



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file - Votre référence

Our file - Notre référence

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

Canada

Equal Educational Opportunity for Students with Disabilities in Canada

Volume I: Research Report

William J. Smith

Department of Administration and
Policy Studies in Education
McGill University, Montréal

May, 1993

A dissertation submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements
of the degree of Doctor of Philosophy



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file / Votre référence

Our file / Notre référence

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-87958-0

Canada

ABSTRACT

The purpose of this inquiry was to conduct a comparative analysis of the legislative action taken by the government of each Canadian province and territory, as of December 31, 1992, with respect to the provision of equal educational opportunity for students with disabilities. The methodology consisted of a form of qualitative content analysis of the relevant legislative action, validated by provincial representatives, complemented by a study of relevant case-law. The analytical framework comprised 60 items grouped around five types of rights: non-discrimination, access, identification/placement, service delivery and parental participation. Overall, four jurisdictions, the Yukon, followed by Ontario, Québec and Saskatchewan, were found to provide for a significant level of rights. Newfoundland, Prince Edward Island, Nova Scotia and the Northwest Territories were found to provide for the lowest level of overall rights. Equality rights and access received the highest ratings across all jurisdictions, while parental participation, service delivery and identification/placement were rated lowest. Extensive references and key extracts from all legislation analyzed are included.

RÉSUMÉ

L'objectif de cette étude était de fournir une analyse comparative des actions légiférées entreprises par tous les gouvernements provinciaux et territoriaux, au 31 décembre 1992, afin de s'assurer de l'égalité des chances en éducation des étudiantes et étudiants handicapés. Au niveau méthodologique, il s'agissait d'une analyse de contenu du type "qualitatif" moyennant un instrument comprenant 60 items autour de cinq genres de droits: la non-discrimination, l'accès, l'évaluation et le placement, l'octroi des services, la participation des parents. L'étude ne s'est servi que des données primaires considérées comme des actions légiférées, complétée par une analyse jurisprudentielle. De plus, les résultats ont été sujets à une validation effectuée par des représentants provinciaux. En bref, l'étude constate que quatre juridictions, le Yukon, suivi par l'Ontario, le Québec et la Saskatchewan, prévoient un niveau élevé de droits; tandis que la Terre-Neuve, l'Île-du-Prince-Edouard, la Nouvelle-Écosse et les Territoires du Nord-Ouest prévoient un niveau inférieur de droits. Les thèmes d'égalité et d'accès ont marqués les scores le plus élevé pour l'ensemble des juridictions et les scores des autres thèmes étaient beaucoup plus bas. Un nombre important des références et un tiré à part des lois analysées sont inclus.

ACKNOWLEDGEMENTS

This dissertation represents the culmination of several years of work as a graduate student and I would like to take this opportunity to thank those who assisted me in this process - colleagues, faculty members and staff, not the least of whom is Mary-Lynne Keenan, Administration and Policy Studies in Education, the Department's secret weapon in keeping the educational process churning.

I would especially like to thank the members of the *Ad Hoc* doctoral committee who directed my program. Thanks to Department chair Gary Anderson, for his leadership and rigorous attention to methodological detail, to Don Burgess for his advice on and experience with educational policy research, to Evelyn Lusthaus, for her grasp of issues concerning persons with disabilities and the inspiration she continually provided, to the two co-directors of the dissertation research, Bill Foster, for his never-ending help and guidance in interpreting legal materials and, especially, to Charles Lusthaus.

Charles has been my principal advisor all through graduate school; he has always given generously of his time and been of inestimable help in turning mush into material fit for publication. John Porter (1979), once reflected on the role of a professor thus:

If I helped them [my students] at all it was by opening doors, removing barriers, sharing my own experiences including my errors with them, being available when the going got tough and helping them avoid the pathology of bureaucratic rules which we foster, but above all letting them teach themselves with the tools at hand (p. 278).

Charles has been that kind of mentor and support and for all his help, I am truly grateful.

The completion of the dissertation itself was also greatly assisted by a number of persons, beginning with four researchers who took time from their busy schedules to critique an initial draft of the conceptual and analytical frameworks used to conduct this study. My heartfelt thanks to Professors Doug Biklen of the School of Education, University of Syracuse, Greg Dickinson, of the Department of Administration and Policy Studies, University of Western Ontario, Michael Manley-Casimir of the Centre for Education, Law and Society, Simon Fraser University and Rud Turnbull of Beach Centre on Family and Disability, University of Kansas.

Further assistance in critiquing drafts of the data analysis instrument from Philippe de Massy, Commission des droits de la personne du Québec, Bruce Drewett, Ontario Education and Owen Mahoney, Ontario Human Rights Commission was also much appreciated. Thanks also go to Judith C. Anderson, Harris & Co., Vancouver, and to Arnold Jones, Superintendent of the Atlantic Special Education Authority for their encouragement and support.

The collection and validation of the data used in the analysis could not have been accomplished without the cooperation and goodwill shown by representatives of the department of education in each province and territory. Information and feedback requested, as well as time to discuss problematic issues were provided by every department of education in the country and this was most gratifying. My warmest thanks to Audrey Dean and Janice Ashcroft, Legislative Services, Alberta Education; Shayne Janzen, Legislative Services, British Columbia Education; Hugo Stephan, Child Care and Development, Manitoba Education; Alex Dingwell, Student Services, New Brunswick Education; Ed MacKey, Student Services, Newfoundland Education; Gail Joyce, Policy and Evaluation; Northwest Territories Education; David Keenan, Education Publications, Nova Scotia Education; Deborah Goldberg, Legal Services and Don Werner, Special Education, Ontario Education; Parnell Garland, Educational Services, Prince Edward Island Education; Come Dupont, Affaires juridiques and Jean-Yves Roberge, Adaptation scolaire, Québec Education; Margaret Lipp, Special Education, Saskatchewan Education; Janet Webster, Special Education, Yukon Education. Thanks to their help, many improvements were made in the research design and many errors and omissions corrected; however, all shortcomings in the final report are strictly the responsibility of the author.

Finally, I would like to express special gratitude to my wife and colleague, Helen Donahue. Not only did she give willingly of her time in conducting library searches, editing and proof reading the manuscript, she cheerfully supported my long hours of incarceration with the computer. Her experience as a teacher and her empathy for students with special needs were a constant reminder of the importance of the issues under investigation. Most of all, without her support, I simply would not have undertaken, let alone completed, the program.

EXECUTIVE SUMMARY

Introduction

The purpose of this study was to conduct a systematic comparison of the legislative action of each province and territory in Canada, as of December 31, 1992, relating to the provision of equal educational opportunity [EEO] to students with disabilities. In order to fulfil this purpose, a framework for the analysis of legal rights for students with disabilities was constructed and used to undertake a content analysis of the legislation in each jurisdiction and provide a comparison of the results. The jurisdictions contemplated by this study are shown below.

AL	Alberta	NS	Nova Scotia
BC	British Columbia	ON	Ontario
MA	Manitoba	PI	Prince Edward Island
NB	New Brunswick	QC	Québec
NE	Newfoundland	SA	Saskatchewan
NT	Northwest Territories	YU	Yukon

Five analytical themes emerged from an empirical testing of the EEO construct derived from the review of the literature: non-discrimination, access to schooling, identification and placement, service delivery, and parental participation. Only primary source data were used, namely the Constitution of Canada, especially the *Charter*, the statutes and regulations of each province and territory, as well as any administrative decisions having the force of law. The analysis was conducted using an instrument consisting of sixty items in order to measure the legislative action taken in each jurisdiction with respect to the five analytical themes.

The analytical framework and the instrument were validated by feedback from various experts and pilot testing. The sources and data and the results of the preliminary data analysis were validated by respondents from each provincial and territorial department of education. The final results of the analysis were validated by means of several tests. In addition to detailed methodological notes, extracts of the legislative action analyzed were included in appendices to provide an "audit trail" for the reader.

There is one caveat which should be mentioned with respect to the focus of this study on legislative action. This inquiry provides information about the "state of the law" in the jurisdictions contemplated by the study; it does not purport to describe the "state of the art" concerning overall government policy, let alone the state of practice in the province in question. It is recognized that non-legislative government policy may provide important benefits to students with disabilities and that, in practice, the benefits *actually* provided to students may be greater than - or less than - that required by legislation. Consequently, one cannot equate the findings of this study with what is provided, *in toto*, let alone done, in any particular jurisdiction. The study shows, however, what the law says must be done and can be enforced by the courts.

Summary of the Findings

Five major research questions, corresponding to the analytical themes developed by this study, were stated as follows:

How does the legislative action in each jurisdiction provide for:

1. non-discrimination?
2. access to schooling?
3. identification and placement?
4. service delivery?
5. parental participation?

Each major question was answered using the following model set of sub-questions:

- .1 What are the specific rights which define the theme?
- .2 To what extent does each jurisdiction provide for such rights?
- .3 How do all jurisdictions compare in terms of the provision of such rights?

The findings for each major research question are summarized below. The rights identified for each theme will first be summarized (sub-question .1). Thereafter, the combined results of the analysis of individual jurisdictions and the comparison of these results will be summarized together (sub-questions .2 & .3). This comparison will include a discussion of the individual items comprising the theme and the ranking of jurisdictions with respect to the theme as a whole. All data are reported as "converted scores" (i.e. raw scores converted to percentages).

Research Question #1: Non-Discrimination

The summary of findings for this question is presented below.

Rights Defined by This Theme

Non-Discrimination is the equal protection and benefit of law without discrimination on the basis of disability. It was defined by twelve items and from these, three sub-themes were derived: application of the prohibition against discrimination to students with disabilities, scope of this prohibition and the adjudication of complaints.

Analysis and Comparison of Jurisdictions

The most significant finding of the study with respect to this question is that the non-discrimination provisions of the Nova Scotia *Human Rights Code* do not apply to youth and senior citizens. Consequently, public education is excluded from the prohibition against discrimination contained in the *Code*.

All *Human Rights Codes* prohibit discrimination on the basis of disability. Québec and Saskatchewan provide for education as a human right. However, with the exception of Manitoba, in all other jurisdictions, the application to public schooling must be inferred from the use in the *Code* of a generic expression such as "services customarily available to the public". A review of the case law suggests that the lack of a specific reference to education in most *Codes* may restrict or even exclude public schooling in these jurisdictions from the ambit of the non-discrimination provisions.

1	ON
2	QC
3	MA
4	NE
5	SA
6	YU
7	AL
8	BC
9	PI
10	NB
11	NT
12	NS

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the top ranked jurisdiction is Ontario whose total score (77) is more than 1 standard deviation [std] (22) above the distribution mean (53), followed by Québec (73). There are two jurisdictions whose scores fall more than 1 std below the mean - the Northwest Territories (18) and Nova Scotia (0). There was no particular pattern in the distribution.

Research Question #2: Access to Schooling

The summary of findings for this question is presented below.

Rights Defined by This Theme

Access to Schooling means admission to elementary/secondary school at public expense. It was defined by fifteen items and from these, four sub-themes were derived: right to public schooling, compulsory attendance, expulsion and additional support.

Analysis and Comparison of Jurisdictions

The key finding of this study with respect to this question is that, while the right to education is "universal", it is not always provided without exception because of disability. The Nova Scotia *Education Regulations* limit this right to students "who are capable of benefiting" from schooling, permitting a general exclusion on the basis of disability. The Alberta, Ontario and Newfoundland *Acts* include provisions which restrict this right for students with severe disabilities who are not considered to be "educable".

Only New Brunswick and Québec provide a right to early/extended schooling for some students with disabilities. The right to expel or suspend students is still the general rule. British Columbia is the only jurisdiction where a right and a duty to follow an educational program remain in force during a suspension (expulsion not allowed in BC). Only seven jurisdictions provide for barrier-free access for new schools which meet the standards set forth in the *National Building Code, 1990*.

1	NB
2	BC
3	QC
4	YU
5	MA
6	SA
7	NS
8	ON
9	PI
10	AL
11	NE
12	NT

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the top ranked jurisdiction is New Brunswick, followed by British Columbia and Québec, whose scores (63, 58, 58) exceed the mean of the distribution (49) by more than 1 std (8). At the low end are Alberta, Newfoundland and the Northwest Territories, whose scores (40, 37, 37) fall below the mean by more than 1 std. There was no particular pattern in the distribution.

Research Question #3: Identification and Placement

The summary of findings for this question is presented below.

Rights Defined by This Theme

Identification and Placement refers to the identification of special education needs and appropriate placement. It was defined by seventeen items and from these, three sub-themes were derived: choice of schooling, assessment and appropriate placement.

Analysis and Comparison of Jurisdictions

The most notable finding of the study with respect to this question is that, in most jurisdictions, very few rights to identification and placement are provided. The analysis shows that the right to home schooling is the positive anomaly in this theme; by contrast, with the exception of Québec, students or parents have little or no right respecting school choice. Since this theme is seen as a bridge between access and service delivery, once parents choose the public school option, this bridge becomes a "controlled access route".

There are some exceptions to this general trend. Ontario and the Yukon provide for parental consent and third-party adjudication with respect to assessment. Saskatchewan and the Yukon provide for the right to an appropriate and least restrictive placement; British Columbia and New Brunswick provide for a right to a regular class placement. In all these four cases, the right is subject to the needs of the student or other limits, the scope of which is yet to be determined by the courts.

1	YU
2	ON
3	AL
4	SA
5	BC
6	NB
7	NE
8	MA
9	NS
10	QC
11	NT
12	PI

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is the Yukon, followed by Ontario, whose scores (61, 50) exceed the distribution mean (18) by more than 1 std (18). At the other end are the Northwest Territories and Prince Edward Island whose scores (3, 3) are almost 1 std below the mean. The distribution is skewed in a four-step pattern, with eight jurisdictions at the low end.

Research Question #4: Service Delivery

The summary of findings for this question is presented below.

Rights Defined by This Theme

Service Delivery is the provision of appropriate educational and disability related services (in order to benefit from education). It was defined by nine items and from these, three sub-themes were derived: appropriate education, instructional and special services.

Analysis and Comparison of Jurisdictions

The most notable finding of the study with respect to this question is that, in most jurisdictions, except for free instructional materials, very few rights to service delivery are provided. Six jurisdictions make no provision for any standard of appropriate education and seven provide no rights to special services. Except for the Yukon, service delivery is not subject to third-party adjudication.

Ontario, Québec and the Yukon provide students with disabilities with the right to an appropriate education according to an individual educational plan (IEP). A similar standard, without reference to an IEP, is also found in British Columbia, the Northwest Territories and Saskatchewan. In B.C. and the Territories, this right applies to *all* students, not just to those with disabilities (eliminating the need for labelling for service entitlement). Québec and Saskatchewan require the adaptation of regular educational services for students with disabilities, which fosters both inclusive education, and individualized programming.

1	YU
2	QC
3	ON
4	SA
5	BC
6	NS
7	NT
8	MA
9	NB
10	PI
11	AL
12	NE

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is the Yukon, followed by Québec and Ontario, whose scores (63, 56, 50) exceed the distribution mean (23) by more than 1 std (22). At the low end are Alberta and Newfoundland, with zero scores (more than 1 std below the mean). There is a bi-polar pattern in the distribution, with four jurisdictions with scores from 44 to 63 and eight with scores from 0 to 19.

Research Question #5: Parental Participation

The summary of findings for this question is presented below.

Rights Defined by This Theme

Parental Participation is understood as the participation of parents in the education of their children, at all stages of the process. It was defined by seven items and from these, three sub-themes were derived: collective participation, individual-level participation and a general appeal mechanism.

Analysis and Comparison of Jurisdictions

The key finding of this study with respect to this question is that, with the exception of one item and one jurisdiction, parents do not generally have a high level of rights to participate in the education of their children. The exceptional item is the right of students and parents to access student records, provided for in eight jurisdictions. The exceptional jurisdiction is Québec, which provides for all aspects of this theme except a general right to third-party adjudication of disputes.

Ontario and Québec make specific provision for the collective participation of parents of students with disabilities. On an individual level, the Yukon *Education Act* includes the most extensive provision for the involvement of parents in monitoring the progress of their child through the IEP process.

1	QC
2	BC
3	YU
4	AL
5	ON
6	SA
7	MA
8	NB
9	NE
10	NT
11	NS
12	PI

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is Québec, whose score (78) is almost 2 std (26) above the mean (28), followed by British Columbia and the Yukon (56, 56) (more than 1 std above the mean). At the other end, are Newfoundland, the Northwest Territories, Nova Scotia and Prince Edward Island with zero scores (more than 1 std below the mean). Between these two extremes, there is slight step pattern in the distribution between jurisdictions with some parental rights and those with very few.

Overall Results by Theme and Jurisdiction

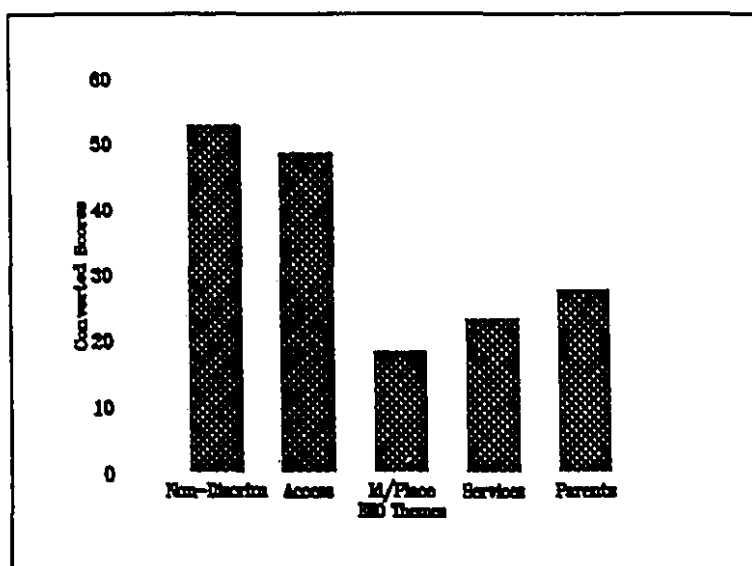


FIGURE 1.

EEO Themes: Mean Scores

Note. Total for each theme = converted (%) mean score from sum of all items in that theme.

As shown in figure 1, there is considerable variance from *non-discrimination* to *identification/placement*. This figure illustrates the "average" level of rights across jurisdictions. This same pattern holds when the differences in student population in each jurisdiction are taken into account, indicating that it is an accurate reflection of the level of rights generally available in Canada.

As shown in the table 1, the distribution is bounded by the Yukon on the high end and the Northwest Territories on the other. There is a three-step pattern, with four jurisdictions in each group; this pattern is consistent across all themes. A jurisdiction which ranks high, middle or low in overall results, tends to rank high, middle or low, as the case may be, in all themes.

The results of the final analysis were validated by four separate tests. First, the number of items in the data analysis instrument was collapsed to fifteen "key

rights". Second, the scores obtained on multivariate response items were compressed to a binary score (0 or 1) in order to see if such changes had any effect on the overall

TABLE 1
Distribution of Jurisdictions: All Themes

Rank	Jurisdiction	Total
01	Yukon	59
02	Ontario	53
03	Québec	47
04	Saskatchewan	43
05	British Columbia	38
06	Alberta	34
07	Manitoba	33
08	New Brunswick	33
09	Newfoundland	27
10	Prince Edward Island	25
11	Nova Scotia	20
12	Northwest Territories	18

results. Third, a similar test was conducted respecting item #15 on the instrument, which had seven possible response categories (higher than any other item). Fourth, the overall score was compared to that which would have resulted from an average of individual theme scores, thereby eliminating the effect of the different weights of individual themes. The results of these tests validated the initial results, as only minor changes in the ranking of jurisdictions occurred in each test. Figure 2 shows the overall distribution, including the breakdown of total scores by theme for each jurisdiction.

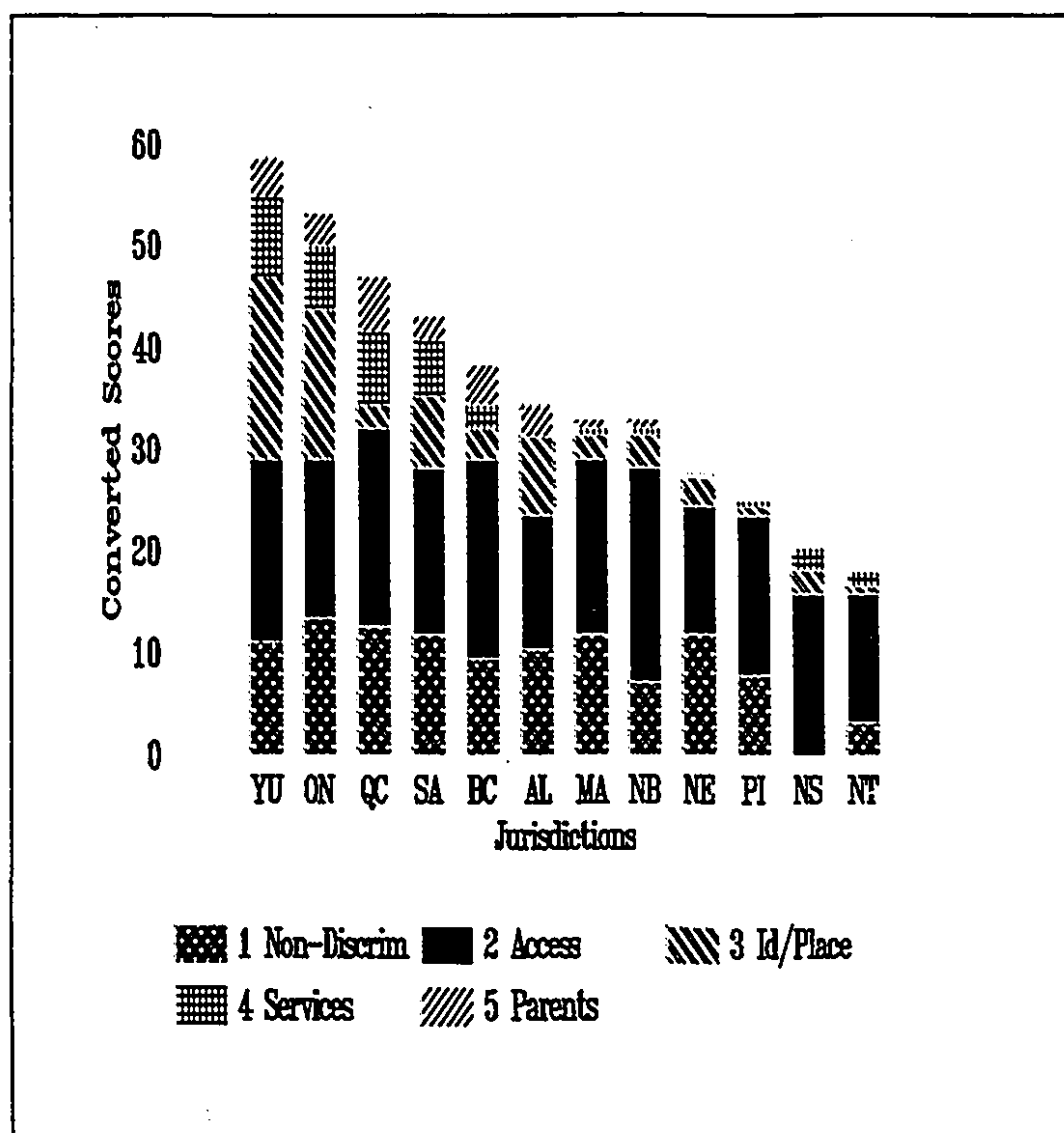


FIGURE 2.
Comparison of Jurisdictions and Themes

Conclusion

The analysis has shown a diversity in the level and type of rights provided for in different jurisdictions. Overall, four jurisdictions, the Yukon, Ontario, Québec and Saskatchewan, provide for a relatively high level of rights; four others, British Columbia, Alberta, Manitoba and New Brunswick, provide a middle level of rights, while the remaining four, Newfoundland, Prince Edward Island, Nova Scotia and the Northwest Territories provide a relatively low level of rights. Non-discrimination and access received the highest ratings, while parental participation, service delivery and identification/placement received considerably lower ratings.

It is the conclusion of this study that while there are many examples of rights provided to students with disabilities, the absence of rights is more generally observed to be the rule. When the scores for all jurisdictions are averaged, only 18 out of 60 items on the data analysis instrument receive an aggregate score of 50 or higher, with an overall mean of 36 for all items (max=100). There are five jurisdictions in which no rights are reported at all for at least one EEO theme. Although the level of rights observed is generally higher in larger provinces, the examples of the smallest jurisdiction, the Yukon, with the highest level of rights and Saskatchewan, with a relatively high rating, demonstrate that the provision of rights is not strictly a matter of size.

Rights are not the only answer to the barriers faced by students with disabilities but they are a critical means for moving from a charity mode to the minority rights paradigm suggested by Hahn (1989) and others. As eloquently summarized by Minow (1990):

There is something too valuable in the aspiration of rights, and something too neglectful of the power embedded in assertions of another's need, to abandon the rhetoric of rights. ... It [rights rhetoric] enables a devastating, if rhetorical, exposure of and challenge to hierarchies of power... (p. 307).

Even if education is not constitutionally protected, as suggested by some, no one would dispute its importance on both an individual and collective level. The school is a microcosm of society, where we gain knowledge and skills and where we learn to get along with each other. To deny a child a right to full inclusion in this process is a denial of his or her fundamental human rights and should not be tolerated in a free and democratic society.

