des Nations Unies;
- c) Inculquer à l'enfant le respect de ses parents, de son identité, de sa langue et de ses valeurs culturelles, ainsi que le respect des valeurs nationales du pays dans lequel il vit, du pays duquel il peut être originaire et des civilisations différentes de la sienne;
- d) Préparer l'enfant à assumer les responsabilités de la vie dans une société libre, dans un esprit de compréhension, de paix, de tolérance, d'égalité entre les sexes et d'amitié entre tous les peuples et groupes ethniques, nationaux et religieux, et avec les personnes d'origine autochtone;

e) Inculquer à l'enfant le respect du milieu naturel.

2. Aucune disposition du présent article ou de l'article 28 ne sera interprétée d'une manière qui porte atteinte à la liberté des personnes physiques ou morales de créer et de diriger des établissements d'enseignement, à condition que les principes énoncés au paragraphe 1 du présent article soient respectés et que l'éducation dispensée dans ces établissements soit conforme aux normes minimales que l'Etat aura prescrites.