TABLE OF CONTENTS

Topic	Page

VOLUME I:

ABSTRACT	i
RÉSUMÉ	i
ACKNOWLEDGEMENTS	iii
EXECUTIVE SUMMARY	v
TABLE OF CONTENTS	xv
LIST OF FIGURES	xxi
LIST OF TABLES	xxiii

1.0 INTRODUCTION AND OVERVIEW

1.1 <u>Introduction</u>	1
1.2 <u>Purpose and Problem Statement</u>	2
1.3 <u>Legal Framework for Equality Rights and Education in Canada</u> ...	7
1.3.1 <u>The Backdrop of International Law</u>	7
1.3.2 <u>The Canadian Constitution</u>	8
1.3.3 <u>Educational Governance: a Provincial Responsibility</u>	10
1.4 <u>Organization of the Study</u>	11
Endnotes - Chapter 1	13

2.0 REVIEW OF THE LITERATURE

2.1 <u>Introduction</u>	15
2.2 <u>Policy Studies in Education</u>	15
2.2.1 <u>Policy Research</u>	15
2.2.2 <u>Public Policies</u>	18
2.3 <u>Equality and Public Schooling</u>	24
2.3.1 <u>Concepts of Equality</u>	24
2.3.2 <u>Equality in a School Setting</u>	30

TABLE OF CONTENTS - continued

Topic	Page
2.4 <u>EEO for Students with Disabilities</u>	36
2.4.1 <u>General Considerations</u>	36
2.4.2 <u>The Minority Rights Paradigm</u>	41
2.4.3 <u>The Provision of EEO to Students with Disabilities</u>	45
2.5 <u>Conclusion</u>	54
Endnotes - Chapter 2	57

3.0 RESEARCH DESIGN

3.1 <u>Introduction</u>	61
3.2 <u>Scope of the Study</u>	61
3.3 <u>Sources of Data</u>	65
3.4 <u>Methodology</u>	67
3.4.1 <u>Developing Specific Research Questions</u>	67
3.4.2 <u>Defining the Rights Comprising Each Analytical Theme</u> ...	70
3.4.3 <u>Analysis of Rights in Each Jurisdiction</u>	71
3.4.4 <u>Comparison of Results Across Themes and Jurisdictions</u> ...	73
3.4.5 <u>Validity and Reliability</u>	74
3.5 <u>Constraints and Limitations</u>	75
Endnotes - Chapter 3	79

4.0 DATA ANALYSIS

4.1 <u>Non-Discrimination</u>	82
4.1.1 <u>Application to Students with Disabilities</u>	82
4.1.2 <u>Scope of Prohibition Against Discrimination</u>	86
4.1.3 <u>Adjudication of Complaints</u>	92
4.1.4 <u>Summary and Discussion of Non-Discrimination</u>	95
4.2 <u>Access to Schooling</u>	99
4.2.1 <u>Right to Public Schooling</u>	100
4.2.2 <u>Compulsory Attendance</u>	105

TABLE OF CONTENTS - continued

Topic	Page
4.2.3 <u>Expulsion</u>	108
4.2.4 <u>Additional Support</u>	109
4.2.5 <u>Summary and Discussion of Access to Public Schooling</u> . .	112
4.3 <u>Identification and Placement</u>	115
4.3.1 <u>Choice of Schooling</u>	117
4.3.2 <u>Assessment</u>	119
4.3.3 <u>Appropriate Placement</u>	122
4.3.4 <u>Summary and Discussion of Identification and Placement</u> .	133
4.4 <u>Service Delivery</u>	136
4.4.1 <u>Appropriate Education</u>	136
4.4.2 <u>Instructional Services</u>	139
4.4.3 <u>Special Education Services</u>	142
4.4.4 <u>Summary and Discussion of Service Delivery</u>	145
4.5 <u>Parental Participation</u>	148
4.5.1 <u>Collective Participation</u>	148
4.5.2 <u>Individual-Level Participation</u>	150
4.5.3 <u>General Appeal Mechanism</u>	153
4.5.4 <u>Summary and Discussion of Parental Participation</u>	155
Endnotes - Chapter 4	158

5.0 SUMMARY AND CONCLUSIONS

5.1 <u>Summary of the Findings</u>	174
5.1.1 <u>Research Question #1: Non-Discrimination</u>	175
5.1.2 <u>Research Question #2: Access to Schooling</u>	176
5.1.3 <u>Research Question #3: Identification and Placement</u>	177
5.1.4 <u>Research Question #4: Service Delivery</u>	178
5.1.5 <u>Research Question #5: Parental Participation</u>	179
5.2 <u>Synthesis and Complementary Analyses</u>	180
5.2.1 <u>Synthesis of Analysis</u>	180

TABLE OF CONTENTS - continued

Topic	Page
5.2.2 <u>Complementary Analyses</u>	182
5.3 <u>Profiles of Individual Jurisdictions</u>	188
5.4 <u>Implications for Future Research and Public Policy</u>	195
5.5 <u>Conclusion</u>	198
Endnotes - Chapter 5	201

REFERENCES

Primary Source Materials	203
<u>Regulatory and Administrative Sources</u>	203
<u>International</u>	203
<u>Canada</u>	204
<u>Alberta</u>	205
<u>British Columbia</u>	206
<u>Manitoba</u>	208
<u>New Brunswick</u>	209
<u>Newfoundland</u>	210
<u>Northwest Territories</u>	211
<u>Nova Scotia</u>	212
<u>Ontario</u>	214
<u>Prince Edward Island</u>	216
<u>Québec</u>	217
<u>Saskatchewan</u>	221
<u>Yukon</u>	221
<u>United States</u>	222
<u>Case Law</u>	223
Secondary Source Materials	229
<u>Periodicals</u>	229
<u>Books, Reports and Other Publications</u>	250

TABLE OF CONTENTS - continued

Topic	Page

VOLUME II:

PREFACE	i
TABLE OF CONTENTS	iii
LIST OF FIGURES	ix
LIST OF TABLES	xi

APPENDICES

A.	METHODOLOGICAL NOTES	1
A.1	<u>Data Collection</u>	1
A.2	<u>Boundaries of the Regulatory Framework</u>	2
A.3	<u>Outline of the Methodology</u>	11
A.4	<u>Data Analysis</u>	16
A.5	<u>Comparison of Results</u>	36
A.6	<u>Validation and Reliability</u>	41
B.	DATA ANALYSIS NOTES	47
B.1	<u>The Canadian Charter and Equality Rights</u>	47
B.2	<u>Nova Scotia Human Rights Code and Public Schools</u>	53
B.3	<u>Ontario Identification, Placement and Review Process</u>	59
	Endnotes - Appendix B	63
C.	DATA ANALYSIS TABLES	65
D.	EXCERPTS FROM INTERNATIONAL INSTRUMENTS	111
E.	CANADIAN LEGISLATIVE PROVISIONS	117
	Endnotes - Appendix E	126

TABLE OF CONTENTS - continued

Topic	Page
F. LEGISLATIVE ACTION: ALBERTA	127
G. LEGISLATIVE ACTION: BRITISH COLUMBIA	141
H. LEGISLATIVE ACTION: MANITOBA	151
I. LEGISLATIVE ACTION: NEW BRUNSWICK	159
J. LEGISLATIVE ACTION: NEWFOUNDLAND	167
K. LEGISLATIVE ACTION: NORTHWEST TERRITORIES	173
L. LEGISLATIVE ACTION: NOVA SCOTIA	179
M. LEGISLATIVE ACTION: ONTARIO	187
N. LEGISLATIVE ACTION: PRINCE EDWARD ISLAND	215
O. LEGISLATIVE ACTION: QUÉBEC	219
P. LEGISLATIVE ACTION: SASKATCHEWAN	247
Q. LEGISLATIVE ACTION: YUKON	265

LIST OF FIGURES

Figure		Page
VOLUME I:		
2.1	<i>Public Policy Framework</i>	21
2.2	<i>Student Rights to Education</i>	22
2.3	<i>Socio-Political Model of Disability</i>	38
2.4	<i>EEO for Students with Disabilities</i>	56
4.1	<i>Distribution of Items: Non-Discrimination</i>	97
4.2	<i>Distribution of Jurisdictions: Non-Discrimination</i>	98
4.3	<i>Distribution of Items: Access to Public Schooling</i>	113
4.4	<i>Distribution of Jurisdictions: Access to Public Schooling</i>	114
4.5	<i>Distribution of Items: Identification and Placement</i>	134
4.6	<i>Distribution of Jurisdictions: Identification and Placement</i>	135
4.7	<i>Distribution of Items: Service Delivery</i>	146
4.8	<i>Distribution of Jurisdictions: Service Delivery</i>	147
4.9	<i>Distribution of Items: Parental Participation</i>	156
4.10	<i>Distribution of Jurisdictions: Parental Rights</i>	157
5.1	<i>EEO Themes: Mean Scores</i>	180
5.2	<i>Distribution of Jurisdictions: All Themes</i>	181
5.3	<i>Validation of Rankings</i>	185
5.4	<i>Distribution of Converted Scores for Key Rights</i>	187
5.5	<i>EEO Themes: Alberta</i>	188
5.6	<i>EEO Themes: British Columbia</i>	188
5.7	<i>EEO Themes: Manitoba</i>	189
5.8	<i>EEO Themes: New Brunswick</i>	189
5.9	<i>EEO Themes: Newfoundland</i>	190
5.10	<i>EEO Themes: Northwest Territories</i>	191

LIST OF FIGURES - continued

Topic	Page
5.11 <i>EEO Themes: Nova Scotia</i>	191
5.12 <i>EEO Themes: Ontario</i>	192
5.13 <i>EEO Themes: Prince Edward Island</i>	193
5.14 <i>EEO Themes: Québec</i>	193
5.15 <i>EEO Themes: Saskatchewan</i>	194
5.16 <i>EEO Themes: Yukon</i>	194

VOLUME II:

A.1 <i>EEO Themes: Unweighted and Weighted Mean Scores</i>	46
B.1 <i>Ontario IPRC and Appeal Process</i>	61

LIST OF TABLES

Table		Page
VOLUME I:		
2.1	<i>Categories of Exceptionality</i>	37
2.2	<i>Emergent EEO Themes</i>	48
3.1	<i>Principal Sources of Data</i>	65
3.2	<i>Specific Research Questions</i>	69
3.3	<i>Analytical Themes</i>	70
3.4	<i>Sample Items from the Data Analysis Instrument</i>	72
3.5	<i>Raw Scores by Analytical Theme</i>	73
4.1	<i>Distribution of Responses: Application to Students with Disabilities</i>	83
4.2	<i>Distribution of Responses: Scope of Prohibition Against Discrimination</i>	86
4.3	<i>Distribution of Responses: Adjudication of Complaints</i>	93
4.4	<i>Distribution of Items: Non-Discrimination</i>	96
4.5	<i>Distribution of Jurisdictions: Non-Discrimination</i>	97
4.6	<i>Distribution of Responses: Right to Public Schooling</i>	100
4.7	<i>Distribution of Responses: Compulsory Attendance</i>	106
4.8	<i>Distribution of Responses: Expulsion</i>	108
4.9	<i>Distribution of Responses: Additional Support</i>	110
4.10	<i>Distribution of Items: Access to Public Schooling</i>	112
4.11	<i>Distribution of Jurisdictions: Access to Public Schooling</i>	113
4.12	<i>Distribution of Responses: Choice of Schooling</i>	117
4.13	<i>Distribution of Responses: Assessment</i>	120
4.14	<i>Distribution of Responses: Appropriate Placement</i>	123
4.15	<i>Distribution of Items: Identification and Placement</i>	134
4.16	<i>Distribution of Jurisdictions: Identification and Placement</i>	135

LIST OF TABLES - continued

Topic	Page
4.17 <i>Distribution of Responses: Appropriate Education</i>	136
4.18 <i>Distribution of Responses: Instructional Services</i>	140
4.19 <i>Distribution of Responses: Special Educational Services</i>	142
4.20 <i>Distribution of Items: Service Delivery</i>	146
4.21 <i>Distribution of Jurisdictions: Service Delivery</i>	147
4.22 <i>Distribution of Responses: Collective Participation</i>	148
4.23 <i>Distribution of Responses: Individual Level Participation</i>	150
4.24 <i>Distribution of Responses: General Appeal Mechanism</i>	154
4.25 <i>Distribution of Items: Parental Participation</i>	156
4.26 <i>Distribution of Jurisdictions: Parental Participation</i>	157
5.1 <i>Distribution of Jurisdictions: All Items</i>	181
5.2 <i>Distribution of Jurisdictions: Student Population</i>	183
5.3 <i>Grouping of Jurisdictions: Across Themes</i>	184
5.4 <i>Enumeration of Key Rights</i>	186
5.5 <i>Distribution of Jurisdictions: Key Rights</i>	187
VOLUME II:	
A.1 <i>Outline of Analytical Framework</i>	11
A.2 <i>Data Analysis Instrument</i>	18
A.3 <i>Raw Scores for All Items</i>	37
A.4 <i>Data Validation by Provincial Respondents</i>	42
A.5 <i>Validation of Rankings</i>	45
C.1 <i>Key to Jurisdiction Codes</i>	65
C.2 <i>Correspondence of Raw and Converted Scores</i>	66
C.3 <i>Key to Reference Codes</i>	68
C.4 <i>Data Analysis Report by Jurisdiction</i>	73
C.5 <i>Data Analysis Report by Theme</i>	91

1.0 INTRODUCTION AND OVERVIEW

1.1 Introduction

In the introduction to a position paper sub-titled "Children are above all else children", the Québec Conseil supérieur de l'éducation [CSE] (1977) made the following statement:

The quality of a society is measured by the way it treats its most disadvantaged members. It is through its educational system, the main force in the socialization of the individual, that society reveals what it is and what it aspires to be. If one argues that the State has the duty to educate all children, it follows that the school must be open to the greatest possible numbers of children and so organized as to be able to cater to the needs of those who require special attention (p. 291).

This statement assumes the value of education, not only to the individual, but to society as a whole. Most people would readily accept this assumption, as stated by La Forest, J. in *Jones v. R.* (1986):

Whether one views it [education] from an economic, social cultural or civic point of view, the education of the young is critically important in our society.

...

No proof is required to show the importance of education in our society or its significance to government. The legitimate, indeed compelling, interest of the State in the education of the young is known and understood by all informed citizens (pp. 592, 594).

In articulating the importance of education, La Forest, J. cites with approval (p. 592) the landmark U.S. civil rights case, *Brown v. Board of Education* (1954):

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

The statement of the Conseil supérieur also reflects a fundamental belief that all children, regardless of race, colour, wealth, level of ability or any other inherent personal

characteristics, deserve the benefit of quality educational services. This equality principle was also affirmed in the above mentioned *Brown* (1954) decision: "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all in equal terms" (p. 493). Providing all school-age children with public educational services is often termed "equal educational opportunity" [EEO], a pervasive concept which has been used to advance the cause of racial minorities, the poor and students with disabilities (Friedman & Wiseman, 1978; J.W. Guthrie, 1983; Kirp, 1977; Lessard, 1991; Salomone, 1986).¹

Because of differences in population makeup and historical antecedents, a dual system of racially segregated schools did not evolve in Canada (Stainback, Stainback & Bunch, 1989). However, as these authors indicate, in this country, as in the United States, there has been a growing concern with the manner in which educational services are provided to students with disabilities or other special educational needs.

As will be discussed below in section 2.4.1, students with disabilities comprise a heterogeneous group of persons who traditionally have been labelled as *different* from other persons, on the basis of various mental or physical characteristics. The nomenclature used to describe persons with disabilities is not a trivial matter. Language is a powerful weapon; the way we describe people or human conditions says as much about the commentator as it does about the persons or conditions he or she is describing. As Biklen (1989) states: "Culture defines disability.... That is, disability has a series of meanings that extend far beyond its observable or objective reality" (pp. 235, 236).

1.2 Purpose and Problem Statement

There has always been a great deal of debate among different members of the education community over the provision of service to students with disabilities or other special needs. In part, this dialogue has focused on equity for disabled students - the right to attend school and to non-discriminatory treatment in school. The search for equity for these students has been viewed by some to be antithetical to the search for "excellence" in education for non-disabled students (e.g. Ferguson, 1989); however, the two concepts are not necessarily incompatible, as set forth in a recent article on special education by

Skrlic (1991), aptly sub-titled "Equity as the Way to Excellence". At present, much of the debate is focused on what Brofenbrener (cited in Zigler, Hodapp & Edison, 1990) terms the "social address" of service delivery. In its simplest terms, the issue is whether students with disabilities should be educated in the regular "mainstream" system, or in a separate "special" system (see Lloyd, Singh & Repp, 1991, for a review of this debate).

This debate is fraught with personal beliefs and at times becomes polemic and semantic, with authors arguing their preferred options in terms of "the murky water" of special education (Wang, Reynolds and Walberg, 1989b), "throwing out the water and saving the baby" (Vergason & Anderegg, 1989) and the "ill-conceived marriage" between the special education "groom" and the regular education "bride" (L.M. Lieberman, 1985). Much of this *exchange* has relied on the metaphor of the "mainstream", speaking of students who "sink or swim in the mainstream" (Zirkel, 1989) or who are "dumped or mired in the mainstream" (Little, Williams, Ward, Fraser & Churchill, 1991). Although these expressions may make the debate more colourful, they sometimes serve to mask the complexity of the issues being discussed.

One of the many areas of research which needs to be undertaken concerning the education of students with disabilities is the study of government policy. Sometimes the policy goals of the government, or its "policy agenda", are made explicit in discussion papers and policy statements but often they must be inferred from various decisions taken. In any case, such goals elicit little interest if they are not followed by some form of action.

Salisbury and Heinz (1970) describe government action in terms of structural policies, those which establish rules, and allocation policies, those which confer benefits. Other actions include planning and developing programs and other procedures designed to foster the implementation of policy objectives. One type of action discussed widely in the literature, is the adoption of *legislative action*, the means by which a government "regulates, controls, promotes, services and otherwise influences matters within its sphere of authority" (Guba, 1984, p. 66). Although government policy consists of other important elements, *legislative action* is of particular interest because it stipulates various rights and obligations which carry the force of law. It is through the enactment of laws

and regulations that the state transforms the important *benefit* of education into a legal *right*. As stated by Thomas Dewey (cited in H.R. Turnbull, 1990):

The very fact of natural and psychological inequality is all the more reason for the establishment by law of equality of opportunity, since otherwise the former becomes a means of oppression of the less gifted (p. xi).

The government is the ultimate arbiter of competing interests among different societal groups or different social values (Swanson, 1989). Its legislative action on matters such as special education will decide the rights and obligations of all members of the educational community with respect to this issue. However, this policy may not be clearly understood by those who are affected by it or who wish to influence it. There is therefore a need for different policy alternatives to be developed and studied. Before such research can be carried out, there is a fundamental need for accurate information about the present state of government policy concerning special education. Once these data are determined, the policy can be analyzed in order to answer more specific questions.

In Canada, in contrast to the United States, there is no national office of education, let alone any agency charged with responsibility for safeguarding the educational rights of students with disabilities. This lack of national focus has resulted in the absence of any pan-Canadian legislative framework and a fragmentation of efforts across the country.² As expressed by Henteleff (cited in *Equality for All*, 1985) with respect to the provision of equality for handicapped persons in general:

There has been much tiptoeing in the labyrinth of federal and provincial relations.... Too many rights have not been given the priority they deserve. What this has resulted in, tragically, is a misapplication of resources, an abuse of individual rights, and particularly the rights of those who need them most (p. 87).

Like other disadvantaged groups, students with disabilities can be viewed as a "discrete and insular minority"³ and this perspective supports the development of public policy based on rights, not charity (Rioux, 1991). This shift in orientation has been described by various commentators as a move toward a *minority rights paradigm* (see discussion below in section 2.4.2) and is slowly developing in Canada (Jongbloed & Crichton, 1990).

The lack of federal presence in the education field is a serious impediment to the

development of such a paradigmatic shift. The Council of Ministers of Education (Canada) [CMEC] provides for some joint endeavours and sharing of information (CMEC, 1989); however, all such efforts depend on a consensus among members, as illustrated by the recent School Achievement Indicators Program (CMEC, 1992). Furthermore, this type of collaboration may result in changes in discretionary government behaviour but it does not produce changes in the legal framework. Education rights are akin to language rights, which, as described by Sackney (1990): "are caught up in the politics of national unity and federal-provincial disputes over the distribution of powers" (p. 123).

To date, little research has been carried out in Canada with respect to government policy on the education of students with disabilities. More specifically, there is a dearth of basic literature analyzing the intentions of government policy, the implementation of these intentions or their ultimate impact on the education of students with special needs. There are a limited number of surveys of special education policy in Canada (Balance & Kendall, 1969; CMEC, 1989; Csapo & Goguen, 1980, 1989; Karagianis & Nesbit, 1980; Murray-Register, 1981; Poirier, Goguen & Leslie, 1988; J.A.C. Smith, 1980; Treherne & Rawlyk, 1979). There are some studies which deal with individual provinces or a small number of provinces (Elkin, 1982; Hodder, 1984; Keeton, 1979-80; MacKay, 1984b; McBride, 1989a, 1990; Poirier, 1984; J.A.C. Smith, 1981; W.J. Smith, 1992c; Thibert, 1979; A. Wilson, 1983). Others have focused on special education policy and legislation in light of the *Canadian Charter of Human Rights and Freedoms* [Charter] (Cruickshank, 1983; Kimmins, Hunter & MacKay, 1985; MacKay, 1987a; MacKay & Krinke, 1987; Poirier & Goguen, 1986; Sussel & Manley-Casimir, 1987; Zuker, 1984). Finally, in addition to individual case comments, some authors have reflected on Canadian special education policy in terms of applicable case law (Laughlin & Young, 1989; O'Reilly, 1991, 1992; The Best Interests Standard, 1992). However, none of the foregoing provides a comparative analysis of the most recent legislative changes adopted in several jurisdictions.

There is therefore a need to provide a comprehensive analysis of the state of the legislative action taken by various jurisdictions in Canada with respect to the education of students with disabilities, as a basis for future policy research on this population. The

legislative action of each government cannot be found in a single document, nor does it remain static over time. Government policy is at once eclectic and elusive. The first task, therefore, is to identify the totality of existing legislation extant in each jurisdiction and analyze these documents, using a structured framework for purposes of comparison.

In an earlier study, this author (W.J. Smith, 1989) conducted a structured analysis of the goals and standing decisions of the special education policy of the Québec Government. All policy data were summarized in a computerized database and these summary statements were then scrutinized to search for and analyze emergent themes and to describe the content of both policy objectives and legislative action. The study demonstrated the need for further research on the state of government policy on special education in Québec, as well as in other jurisdictions.

Building upon this earlier work, the purpose of this study is to conduct a comparative analysis of the legislative action of each jurisdiction in Canada, as of December 31, 1992, relating to the provision of equal educational opportunity to students with disabilities. In order to fulfil this purpose, this study will endeavour to set forth a framework for the analysis of legal rights for students with disabilities, undertake a content analysis of the legislation in each jurisdiction and provide a comparison of the results. This inquiry is based on the premise that one must first ascertain what government policy is before you can consider how it is being implemented or examine the actual effects of the policy. This study purports to provide "baseline data" for such studies as well as an analytical model which can be used as a basis for the investigation of government policy in other domains.

This inquiry provides information about the present "state of the law" concerning equal educational opportunity for students with disabilities in Canada. Accordingly, it attempts to describe what the law states must be done, rather than what is actually being done in any given jurisdiction. When things are going well in any domain, such as education, the law seems remote and of little relevance. What matters is the day-to-day interaction between parents, educators and other interested parties. Unfortunately, things do not always go well and then one begins to ask what the law says, what rights can actually be

enforced in court. This study attempts to contribute to such an understanding and raise awareness of the disparities which exist in this country in terms of legally enforceable rights concerning the education of students with disabilities.

1.3 Legal Framework for Equality Rights and Education in Canada

This section is intended to provide a brief overview of the legal framework for the provision of equality rights and the control of education in Canada,⁴ prefaced by a brief discussion of the place of international law therein.

1.3.1 The Backdrop of International Law

The most ubiquitous expression of human rights is contained in the United Nations *Universal Declaration of Human Rights* (1948), which provides for a variety of human rights and freedoms, including education (s. 26). Fogarty (1987) states that Canada only has a moral commitment to support the *Declaration*, which "was not generally conceived as law, and had no binding effect on the member states" (p. 162). This reasoning would apply to other similar resolutions (see documents included in Vol. 2, app. D).

By contrast to the preceding declarations of intent, Canada is bound by various agreements on human rights (see for example, *Convention on the Rights of the Child*, 1989; *International Covenant on Economic, Social and Cultural Rights*, 1966). Cohen & Bayefsky (1983) suggest that these instruments are only binding if implemented by legislation,⁵ while Gibson (1990) states that "none of these international obligations has any direct legal significance within Canada" (p. 15). However, in some cases, individuals may bring a complaint before the U.N. Human Rights Committee and bring political pressure to bear on governments.⁶

Hayward (1985) states that "in many cases reference is made to conventions or international decisions, without indicating what significance, if any, should be assigned to them" (p. 10). However, she and various other commentators (e.g. Bayefsky, 1985, 1986; Caron, 1984; McDonald, 1989; Pentney, 1989; Schabas, 1991) assert that the above instruments, and others to which Canada is not a signatory (e.g. the *European Convention for the Protection of Human Rights and Fundamental Freedoms*), can be used by the

courts to interpret human rights legislation (*R. v. Rahey*, 1987). As stated, by Dickson, C.J.C. dissenting in *Reference re Public Service Employee Relations Act* (1987):

In short, though I do not believe the judiciary is bound by the norms of international law in interpreting the *Charter*, these norms provide a relevant and persuasive source for interpretation of the provisions of the *Charter*, especially when they arise out of Canada's international obligations under human rights conventions (p. 349).

Given this international backdrop, Canadian law will now be examined briefly.

1.3.2 The Canadian Constitution

Educational governance begins with the Constitution, whose purpose, according to Swinton (1982), is "to establish the scope of governmental authority and to set out the terms of the relationship between the citizen and the state and those between the organs of government" (p. 44). In a federal state, this task first involves the distribution of powers between the federal and provincial (state) governments.

The Canadian Constitution, unlike most constitutions, is not found in a single document. Originally contained in the *Constitution Act, 1867* (formerly *British North America Act, 1867*), it was patriated from Great Britain in 1982 by the *Canada Act, 1982*, which contains the *Constitution Act, 1982* (Schedule B), which contains the *Canadian Charter of Rights and Freedoms* (Part I).⁷ The Constitution consists of the aforementioned acts, those set forth in a schedule of the 1982 Act and future amendments thereto. The Constitution also includes provisions forming parts of the "provincial constitutions".⁸

According to the *Constitution Act, 1867*, the federal government's authority over education is limited to residents of the territories⁹ and to specific fields (military bases, Indian reserves and federal penal institutions). Beyond these provisions,¹⁰ the provinces are granted exclusive authority to "make Laws in relation to Education" (s. 93), subject to the provisions stipulated therein, which prevent a government from enacting laws prejudicial to any rights or privileges pertaining to denominational schools, as they existed at the time the province joined Canada. This same section grants the federal government remedial power to redress provincial infringements of these rights but Hogg (1992) reports that this authority has never actually been used and was only once contemplated for use.¹¹

Until 1982, constitutional questions were largely concerned with whether a particular legislative provision fell within the competence of the legislature in question or, in the case of educational statutes, whether the provision infringed the denominational rights referred to above. In 1982, this situation changed dramatically with the constitutional entrenchment of the *Charter* by virtue of the *Constitution Act, 1982*, which also states that "the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect" (s. 52(1)). The *Charter* applies to both the federal and provincial¹² legislatures and governments (s. 32); however, it was not meant, except to the extent expressly provided for therein,¹³ to otherwise alter the division of federal and provincial powers discussed above (ss. 29 & 31).

For purposes of this study, the *Charter* is particularly important because it sets forth a constitutionally binding framework for provincial legislative action in the field of education. The question of whether school boards are bound by the *Charter* has been seen as problematic by many authors and Canada's highest court has yet to decide a case on this point. However, an analysis of recent cases of the Supreme Court dealing with other public sector institutions (W.J. Smith, 1992-93) suggests that boards are bound by the *Charter* and this conclusion is retained as an assumption for purposes of this study.

In relation to the subject of this study, the key provisions of the *Charter* are those dealing with *equality rights* (s. 15) and the *reasonable limits* which circumscribe these rights (s. 1).¹⁴ The equality rights are also subject to one potential constraint - the so called "override" provision of section 33.¹⁵ This section was introduced into the *Charter* as a political compromise to appease certain provincial premiers (Tassé, 1989) and has the effect of making judicial review of the sections of the *Charter* caught by this provision (ss. 2, 7-15) to be suspensive only, if the government wishes to override the court. Although this provision may appear strange to non-Canadian observers, it is consistent with our tradition of parliamentary sovereignty and has precedence in the *Canadian Bill of Rights* and other provincial human rights codes (Hogg, 1992).

Some commentators consider that section 7 (right to "life, liberty and security of the

person") of the *Charter* provides a constitutional basis for the right to education but no case law exists to support this point of view (for a discussion of this issue, see Foster & Pinheiro, 1988; MacKay & Krinke, 1987; Sussel & Manley-Casimir, 1987; MacKay & Sutherland, 1992).¹⁶

1.3.3 Educational Governance: a Provincial Responsibility

Within this constitutional framework, provincial governments make laws and regulations concerning education, first among which are "fundamental" or "quasi-constitutional" laws such as human rights codes (Bin, 1992). As expressed by McIntyre J, speaking for a unanimous Supreme Court both in *Re Winnipeg School Division No. 1 and Craton* (1985): "Human rights legislation is of a very special nature and declares public policy regarding matters of general concern" (p. 6) and in *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.* (1985): "[Such legislation is] not quite constitutional but certainly more than ordinary..." (p. 329). Every provincial and territorial government in Canada has enacted human rights legislation, as well as an *Education Act* or *School Act* to govern the provision of education at the elementary and secondary levels.¹⁷

In the basis of these Acts, all provincial governments have established departments of education to oversee the administration of education via local school boards. Although locally elected school boards pre-date Confederation, they are now generally considered as "state agents" acting for the province (MacKay & Sutherland, 1992; Zuker, 1988). While recognizing that teachers and other school board officials are often characterized as acting *in loco parentis* (acting as delegates of parents), MacKay and Sutherland (1992) argue that they should be viewed primarily as engaged in state action.¹⁸

School Boards are both creatures of legislation and creators of subordinate legislation (Hurlbert & Hurlbert, 1992) - the "immediate instrument" of education statutes (*McLeod v. Salmon Arm School Trustees*, 1952). Their powers and structures vary from province to province, but they "have only the powers granted by statute.... they make rules and policies in the form of bylaws and regulations" (MacKay, 1984a, pp. 26, 28). They can also be viewed as an extension of state authority, as exercised under the doctrine of *parens patriae*. In this doctrine, the State is seen as the "parent of the country" and is

expected to stand as guardian for those who cannot fend for themselves, such as children not being given proper care by their parents (*Black's Law Dictionary* [Black], 1990).

School board decisions and actions are thus governed by a long chain of laws, regulations and government policies, all of which are subject to some form of judicial or administrative review, depending on the issue in question. Ultimately, the courts are the arbiter of this process, be it a matter of federal-provincial jurisdiction, a conflict between a given statute and the *Charter* or a local administrative action which violates provincial law. Generally speaking, court decisions can be appealed, possibly as far as the Supreme Court of Canada, which Sussel and Manley-Casimir (1986) have foreseen as potentially playing the role of a "national school board".

1.4 Organization of the Study

The complete study is contained in two volumes. Volume 1 contains the study report, as outlined below, as well as the reference list of all primary and secondary materials cited. Volume 2 contains the appendices of the report, which provide supplementary notes on the methodology and the analysis of the study, summary data tables, extracts from key legislative action and other material.

Chapter 2 contains a review of the relevant literature. It begins with the theme of educational policy and law and treats two sub-themes: policy research in education and policy as an instrument of governance. Second, the general literature on equality and public schooling is examined, with particular attention to basic concepts of equality, equality in an educational setting and equality for students with disabilities. Finally, the literature specifically dealing with EEO is reviewed with respect to various themes.

The research design is presented in chapter 3. Specifically, the scope of the study and the specific research questions to be addressed are delineated; the sources of data and the methodology are explained and constraints and limitations identified. Chapter 4 presents the data analysis; it is organized around the five themes of the legislative action being analyzed: non-discrimination, access to schooling, identification and placement, service delivery, and parental participation. Each section includes a comparison of all

jurisdictions with respect to the theme in question.

The final chapter summarizes the overall results of the analysis with respect to the five themes and presents the general conclusions of the study with respect to the totality of these themes. Implications for future research are also discussed.

Endnotes - Chapter 1

1. The terms *equality of opportunity* or *equal educational opportunity* can be narrowly or broadly defined (Karst, 1983; see also discussion below in section 2.3); in this study, unless the context indicates otherwise, the terms are used in the broad sense.
2. Dolmage (1990) concludes that the absence of the federal presence in education in Canada sets this country apart from other western nations:
The federal government has no formal voice in Canadian education. This has placed the federal government in the unique position of having to respond to questions of national interest, linguistic, religious and cultural diversity, and regional economic disparity, without the constitutional authority to act in the area of education. Solutions to these problems have challenged even the Canadian capacity for compromise (p. 74).
3. This phrase has been used by the Supreme Court of Canada (*Andrews v. Law Society of British Columbia*, 1989; *R. v. Turpin*, 1989; see also discussion in Patmore, 1990) to describe classes of persons entitled to protection under the equality rights section of the *Canadian Charter of Rights and Freedoms* and originates in doctrine developed in U.S. constitutional law (see, for example, Erler, 1982).
4. This section is not intended to provide even a limited description of the Canadian constitutional framework, the legal system or the governance of education in Canada; the reader who is interested in these broader issues is referred to Hogg (1992), G.L. Gall (1990) and Bezeau (1989) respectively and the many works referred to therein.
5. Because of the constitutional division of powers between the federal and provincial governments, some international agreements require the consent of the provinces, as expressed through provincial legislative acts (Gottlieb, 1968).
6. Individual cases can only be filed when the country, like Canada, is a signatory to the *Optional Protocol to the International Covenant on Civil and Political Rights* and all domestic remedies have been exhausted. The most notable case in Canada is that of Sandra Lovelace (see Bayefsky, 1982) which alleged cultural and gender discrimination under the *Indian Act*. Although this case resulted in changes to the *Act* (S.C., 1985, c. 27, s. 4), Gibson (1990) reminds us that such cases are "extremely rare" (p. 16).
7. For a complete consolidated text, see the *Constitution Acts, 1867-1982*; excerpts from the *Canadian Constitution* are included in Vol. 2, app. E.
8. The *Constitution Act, 1867* includes provision for the appointment of the Executive Power and the Legislative Power of the four original provinces (New Brunswick, Nova Scotia, Ontario, Québec). The "provincial constitutions" of these four and the other six provinces which became part of Canada in subsequent years are a mixture of provisions contained in the *Constitution Act, 1867*, federal statutes, as well as various British statutes. The latter were incorporated into Canadian law by the "reception of English law" doctrine, as well as by the patriation of the Constitution in 1982 (see Hogg, 1992, chaps. 1-2). Unlike American state constitutions, which provide for various rights, including the right to education (Hubsch, 1989; Tyack & James, 1986), the "provincial constitutions" of Canadian provinces contain no such rights. Like the Canadian Constitution, "provincial constitutions" are elusive beasts; even the power to amend the latter is unclear in some respects because of the complex amending formula provided for in the *Constitution Act, 1982* (see Hogg, 1992, chap. 5).
9. In practice, the territorial governments enjoy autonomy in educational governance, due to a blanket delegation of federal powers in this domain. Throughout this study, unless indicated otherwise, a reference to a provincial government, legislature, etc. will be deemed to include a like reference to the territories.
10. It should be noted, however, that certain federal laws, such as the *Young Offenders Act*, have application in an educational setting; moreover, federal transfer payments and other grants-in-aid provide a source of influence, if not control, over various educational matters.

11. This occurred in 1896 in relation to the Manitoba school question (see Titley, 1990).
12. As specific reference is made to the territories (ss. 30 & 32), it is generally assumed (Swinton, 1982; Tassé, 1989) that there is no particular problem regarding the application of the *Charter* to the territories.
13. The most obvious example of the "intrusion" of the *Charter* into the education field is s. 23, which deals with the right to minority language education rights - i.e. to French language instruction for French speaking Canadians throughout Canada, except Québec, and to English language instruction for English speaking Canadians in Québec. Section 23 serves to limit the power of provincial governments to legislate on matters governing the language of instruction (W.J. Smith, 1992-93; generally, see J.C. Anderson, 1990a; Bastarache, 1987, 1989; the leading case on point is *Mahe v. Alberta*, 1990; see Vol. 2, app. E for the text of this section).
14. These provisions are the subject of a note (see Vol. 2, app. A); a complete text of these sections is also included in Vol. 2, app. E; for a comprehensive overview of the *Charter* and an extensive bibliography, see Beaudoin and Raushney (1989).
15. This section also includes the terms and conditions for the exercise of the override right but these should be considered more requirements of form than of substance (*Ford v. Québec (A.G.)*, 1988).
16. Ironically, the only explicit reference to education in the *Charter* is found in s. 23 dealing with minority language rights (see note 13). Like s. 93 of the *Constitution Act, 1867* (which includes protection for religious minorities), s. 23 is generally recognized as the result of a political compromise, rather than a codification of pre-existing rights (Foucher, 1990).
17. Some such *Acts* may include provision for post-secondary level education but such education is usually dealt with in separate legislation.
18. This proposition does not imply that the doctrine of *in loco parentis* has no place in specific areas such as negligence (see for example *Myers v. Peel County Board of Education*, 1981, and discussion in Foster, 1992-93; Giles, 1988).

2.0 REVIEW OF THE LITERATURE

2.1 Introduction

The purpose of this chapter is to review the relevant professional literature. It begins with the literature concerning policy research, the field of inquiry in which this study is grounded, and public policy. The remainder of the review deals with *equal educational opportunity* [EEO] and is contained in two sections. In the first, general notions about equality are discussed, followed by its application in an educational setting. The second section focuses on the application of the EEO principle to students with disabilities. In the final section, the review of the literature is summarized and the themes used as the conceptual basis of the research design are presented.

2.2 Policy Studies in Education

2.2.1 Policy Research

Policy research is described by G. Anderson (1990) as "a human activity which explores social issues and problems within their real-life context, attempting to account for the political and practical dimensions of a problem as well as exploration of the technical dimensions of possible solutions" (p. 186). This eclectic process is characterized thus by Rossi, Wright and Wright (1978, p. 173):

[Policy research] is a mixture of science, craftlore and art. The science is the body of theory, concepts, and methodological principles; the craftlore, the set of workable techniques, rules of thumb, and standard operating procedures; and art, the pace, style, and manner in which one works.

Carol Yeakey (1983), in her seminal review of educational policy research, notes the "uneven development" of the field, one which she characterizes as "ill-defined", with "inherent inconsistencies and contradictions" (p. 255). Hawkesworth (1988) concludes that "even the most cursory review of the recent literature in policy analysis suggests a field in ferment" (p. 11).

Some of confusion arises from the basic terminology used to describe the field (see for example, Behn, 1985; Bovbjerg, 1985; Cook & Vaupel, 1985; Majchrzak, 1984; Nagel, 1990; Rubenson, 1989; Weiss, 1983; Yeakey, 1983); to borrow a metaphor from Yeakey's

(1987) discussion of critical thought and administrative theory: "The conceptual landscape is virtually cluttered with vagaries of term" (p. 23), with one expression meaning one thing when used by one author and quite another when used by someone else. We speak of policy studies, policy sciences, policy research and policy analysis; we refer to policy intellectuals, policy analysts, policy specialists and policy advisors. We distinguish between basic research and applied research, between policy content and policy process, between the investigation of fundamental problems and of technical problems.

It is suggested that the richness of this field of inquiry, as well as part of the reason for the difficulty in defining it, stems from its multi-disciplinary nature. Traditional fields of inquiry in the social sciences - economics, political science, public administration, sociology, psychology - are focused, both in terms of subject matter and methodology. Policy studies are more eclectic in terms of subject matter and "less prescriptive in method than are most other forms of research" (G. Anderson, 1990, p. 187). DeLeon (cited in Conway, 1990) sees the lack of methodological focus as a weakness, noting that "the methodological rigour which defines a discipline seems not to have taken root" (p. 168). By contrast, Yeakey (1983) views the incorporation of diverse methodologies as a source of strength, not weakness.

Policy studies can be conceptualized as a continuum of different types of research activities. On the one end, the field is grounded in the various academic disciplines which intersect to define it. As such, the field includes the pursuit of knowledge for its own sake. However, policy studies are very much concerned with the world "in action", which represents the other end of the continuum. At this end, policy studies, which in this context is often called policy analysis, is intended, as stated by Coleman (1972), "not to further develop theory about an area of activity, but to provide an information basis for social action" (pp. 2-3). As McCarthy (1986) states, "policy studies have the potential to link theory with practice and bridge the various speciality areas in educational administration" (p. 10).

Educational policy has received a great deal of attention by both governments and the population at large in North America because of the continuing faith of both elite groups

and reformers to solve national problems through schools (Cuban, 1990; Mitchell, 1988).¹ The well known study on equal educational opportunity by Coleman et al. (1966) illustrates the attempt to improve education by mega-policy studies. Cohen and Garet (1975) assess the attempt of such studies to reduce education to factors in a regression analysis. They state that many researchers, including "a few wildly heretical economists have begun to wonder where children and classrooms fit into all this" (p. 32). Reviewing the interaction of researchers and policy-makers, they conclude:

More and better applied research in education has not produced more clarity or any noticeable convergence in policy advice. Rather, it seems to have intensified or sharpened conflicting ideas about policy, research and research method. It has raised these conflicts to new levels of scientific sophistication and difficulty, and frequently has transformed the issues en route. When research has affected public life, it has done so chiefly through its affect on global, diffuse and hard-to-control systems of knowledge and belief (pp. 38-39).

An early review by J.W. Guthrie (1980) gave a mixed assessment of policy research in education, concluding that its impact was much greater with respect to equality, than to efficiency or liberty.² More recently, Boyd (1988) notes the importance of policy research, as it affects the general development of policy in education. He also concludes that changing values in society, as already discussed above, affect the course of policy studies and have impacted on the way we think about educational policy issues:

Dialogue and concern have moved from equity, social justice, and the common good to questions of liberty, choice, excellence, and efficiency. In education, this trend is particularly evident in the erosion of support for common, public schools and concomitant interest in private schools, tuition tax-credits and voucher plans (p. 507).

Yeahey (1983) too remains optimistic about the value of policy research in education and suggests the following major benefits:

[Policy research]

1. Incorporates universal as well as particular, theoretical conceptualizations of the same problem;
2. Rejects the apolitical approach to administration;
3. Aids in ameliorating the schism between practitioners and researchers;
4. Argues for a mosaic of methodologies and paradigms in the assessment of any one problem (p. 275).

The utilization of policy research, like other social science research, is often seen as problematic (Gagnon, 1990; Lindquist, 1990; Nelson, Roberts, Maederer, Wertheimer & Johnson, 1987; Weiss, 1982, 1989, 1990). Similarly, the relevance of educational policy research is regarded with a similar degree of scepticism, as are other forms of educational research (Finn, 1988a, 1988b; Glass, 1987; Shavelson & Berliner, 1988; Kaestle, 1993). Despite such reservations, educational policy research can have a great deal to do with informing policy-makers and practitioners about the ways and means to accomplish policy goals (Keogh, 1990; McDonnell, 1988). However, as will be discussed in the following section, the enactment and implementation of public policy is a diffuse and multi-faceted process. Policy research will only be relevant when it can synthesize complex legal, administrative, pedagogical, political and social issues in a meaningful way for all concerned stakeholders (Coleman & LaRocque, 1983).

2.2.2 Public Policies

Prunty (1985), with reference to his 1984 review of the literature, states that "the term 'policy' has no standard usage, and is riddled with ambiguity" (p. 133), while House and Coleman (1980) describe public policies as "elusive beasts" (p. 183). Heidenheimer (1986), discussing the problem of conducting comparative policy analysis, concurs with these views with respect to Anglo-American usage but notes that in many other languages the problem is the lack of any *distinct* term for *policy*. Similarly, Yeakey (1983) also suggests that diversity rather than uniformity characterizes the definitions of policy found in the literature.

Henchey (cited in *Evaluation of Educational Policy*, 1990) identifies three types of educational policy: "**technical policies** which involve specific changes in programs or procedures, **structural policies** which are broader in scope and deal with patterns of curriculum and organization, and **fundamental policies** which involve a rethinking of basic assumptions and directions" (pp. 17-18, emphasis added). According to Palumbo (1988), "public policy is *prescriptive* in that it provides a set of goals or objectives that an agency, group, or person would like to achieve.... Public policy is also *descriptive* in that it refers to actual actions being taken by governmental agencies" (p. 7). Guba (1984) also suggests that the term "policy" can be defined in a variety of ways and that the

definition chosen conditions the type of policy study to be carried out. He categorizes policy in terms of three broad types; the first of these types, policy-in-intention, is of particular interest to this study because it involves governmental action.

Despite the diversity of views and perspectives on public policy, there are two major themes which recur throughout the literature. First, public policy is exclusively associated with the exercise of government authority. According to Gustavsson (cited in Kiviniemi, 1986), a public policy is "a relation between government and citizens in which government induces citizens to act in some way they would not otherwise act" (p. 251). Dye (1975) describes three distinctive characteristics of this phenomenon.

First of all, government lends *legitimacy* to policies.... Only government policies involve legal obligations. Second, government policies involve *universality*. Only government policies extend to all people in a society.... Finally, government monopolizes *coercion* in society - only government can imprison violators of its policies (p. 18).

Yeakey (1983) also reflects this same view, stating that "public policies are both authoritative and legally coercive" (p. 257).

The second general theme observed in the literature is the notion that this governmental authority is exercised in order to "direct human actions to a normatively preferred outcome" (Meehan, 1990, p. 35). Thus, Nagel (1985) defines public policies as "government decisions designed to cope with social problems, where the government decisions have a prospective influence on future government decisions, rather than just the immediate parties" (p. 49). J.T. Guthrie (1984) describes educational policy thus:

A policy is a desired or intended principle of operation. It is pragmatic because it relates means to goals in a consistent manner.... A policy is distinguished from a program, which is a more highly specific set of actions. A policy is not well construed as a procedure nor does it carry the theoretical connotation of an explanation. A policy is a goal but it is more than that. It represents a rule of thought or action that commands the resources and the commitment of the policymaker (p. 671).

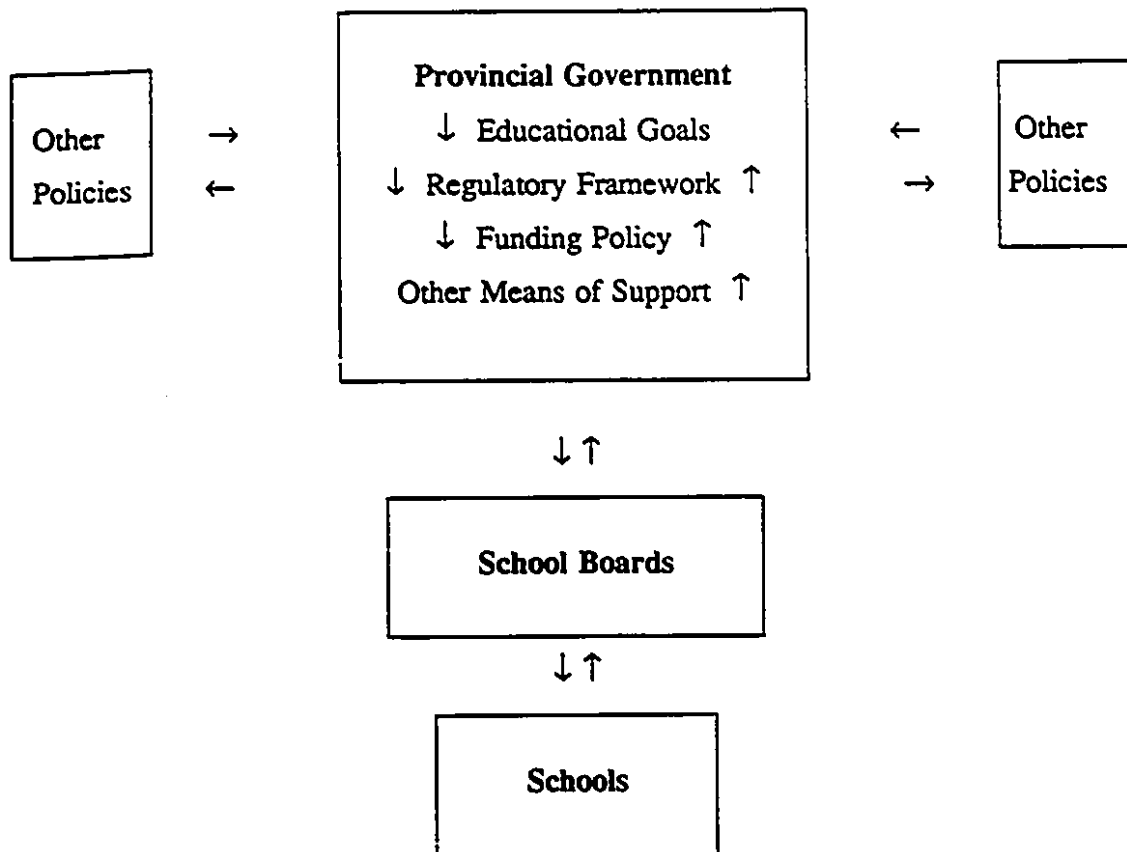
Public policy can thus be viewed as an instrument of governance, used first to establish intents, priorities and goals and second, to direct future action, primarily through the two aforementioned dimensions of control and benefits (Downey, 1988). Public policy begins with intents and proceeds through various forms of action and inaction. In the latter case,

the government decides not to act and policy becomes one of omission rather than one of commission (Yeakey, 1983). Some actions are taken so as to heighten visibility of a particular issue and have more of a symbolic than a substantive effect (Sheriff, 1983).

In a public policy domain such as education, government action may be exercised directly by the government or delegated to subordinate bodies, such as school boards. Each of these "policy actors" is legally responsible for the formation and implementation of public policy at one level of the system or another. Policy actors have a variety of means at their disposal which can be thought of as "policy instruments". The development, enactment and implementation of educational policy is an interactive process. The various elements of one policy affect each other; similarly, the intersection of different policies multiplies these interactions. The goals, behaviours and actions of stakeholders at different levels of the system interact in a myriad of ways. The understanding of one element, such as legislative action, is not complete until one understands its relation to the other elements of this policy matrix (Lawson & Woock, 1987; M. McLaughlin, 1987).

To take educational policy as an example of public policy, the provincial government decides on various goals for public education (e.g. providing equal opportunity to students with disabilities). It may chose to incorporate certain policy elements into the regulatory framework (e.g. a law requiring school board to provide access to all students). It may modify its grants' policy to support certain elements (e.g. funding incentives for integration) and may provide other forms of support (e.g. provincial curriculum guides).

The sum of these policy elements have to be meshed with other related policies (e.g. decentralization of educational decision making, non-educational programs for persons with disabilities). Other policy actors become involved in implementing the policy (e.g. school boards and schools). At each level of the system, the interactions continue until the policy affects - in both intended and unintended ways - the student. A simplified version of this policy framework is shown in figure 2.1.



Note. Additional goals, rules, resource policies and other means of support for implementing policy provided for at the school board and school levels are not shown.

FIGURE 2.1

Public Policy Framework

As suggested by the model shown in figure 2.1, governments have a variety of policy instruments at their disposal. For purposes of this study, the enactment of compliance standards by legislation, or the creation of a regulatory framework, is of particular interest. It should be noted, however, that everything the government, school boards or other public bodies do is either empowered or required by statute, making it difficult to distinguish between "legislative action" and other forms of government action.

Generally speaking, legislative action, or the *regulatory framework*, is understood as the means by which a government regulates and controls those matters which come within its authority (McDonnell & Elmore, 1987). These decisions may take various forms; however, they are all based on statutory authority and are generally prescriptive in nature,

consisting of *substantive laws*, which "fix duties, establish rights and responsibilities" and *procedural laws*, which "prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court" (Black, 1990, p. 1203). The regulatory framework also includes *delegated legislation* enacted by subordinate bodies, such as the executive branch of government, Crown agencies, municipalities and school boards.

The word "right" encompasses many denotations and connotations. The concept of a right can be built on a variety of foundations, such as natural law or social contract (Machan, 1989). Similarly, one can construct a moral or philosophical basis for providing rights to particular groups, such as children (Alston, Parker & Seymour, 1992; Gaffield & West, 1978) or to particular benefits, such as education (Magsino, 1978, 1982a, 1982b; Olafson, 1973). It is also argued (Abberley, 1987; Barton & Smith, 1989) that the emergence of rights invariably results from a reaction to the oppression of a group within society. None of these foundations will be explored in this brief review; in the context of this discussion, a "right" is construed as a "legal right", one conferred upon citizens by law (MacKay, 1991), using the model shown in figure 2.2.

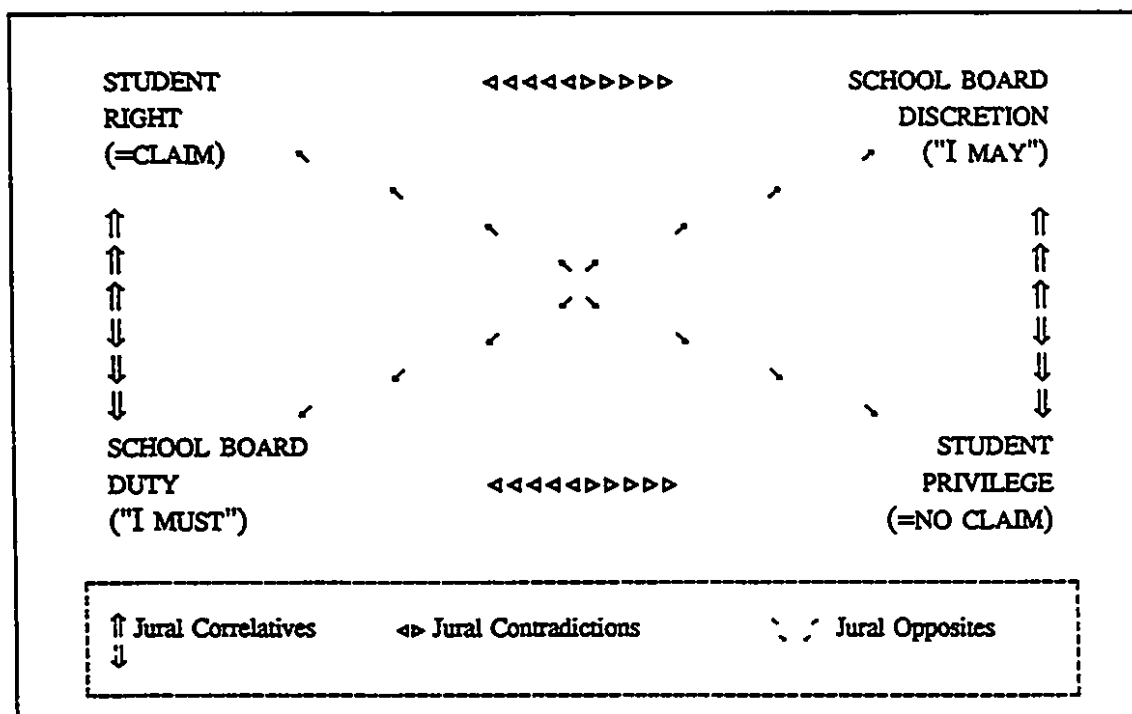


FIGURE 2.2

Student Rights to Education

Figure 2.2 represents a simplified form of a comprehensive scheme of jural relations constructed by Hohfeld (1913/1964).³ He classifies "rights" and "privileges" as jural *opposites* because only rights provide a legal entitlement to a benefit. Privileges, as Asch (1989) would say, are enjoyed at the sufferance of others. Generally speaking, the presence of a right in one person (e.g. a student) entails a jural *correlative* duty in another person (e.g. a school board). Similarly, the presence of a right in one person implies the absence of discretion in another person, a relation which Hohfeld calls a jural *contradiction*. In other words, a right is understood as "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others" (Black, 1990, p. 1324).

The creation of rights for individuals, or classes of individuals, and the imposition of duties on individuals, groups and public bodies is based on a set of values espoused by the government. In a democratic society, such values are understood to be those espoused by the community the government represents. It is often argued that individual rights are the very foundation of a democratic society (Carmichael, Pocklington & Pyrcz, 1991). Legal rights may be used, among other purposes, to enshrine certain fundamental values, such as equality, or to provide a basis for various social and economic benefits, such as education (Higgins & Barresi, 1979; Higgins, Ross & Hockenberry, 1979).

The relationship between legal rights and the education system is more subtle and pervasive than the simple provision by law of entitlement to schooling or other educational benefits. Manley-Casimir and Pitsula (1988-89) argue that law and education fulfil similar and complementary functions in our society:

Each in different ways is concerned with fundamental values, their transmission and preservation; each must adapt to and accommodate shifts in values and the reflection of these values in policy and practice; each is inherently normative, that is, concerned with individual and collective mores, social ideals and prized beliefs of the culture.... Both law and education form part of the normative order of society.... In this normative order and stated simply, the school is expected to transmit or impart these norms or expectations about behaviour to the young while the law serves to adjudicate conflicts that arise in the living out of these norms or expectations (p. 40).

"The teaching of justice requires just schools" (Kholberg, cited in Manley-Casimir, 1974,

p. 361) and the law must educate citizens as well as protect their rights (Zuker, 1992).

The provision to children of the right to equality of educational opportunity is also premised on the belief that children should be treated as persons before the law (Manley-Casimir, 1979). In establishing such rights, the child's place in the family, in the school and in society at large is redefined (Ayim, 1986; Esbensen, 1991; Magsino, 1991; J. Wilson, 1985). In the case of children with disabilities, the right to equal educational opportunity becomes the foundation for equal treatment as an adult and contributing member of society (R.S. Gall, 1993; Lusthaus, 1987; Kysella, French & Brenton-Haden, 1993).⁴

In the next section, the literature dealing with these normative values of equality and equal educational opportunity, especially for students with disabilities, will be presented and discussed.

2.3 Equality and Public Schooling

In this section, the literature concerning general concepts of equality will be reviewed, followed by a discussion of the literature dealing with the application of these basic principles in a school setting.⁵

2.3.1 Concepts of Equality

The notion of *equality* is as old as human thought but despite its universal appeal, it still remains an "elusive ideal" (Bedau, 1967; Eichler, 1988). In the words of Lucas (1965):

Equality is the great political issue of our time.... The demand for equality obsesses all our political thought. We are not sure what it is... but we are sure that whatever it is, we want it (p. 296).

The very concept of equality is a paradox. On the one hand, it is often asserted that all persons *are* equal, as stated in the *American Declaration of Independence* (1776): "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights..." (cited in Schapiro, 1958, p. 124). However, all people are not *in fact* equal, as stated by Blits (1990):

Every individual inherits some of the advantages or disadvantages of his ancestors and is largely influenced by the social conditions (education, family environment, and the like) in which fortune places him (p. 309).

The attempt to resolve this paradox has a long history, one which shows no sign of abating (Fogarty, 1987; Marcil-Lacoste, 1989-90).

Lucas (1965) argues that formal equality⁶ by itself establishes very little. He also rejects the notion of equality as an argument to treat human beings humanely. While conceding the importance of "equality before the law", he argues that it is not an egalitarian concept: "Justice has her eyes blindfolded; only those considerations which go into the scales are weighed" (p. 300). In a subsequent article, Lucas (1977) asserts that "the concept of equality belongs, properly speaking, to the mathematical disciplines" (p. 255); it is inappropriate for social and political discourse and is counter-productive.

Westen (1982) argues that "equality is an empty vessel with no substantive moral content of its own" (p. 547). Similarly, he asserts that "equality is not alone in its emptiness.... Freedom, too, is a formal concept with no substantive content apart from the variables which are inserted in it to give it meaning" (p. 547, n. 31). Westen (1982) applies his reasoning to cases based on either "fundamental rights" or "suspect classifications":⁷

Fundamental rights cases and suspect classification cases involve different substantive rights, but their logic is the same; each comes clothed in the form of equality, yet each finds its substance in an underlying entitlement that can and must be worked out without reference to the general notion that likes should be treated alike (p. 568).

This argument focuses on the Fourteenth Amendment of the United States Constitution, which provides for "*equal* protection of the laws". If equality is as empty as Westen suggests, then a great deal of American constitutional jurisprudence is based on a fallacy.

It is not surprising that Westen's argument has attracted considerable attention and criticism (e.g. Chemerinsky, 1983; D'Amato, 1983; Greenawalt, 1983; Karst, 1983). Karst (1983) views constitutional equality as the essence of substantive rights - "the social cement that binds our nation together" (p. 280).⁸ Neither traditional views on equality nor these critiques had any effect on Westen (1983a, 1983b), as illustrated by the latter's (1983b) reference to "Thus spoke Zarathustra" by Nietzsche:

Thus I speak to you in a parable - you who make souls whirl, you preachers of *equality*. To me you are tarantulas, and secretly vengeful. But I shall bring your secrets to light....

I do not wish to be mixed up and confused with these creatures of

equality. For, to *me*, justice speaks thus: "Men are not equal." Nor shall they become equal (pp. 1186-1187, n.3).

As suggested by Gibson (1990), the problem with equality is not that it is an empty notion but rather that it is full to the point of spilling over.

When governments attempt to define equality in law, they are no longer indulging in philosophical discourse, as the results of their deliberations will result in the creation of various rights and obligations enforceable by the courts (Dorsen, 1967). Thus, for example, Dworkin's (1977) principles of "equality of treatment" and "treatment as an equal" can only be fully understood legal terms when they are applied in a specific situation. In R.N. McLaughlin's (1979) words: "Legal equality is not treating everyone alike. Few laws are 'equal' in this sense" (p. 5). As expressed by Frankfurter, J. of the United States Supreme Court in *Dennis v. United States* (1950): "It was a wise man who said that there is no greater inequality than the equal treatment of unequals" (p. 184).

Legal equality ensures that the distinctions which laws do make between groups are relevant to acceptable public purposes (R.N. McLaughlin, 1979). It is violated when a government classifies so as to distinguish among persons who should be viewed as similarly situated or when it fails to classify appropriately. As pithily stated by Anatole France (cited in Abella, 1984): "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread" (p. 1).

Equality is often the rhetorical and ideological battleground, where the interests of majority and minority groups are fought out, where the rights of the individual are pitted against the rights of the collectivity (George, 1989). These rights are described by a variety of terms, including human rights, such as freedom of religion and free speech; political rights, such as the right to vote and freedom from unreasonable search and seizure; and socio-economic rights, such as health care and education. Henkin (1981) contrasts the American and French approaches to the provision of rights. Briefly, he asserts that in the British-American tradition, individual rights are preserved within the "social contract" between government and the citizenry, while in the French tradition, individual rights are pooled to create collective rights. These two traditions create very different environments in which to assess equality rights.⁹

Equality can thus be used to describe various forms of distributive justice, usually involving some notion of individual liberty and welfare. As stated by Rawls (1971): "The distribution of wealth and income, and the hierarchies of authority, must be consistent with both the liberties of equal citizenship and equality of opportunity" (p. 61). Equal citizenship is based on the premise that although people may possess different qualities, and therefore be unequal in terms of merit, they are all of equal worth (Vlastos, 1962). Equal opportunity implies freedom to exercise one's natural abilities. However, as argued by Frankena (1962), it can also involve special consideration for individuals in order to "restore inequalities due to natural or extraneous causes" (p. 15). Proponents of a broader construct for equality rights argue that protecting people from the unjust application of law, or even unjust laws themselves is not enough; equality is achieved when a minimum level of social or economic benefits are provided. As Ginsberg and Lesser (1981) observe, "it does little good to be secure from physical harm or abuse if one lacks the subsistence to survive" (p. 237).

Distributive, when used to describe justice, usually means the "fair disbursement of common advantages and sharing of common burdens" (Black, 1990, p. 864); however, it is sometimes more narrowly construed, for example, when used to describe adversarial bargaining as a "zero-sum game", where the gains of one side are viewed ineluctably as a loss to the other. Thus, it can be argued that a claim to certain benefits (goods, services, treatment, etc.) on the basis of equality entails the loss or denial of a benefit to someone else. For example, the prohibition against mandatory retirement (equality on the basis of age) provides benefits to older workers but results in reduced employment opportunities for younger workers (Bator, 1986). Thus, the concept of equality is seen both positively and negatively by some, especially in relation to affirmative action programs (discussed below, p. 29).

Contemporary authors often discuss equality in terms of "fair play", also known as *procedural equality*, and "fair shares", also known as *substantive equality*. According to J.M. Vickers (1983), "fair play" aims at removing external barriers to allow people an equal opportunity¹⁰ to compete in "life's race". This view can encompass a wide variety of treatments, as stated by Gibson (1990): "Stingily applied, the fair play ... model

represents a stern and unsympathetic form of rugged individualism. Generously applied, it can accommodate a considerable measure of humanitarianism" (p. 63). J.M. Vickers (1983) describes "fair shares" as a more expansive form of equality which promotes the collective welfare of all members of the community, regardless of their ability to compete in "life's race". Otherwise, it is argued, disadvantaged individuals will still finish last, if they finish the race at all; as Bayefsky (1985) says: "Free to try. Born to lose" (p. 5). Equality is also closely associated with non-discrimination, which Bayefsky describes as "positive and negative statements of the same principle" (p. 27).

Equality can be narrowly viewed as the obverse of discrimination or more broadly construed. In the latter construct, the fact that one refrains from discriminating against someone does not mean *ipso facto* that one is providing equality to that person (Gold, 1982). The nexus between the two depends on the interplay of various constructs of equality and discrimination, which are beyond the scope of this review to explore. Simply put, discrimination can be viewed as "treating one person differently from another without proper justification" (Dukelow & Nuse, 1991, p. 288). Thus, discrimination means more than treating people or groups differently, it involves some notion of injustice, often termed *invidious* or *prejudicial* treatment. A finding of discrimination is dependent both on context and values; it should not be surprising, therefore, that what is deemed to be discriminatory has changed significantly over the years.

Discrimination may be overt and directed against individuals or groups but it may be more subtle, even unintended. As stated by Abella (1984):

It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory (p. 7).

Such "indirect" discrimination is usually referred to as *systemic* discrimination, which Gibson (1990) states exists, "if it is a consequence of the manner in which some general system is organized or operated, rather than of particularized action directed at specific individuals or groups. The construct of systemic discrimination reinforces the definition of discrimination on the basis of *results* or *effects*, rather than *intent*s (Knopff, 1989, chap.

2). The invidiousness and pervasiveness of systemic discrimination has given rise to a concept, even more controversial than equality itself - affirmative action.

Affirmative action is intended to undo "past wrongs"; according to Blackburn:

[It encompasses] any action taken to break historic social patterns of rejection, based on race, colour, religion or national origin, which have produced seriously disadvantaged minorities, whether or not these patterns result from cold-blooded, calculated conspiracies ... or merely result from thoughtlessness, apathy and lack of awareness (cited in Tamopolsky & Pentney, 1985, pp. 4/80-4/81).

People opposed to affirmative action term it "reverse discrimination", assert that "wrongs cannot right wrongs" and claim that it is as unfair as the discrimination which it purports to address. While supporting the legitimacy of affirmative action, Bosset and Caron (1989) suggest three criteria to test the legitimacy of such programs: established past discrimination toward the "minority group", proportionality of the program to the goals being pursued and lack of excessive prejudice toward the "majority group".

Although affirmative action programs can produce effects on members of the majority group in the short term which can be viewed as discriminatory, it is intended to produce a new balance of equality in the long run. In *Action travail des femmes* (1987), the Supreme Court of Canada cited with approval the appeal court, which stated that "the prevention of systemic discrimination will reasonably be thought to require systemic remedies" (p. 215). The Court summarized the validity of affirmative action thus:

To render future discrimination pointless, to destroy discriminatory stereotyping ..., it is essential to combat the effects of past systemic discrimination. In so doing, possibilities are created for the continuing amelioration of employment opportunities for the previously excluded group (p. 215).

Although this case involved affirmative action for women in employment, the parallels for persons with disabilities in education are obvious.

As can be seen from the foregoing, equality is a pervasive concept that invokes the principles of fairness and justice and subtends both "like treatment" and "unlike treatment", depending on the particular social context. One such context in which these general notions of equality have been put to the test, is the domain of public schooling.

2.3.2 Equality in a School Setting

As alluded to above (see note 10), equality in the school setting is often termed *equal educational opportunity* [EEO], a construct which has evolved over time and which is defined differently by various commentators (Ennis, 1976; Komisar & Coombs, 1964; Lapati, 1976). Porter (1979) reports that for researchers such as Coleman et al. (1966), EEO is understood in terms of group membership, while for others such as Jencks (1973), EEO is understood on an individual level. Thus, for example, if EEO is considered in terms of years of schooling, Coleman would look to see if the averages for different racial groups were similar, while Jencks would consider everyone together to calculate the average and insist that all must be near it. In education, as in other contexts, equality has both an *absolute* and a *relative* dimension, the former being an expression of fundamental human values, while the latter depends on the circumstances, i.e. "What best equalizes opportunity in this context?" (Armour, 1975, p. 146).

Coleman (1968) associates the origin of EEO with the emergence of the industrial economy and public tax-supported education in the mid-nineteenth century. Prior to this time, education, like other "welfare" functions, was a familial responsibility. "Thus, it was to the family's interest to see that its members became productive. Conversely, a family took relatively little interest in whether someone in *another* family became productive or not" (p. 8). As employment opportunities outside the home increased, the locus of schooling shifted from the family to the community. Educational opportunity, and then *equal* opportunity, became linked, therefore, to both the needs of the emerging industrial economy and the assumption by the community for an increasing array of social responsibilities. With this development, the recognition of the value of education to both the individual and society was born.

Originally, according to Coleman (1968), EEO was understood to mean the provision of the *same curriculum* to all students in the *same school* but this notion was later modified by the assumption that different children had different occupational futures which required differential courses of study. Moreover, the meaning of *same school* was "refined" to mean the same schools for whites and the same schools for blacks, a view which was affirmed by the U.S. Supreme Court in *Plessy v. Ferguson* (1896). Fifty years later, this

ruling was reversed in *Brown v. Board of Education* (1954), the Court declaring that the doctrine of "separate but equal" had no place, that the segregation of the races for purposes of schooling is inherently unequal and that "the impact [of segregation] is greater when it has the sanction of law; for a policy of separating the races is usually interpreted as denoting the inferiority of the negro group" (p. 494).

The seminal study by Coleman et al. (1966) conceptualizes inequality in schools in terms of resources (e.g. per-pupil expenditures), racial segregation, intangible factors (e.g. teacher expectations), consequences of schooling for individuals with equal backgrounds and abilities and consequences of schooling for individuals with unequal backgrounds and abilities. The Coleman Report argues that the school ought to, but fails to, provide EEO to children from different socio-economic backgrounds. Gordon (1972), in one of the Harvard papers on the Coleman Report, arrives at the following conclusion:

Clearly, some children come to the school situation with a pattern of strengths and weaknesses and styles that may be somewhat atypical to the pupil ability patterns the school is most accustomed to work with.... We move toward equalization of opportunity when these special patterns become guideposts around which learning experiences are designed to achieve common standards as well as unique achievements (p. 431).

As can be seen from Gordon's statement, EEO begins with the consideration of similarities and differences among the children who come to school; these reflect internal factors, such as ability and interest, and external factors, such as socio-economic status and cultural values, as well as the interaction between the two. Inequalities arise from inappropriate treatment of these similarities and differences, that is when we act on the basis of factors which are not relevant to the school context or fail to act on the basis of those which are relevant. For example, EEO is denied or diminished when one acts on the basis of colour (irrelevant factor) or when we fail to compensate for a child who comes from a home with very little stimulation (relevant factor).

According to Burbules, Lord and Sherman (1982), a factor is relevant if and only if it is directly related in an instrumentally helpful or harmful way to achieving a given end. They discuss relevant factors in terms of advantages and disadvantages, which they term "merits" and "needs". They also note that not all merits or needs will be considered or,

if they are, given equal weight, when one factor is balanced against another: "In a world of scarce resources, such balances are yet another source of difficult and indefinite judgments" (p. 173). How these judgments are made, or ought to be made, depends on the purpose one assigns to education. Cummins (1986) has constructed a theoretical framework to consider the treatment of minorities in the school setting. He describes alternative attitudes and interactions between the majority and minority groups and posits that students will either be *empowered* or *disabled* as a result.

Derr (1973) classifies schools according to social purposes, on the basis of an intent to maintain or change the existing order, and individual purposes, from the perspective of the individual *qua* person and as a member of society. In terms of EEO, it is suggested that in all these cases, public education involves a mixture of altruism and utilitarianism, of idealism and cynicism. Sometimes it is difficult to distinguish motives:

Perhaps at times and in places the equality theme in the expansion of public education was a spiritual sugar-coating or an ideological wrapping to conceal the hard materialism of economic reasoning. Equality appeared as an exalted goal more acceptable than the profane accumulation of wealth (Porter, 1979, p. 243).

Similarly, Cummings (1986) explains the paradox of theory and action thus: "Within democratic societies, contradictions between the rhetoric of equality and the reality of domination must be obscured" (p. 25).

The interrelated purposes of schooling and their relation to EEO are illustrated by the following statement in the *Report of the Royal Commission of Inquiry on Education in the Province of Québec* (1963-1966, Vol. I, pp. 3-4):

As much for spiritual and humanistic as for practical reasons,... the education system, as such, must have three goals today:

- to make available to all, without distinction of creed, racial origin, culture, social environment, age, sex, physical health or mental capacity, an education of good quality satisfying a wide variety of needs;
- to allow everyone to continue his studies, in the field which best suits his abilities, his tastes and his interests, up to the most advanced level he has the capacity to reach, and thus have available to him everything which can contribute to his complete fulfilment;

- to prepare all young people for life in society, which means earning their living by useful work, intelligently assuming their social responsibilities in a spirit of equality and freedom, as well as to offer adults every opportunity for self-improvement.

W.G. Fleming (1974) cites this report as exemplifying the types of goals espoused by education commissions throughout Canada since World War II.

The foregoing reflects a positive view of school, where, according to Porter (1965) "the occupational structure will reflect a more rational allocation of ability; and individuals will have the greatest opportunity to develop their talents and make their contribution to the social good" (p. 167). However, the studies by Coleman et al. (1966) and Jencks (1973) suggest that despite massive investment in education, we have failed to achieve these objectives. Porter himself (1979) states that "rather than offset the inequalities of class, public education has served to perpetuate them" (p. 255). Hurn (1985) indicates that the positive view, which he terms a "functional paradigm", has been increasingly questioned as a sociological explanation of schooling.

Hurn (1985) speaks of an increasing disillusionment in the belief that schools contribute to EEO, that they are improving and even that we know how to improve them. He describes the opposing "conflict paradigm" in the following terms (p. 48):

It is an essentially sceptical or even cynical view of the role of schooling in modern society. Thus,... the conflict paradigm often depicts them [schools] as institutions that perpetuate inequality and convince lower-class groups of their inferiority.... In the conflict paradigm, furthermore, we find an argument that schools are often instruments of *class domination*, a way in which elites render the mass of the population docile and compliant.

Mehan (1992) provides a more balanced assessment of the role of schools in terms of promoting or attenuating inequality. He sees the school as "an interactional device that shapes students' careers on the basis of an interplay between students' backgrounds characteristics and the institutional practices of the school" (p. 16).

It is beyond the scope of this review to discuss the theories of such critics; suffice it to say that the ability of the public school to contribute to EEO is by no means a given. Schools, in many ways, provide a mirror-like image of the society in which they are grounded (Yeakey 1981) and it is not surprising that achieving equality in the school is

as complex as achieving it in society at large (Frederickson, 1990; Marjoribanks, 1991; Sutton, 1991). As James (1991) notes: "schools, despite a plethora of reforms over recent decades, routinely fail to alter their hierarchical and unequal treatment of students from different groups in society" (p. 169). Manley-Casimir and Housego (1970) observed that one main reason for our limited success in achieving equality is "the lack of explicit knowledge of what mechanisms and policies will achieve specific ends" (p. 86). The following provides a brief description of the means by which schools have *attempted* to reach this goal.

At the outset, it should be recognized that resource allocation has always been one of the principal means used to foster EEO, which has been a recurrent theme in school finance literature for many years (Berne, 1988; Jones, 1981; Verstegen, 1990). In this context, *equality* is often termed *equity*, a term which Burbules, Lord and Sherman (1982) also suggest is more appropriate in the general EEO construct.¹¹ For purposes of this discussion, the terms *equity* and *equality* will be used interchangeably. In the simplest terms, there are two means by which resources are directed to support EEO. The first, termed *horizontal equity* in financial jargon, is designed to provide the same level of resources to each school district, usually by means of provincial (state) equalization grants based on relative district wealth. The second, termed *vertical equity*, is designed to provide a different level of resources to each district, typically in the form of "add-on" grants on the basis of relative program needs (Michaud, 1989).

As reflected in the work of many authors (Burbules, 1990; CSE, 1980; Coleman et al., 1966; Good & Brophy, 1986; Harvey & Klein, 1989; Howe, 1989, 1990; Levesque, 1979; Nwabuogu, 1984; Ornstein, 1982), the provision of EEO can be conceptualized in terms of inputs, throughputs and outputs. These elements are summarized by Sutton (1991).

Schooling inputs consist of what a school starts with when educating its students and include financial, physical, and human resources.... Educational processes [throughputs] include what happens within the school when students are educated - for example, how students are treated by teachers and what courses they take. Outcomes include academic achievement, rate of dropping out, and attitudes (p. 478).

Murphy (1989) states that the emerging construct of EEO is access to learning which is concerned more with *how* inputs are directed towards achieving school success, which

places the focus for the EEO process on the school level.

As alluded to above (see note 10), equal opportunity is often interpreted narrowly in terms of inputs,¹² as opposed to outputs. Karst (1983) refutes this distinction and cites education as a case in point, while Hurn (1985) emphasizes that EEO encompasses a wide variety of meanings. For purposes of this discussion, EEO is understood to embrace the three elements mentioned above - inputs, throughputs and outputs, in much the same way as equality has been described in terms of fair play, fare shares and affirmative action.

EEO policy, regardless of the means employed, attempts to reduce existing inequalities among individuals and groups due to genetic and environmental factors (Coleman, 1973), to select and pursue educational goals (M. Lieberman, 1959), and to seek, what is sometimes called, a *minimally adequate education* (Chambers, 1987). It is generally recognized (Blackstone, 1969), that we cannot deal with the problem of educational equality without confronting the problem of social and economic inequality (Menacker, 1990). As Yeakey and Johnston (1985) put it, we must recognize the "synergistic relationship between achievement and family income" (p. 167).¹³ A gradation of measures may be required in order to foster greater equality, even if the ideal state of complete equality can never be attained. Providing access to schooling is only a first step; although the schools cannot be required to ensure that all students achieve equality of results, they are required to equalize every student's opportunity by providing different inputs and throughputs which contribute toward the achievement of equality of results (T. Fleming, 1981; Horowitz, 1966; Kirp, 1968, 1977; Yudof, 1973).

Much of the EEO literature is premised on the belief that students' success in school should be determined by ability and effort and not class or wealth. However, there is considerable divergence concerning the extent to which schools ought to attempt to compensate for such inequalities, from the conservative position (of simply protecting basic rights) to the social-democratic position (of redistributing economic benefits) (Feinberg, 1975; Salomone, 1986). There is similar diversity regarding the means to achieve such goals and whether equality can be achieved, or at least maximized, by dealing with a diversity of students together or separately (see for example, Brundt, 1982;

Reese, 1988; Slavin, 1990). Students with disabilities are one group which has attracted considerable attention around these issues.

2.4 EEO for Students with Disabilities

This section reviews the literature dealing with EEO and students with disabilities.¹⁴

2.4.1 General Considerations

Even a brief review of the history of the treatment and education of persons with disabilities (Blatt, 1981; Bogdan & Taylor, 1982; Bruininks, Hauber & Kudla, 1980; Lazerson, 1983; Lusthaus, 1991; Wolfensberger, 1975; Zigler, Hodapp & Edison, 1990), reveals that these people have been labelled by a variety of degrading terms, which have a profound influence on both private attitudes and public policy. It is not surprising, therefore, that many people are now striving to change both the ways we think about persons with disabilities and the vocabulary we use to describe them. Articles by Asch (1989) and Snow (1991), two authors with disabilities, demonstrate the need to recognize that persons with disabilities cannot be reduced to a flat uni-dimensional character, bounded by a disability label.

Gartner and Lipsky (1987) remind us that nomenclature in the field of disability is often confusing and changing but generally speaking, the understanding of disability has been grounded in medical science. The medical model of disease may be depicted symbolically as a sequence (World Health Organization [WHO], 1980, p. 10):

ETIOLOGY → PATHOLOGY → MANIFESTATION.

This perspective has been responsible for maintaining a focus on physical and mental characteristics, rather than on the individual; as Ferguson and Asch (1989) state, "parents and children became the adjectives, disability the noun" (p. 108).¹⁵

In the educational milieu, it is common to discuss this population in terms of "categories of exceptionality" or as students "with special needs". Winzer (1990), while recognizing the lack of standardized definitions in Canada, provides a useful typology (summarized in table 2.1.) of the categories of exceptionality which are used in different jurisdictions.

TABLE 2.1
Categories of Exceptionality

Intellectual differences^a	which include children who are intellectually superior and those who are mentally handicapped.
Sensory handicaps	which include children with auditory impairments and those with visual problems.
Communication disorders	which include children with speech and language problems and those with learning disabilities.
Behaviour disorders	which include children with social maladjustment, emotional disturbance and childhood psychoses.
Physical handicaps and Impaired health	which include children with neurological defects, orthopedic conditions, birth defects and conditions resulting from infection and disease.
Developmental Disabilities	which include children with pervasive disorders, such as infantile autism, and those with multiple handicaps, such as cerebral palsy and mental retardation, or deafness and blindness.

Note. From *Children with Exceptionalities: A Canadian Perspective* (2nd ed., pp. 6-7) by M.A. Winzer, 1990, Scarborough ON: Prentice-Hall.

^a The inclusion of the *gifted* in this category is an anomaly in relation to the overall classification scheme, inasmuch as children with special abilities in other areas - physical prowess for example - are not generally considered as "exceptional".

It is beyond the scope of this brief overview to discuss the problems associated with these definitions, or others presented by different authors. However, it should be noted that there is considerable controversy over definitions, especially for the "mild disability categories".¹⁶ This brief discussion will be confined to the general construct of disability. Gartner and Lipsky (1987) summarize the issue of disability in the following terms:

Society's attitudes toward disability are deeply ingrained in professional practice. This is particularly evident in the social-psychological literature, where disability is based on the following assumptions: (1) disability is biologically based; (2) disabled persons face endless problems, which are caused by the impairment; (3) disabled persons are "victims"; (4) disability is central to the disabled person's self-concept and self-definition; and (5)

disability is synonymous with a need for help and social support (p. 381).

In contrast to this traditional perspective, Nordenfeld (1992) defines disability as "a non-ability - given a specified set of circumstances - to realize one or more of one's vital goals (or any of its [sic] necessary conditions)" (p. 10). Nordenfeld thus rejects the notion of "ability" as an absolute norm against which disability can be measured, in favour of a tripartite relation involving the person, his or her vital goals, and the environment in which he or she acts. His model, which is shown in figure 2.3, provides a socio-political understanding of disability, consistent with the minority rights paradigm discussed below.

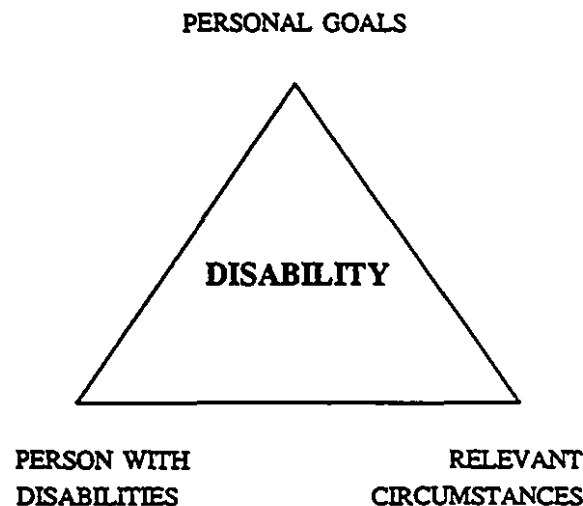


FIGURE 2.3
Socio-Political Model of Disability

The application of EEO to students with disabilities is more complex than its application to the poor or to members of ethnic or racial minorities because of the lingering attitude that equality rights do not apply to students with severe disabilities. Stratford (1991), with reference to Lusthaus (1985b) reports that individuals are not considered as human unless they possess the essential characteristics of "humanness" - intelligence, self-consciousness and the ability to have human relationships (p. 7).

Weinberg (1981) states that several philosophers, in attempting to formulate an argument

for *human* rights, exclude certain emotionally disturbed and developmentally disabled persons because of their alleged lack of certain *human* qualities:

I omit here [from the argument for human rights] ... the clinical cases of people who are mad or mentally defective, who always constitute special exceptions to what is generally true of men (Williams, cited in Weinberg, 1981, p. 160).

The nature of the organically defective human and the nonhuman animal with similar capacities in fact are quite close, closer in many ways than are the natures of a normal human and an organically deficient one (Weinberg, 1981, p. 182).

Such attitudes are drastic and are more widespread than most people care to admit, as evidenced by the mass support, at different times, for the sterilization and euthanasia of persons with severe disabilities (Lusthaus, 1985a; Walmsley, 1978; Wolfensberger, 1981).

Even for those who would not subscribe to such extreme views, the application of EEO to students with disabilities is still seen as problematic because of the nexus between schooling and (dis)ability, especially intellectual disabilities. As stated above, many people view EEO as an appropriate policy to compensate for conditions of socio-economic disadvantage, which are viewed as *non-relevant* criteria. Accordingly, all students who *merit* schooling, by the *relevant* criteria of ability and effort, will be able to benefit from same. By contrast, a student's disability may be viewed as a *relevant* characteristic, if it renders him or her less able to benefit from schooling.

The presumption that students with disabilities do not merit equal treatment is reflected in the history of special education (Gaudreau & Canevaro, 1990; Lazerson, 1983; Sarason & Doris, 1979; Taylor & Searl, 1987; W.J. Smith, 1992d; Woodill, 1991). The view as to who should be considered as "educable" or "non-educable" has changed over the years, a process which Orelove (1991) calls the redrawing of the educational "Maginot Line". However, throughout this process, albeit to a greater or lesser degree, students with disabilities have been the object of discrimination.

In recent years, the improvement of the quality of schools has become the leitmotif of educational policy talk; as Magnuson says (1985), educational reform is *à la mode* in North America. The publication of *A Nation at Risk* (National Commission on Excellence

in Education, 1983) did not create the "movement for excellence" but it did provide an enduring focus (Firestone, Fuhrman & Kirst, 1991; Giroux, 1984; Hanson, 1991). Among many other issues, this movement fuelled the notion that the attention being *lavished* on disadvantaged students was detracting from the reform agenda - in other words, quality and equality were not compatible (Bacharach, 1988; Ferguson, 1989; Marcoulides & Heck, 1990). Not surprisingly, many people saw the reform movement as a threat to equality of opportunity for all students (Apple, 1988, 1989; Murphy, 1989).

There is a growing body of literature which questions the incompatibility of quality and equality (Freeland, 1991; Marcoulides & Heck, 1990; National Joint Committee, 1992; Odden, 1987; Savage, 1988; Shor, 1986; Skrtic, 1991; Strike, 1985). Skrtic (1991) emphasizes the need for collaboration in a post-industrial era and that success is achieved by people "learning collaboratively with and from persons with varying interests, abilities, skills, and cultural perspectives" (p. 181). With this context in mind, the evolution of educational policy for students with disabilities will be briefly discussed.

In the last twenty years, despite the E-Quality debate, considerable attention has been paid to public policy and the education of students with disabilities, beginning, in the United States, with the adoption of the *Education for All Handicapped Children Act* (1975), commonly known by its pre-passage name, P.L. 94-142 (consolidated in the *Individuals with Disabilities Education Act [IDEA]*).¹⁷ In Canada, the report of the Commission on Emotional and Learning Disorders in Children [CELDIC] (1970) has often been cited as a key document in the development of Canadian special education policy (Goguen, 1980; Karagianis & Nesbit, 1980). However, it did not result in any significant federal initiative in this country. Csapo (1980) describes Canadian special education policy as "an intricate patchwork quilt of political accident, professional ambition, and pedagogical oversight loosely bound together with provincial permissive or mandatory red tape and federal neglect" (p. 215). Contrasting the lack of federal involvement in Canada, the *IDEA* has remained a focus for policy in the United States (Reynolds, Brandl & Copeland, 1983).

Whether the public policy forum is federal or provincial, understanding public policy begins with the perspective of the policy-makers toward the social problem which is being

addressed. As Townsend states, the way in which a problem is conceived "contains an implicit prescription for policy" (cited in Jongbloed & Crighton, 1990, p. 25). The emergence of EEO policy for students with disabilities represents a paradigmatic shift in the way in which policy-makers view disability and the role of education in responding to the needs of this population (Heward & Lloyd-Smith, 1990; Salomone, 1986).

This new perspective posits that these students should be understood as a minority group and given the same consideration in terms of EEO as any other group which has been disadvantaged by its treatment by society. The essential elements of this minority group framework will be discussed in the following section.

2.4.2 The Minority Rights Paradigm

Traditionally, people with disabilities have been regarded as victims of a disabling condition in need of treatment, rather than viewed as an oppressed minority; this has been especially true for people with severe developmental disabilities (Barnartt & Seelman, 1988; Biklen, 1988; Gerber, 1990). Believing that people with disabilities were *objects of care*, rather than persons with legitimate interests and aspirations, social policy can be characterized as one which "imposed, in the name of benign paternalism, bureaucratic manipulation and socio-economic dependence, and ultimately dead-end lives, on people with disabilities" (Gerber, 1990, p. 4). The pervasive and negative impact of the prevailing medical model of disability on social policy is summarized by Biklen (1988):

The notion that people with disabilities suffer at the hands of their disabilities rather than from social ostracism and discrimination sets this group apart from other minority groups.... [They] become the captives of a treatment model; they and their lives become medicalized.... Indeed, identification as a patient would seem to preclude identification or status as an oppressed minority (p. 128).

The minority rights paradigm "posits that the primary problems facing disabled citizens are external rather than internal, and that remedies can be achieved through efforts to alter the environment in which they live, instead of their personal characteristics" (Hahn, 1989, p. 225, footnote omitted). In this paradigm, no one is to be denied rights because he or she is judged to be less worthy than others (Hudson, 1988):

We may "grade" people with a mental handicap according to their

measured intelligence, personality traits, social competence and so forth, but in respect of "human worth", all ... must get equal grades. "Human worth" is not a grading concept, and the moral community is not a club from which members may be dropped (pp. 230-231).

In the minority rights paradigm, the traditionally dominant *individual problem* perspective is replaced by a *public issue* approach (Borsay, 1986), fostering the transition from an institutional to community living model. This view does not deny the significance of "germs, genes and trauma but rather points out that their effects are only ever apparent in a real social and historical context" (Abberley, 1987, p. 12). As Abella (1984) states, in terms of employment policies, it is essential to develop an approach which "treats disability as tangential to, rather than definitive of, the individual" (p. 39).

Both institutionalization and special education have been characterized as a "functional limitations" model, which presumes that disabilities are essentially internal or medical and that solutions can be found to overcome, or at least compensate for, such deficits, an approach which is sometimes called the "let's-fix-it" model (Guess, Benson & Siegel-Causey, 1985). Hahn (1989) suggests that this earlier model is also defined in economic terms - the inability to engage in meaningful work. Turnbull & Turnbull (1985) offer an alternative approach to develop the capacities of persons with disabilities to engage in meaningful choice-making, which they describe as a "catalytic trigger" of independence.

Fine and Asch (1988) assert that people with disabilities "comprise a minority group and most of their problems can and must be understood in a minority-group framework" (p. 6). They define a minority groups according to four criteria: "identifiability, differential power, differential and pejorative treatment, and group awareness" (p. 7). The formation of a minority rights movement has been much more difficult for people with disabilities than for other groups, as stated by Scotch (1988):

Disabled people not only lack the common demographic conditions to foster group awareness and activism, but the social status of being disabled can create serious disincentives for many to identify themselves as disabled and act collectively on that basis (p. 161).

In addition, many persons with developmental disabilities have spent a great deal of their lives in institutions or other situations where they have been inculcated with the belief

that they cannot do anything for themselves. Oliver (1986) suggests that people with disabilities have been rejecting this "personal tragedy" view of disability and are beginning to view disability as a form of social oppression.

The minority rights paradigm is grounded in this socio-political understanding of disability. As discussed above (see note 16), the disabling experience of many children who have been labelled "mentally retarded" in school provides a classic example of the importance of environment in defining disability. "In urban, industrialized society, the concept of mental retardation provided both a legitimization for the failure of some to succeed and a ready-made explanation for perceived social disorder" (Bogdan & Taylor, 1982, p. 9). Scheer and Groce (1988) report that "an increasing number of disabled individuals have identified themselves both as unique individuals and as members of a minority group" (p. 36). It is suggested that this approach fosters both individual dignity and a claim on rights in place of charity.

Hahn (1988, 1989) states that this new approach first seeks to secure improved legislation to combat discrimination, which "can be effectively utilized to create an increasingly favourable educational, social, economic, and even physical climate for persons with disabilities" (1989, p. 230). This viewpoint has been advocated in Canada and contributed to the inclusion of disability in the equality rights provisions of the *Charter*:

The growing awareness and concern about [the rights of people with disabilities] in society is based on a true understanding that disabled people are a minority that have suffered discrimination which has limited their participation in society and who therefore require protection of the law (Kanery, cited in Patmore, 1990, p. 58).¹⁸

Asch (1989) summarizes the importance of the law to students with disabilities:

What the law is doing best today is giving parents, advocates, and disabled students something against which to measure what they have. Before... no law entitled them [students with disabilities] to be in school, and in law and practice, they were there on others' sufferance. They got crumbs and were never given any reason to think they should have more (p. 202).

The legal framework "establishes the rights and obligations of all stakeholders in the educational community.... It sets forth the limits to administrative discretion by subjecting it to the rule of law" (W.J. Smith, 1991a, p. 2). As discussed in section 1.3.3, school

boards in Canada are creatures of provincial legislatures (Hurlbert & Hurlbert, 1992) and are increasingly viewed as "state agents" (MacKay & Sutherland, 1992). Government policy generally, and legislated policy specifically, determine the extent to which students with disabilities have entitlement to various EEO rights and benefits.

This movement recognizes that law is one, albeit important, component of public policy and that "the functional demands exerted on human beings by the environment are fundamentally determined by public policy" (Hahn, 1988, p. 40), and hence the need for policy research (Hahn, 1986). There is considerable divergence on the role of legislation in effecting educational change (Goldberg, 1989; Iannaconne, 1981; Jung & Kirp, 1984; Thurston, 1980; Welton & Evans, 1986) and on the role of litigation (Lufler, 1980; Manley-Casimir, 1982; Pitsula & Manley-Casimir, 1989-90; Prasse, 1988; Van Geel, 1988). However, as McBride (1989b) argues, "the most fundamental social change for handicapped children lies in the clear, unequivocal statement of responsibility for their education by school districts as part of a legislative mandate" (p. 12).

Lusthaus, Hanrahan and Lusthaus (1979) conclude that continued legislation which promotes structural changes is required in order to break the economic barriers that keep people with disabilities "in their place" (p. 25). Engel (1991) emphasizes the "mutually constitutive" processes through which law and every day life interact, while H.R. Turnbull (1978) reminds us that although "laws are unenforceable unless they have the weight of public opinion behind them,... public attitudes can [also] be shaped by law" (p. 125). Rather than relying on moral persuasion, this paradigm depends on a plan of action which will result in legislative reform (Beachell & Peters, 1990). In contrast to earlier approaches, the advocacy movement now asserts the *right* to full participation in society (Baker, 1990). The challenge to policy makers is to devise an appropriate legal framework for the provision of EEO to students with disabilities (Blatt, 1970, chap. 5; Howe & Miramontes, 1991).

The minority rights paradigm provides the conceptual basis for the development of such a framework. Like racial minorities, they have been treated as inferiors and the importance of the aforementioned *Brown v. Board of Education* (1954) decision to

students with disabilities has been noted by several authors (Gilhool, 1976, 1989; H.R. Turnbull, 1990). The relevance of the *Brown* decision is further reinforced by the opening statement by John W. Davis, counsel for one of the defendant school boards:

If the appellants' [argument] ... should prevail here, there is no doubt in my mind that it would catch the Indian within its grasp just as much as the Negro. If it should prevail, I am unable to see why a state would have any further right to segregate ... on the ground of sex or on the ground of age or on the ground of mental capacity (cited in Gilhool, 1989, p. 243).

The literature dealing with the means to provide EEO to students with disabilities will be discussed in the following section.

2.4.3 The Provision of EEO to Students with Disabilities

As alluded to above (see note 11), in some instances, equality will be fostered by providing students with disabilities with the same rights and benefits as that provided to other students, while in others, it will require the provision of a different treatment. Thus, Colker (1987) suggests that policies for dealing with minority groups should not be designed to deny difference but to oppose subordination. Minow (1985) conceptualizes this issue as the "dilemma of difference" - "the risk of reiterating the stigma associated with assigned difference, either by focusing on it or by ignoring it" (p. 202).

Minow (1985) asks whether "the stigma and unequal treatment encountered by minority groups [are] better remedied by separation or by integration of such groups with others" (p. 157). Her analysis provides two "lenses" for focusing on critical issues such as integration. The first focuses on the groups we define: "Categories that take the form of dichotomies - same and different, normal and handicapped ... obscure the variety and range of characteristics that more aptly describe experience" (p. 203). Her second lens is the recognition that difference is constructed by the relation between groups, rather than by a difference in the group which is considered as inferior or deviant.

In other words, the condition of "normalcy" depends on the condition of "abnormalcy" for its meaning, as the definition of a slave depends on the existence of a master. By contrast, Minow (1985) argues that "focusing on the relationship or matrix in which difference is created may offer people the chance to acknowledge difference and not locate it in another who then is unequal, but instead in the relationship used to define that

'difference'" (p. 206). Consider in this light this extract from *United States v. Texas*:

Little could be more clear to the Court than the need ... for special education consideration to be given to the new Mexican-American students in assisting them in adjusting to those parts of their new school environment which present a cultural and linguistic shock. Equally clear, however, is the need to avoid the creation of a stigma of inferiority akin to the "badges and indicia of slavery"... (1971, p. 28).

It is argued that an appropriate policy framework for the provision of EEO to students with disabilities is essentially a means to reconcile this dilemma of difference.

A review of the literature reveals several critical issues in the construction of such a framework. First, several authors discuss "base policies" that establish the right to attend school without discrimination on the basis of disability (Higgins & Barresi, 1979; Higgins, Ross & Hockenberry, 1979; Poirier, 1984). Building on this base, the Council for Exceptional Children [CEC] sets forth both a set of principles (cited in Lippman & Goldberg, 1973, app. B) and a legislative framework (CEC Model Statutes, 1976) for the education of students with disabilities. The Canadian CEC provides for a similar framework (A Matter of Principle, 1974). Included in these policy statements are the right to free public schooling, the provision of special education services and the involvement of the family in the educational process.

Abeson and Ballard (1976), and Bateman and Herr (1981) review state and federal policy respecting the education of students with disabilities in terms of several major issues, notably: the right to education, due process, least restrictive placement, non-discriminatory evaluation, confidentiality and individualized instruction. Weintraub and Abeson (1976) distil these issues to mean the legal right to equal educational opportunity, or the right to access different resources for different purposes. These and other authors (e.g. Brison, 1978; Goguen & Leslie, 1980; McCarthy & Thomas, 1977) delineate more specific elements to be included in an educational policy framework such as definitions of disability, the screening and referral process, access to student records, early and extended schooling, graduation standards for students, transportation and inter-agency cooperation.

H.R. Turnbull (1990) synthesizes the various policy issues described in the American literature in terms of six major themes: zero reject; testing, classification and placement;

individualized and appropriate education; least restrictive appropriate educational placement; procedural due process; and parent participation and shared decision-making. The combination of these themes provides for free and appropriate public education (FAPE). Although Turnbull's classification scheme reflects the *IDEA*, it does not merely represent the emergent themes of one piece of legislation. Rather, it more broadly reflects the strands of the professional literature and case law, which in turn were incorporated in the U.S. federal *Act*.

In Canada, J.A.C. Smith (1980) compares educational rights in terms of six themes: zero exclusion, obligatorily "worthwhile" education, obligation to provide special programs, duty of boards to provide or purchase services, legal liability of principals in ensuring service delivery and the role of the courts as the "final arbiter" of disputes. D.H. Vickers (1981) describes EEO as "free and appropriate education to all children, in the least restrictive environment", together with the "procedural safeguards [that] will make it possible" (p. 98). A. Wilson (1983) frames her discussion of Ontario special education legislation in terms of five guiding principles: universal access, education at public expense, provision for appeal, appropriate educational programs, and ongoing assessment and review. MacKay (1984b) examines education rights in Nova Scotia in terms of three broad categories or themes: right to education, appropriate special education and parental rights and duties. Poirier, Goguen and Leslie (1988) compare the legislative action in each province in terms of the right to education, appropriate education, adequate resources and parental participation. W.J. Smith (1989) describes Québec special education policy in terms of three emergent themes: access, quality education and integration.

Although these general concepts and individual elements are articulated in different ways and with different terms, five general themes emerge from the literature: access, identification and placement, appropriate education, parental participation, and natural justice.¹⁹ Access is concerned with the right to attend school but also with barrier-free entry to transportation and facilities. Identification and placement includes non-discriminatory assessment procedures and the assignment to various school settings. Appropriate education concerns educational programs and related services. Parental participation includes the consultation of parents and their involvement in the educational

process. Natural justice is concerned with the provision of procedural safeguards and the means of enforcing the foregoing rights. The linkage of these five themes to the literature is shown in table 2.2. Thereafter, each of these themes will be briefly reviewed in turn.

TABLE 2.2
Emergent EEO Themes

Theme	Exemplary Sources in Literature
Access	access (W.J. Smith, 1989); universal access; education at public expense (A. Wilson, 1983); zero-reject (J.A.C. Smith, 1980; H.R. Turnbull, 1990); right to education (MacKay, 1984b; Poirier, Goguen & Leslie, 1988; D.H. Vickers, 1981)
Identification & Placement	testing, classification & placement (H.R. Turnbull, 1990); least restrictive environment (H.R. Turnbull, 1990; D.H. Vickers, 1981); integration (W.J. Smith, 1989); ongoing assessment & review (A. Wilson, 1983)
Service Delivery	appropriate education (MacKay, 1984b; Poirier, Goguen & Leslie, 1988; H.R. Turnbull, 1990; D.H. Vickers, 1981; A. Wilson, 1983); "worthwhile" education, special programs (J.A.C. Smith, 1980); quality education (W.J. Smith, 1989)
Parental Participation	parental participation (MacKay, 1984b; Poirier, Goguen & Leslie, 1988; H.R. Turnbull, 1990); and shared decision-making (H.R. Turnbull, 1990)
Natural Justice	due process (H.R. Turnbull, 1990); procedural safeguards (D.H. Vickers, 1981; right of appeal (A. Wilson, 1983); courts as final arbiter (J.A.C. Smith, 1980)

Access

In terms of the Access theme, the first critical issue, to borrow a phrase from Cruickshank (1986), is to get the students with disabilities "to the school door", that is a right to attend school. In the United States, legislation establishing such rights has been driven by litigation (Tweedie, 1983)²⁰, while this has not been the case in Canada because of differing legal traditions (Manley-Casimir, 1982). At a minimum, this right means that students with disabilities have the same right to attend school as other children ("zero-reject") but this right is enhanced by provisions which provide for "head-start" programs for pre-school age children or extended schooling for older students (Lippman &

Goldberg, 1973; Richards & Williams, 1973). However, this right "becomes moot, if it does not include the right to get through the school door" (W.J. Smith, 1992c, p. 43), hence the importance of barrier-free access to school facilities.

Closely associated with the right to education is the duty to attend school. The expansion of public education, accompanied by compulsory school attendance laws has been explained by a wide variety of theories (Tyack, 1976). Compulsory school attendance laws have always provided for exceptions, partly in recognition of the parents' right to provide for an "alternative" education in a private school or by other means (Giles, 1988).²¹ For students with disabilities, the issue is whether disability constitutes a reason for excused school attendance.

Even when schools are obliged to admit students with disabilities, this right can be nullified by the right of schools to suspend and expel students (Bartlett, 1989; Yell, 1989). W.J. Smith (1992c) characterizes this policy as "back door exclusion":

Expulsion exceptions can have a significant impact on students with special needs, if their right to enter the front door of the school is circumvented by the right of the school board to usher them out the back door (p. 42).

Once students with disabilities have gained legal and physical access to the school, the treatment of other issues often depends first on their identification and classification.

Identification and Placement

Identification and classification can be thought of as a "triggering mechanism", which provides entitlement to, or denial of, various services on the basis of a recognition of the student's disability. The system used to make such decisions is based on an explicit or implicit understanding of the nature of disability and the purposes of schooling (Carrier, 1990; Csapo, 1989; Welton, 1989). The system may be based on medical categories of disability, as discussed above in section 2.4.1. Alternatively, it may be based on the recognition of "special educational needs", which some authors construe as a departure from a categorical to an individual approach (Norwich, 1990). Others see simply the expression as a euphemism for failure (Barton, 1986; Roaf & Bines, 1989). Whatever one's perspective, the system for identifying and classifying students with disabilities is

a powerful determinant in the development of educational policy and the delivery of services (Dessent, 1988; Fulcher, 1990).²²

As a general rule, the identification and assessment process tends to be very bureaucratic, involving considerable expense, absorbing resources which could otherwise be used for instructional purposes (Biklen, 1991; Donahue & Smith, 1986; Davis & Smith, 1984). Howell (cited in Minow, 1985) comments that disability categories are a function of funding - "whatever I [the administrator] give out money for" (p. 180). Conversely, schools are loath to identify children - and by extension provide services - if the requisite funding will not be provided (Kauffman, 1980). The practice of classifying and labelling students has received considerable professional criticism (see for example, Evans, 1991; Reynolds, 1991) but it has also attracted a wider socio-legal criticism on the basis of discrimination against students with disabilities and other minority groups (Astin, 1990; Scott-Jones, 1991; Obiakor, Patton & Ford, 1992).

First, the reliance on standardized tests to identify and classify students is widely thought to be biased and detrimental to the needs of students (R.L. Taylor, 1980; Taylor, Tucker & Galagan, 1986; Ysseldyke, 1987). This should not be surprising, as assessment has traditionally been used to "sort" students. Originally, sorting was synonymous with exclusion, which was why the original IQ test was first developed by Binet to identify Paris schoolchildren who were not able to follow the school curriculum (McMurray, 1983). The function of assessment as a device for sorting and segregating children has been prevalent in both the United States (Kirp, 1973) and Canada (Woodill, 1991). Second, the disproportionate representation of blacks and other minority groups others has likewise been an issue of major concern (R. Elliott, 1987; Prasse & Reschley, 1986; Wood, Johnson & Jenkins, 1986). Similar problems are reported with respect to the evaluation of student learning (Barton, 1986). As important as these issues are, no subject included in this theme has received as much attention as the right to placement, especially an integrated placement in a regular class (Ferguson, Ferguson & Bogdan, 1987; Gent & Mulhauser, 1988; Hocutt, Martin & McKinney, 1991; Madden & Slavin, 1983; Sarason & Doris, 1982; Semmel, Gottlieb & Robinson, 1979).²³

The quest for an integrated placement is a logical extension of the quest to be admitted to school and takes precedence as a policy issue, once the battle over access has been won (Sailor, Gerry & Wilson, 1991). At present, integration generally refers to placement in a regular class. However, the term has also been used to describe placement in segregated classrooms in regular schools, which Biklen (1992) calls "islands in the mainstream". The terms "integration" and "mainstreaming" are often used as synonyms (Winzer, 1990); however, the usage of the terms varies considerably.²⁴

In the United States, mainstreaming is also associated with the civil rights movement (Gilhool, 1976; Sarason & Doris, 1982), as the disability analogue to the rejection of the "separate but equal" doctrine in *Brown v. Board of Education* (1954). More generally, mainstreaming is usually thought of as the educational corollary to Wolfensberger's (1972) principle of normalization of services for persons with disabilities (MacMillan, Keogh & Jones, 1986). To qualify as mainstreaming, the placement must provide for the social and functional integration of the student, not merely for his or her physical presence in class (see note 24) and, ultimately, prepare the student for integration into society and the workplace (Lusthaus, 1987).

At the present time, the dominant model for mainstreaming is the "cascade pyramid" which was first formulated by Deno (1970) on the basis of earlier work by Reynolds (1962) and later popularized by Gearheart (1974). Basically, this model envisages a continuum of services from the residential school to the regular classroom. Closely associated with the cascade model is the concept of the "least restrictive environment" [LRE], a principle as widely accepted as the cascade (Castellani, 1987), namely, that handicapped children should be educated with their non-handicapped peers to the greatest extent possible. H.R. Turnbull (1990) describes the LRE principle, as provided for in the *IDEA*, as a *rebuttable presumption*: "It sets forth a general rule of conduct (integration of handicapped and nonhandicapped children), but allows it to be rebutted when integration is not appropriate for the handicapped child" (p. 161).

Sussel and Manley-Casimir (1987) state that the LRE principle affirms that regular class placement is preferable to special class placement, which is preferable to placement in

special schools, which in turn is preferable to placement in an institution. It is argued that their view is an accurate interpretation; the LRE principle can therefore be viewed as converting the principle of integration into the lock-step ascent of the "cascade pyramid". "Those who ascend must do so one step at a time; some will ascend more steps than others and some may never ascend at all" (W.J. Smith, 1992d, p. 29).

The cascade and LRE principle are being contested by the proponents of inclusive education.²⁵ (Forest & Lusthaus, 1987; Lipsky & Gartner, 1989b; Lusthaus, Gazith & Lusthaus, 1992), as contrary to EEO principles. S.J. Taylor (1988) identifies seven conceptual and philosophic flaws in the LRE principle, claiming that it supports a continuum of restrictive services and is used to "legitimate unnecessary segregation under the guise of protecting rights" (p. 47). Bowd (1992, p. 22) is also critical of the cascade - LRE paradigm: "Placement alternatives are fixed and unchanging and it is the exceptional student who must adapt.... This [model] ensures that entry to the mainstream is contingent upon the attainment of prerequisite competencies in an accountable fashion".

Appropriate Education

The Appropriate Education theme is clearly the heart of EEO; after all, it is of little consolation to parents of a student with a disability to have access to the school, be free from discriminatory assessment and placed in a regular classroom, if he or she does not receive educational services appropriate to his or her needs. It is not surprising that determining what is "appropriate" for any given student is often controversial (D.H. Vickers, 1981). As stated in "Note: Enforcing the Right" (1979):

At the centre of many complaints will be a conflict over the nature and quality of services to which a handicapped child is entitled. Parents will assert that the law requires certain services to be provided. The school representatives - aware of the constraints of their own budget - will contend that "appropriate" means something less (p. 1125, footnotes omitted).

In the United States, the duty to provide appropriate education is included in the *IDEA* and this provision was eventually the subject of a decision of the U.S. Supreme Court in *Board of Education v. Rowley* (1982); consequently, this case is used as a framework in much of the discussion of appropriate education (see for example, Broadwell & Walden,

1988; Haggerty & Sacks, 1977; Osborne, 1988, 1992; H.R. Turnbull, 1986; Yanok, 1986; Yudof, 1984). The Court decided that the standard of service to be provided was one of "personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction..." (Rowley, 1982, p. 177). Edmister and Ekstrand (1987) contrast this finding of "reasonably appropriate" with that expected by many parents of the "most appropriate" education.²⁶

Differences in opinion respecting "appropriateness" mirror the different levels of EEO which one can set for a school system, from a minimal standard - a threshold of opportunity - to one designed to maximize each student's potential (Meisels, 1985). In both the United States (Yudof, 1984) and Canada (Zuker, 1988), the courts seem predisposed to leave a wide measure of discretion to the government and school boards in determining what is appropriate in individual circumstances. The courts seem more willing to adjudicate procedural issues.

Natural Justice and Parental Participation

The two remaining themes - Natural Justice and Parental Participation - are viewed as support themes to the provision of EEO. Natural Justice subsumes two critical issues - the right to an impartial hearing and the right to be heard (Anderson & Anderson, 1979; G.L. Gall, 1990; Hogg, 1992;). Originating in Common Law, the principles of natural justice are now enshrined in the *Canadian Charter*, which guarantees equality before and under the law, as well as equal benefit and protection of the law (s. 15). However, it would be a mistake to think of this theme in purely constitutional or even legal terms; procedural issues can be resolved in a variety of frameworks (Kirp, 1983) and can enhance rather than detract from collaborative relations between parents and education professionals (Turnbull & Turnbull, 1990).

Turnbull and Turnbull (1978) report the frustrating experiences of many parents of students with disabilities in dealing with "the system". According to Wilgosh (1990): "Parents want to have a parent-professional partnership of open discussion with knowledgeable and caring professionals who take the time to listen to them" (p. 304). Unfortunately, the search for collaboration has led to confrontation; as stated by one

parent quoted by Wilgosh: "I really didn't know, when I became a mother, that I was supposed to be a warrior. I thought 'nurture,' not 'battle.' Yet as I am talking, I am aware that I need to fight if I want things to change" (p. 304). The stories of other parents (see for example, Gilbert, 1986; Hoyle, 1992; Jory, 1991; Lusthaus & Lusthaus, 1978; Robitaille-Rousseau, 1984) indicate the need for parental participation, whether provided for through legislation or by some other means.²⁷

H.R. Turnbull (1990) notes that in the United States there are thirty-six grounds upon which a due process hearing can be sought: "This alone makes due process a provision that can be wielded in good faith or in bad, for the legitimate purpose of correcting deficits in a handicapped child's educational rights or for purposes of harassment" (p. 210). While recognizing the problems with this approach, he concludes that the necessity of due process is beyond dispute. Edmister and Ekstrand (1987) and Goldberg and Kuriloff (1991) are less conclusive, contending that litigation alone is not a productive means for dealing with all problems. It is also felt that legally oriented procedures have the potential for protracted and costly litigation (Hyatt, 1981; Tillery & Carfioli, 1986).

2.5 Conclusion

The purpose of this chapter was to provide a review of the literature dealing with policy studies in education, equality and public schooling in general and, finally, with equality and students with disabilities in particular.

The policy studies review examined both public policies and policy research. We have seen that the term "policy research" supports a wide range of meanings. For some authors, it is synonymous with policy analysis, for others, it represents an entirely different type of activity. It has been suggested that both can be subsumed under the generic rubric of "policy studies". The multi-disciplinary nature of the field and its traditional problem-solving focus have been noted.

The term "public policy" is equally eclectic. Some authors assign a very narrow meaning to the term, while others suggest that it encompasses broad statements of intent and detailed implementation plans. One distinctive feature of public policies is their nexus

with government authority, which gives such policies their public, as opposed to private, character, whether to set rules, distribute benefits or accomplish other aims. Given the purpose of this study, the importance of the regulatory function of public policy was emphasized, as it is by the enactment of laws and regulations that the normative values of equality and equal educational opportunity becomes rights, rather than aspirations.

The review of the EEO literature began with general notions of equality. Even more elusive than "policy", equality can mean the "same" or "different"; it has been seen as an "empty idea" and one that is full to the point of "spilling over". Despite semantic and rhetorical differences, equality has remained an ideal that continues to inspire both hope and cynicism. Discrimination has been described as the obverse of equality, which can be pursued by a variety of means, according to the political agenda of the players involved.

Equal educational opportunity, or EEO, has been used to describe the search for equality in the school setting. Once again, the meaning attributed to EEO varies according to one's agenda or the purposes ascribed to public schooling. Having noted the disillusionment of many at the ability of schools to provide EEO, the construct has been described in terms of inputs, such as resources, throughputs, such as instructional organization, and outputs, such as years of schooling attained. Finally, it was shown that a combination of measures may be required to provide EEO to a group, depending on particular circumstances.

The application of EEO to students with disabilities has been shown to be particularly problematic because of lingering attitudes about disability and the entitlement of "such people" to equality rights. The minority rights paradigm has been advanced by many authors as a response to traditional views and provides an additional framework for developing appropriate EEO policies. It has also been suggested that the "dilemma of difference" can be best resolved by viewing (dis)ability as a continuum, rather than a dichotomy, and by focusing on the relationships among people rather than on the characteristics of the minority group.

Finally, EEO has been described in terms of access, identification and placement, appropriate education, natural justice, and parental participation. These themes have been used to review a variety of critical issues and highlight the views held by different authors. This review of the general construct of EEO and these specific themes provide the conceptual framework of this study, as illustrated in figure 2.4.

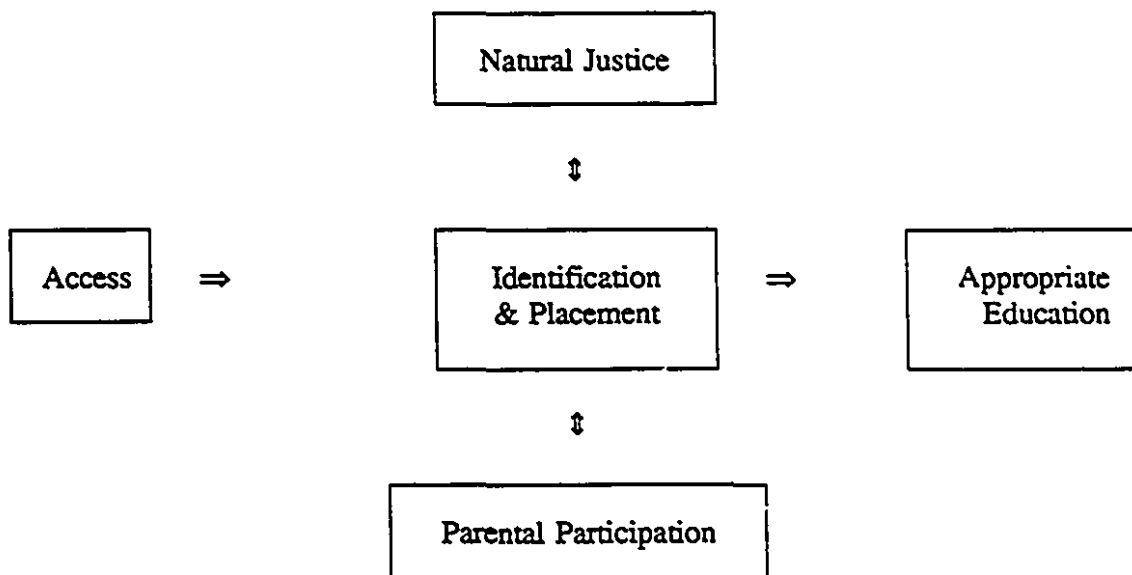


FIGURE 2.4

EEO for Students with Disabilities

In the following chapter, the research design, which builds on this framework, will be presented and discussed.

Endnotes - Chapter 2

1. Tyack (1991), a keen observer of American educational history, summarizes the role of education in public policy thus: "Repeatedly, Americans have followed a common pattern in devising educational prescriptions for social ills. Once they discovered a problem they labeled it and taught a course on the subject" (p. 100). Similarly, as stated pithily by Cuban (1990), "if society has an itch, schools get scratched" (p. 9).
2. Equality, efficiency and liberty are the three goals which J.W. Guthrie (1980) identifies as the hallmarks of American public policy.
3. Hohfeld's terminology has been slightly adjusted to avoid confusion with the terms used in this study.
4. The importance of education rights in this context cannot be overemphasized. Ross and Shillington (1990), using 1986 Canadian national census data, report that education is the "single most important factor determining earnings among persons with a disability" (p. 68). They also found that persons with disabilities are more likely to have less education and have low incomes than their non-disabled peers and that these disparities were higher for females with disabilities.
5. When reviewing concepts which are dealt with in law and which have been assigned a *legal meaning* in a given jurisdiction, the discussion inevitably involves reference to authorities commenting on particular cases, and to the case law itself. This review includes such references for the purposes of constructing the conceptual framework for the analysis conducted by this study. This review does not purport, however, to analyze equality as defined by the *Charter* or by Canadian law generally, nor provide a survey of Canadian cases in this regard. The analysis of relevant case law as a source of interpretative data is included in chapter 4.
6. According to Lucas (1965), formal equality "requires that if two people are being treated, or are to be treated, differently, there should be some relevant difference between them" (p. 296); see also Westen (1982): "By 'equality' I mean the proposition in law and morals that 'people who are alike should be treated alike' and its correlative, that 'people who are unlike should be treated unlike' (pp. 539-540, footnotes omitted).
7. These terms are taken from the American constitutional doctrine of "equal protection of the laws" (U.S. Const., amend. XIV). In cases involving state action which denies or impairs a fundamental constitutional right such as the right to vote, or discriminates on the basis of a constitutionally suspect classification such as race, then the state action is subject to "strict scrutiny", the most stringent standard for judicial review possible. As stated by Gunther (1972), the standard of strict scrutiny is "'strict in theory', but 'fatal in fact'" (p. 8; see generally, Frank & Munro, 1950; "Note: Developments in the Law", 1969; Perry, 1979; Ross, 1986; Tabari, 1989; Tribe, 1988).
8. After reviewing the development of constitutional equality as an American ideal, Karst (1983) concludes his critique with the following:
 Ultimately, the emotional force of constitutional equality as an American ideal derives from two sets of feelings about ourselves in relation to our fellow citizens: first, the sense of individual identity and worth, and second, the sense of community....
 What is special about our ideal of constitutional equality is that, unlike such ideals as individualism or freedom, it stands as a constant reminder of our connections to each other....
 Our courts perform a special function in promoting the sense of community, a function that legislative bodies cannot easily perform.... [The courts] will restrain the majority's worst excesses, in the name of constitutional values that define our national community (pp. 286-287).
9. These contrasting traditions are particularly relevant for an examination of equality rights in Canada. First, English and French Canadians have inherited, respectively, the British and French traditions discussed above. Cloutier (1976) studied the attitudes of these two groups and concludes that for English Canadians, the individual represents the basic unit of social analysis and that all individuals are equal. By contrast, he concludes that for French Canadians, the collectivity is more important than the individual and that equality should be defined in terms of collectivities, not individuals. (For a classic case on these opposing views, see *Québec (A.G.) v. Quebec Protestant School Boards*, 1984 and discussion in Grey, 1988; Irving, 1986.) More recently, the issue of collective versus individual rights has

been debated with respect to the aboriginal peoples of Canada (Olthuis, 1986).

10. *Equal opportunity* is given a narrow meaning in this construct; it will be argued below, with reference to *equal educational opportunity*, that this term should be given a wider meaning.

11. These authors prefer the term *equitable* educational opportunity, which they argue embraces the notions of *equal* (same or similar) and *fair* (different but appropriate) educational opportunities. However, because of the widespread use of the term *equality* in the expression EEO, they retain the latter term, which this author does as well (see also Bowman, 1991; Brookover & Lezotte, 1981; Marjoribanks, 1975; Secada, 1989).

12. Some authors subsume throughputs (or processes) under inputs. It is argued, however, that this compression obscures important differences between, for example, the level of resources provided to a school (input) and what is done with these resources (throughputs).

13. Yeakey and Gordon (1982) note with bitter irony that the legend of the school's ability to combat inequality and provide a way out of poverty has actually contributed to the problem:

Because the legend is so pervasive, social programs and policies founded on the legend continue to persist. And so unswerving is America's faith in the school as the vehicle for social mobility that the search for more effective vehicles to obviate poverty is neglected (p. 125).

14. See note 5 regarding the reference to case law within the scope of this discussion.

15. The WHO classification scheme includes various categories of disabilities and impairments. Although these two terms are quite different, they are used interchangeably by some authors and ignored by others. It seems preferable, however, to retain the term *disability* to describe the population, as the term *handicap* refers as much to the environment as to the person.

16. These include learning disabilities/difficulties, mild intellectual handicaps and mild emotional/behavioural disorders (H.M. Donahue, 1991; see also Evans, 1991; Hammill, 1990). Moreover, for purposes of a study on education, it is important to note that some categories "are defined almost totally by the child's response to the demands of the school" (Hallahan & Kauffman, 1982, p. 10). For example, Bogdan and Taylor (1982) argue that "schools classify a large number of children as retarded who function perfectly well at home, in their neighbourhoods and in other situations" (p. 8), creating what the President's Committee on Mental Retardation termed the "six-hour retarded child" (Reynolds, 1991). Accordingly, St Claire (1986) and Lea (1988) argue that mental retardation is better understood as a social construct than an individual pathology.

17. The *IDEA* (formerly the *Education of the Handicapped Act*) is a federal statute, which sets forth the conditions for federal funding of special education services; no state is obliged to comply with the provisions of the *IDEA*, providing it is willing to forego federal funding. Lipsky and Gartner (1989c) report that with the submission of a state plan by New Mexico in 1984, all 50 states are now participating in the federal program. This review does not purport to deal with the *IDEA* per se but it cannot be ignored in discussing American literature or case law, much of which are presented in "pre-*IDEA*" and "post-*IDEA*" terms (Bateman & Herr, 1981).

18. This statement was taken from the presentation of the Coalition of Provincial Organizations of the Handicapped to the Special Joint Committee of House of Commons and of the Senate [Hays-Joyal Committee] studying the proposed *Canadian Charter of Rights and Freedoms*. Similar presentations were made by the Canadian Association for the Mentally Retarded [now the Canadian Association for Community Living] to this Committee and to the Special Committee of House of Commons on the Disabled and the Handicapped (Lepofsky & Bickenbach, 1985; Vickers & Endicott, 1985). Although the inclusion of disability as a listed ground in the *Charter* prohibition against discrimination, one month before the final draft of s. 15 (February 13, 1991), it was not included (Bayefsky, 1985, p. 10). The exclusion of disability was no oversight and considerable pressure was required to counter the opposition of the government to adding disability as a listed ground (for a brief summary of the debate, see Lepofsky & Bickenbach, 1985, pp. 332-340).

19. The expression "natural justice", which concerns the provision of fundamental procedural fairness, is not found in the American literature. The closest American term is "due process of law", which is grounded in the *United States Constitution* (Amend. V, XIV).

20. The most well known early cases are *Mills v. D.C. Board of Education* (1972) and *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* (1971). For a comprehensive table of cases, see H.R. Turnbull (1990).

21. In Québec, for example, Magnuson (1980) reports that the clerical point of view prevailed, which insisted that "compulsory school law would violate the right of parents to determine the education of their children" (p. 47). In contrast to all other provinces, which had compulsory education laws by the beginning of the twentieth century (Bergen, 1961), Québec did not enact such legislation until 1943 (H. Côté, 1984).

22. Although the use of the expression "special educational needs" is common in North America, much of the debate presented in this paragraph relates to the adoption of this expression in British education law which followed the publication of the celebrated Warnock report on special education (Department of Education and Science, 1978).

23. It is argued by some that the focus on placement has served to detract from giving adequate attention to service delivery issues (e.g. Hodapp & Zigler, 1992; Leinhardt & Pally, 1982).

24. A.P. Turnbull (1982) states that there is no clear and accepted definition of mainstreaming but she and several other authors follow the one set forth by Kaufman, Gottlieb, Agard and Kukic (1975):

[Mainstreaming is] the temporal, instructional and social integration of eligible exceptional children with normal peers based on an ongoing, individually determined, educational planning and programming process and requires clarification of responsibility among regular and special education administrative, instructional, and supportive personnel (p. 4).

By contrast, Bowd (1992) views mainstreaming as a dominant group - minority group model, while integration is construed as a more diffuse model, whereby various groups form part of a cultural mosaic, interacting in a variety of subtle ways. Although Bowd's description does not reflect what is generally found in the literature, his analysis supports the critics of the "least restrictive environment" thesis, discussed below on p. 52.

25. Inclusive education, in contrast to the cascade, is based on the belief that *all* children belong in the regular class and can be viewed as the educational corollary of the social policy of "community living" for persons with disabilities (Forest, 1991). It is closely associated with the "regular education initiative", which aims at eliminating the separate systems of regular and special education (Davis, 1989; see generally, Lipsky & Gartner, 1989a; Lloyd, Singh & Repp, 1991; Porter & Richler, 1991; Stainback, Stainback & Forest, 1989).

26. It should be noted that in the U.S. context, appropriate education is closely associated with the provisions of an *individualized educational plan* [IEP], also mandated by the *IDEA*. In theory, an IEP provides for specific goals, timetables for and periodic review of these goals (Abeson & Ballard, 1976). However, some argue that they are little more than "a ritual - a routine educators can follow so they can say they have 'educated' the child" (Hallahan & Kauffman, 1982, p. 29). IEP's, like assessment, are also criticized for the amount of time and resources they consume (Bateman & Herr, 1981).

27. Given the focus of this study on legislative action, this section does not purport to do anything more than establish the need for parental participation in the educational process. The role of parents, like professional practice, comprises a wide array of issues which are not amenable to treatment by legislative action but which are crucial to the development of appropriate policies for the education of students with disabilities (see for example, Ferguson & Asch, 1989; Lipsky, 1989; McCallum, 1991; Winzer, 1990, chap. 4; in particular see, Turnbull & Turnbull, 1990 and the extensive references included therein).

3.0 RESEARCH DESIGN

3.1 Introduction

The purpose of this chapter is to describe the research design used to conduct the study. The three main sections of this chapter are devoted to the scope of the study, the sources of data and the methodology, which includes the specific research questions asked. In the final section, the constraints and limitations of the study are identified and explained.

3.2 Scope of the Study

As stated above in section 1.2, the purpose of this study is to provide a comparative analysis of the *legislative action* of each jurisdiction in Canada, as of December 31, 1992, relating to the provision of *equal educational opportunity to students with disabilities*. Before undertaking any analysis, it was necessary first to delimit the scope of the study with respect to each of the three constituent elements of this statement of purpose.

Legislative Action

The focus on legislative action is based on the importance accorded to the regulatory framework by the minority rights paradigm (see discussion above in section 2.4.2). The scope of the study in terms of this focus is defined by the policy actors and the type of legislative action contemplated.

First, as discussed above in section 2.2.2, legislative action in a domain such as education can be taken by various levels of government, depending on who has jurisdiction for the matter being considered and any delegation of powers in force. This study focuses on one set of government policy actors, namely the provincial and territorial governments responsible for the provision of elementary-secondary education in Canada. All twelve jurisdictions^{*} are included in the scope of this study. The study does not deal with the role of either the federal government or school boards as policy actors. However, the presence of both of these bodies is felt throughout the study: the federal government, by

^{*} Hereinafter, unless the context indicates otherwise, a reference to "jurisdictions" refers to the ten provinces and the two territories of Canada.

virtue of its role as principal architect of the Constitution and school boards, as the bodies charged with the primary responsibility for discharging the duties prescribed by provincial education law.

Second, this study focuses on legislative action which confers rights on students with disabilities to free and appropriate public education. For purposes of this study, a *right* is understood in legal terms, using Hohfeld's (1913/1964) scheme of jural relations (see above discussion surrounding figure 2.2, p. ?). Inasmuch as the majority of students in public schools are minors, there is a close nexus between their rights and the rights of parents, either acting on behalf of or in support of the student; consequently, parental rights are included in the scope of this study.

As will be seen below in section 3.3, it is often difficult to distinguish one type of government action from another. Conceptually, the study deals with legislative action which enables a student, or his or her parents, to make a legally enforceable claim to certain educational rights. In keeping with the minority rights paradigm, this delimits the scope of the study to what *must*, by law, be done to provide EEO for students with disabilities, not what *might* or *could* be done, let alone what *is* done in practice.

Permissive or enabling provisions which *allow* school boards to provide instruction or other services are important because without them school boards would not be empowered to provide free public education.¹ However, given a long history of free compulsory public education, permissive provisions are now only of interest to the extent to which they authorize something which would not otherwise be permitted by the implied powers of the enabling legislation. The presence or absence of many permissive provisions (e.g. the right to employ non-instructional personnel) are less important because one can assume that boards have the right to do so by virtue of their general duty to educate students. However, other provisions (e.g. the right to place a student in an outside institution) may authorize something which is not implied by this general duty.

Thus, a statutory provision which stipulates that a school board has the authority to decide on a particular matter or that it *may* provide a benefit will only be retained for purposes

of analysis to indicate the absence of a right. Such provisions are important in the same way in which resources, training and other means are provided to contribute toward EEO. They constitute part of the service delivery framework provided by administrative discretion and should not be considered as part of the regulatory framework. The presence of a legislative provision which states that boards may provide certain services will be treated in the same manner as the provision of government funding for such services, in the absence of mention in legislation. Each provides potential benefits, neither provides any rights.

The study does, *per force*, deal with the duties of other parties which are the jural correlatives of such rights (see section 2.2.2, figure 2.2); however, it does not deal with the rights of other parties. Thus, provisions of provincial collective agreements for teachers are not be considered because they provide only "incidental benefits" to students or parents, who have no standing of claim, for example, to small class sizes on the basis of such an agreement. By contrast, if students or parents can claim "third party beneficiary status" with respect to any legally binding provisions, then the latter are considered.²

Equal Educational Opportunity

This study deals with equal educational opportunity, as discussed above in chapter 2. Specifically, it focuses on the provision by the state, without charge to students or their parents, of elementary-secondary education, either in public schools or in other settings at public expense, in other words - *free and appropriate public education*. The term is borrowed from the American literature but is not intended to imply the application of U.S. judicial standards for students with disabilities.³

As discussed above in section 2.4, the provision of *free and appropriate public education* for students with disabilities is grounded in the concept of equality, which provides the foundation for opportunities specifically related to education. The latter first requires a threshold of opportunity through admission to public schooling, and thereafter, the provision of appropriate educational placements, services and other means to support the enjoyment of these benefits, especially natural justice and the participation of parents.

In keeping with the perspective of the minority rights paradigm, this construct means that young people with disabilities have an equal right to be in school and a right to have something meaningful happen once they are inside.

Students with Disabilities

Finally, this study is concerned with the population of *school age* students, that is, those children and youth, old enough or young enough, to be eligible, or required, to attend school at the elementary or secondary levels. The sub-group on whom this study focuses consists of students with a *disability*, as defined by Nordenfeld (1992) and discussed above (see section 2.4.1).

For purposes of analysis, neither specific age limits for, nor definitions of, this population were determined a priori, for both theoretical and empirical reasons. It was assumed that although most people would support the idea of free public schooling, there would be less convergence of opinion as to when such an entitlement should begin and until what age it should continue. Practice reflects these assumptions, as the legislated age limits to public schooling vary widely. Similarly, as discussed above in section 2.4, there are no universally accepted definitions of basic terms such as "disability" and "handicapped person", let alone universal acceptance of the various categories of disability which have been set forth by different authorities. Definitions vary from one jurisdiction to another and, within a given jurisdiction, definitions may vary according to the agency or purpose involved in the provision of services. Consequently, both the age limits and the definitions of the population being investigated emerged from the analysis of the data.

Delineation of Appropriate Research Questions

In order to set forth an appropriate set of specific research questions, it is necessary to provide for the intersection of the subject of this inquiry (EEO rights) and its object (legislative action taken). In other words, the questions must be framed to reflect the construct of EEO discussed above in chapter 2 (see figure 2.4, above), while taking into account the form in which the legislative enactments were drafted. The method used to accomplish this task is described below in section 3.4.2 and the research questions which resulted from this process are set forth in table 3.2.

3.3 Sources of Data

Only primary source materials which constitute *legislative action* were used as data; however, relevant case-law was used for the interpretation of the legislative action. The principal sources of data are listed in table 3.1 and briefly discussed thereafter.

TABLE 3.1
Principal Sources of Data

Constitution of Canada
Provincial/territorial statutes
Provincial/territorial regulations
Provincial/territorial administrative decisions which have the force of law

Canadian Constitution

The Canadian Constitution (*Constitution Acts, 1867 to 1982*) provides for, *inter alia*, the division of powers between the federal and provincial governments, including the virtually exclusive powers of the latter respecting elementary and secondary education (for details see section 1.3.2 above). For purposes of this study, the key constitutional document is the *Charter*, especially the guarantees to equality rights contained therein.⁴ Since the object of this study is provincial legislative action, the provisions of the *Charter* are used primarily to interpret provincial laws and regulations. The *Charter* is not the object of a separate constitutional analysis (a brief note on the *Charter* is included in Vol. 2, app. B; key provisions of the *Charter* are included in Vol. 2, app. E).

Statutes

A "statute" is defined by Yogis (1990) as "an act of the legislature; in Canada an act of a provincial legislature or the Federal Parliament adopted pursuant to statutory authority" (p. 209). Given the division of legislative powers over education, the primary sources of statutory data for this study are found in provincial/territorial statutes. These statutes also include "quasi-constitutional" laws (see discussion above in section 1.3), which are the primary source of data for legislative action on non-discrimination. By contrast, federal

human rights legislation (*Canadian Bill of Rights; Canadian Human Rights Act*) is not applicable to public education under the jurisdiction of the provinces or territories. All relevant statutes were used as sources of data.

Regulations

There exist many forms of delegated legislative authority, including regulations, orders, by-laws, directives and other documents, published under various names (Holland & McGowan, 1989). The terminology is confusing, especially when dealing with different jurisdictions. For purposes of this study, the term "regulation" designates a regulation published in one of the provincial/territorial *Gazettes*. All other forms of delegated legislation are included under the heading "Administrative Decisions", described below. All relevant regulations were used as sources of data.

Administrative Decisions

Government departments and other administrative bodies make a wide variety of decisions and publish various kinds of documents. The identification of which administrative documents constitute legislative action is a complex issue. However, in general, an administrative decision must satisfy three criteria to be considered as delegated legislation, and hence part of the regulatory framework: it must be made pursuant to specific legislative authority; its content must be normative and impersonal; it must have constraining force derived from the statute which is its ultimate author (Garant, 1985; Pépin & Ouellette, 1982; Reid & David, 1978). For purposes of this study, decisions made by a subordinate level of government or any body acting in a "quasi-judicial" capacity were excluded. However, the latter might have been considered under case law, as discussed below.

The "grey areas" (e.g. education department directives which may or may not have the force of law) were examined on a case-by-case basis, taking into account the position of the department in question (i.e. if it considered the directive to be binding or non-binding; for details, see discussion in Vol. 2, section A.2, app. A). In keeping with the above discussion in section 3.2 (especially discussion surrounding note 2), the criterion is the following: Could a parent rely on the directive in court in support of a claim to certain

educational rights or would the court ignore the directive as non-binding policy.⁵ All relevant administrative decisions were used as sources of data.

Case Law

Court judgements and other awards can shape government policy by defining the scope of existing provisions and creating a reason for modifying policies to respond to the interpretations handed down. They cannot be considered as government policy but, as well as interpreting legislated policy (Nicholls & Martin, 1983), they constitute a source of law per se (G.L. Gall, 1990). Taken together, they comprise the case law:⁶

The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes or other sources of law. It includes the aggregate of reported cases that interpret statutes, regulations, and constitutional provisions (Black, 1990, p. 216).

In addition to cases which arise from some form of litigation, the Government of Canada may refer important questions of law or fact to the Supreme Court of Canada for hearing and consideration. Each provincial government has also enacted legislation providing for similar reference to the provincial court of appeal, and thereby indirectly to the Supreme Court of Canada (Hogg, 1992). Given that the focus of this study is government policy, case law is viewed primarily as a source for the interpretation of statute based law, rather than as a source of law per se. With this caveat in mind, relevant Canadian case law was used as a source of data.

3.4 Methodology

There was a need to develop an analytical framework which permitted the data from each jurisdiction to be identified and described in a systematic and replicable manner, which in turn would permit a comparison of the results. The development of this framework began with the development of the specific research questions, then provided for the ways and means to conduct the analysis and, finally, to test for the validity and reliability of the methodology.

3.4.1 Developing Specific Research Questions

As alluded to above in section 3.2 (p. 64), the research questions were developed on the basis of five analytical themes, which evolved from the empirical testing of the construct

of EEO derived from the review of the literature. The first version of the analytical themes consisted of a nine-cell grid, defined by three types of legislative action and three EEO themes.⁷ The second version attempted to collapse the grid into three types of rights, each with sub-themes.⁸ Neither effort proved successful (see notes 7 and 8). In the third, and final, version, it was decided to frame the major research questions in terms of five analytical themes:

- non-discrimination;
- access to schooling;
- identification and placement;
- service delivery;
- parental participation.

Taken together, these analytical themes are deemed to encompass the construct of EEO described in chapter 2, as illustrated above in figure 2.4. The first analytical theme (non-discrimination) corresponds in part to the theme of *natural justice* included in figure 2.4; the remaining four analytical themes correspond to the other four EEO themes included in figure 2.4, while incorporating elements of natural justice in each.⁹

Given the purpose of this study - to identify, analyze and compare the EEO rights provided for in each jurisdiction in Canada, it was decided to formulate each major research question in terms of three sub-questions, corresponding to these three elements of the purpose statement. These sub-questions are organized sequentially, that is, the second depends on the first and the third depends on the second. Thus, the first sub-question defines rights; the second analyzes the legislation in each jurisdiction to measure the extent to which these rights are found; the third compares the results of this analysis across jurisdictions.

The specific research questions are set forth in table 3.2. Thereafter, in sections 3.4.2 to 3.4.4, the methods used to answer each of these three sub-questions will be described.

TABLE 3.2
Specific Research Questions

-
1. How does the legislative action in each jurisdiction provide for non-discrimination?
 - 1.1 What are the specific rights which define *non-discrimination*?
 - 1.2 To what extent does each jurisdiction provide for such rights?
 - 1.3 How do all jurisdictions compare in terms of the provision of such rights?
 2. How does the legislative action in each jurisdiction provide for access to schooling?
 - 2.1 What are the specific rights which define *access to schooling*?
 - 2.2 To what extent does each jurisdiction provide for such rights?
 - 2.3 How do all jurisdictions compare in terms of the provision of such rights?
 3. How does the legislative action in each jurisdiction provide for identification and placement?
 - 3.1 What are the specific rights which define *identification and placement*?
 - 3.2 To what extent does each jurisdiction provide for such rights?
 - 3.3 How do all jurisdictions compare in terms of the provision of such rights?
 4. How does the legislative action in each jurisdiction provide for service delivery?
 - 4.1 What are the specific rights which define *service delivery*?
 - 4.2 To what extent does each jurisdiction provide for such rights?
 - 4.3 How do all jurisdictions compare in terms of the provision of such rights?
 5. How does the legislative action in each jurisdiction provide for parental participation?
 - 5.1 What are the specific rights which define *parental participation*?
 - 5.2 To what extent does each jurisdiction provide for such rights?
 - 5.3 How do all jurisdictions compare in terms of the provision of such rights?
-

3.4.2 Defining the Rights Comprising Each Analytical Theme

Before deciding upon a methodology to define the rights comprising each analytical theme, it was necessary to define each of the five themes. The definitions retained for purposes of this analysis are shown in table 3.3

TABLE 3.3
Analytical Themes

Theme	Definition
1. Non-Discrimination	Equal protection and benefit of law without discrimination on the basis of disability.
2. Access to Schooling	Admission to elementary and secondary schooling at public expense.
3. Identification & Placement	Identification of special educational needs and appropriate educational placement.
4. Service Delivery	Provision of appropriate educational and disability related services, in order to benefit from education.
5. Parental Participation	Participation of parents to in the education of their children, at all stages of the process.

As set forth above in table 3.2, each major research question seeks first to determine the rights which define the theme being investigated. In order to answer this sub-question, the following method was used. First, a number of items were gleaned from the review of the professional literature which described specific rights. Second, other items were identified from the specific rights contained in the legislation of the jurisdictions to be analyzed. The results of these two procedures were combined and validated to produce sixty items, which were used to define each theme. These individual items were then factored to derive sub-themes, which are shown in table 3.5.

The answers to this first sub-question provide the methodological basis for answering the remaining two sub-questions, as presented in the sections 3.4.3 and 3.4.4 below.

3.4.3 Analysis of Rights in Each Jurisdiction

The search for emergent themes is an appropriate methodology to analyze the legislative action of a single jurisdiction, when one wishes to avoid using any a priori theories and induce appropriate generalizations on the basis of the data analyzed (W.J. Smith, 1989). However, this approach is problematic when the analysis of the data is also used to compare several jurisdictions. Assuming that different themes and patterns would emerge from the analysis of each jurisdiction, the comparison of the results would be rendered very difficult. This problem can be obviated by the use of a predetermined framework.

One such method consists of using a "lighthouse" jurisdiction as a framework for the analysis; alternately, the analysis can be based on some theoretical standard or norm. Thus, for example, one could analyze the legislative action taken in each Canadian province, using the provisions of the U.S. *Individuals with Disabilities Education Act* as an analytical framework. Using the second approach, one could create a set of legislative standards based on those found in the professional literature or the policy statements of various advocacy groups to use as the basis of analysis. As the purpose of this study was to provide a comparative analysis of Canadian jurisdictions, it did not seem appropriate to adopt a non-Canadian legislative framework as a basis for the analysis. Furthermore, there was no a priori reason to select any particular Canadian jurisdiction as the standard for the analysis. Accordingly, the use of a norm-based comparison seemed preferable.

In order to conduct such a normed-based analysis, an instrument was constructed from the sixty items which define the analytical themes (see discussion in section 3.4.2 above). Each item was expressed in the form of a question. For each question, a series of possible responses was devised in order to distinguish different "levels" of rights. The possible responses for a given question were ordinaly related (i.e. each response provided for a *higher* or *greater* level of rights than the previous one but the relation between levels was not known). Various definitions and decision rules were determined in order to delimit the questions and distinguish between the various response categories (i.e. between the different levels of rights). A sample of the questions from the instrument are shown in table 3.4. The complete instrument and the decision rules for interpretation of the items and analysis of the data are included in Vol. 2, table A.2, app. A.

TABLE 3.4
Sample Items from the Data Analysis Instrument

Q#/r#	Sample Items / Possible Responses
1.	Is disability included as listed ground of discrimination?
{0}	Disability not included
{1}	Some forms of disability excluded
{2}	Disability but not means to palliate a handicap included
{3}	Disability and means to palliate a handicap included
13.	Is there a right to free public schooling?
{0}	No such right is provided for
{1}	Right to schooling subject to a general exception for disability
{2}	Right to schooling subject to an exception for "severe" disabilities
{3}	Universal right to free public schooling provided without exception for disability
28.	Is there a right to home instruction?
{0}	No right to home instruction
{1}	Right to provide home instruction
{2}	Right to provide home instruction and receive support services from board or government
45.	Is there a right to appropriate education?
{0}	No right to appropriate education
{1}	Right to appropriate education
{2}	Right to appropriate education according to IEP
54.	Are school boards required to provide for board-level participation of parents?
{0}	NO
{1}	YES

* The "r#" in square brackets - {0}, {1}, etc. - indicates the numeric value assigned to each possible response for purposes of tabulation and comparison.

This study employs a qualitative form of content analysis to answer the questions in the instrument, an approach which Krippendorff (1980) views as an appropriate "research technique for making replicable and valid inferences from data to their context" (p. 21). In contrast to traditional forms of content analysis (e.g. Berelson, 1954), a broader approach was taken, as suggested by Best (1977). He defines content analysis as "the systematic examination of current records or documents as sources of data.... It is well to remember that the emphasis in documentary materials is not always accurately evaluated by frequency of appearance or quantity of space occupied" (p. 129).

3.4.4 Comparison of Results Across Themes and Jurisdictions

The data analysis instrument also permitted the quantitative tabulation of results for each jurisdiction and hence a structured comparison of across themes and jurisdictions. Given the use of ordinal related response categories, it was possible to assign a numeric value to each possible response and sum the "raw scores" (not weighted or standardized) for each theme for each jurisdiction. The maximum possible raw scores for all themes and sub-themes are shown in table 3.5 (see also Vol. 2, section A.5, app. A).

TABLE 3.5
Raw Scores by Analytical Theme

Theme / Sub-Themes	Range of Items	Number of Items	Max Score
Non-Discrimination			
Application to students with disabilities	#1-#2	2	6
Scope of prohibition against discrimination	#3-#7	5	8
Adjudication of complaints	#8-#12	5	8
		12	22
Access to Schooling			
Right to public schooling	#13-#19	7	23
Compulsory attendance	#20-#22	3	9
Expulsion	#23-#25	3	5
Additional support	#26-#27	2	6
		15	43
Identification & Placement			
Choice of schooling	#28-#29	2	4
Assessment	#30-#35	6	11
Appropriate placement	#36-#44	9	23
		17	38
Service Delivery			
Appropriate education	#45-#46	2	4
Instructional services	#47-#48	2	3
Special educational services	#49-#53	5	9
		9	16
Parental Participation			
Collective participation	#54-#56	3	3
Individual-level participation	#57-#59	3	3
General appeal mechanism	#60	1	3
		7	9
Grand Total		60	128

3.4.5 Validity and Reliability

In any social science research, *validity* refers to the extent to which the results of the analysis measure what we expected to measure, while *reliability* refers to the consistency of the measure over time (G. Anderson, 1990). These issues are often thought of in relation to experimental designs and other forms of quantitative analysis but they are equally relevant to qualitative research, albeit in different forms (Lincoln & Guba, 1985). There are two types of validity which are relevant to the present study: *construct validity* and *content validity*. The first refers to the extent to which the conceptual framework measures the theoretical construct of EEO; the second refers to the extent to which the items used in the analysis represent the content which they are supposed to measure. The reliability of the analysis is measured by the extent to which other researchers would arrive at the same answers to the questions posed, using a given analytical framework.

The first draft of the analytical framework and the EEO themes and sub-themes was sent to five prominent researchers in Canada and the United States and feedback was received from four of them. Their input permitted the validation of the EEO construct being developed and was very helpful in improving the details of the design and the delineation of the various EEO themes.

A draft version of the data analysis instrument was pilot tested with data from Québec by the researcher, with feedback from a representative of the Commission des droits de la personne du Québec, and with Ontario data by two representatives from, respectively, the Ontario Human Rights Commission and the Ontario Ministry of Education. This process facilitated the refinement of the instrument and the development of appropriate decision rules and explanatory notes.

The preliminary data collection was validated by sending a copy of all legislative action identified by the researcher to representatives of each provincial and territorial department of education. Responses were received from all twelve jurisdictions. Their feedback indicated that the vast majority of relevant statutes and regulations had been identified by the researcher. The few "missing pieces" were supplied by the provincial respondents, as were the administrative documents and other data not available to the researcher.

The results of the preliminary analysis were validated by sending the draft responses for a given jurisdiction to the respondent in the department of education in question. Once again, responses were received from all twelve respondents. Their feedback supported the answers reached by the researcher, although, as anticipated, there were some differences of opinion concerning the data analysis instrument and the answers reached. Further clarification and consensus was achieved by subsequent telephone conversations (for details, see Vol. 2, section A.6, app. A). Furthermore, by means of this process, recent amendments of certain legislative acts were identified and supplied. The feedback and assistance from provincial respondents was extremely helpful in validating the data, the analytical framework and the results of the analysis. Their forthright and constructive comments made it possible to improve upon the design and conduct of the analysis and validate the results.

The results of the final analysis were further validated by four separate tests. First, the number of items in the data analysis instrument was collapsed to fifteen "key rights". These key rights were deemed by the researcher, after consultation with selected experts in the field, to be the most important from the sixty rights contained in the instrument. Second, the scores obtained on multivariate response items were compressed to a binary score (0 or 1) in order to see if such changes had any effect on the overall results. Third, a similar test was conducted respecting item #15 on the instrument, which had seven possible response categories (higher than any other item). Fourth, the overall score was compared to that which would have resulted from an average of individual theme scores, thereby eliminating the effect of the different weights of individual themes. The results of these tests confirmed the validity of the initial results, as only minor changes in the ranking of jurisdictions occurred in each test (see Vol. 2, section A.6, app. A.).

3.5 Constraints and Limitations

The various constraints and limitations of the study are summarized below.

Scope

This study is inherently limited to legislative action as of December 31, 1992 (excluding other policy instruments) on student/parent rights (excluding other rights) by governments

(excluding other policy actors) concerning equal educational opportunity respecting elementary-secondary education (excluding post-secondary education) of "school-age" students with disabilities (excluding infants and adults), as defined in each province/territory (excluding federal educational jurisdiction), enrolled in public schools or schooled at public expense (excluding private schools, except as alternate public school placements).

There is one caveat which should be mentioned with respect to the focus of this study on legislative action. As stated above in section 1.2, this inquiry provides information about the "state of the law" concerning equal educational opportunity for students with disabilities in a given jurisdiction, and in relation to the other jurisdictions contemplated by the study. It does not purport to describe the "state of the art" concerning overall government policy, let alone the state of practice in the province in question. It is recognized that in many instances, non-legislative government policy provides important benefits to students with disabilities. For example, a government could set up a financial aid program for teacher aides, in order to encourage integration. Similarly, in practice, the benefits actually provided to students may be greater than - or less than - that required by legislation. Consequently, one cannot equate the findings of this study with what is provided, *in toto*, let alone done, in any particular jurisdiction.

Finally, in terms of non-legislative action, the importance of financing deserves special mention. Each province and territory has a system for the funding of education; the Federal Government also provides monies for education by means of transfer payments to the provinces and territories. There is no doubt of the importance of funding arrangements to support special programs such as the education of students with disabilities (see for example, W.J. Smith, in press). One of the researchers who critiqued the conceptual framework stated that funding is arguably the best indicator of the meaningfulness of the rights provided to these students. Funding does receive indirect consideration in this study, as reflected in the right to various services at public expense. However, given the complexity of funding systems and the fact that funding is more properly considered as a school board right than a right of students or parents, it was decided that funding should be treated in a separate study.

Data Collection

The statutes and regulations considered were limited to those published in the *Official Gazette* of the jurisdiction in question, as of December 31, 1992 and which are presently in force into force.

The major potential constraint on the collection of administrative decisions was the fact that the researcher had to rely on provincial and territorial education officials to supply them. This was initially seen as problematic both from the point of view of access to the data and the selection of any material supplied. The first potential problem was completely eliminated by the fact that every department supplied the requested documentation. Given the cooperative and open attitude of the respondents, the selection of material is not deemed to have been a problem.

As alluded to in the discussion of case law as a source of data (see section 3.3 above), all legislative action is subject to interpretation by the courts or administrative tribunals. Relevant case law was limited to decisions of the Supreme Court of Canada, provincial courts and human rights boards of inquiry, which were published in national and regional reporters as of December 31, 1992, and to unreported cases, including decisions emanating from Special Education Tribunals, made available to the researcher.

As alluded to in the discussion of various declarations and agreements (see section 1.3 above), such documents constitute a source of international law and may be used to support human rights cases. Because of the limited relevance and complexity of this material, it was decided to exclude all international law as a source of data.

Data Analysis

The *Charter* guarantees of equal protection and benefit of the law are of obvious importance to students with disabilities; provincial legislative action must meet these standards to the extent provided for by the *Charter* or they will be struck down by the courts. Similarly, the primacy of *Human Rights Codes* as quasi-constitutional laws requires that laws and regulations affecting students with disabilities meet the equality standards set forth in each provincial *Code*. The determination of the validity of

provincial laws and regulations in the light of the *Charter* and the provincial *Human Rights Code* is therefore of considerable importance in assessing the legislative action of each jurisdiction. However, it was felt that such an undertaking was beyond the scope of this study and warranted specific treatment in a separate analysis. Consequently, this study's analysis of the validity of the legislative action is limited to instances where there is a *prima facie* reason to question the validity of the enactment in question. No systematic analysis of the validity of provincial legislative action was undertaken.

As discussed above (section 3.4.4), the results of the data analysis were tabulated for purposes of comparison. It was accepted as a limitation that the items included in the instrument were not weighted and that the total "raw scores" had no absolute value but only permitted a *relative* comparison of jurisdictions by rank ordering (see Vol. 2, section A.5, app. A).

Formal validation of both data collection and analysis was conducted by two means: the completion of data validation instrument by provincial and territorial respondents and follow-up telephone conversations with the respondents, as well as other officials. It was accepted that this process would be subject to two limitations. First, it was not possible to include on-site visits to each department of education. Second, it was not possible to conduct the validation on an iterative basis, that is, to continually "play back" all changes in the data analysis to respondents until there was consensus on most items and agreement that remaining differences could not be reconciled.

Endnotes - Chapter 3

1. This notion derives from the general theory that public bodies can only do what they are empowered to do by statute; the language of the enabling legislation determines whether the powers of the body in question are broadly or narrowly defined.
2. For example, the U.S. *Individuals with Disabilities Education Act* sets compliance standards for states and school boards to receive federal funding; if a state chooses not to receive federal funds, the statute has no application but if it does, then students/parents may claim all the rights contained in the *Act*, once the suspensive condition of state acceptance has been met.
3. In the United States, the concept of free and appropriate public education is usually defined in terms of the compliance standards set forth in the *Individuals with Disabilities Education Act* (see for example, H.R. Turnbull, 1990).
4. As discussed above in section 1.3.2, section 93 of the *Constitution Act, 1867* establishes all but exclusive provincial jurisdiction in the education field. Federal remedial power under this section can only be used in disputes arising over denominational schools. Given the purpose of this study, the scope of provincial jurisdiction under s. 93 is not viewed as being problematic.
5. See for example, the treatment of B.C. Ministry of Education policy manual in *Bales v. S.D. #23 (Central Okanagan)* (1984).
6. Case law is often referred to as the *common law*, "in contrast to cannon (or ecclesiastical) and the civil (or Roman) law" (Dukelow & Nuse, 1991, p. 182); however, the term *common law* is also used to refer to the system of private law, as distinct from public law, which applies throughout Canada except Québec, which maintains the French system of civil (private) law. Case law is therefore preferred as a broader term which includes all jurisprudence, much of which arises from disputes over statute based law.

7. Analytical Themes: Version 1

LEGISLATIVE ACTION [LA]	EEO THEMES		
	Access	Service	Procedure
Equality Rights	I	II	III
General Education Rights	IV	V	VI
Special Education Rights	VII	VII	IX

Note. It was found that there were too many points of intersect; as a result there were some cells with very little data; it was also difficult, in some cases, to separate general from special education rights, as these themes were often treated in one legislative provision.

8. Analytical Themes: Version 2

LA on Equality Rights
Application; Recourse

LA on Substantive Education Rights
Access; Identification and Placement; Service

LA on Procedural Education Rights
Participation; Recourse

Note. The separation of substantive and procedural rights was found to be somewhat artificial in areas where

substance was too amorphous to delineate, or subject to diverse values, professional judgement; in such cases, rights were sometimes provided by procedures rather than substance (e.g. appropriate education through natural justice).

9. The separation of the analytical themes in this manner was done for two reasons. First, legislative action on non-discrimination is found in *Human Rights Codes*, while the other themes are treated in the *Education Act* of each jurisdiction, suggesting this separation. Second, elements of natural justice permeate all of the foregoing, suggesting that it not be treated as a separate analytical theme.

4.0 DATA ANALYSIS

This chapter presents the analysis of the data. It is organized in terms of the five major research questions of the study respecting: non-discrimination, access to schooling, identification and placement, service delivery, and parental participation. As stated in section 3.4.1, the first sub-question (determining the specific rights which define the theme) of each major research question was answered in designing the data analysis instrument (see Vol. 2, table A.2, app. A). This instrument was in turn used to analyze the legislative action in each jurisdiction and compare the results. Accordingly, in each section of this chapter, the answer to sub-question 1 will be presented summarily, followed by a detailed presentation and discussion of the analysis and comparison of all jurisdictions. For the sake of brevity, when reference is made to several jurisdictions* in parentheses, the following abbreviations will be used:

AL	Alberta	NE	Newfoundland	PI	Prince Edward Island
BC	British Columbia	NT	Northwest Territories	QC	Québec
MA	Manitoba	NS	Nova Scotia	SA	Saskatchewan
NB	New Brunswick	ON	Ontario	YU	Yukon

Supplementary material and discussion are included in notes at the end of the chapter and, for topics of particular concern, in detailed notes in Vol. 2, app. B. Detailed data analysis tables are included in Vol. 2, app. C, which provide the responses of each jurisdiction, as well as pin-point references to the relevant legislative action. Excerpts from the legislative action taken by each jurisdiction are included in Vol. 2, appendices F to Q. As stated above in section 3.5, the *Charter* was not, per se, an object of this inquiry. Nonetheless, it is part of the constitutional framework and must be considered when analyzing provincial and territorial legislation. Accordingly, reference to the *Charter* will be limited to cases where the analysis suggests, *prima facie*, that the constitutional validity of a given legislative provision is problematic, especially in light of the equality provisions of the *Charter* (s. 15). To avoid repetitious detail each time the validity of a text is suspect, a brief note on these provisions is included in Vol. 2, section B.2, app. B.

* Similarly, each department of education will be referred to in the same manner, viz Alberta Education, BC Education, etc., or where the context permits, as "the Ministry".

4.1 Non-Discrimination

The specific research questions for this theme are as follows:

- 1.1 What are the specific rights which define *non-discrimination*?
- 1.2 To what extent does each jurisdiction provide for such rights?
- 1.3 How do all jurisdictions compare in terms of the provision of such rights?

This theme is understood as the equal protection and benefit of law without discrimination on the basis of disability. In order to answer sub-question 1.1, it was defined by twelve items and from these, three sub-themes were derived: application of the prohibition against discrimination to students with disabilities, scope of this prohibition and the adjudication of complaints. The individual items are included in various tables in the discussion which follows.

The analysis and comparison of individual jurisdictions (sub-questions 1.2 & 1.3) will be presented and discussed jointly in the following three sections, each dealing with one of the above sub-themes of *Non-Discrimination*. This will be followed by a summary and discussion of the theme as a whole.

4.1.1 Application to Students with Disabilities

Each jurisdiction in Canada has adopted a *Human Rights Code** [*Code*] which serves to complement the rights guaranteed in the *Canadian Charter* (Caron, 1988) and fill the void in this regard at common law.¹ Unlike the *Charter*, whose scope is limited to legislation and government action (*R.W.D.S.U. v. Dolphin Delivery*, 1986), the codes are intended to protect individuals from discrimination by groups and individuals with respect to enumerated activities in the public and private sectors, typically, employment, accommodation and the provision of goods and services.² For students with disabilities, the basic issue is whether disability is included as a prohibited ground respecting non-discrimination and whether education is an enumerated activity. The distribution of responses respecting this sub-theme is shown in table 4.1.

* The nomenclature of human rights legislation in each jurisdiction varies; for purposes of discussion, the generic term *Human Rights Code*, or when the context permits, *Code*, will be used for every jurisdiction.

TABLE 4.1
Distribution of Responses: Application to Students with Disabilities

Item	Responses
1. Is disability included as listed ground of discrimination?	
[0] Disability not included	1
[1] Some forms of disability excluded	0
[2] Disability but not means to palliate a handicap included	2
[3] Disability and means to palliate a handicap included	9
2. Is public education an activity to which non-discrimination rights apply?	
[0] Public education not included	1
[1] Public education subsumed under general activity	8
[2] Public education stipulated as activity	1
[3] Public education stipulated as human right	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C; see also note 3 re scoring of items for Nova Scotia.

Provision for Disability

All jurisdictions include physical and mental disability³ and the vast majority also include the means to palliate a handicap as a prohibited ground and all but four (BC, MA, NT and QC) define the terms included in the *Code*. In general, the lack of a definition of disability in the *Code* creates uncertainty about the scope of the prohibition (*Gillingham v. Westminster Guard & Patrol Ltd.*, 1991). The lack of a definition in the Québec *Code* is seen as especially problematic, in view of the various definitions of disability and other special needs used in other Québec legislation.⁴

The scope and detail of the definitions used in different *Codes* vary somewhat but can be illustrated by the New Brunswick *Code* (s. 2):

"mental disability" means

- (a) any condition of mental retardation or impairment,
- (b) any learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken language, or
- (c) any mental disorder; ...

"physical disability" means any degree of disability, infirmity, malformation or disfigurement of a physical nature that is caused by bodily injury, illness or birth defect and, without limiting the generality of the

foregoing, includes any disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance.

Two jurisdictions stipulate that the meaning of "disability" includes both actual and perceived conditions (*Nova Scotia Code*, s. 3(1); *Ontario Code*, s. 10(1)). As a general rule, the prohibition against discrimination does not include "harassment", which is treated separately and is generally confined to gender based complaints. However, three jurisdictions (MA, NE, QC) define harassment to encompass disability as a prohibited ground,⁵ which enlarges the scope of protection afforded to persons with disabilities.⁶

Provision for Public Education

The vast majority of jurisdictions do not expressly mention education as an enumerated activity⁷ but the inclusion of education is inferred by the language of the *Code*. The following provision of the *Alberta Code* (s. 3) is typical of the wording used:

No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

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

(b) discriminate against any person or class of persons with respect to any accommodation, services or facilities customarily available to the public,

because of race, religious beliefs, colour, gender, physical disability, mental disability, ancestry or place of origin of that person or class or persons or of any other person or class or persons.

The wording in the *Alberta Code* has been found to subsume public education (*Schmidt v. Calgary Board of Education*, 1975); however, a contrary interpretation of similar wording was reached in *Winnipeg School Division No. 1 v. McArthur* (1982). The *Manitoba Code* has since been amended to specify education. On the basis of *Schmidt* and other cases,⁸ *McArthur* appears to be an isolated case (see also discussion in Keene, 1992); hence the decision to infer the inclusion of education as an enumerated activity.

Despite the assumption that public education is subsumed by "services available to the public" language, the scope of application of *Human Rights Codes* to public schooling in jurisdictions retaining this type of language is still viewed as problematic. Even when

public education is considered to be an activity to which the public customarily has access, the failure to specifically mention education leaves the question as to which particular educational services are protected open to considerable interpretation, as suggested by several reported cases.⁹

Two jurisdictions have gone so far as to include education as a "human right":

Québec (*Code*, s. 40):

Every person has a right, to the extent and according to the standards provided for by law, to free public education.

and Saskatchewan (*Code*, s. 13(1)):

Every person and every class of persons shall enjoy the right to education in any school ... or place of learning, ... without discrimination because of his or their race, creed, colour, sex, marital status, disability, nationality, ancestry or place or origin.

Not only does such language resolve any doubt concerning the application of the *Code* to public schooling, it enshrines education as a "quasi-constitutional" right, which can be crucial in cases where there is a conflict between an educational right and some other (ordinary) statutory right (see discussion in section 1.3.3 above). The Saskatchewan provision is arguably a stronger expression of the right to education because it is not qualified by reference to other "standards provided for by law".¹⁰ It can therefore be thought of as an independent right, while any substantive right arising from the Québec provision depends on the existence of another enactment.¹¹ However, the inclusion of education as a human right does not resolve potential conflict with other rights which might be enumerated in the *Code*¹² or which are constitutionally protected.¹³

At the other end of the spectrum, is Nova Scotia. Like other jurisdictions, the Nova Scotia *Code* prohibits discrimination in respect of "the provision of or access to services or facilities" (s. 5(1)(a)), which would be construed as to include education. However, the *Code* states that section 5(1) does not apply "in respect of the provision of or access to services or facilities, to the conferring of a benefit on or to providing of a protection to youth or senior citizens" (s. 6(1)(a)). This provision has been interpreted by the researcher to mean that public education is excluded from the prohibition against discrimination contained in section 5(1)(a). Although it is believed that if the text in question were subjected to judicial scrutiny, it would be declared unconstitutional, until

such action is taken, the exclusionary effect of the provision remains. Given the importance of this conclusion for the provision of EEO to students in Nova Scotia, a note on this topic has been included in Vol. 2, app. B.

4.1.2 Scope of Prohibition Against Discrimination

The scope of the prohibition against discrimination is measured by means of the limits or standards set forth in the *Code*, the primacy of the *Code* over other legislation, the application to the Crown and the provision for voluntary and sanctioned affirmative action. The distribution of responses for this sub-theme is shown in table 4.2.

TABLE 4.2
Distribution of Responses: Scope of Prohibition Against Discrimination

Item	Responses
3. What limits or standards for non-discrimination are stipulated?	
[0] No such stipulations included	3
[1] Equality rights subject to standard of "reasonable accommodation"	6
[2] Equality rights subject to standard of "undue hardship"	3
[3] Equality rights subject only to "limits prescribed by law"	0
4. Does right to non-discrimination have primacy over other legislation?	
[0] Equality rights do not have primacy	3
[1] Equality rights have primacy subject to override	6
[2] Equality rights have primacy	3
5. Is Crown bound by non-discrimination provisions?	
[0] NO	2
[1] YES	10
6. Is voluntary affirmative action provided for?	
[0] NO	8
[1] YES	4
7. Is sanctioned affirmative action provided for?	
[0] NO	3
[1] YES	9

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C; see also note 3 re scoring of items for Nova Scotia.

Limits or Standards for Non-Discrimination

As shown in table 4.2, nine jurisdictions set forth some level or standard for equality

rights. The Northwest Territories *Code* contains no standard; the Québec *Code* contains a limit similar to section 1 of the *Charter* but it does not apply to equality rights (Caron, 1985; Morel, 1986). One could argue that the inclusion of a standard or limit restricts the prohibition against discrimination, which would otherwise be considered as absolute. However, a review of relevant case law supports the view that without the inclusion of a standard or limit, the courts will construe one, based on the premise that no rights are absolute (Berlin, 1984-85). Furthermore, as with any legislative provision, such standards, whether intended to expand or restrict non-discrimination rights, must in turn meet the equality provisions of the *Charter* (see note in Vol. 2, app. B).

Six jurisdictions (AL, BC, MA, NB, NE, PI) include a *de minimis* standard; for example, the Alberta *Code* (s. 11.1):

A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

Three jurisdictions (ON, SA, YU) have adopted the standard of "undue hardship"; for example, the Ontario *Code* (s. 11):

(1) A right of a person under Part I [Freedom from Discrimination] is infringed ..., except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances;

(2) The Commission, a board of inquiry 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.

The Ontario *Code* also includes a similar standard for determining whether a person "is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap" (s. 17(1)).

Three jurisdictions (NE, SA, YU) have specific provisions regarding standards as they relate to disability-based discrimination. The Newfoundland *Code* sets a "reasonable limit" for discrimination on the grounds of physical or mental disability "based upon a good faith qualification as determined by the Commission" (*Code*, s. 6(2)). Saskatchewan

provides detailed guidelines respecting its "undue hardship" requirement in both the *Code* and the accompanying regulations. Specifically, the *Code* refers to discrimination due to impediments to "physical access to the premises, facilities or services" or to the "lack of proper amenities" (s. 31(9)). These provisions have been amended, in part, subsequent to a well known case dealing with barrier-free access (*Re Saskatchewan Human Rights Commission and Canadian Odeon Theatres Ltd.*, 1985) which will be discussed in section 4.2. The Yukon *Code* deals only with physical disability (s. 7(1)(2)) but stipulates that the *Code* does not apply to buildings which were in conformity with the *Building Standards Act* when the *Code* took effect (s. 7(3)).¹⁴

Primacy of Non-Discrimination Provisions

The distribution of responses concerning the primacy of human rights legislation is similar to that observed above for standards. In the context of this study, primacy clauses are a statutory means for resolving potential inconsistencies between laws within a given jurisdiction.¹⁵ Where two (or more) enactments appear to be inconsistent - where the provisions of one cannot be applied while applying the provisions of the other, the courts may resolve the matter through interpretation or by assigning one act priority over the other. Thus, a more recent law may be presumed to overrule an older one and a law of special purpose may take precedence over a law of general application (P.-A. Côté, 1991).

Given the quasi-constitutional status of human rights legislation, the *Codes* have been seen as prevailing over conflicting legislation, even in the absence of a primacy clause (Keene, 1992). However, the inclusion of a primacy clause makes it clear that in cases of legislative conflict, the provisions of the *Code* shall prevail. Two jurisdictions (NB, NT) do not have a primacy clause. Three jurisdictions (BC, NE, PI) include a provision such as that in found in the Prince Edward Island *Code* (s. 1(2)):

This Act shall be deemed to prevail over all other laws of this jurisdiction and such laws shall be read as being subject to this Act.

Six other jurisdictions (AL, MA, ON, QC, SA, YU) have adopted a "notwithstanding" clause; in such cases, the *Code* applies unless a declaration in another act stipulates that it overrides a provision of the *Code*; for example, the Saskatchewan *Code* (s. 44):

Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless it falls

within an exemption provided by this Act or unless it is expressly declared by an Act of the Legislature to operate notwithstanding this Act.

Application to the Crown

In addition to primacy clauses, the scope of the *Code's* protection is strengthened if it applies to the Crown.¹⁶ Every jurisdiction in Canada except two (BC, PI), provides for a clause in an act governing the general interpretation of statutes and regulations, such as the following one from Manitoba (*Interpretation Act*, s. 14):

No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Given such a general provision, a declaration in the *Code* binding the Crown is required to ensure that the *Code* applies to the government.

The opposite approach (BC, PI) is illustrated by the British Columbia *Interpretation Act* (s. 14(1)): "Unless it specifically provides otherwise, an enactment is binding on Her Majesty". In these two cases, no provision in the *Code* is required to bind the Crown. The Northwest Territories (which has a general provision excluding the Crown, *Interpretation Act*, s. 8) is the only jurisdiction in Canada where the Crown is not bound by its *Code*.

Affirmative Action

The final element retained for measuring the scope of non-discrimination is the provision for affirmative action - programs intended to undo "past wrongs":

Affirmative action means any action taken to break historic social patterns of rejection, based on race, colour, religion or national origin, which have produced seriously disadvantaged minorities, whether or not these patterns result from cold-blooded, calculated conspiracies ... or merely result from thoughtlessness, apathy and lack of awareness" (Blackburn, cited in Tarnopolsky & Pentney, 1985, pp. 4/80-4/81).

Affirmative action programs are intended to produce a new balance of equality in the long run, as stated by the Supreme Court of Canada in *Action travail des femmes v. CNR*:

To render future discrimination pointless, to destroy discriminatory stereotyping and to create the required "critical mass" of target group participation in the work-force, it is essential to combat the effects of past systemic discrimination. In so doing, possibilities are created for the

continuing amelioration of employment opportunities for the previously excluded group (1987, p. 215).

Affirmative action programs are explicitly permitted, but not required, by the *Charter* (s. 15(2)). Consequently, they need to be provided for in the *Codes* in order to obviate a complaint of "reverse discrimination", in respect of equality rights provided for therein.

Two relevant items in the data analysis instrument dealt with voluntary and sanctioned programs. Voluntary provisions are understood to mean permissive language allowing school boards, for example, to initiate affirmative action programs, without the specific permission or approval of the human rights commission, a tribunal or some other body. Sanctioned provisions refer to legislative authority vested in one of the latter to order or approve such programs. Three jurisdictions (BC, MA, ON) provide for both such approaches; the Yukon provides only for voluntary programs, Alberta provides for neither; the remainder only provide for sanctioned programs.

The Manitoba *Code* (s. 11) is good example of the type of language which fosters the provision of voluntary programs:

Notwithstanding any other provision of this Code, it is not discrimination, a contravention of this Code, or an offence under this Code

(a) to make reasonable accommodation for the special needs of an individual or group, if those special needs are based upon any characteristic referred to in subsection 9(2); or

(b) to plan, advertise, adopt or implement an affirmative action program or other special program that

(i) has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection 9(2), and

(ii) achieves or is reasonably likely to achieve that object.

The approach to affirmative action favoured by the majority of jurisdictions is illustrated by the Newfoundland *Code* (s. 19):

(1) On the application of a person the commission may approve programs designed to prevent, reduce or eliminate disadvantages respecting services, facilities, accommodation or employment that may be or are suffered by a group of individuals where those disadvantages would be, or are based on or related to the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, marital status, physical disability or mental disability of members of that group or the age of that group.

- (2) Before or after the commission approves a program, the commission may
- (a) make inquiries concerning the program,
 - (b) vary the program,
 - (c) impose conditions on the program, or
 - (d) withdraw approval of the program
- as it thinks appropriate.

- (3) Nothing done in accordance with a program approved under this section is a violation of this Act.

Québec is included above as a jurisdiction not permitting voluntary affirmative action, although a contrary interpretation of its *Code* has been advanced (Bosset & Caron, 1989; Samson, 1988).¹⁷ However, under the umbrella of sanctioned programs, the *Regulation Respecting Affirmative Action Programs* does provide for affirmative action in education. The regulation (div. III) provides for the following for target groups:

An analysis of the educational system in the institution will allow identification of those practices from among the rules, directives, policies, decisions, contracts, agreements and the like, as well as the way they are applied, which though apparently neutral have a discriminatory effect in the services provided by the institution (s. 16).

The first decision providing for such an affirmative action program has just been handed down (*Re Commission des droits de la personne and Commission scolaire régionale Chauveau*, 1993; see text surrounding note 93).

It is understood, as a general principle, that any affirmative action program must be *genuinely* designed to promote the welfare of the target group and cannot shield discriminatory practice behind an affirmative *facade* (Jurianisz, 1988), as set forth in *Schewchuck v. Ricard* (1986, p. 295):

Affirmative action laws or programmes must be carefully scrutinized to ascertain (a) whether the law or programme is in fact an ameliorative one for disadvantaged individuals or groups including those set out in s. 15(2) [of the *Charter*], and (b) if ameliorative, whether the effect of the law or programme is so unreasonable that it is grossly unfair to other individuals or groups.

However, even if a given program is genuinely designed to provide affirmative action for a given group (e.g. persons with disabilities), this does not mean that certain practices within the program could not constitute "adverse effect" discrimination towards this group.¹⁸ Furthermore, there is also always a danger that practices within "approved"

programs will tend to be viewed as helping, not hindering the persons in question, even when this is not the case.¹⁹

The potential for such problems depends on the enabling language of the *Code*. They are minimized if the enabling provisions stipulate that an affirmative action program is allowed (i.e. that such a program does not constitute discrimination per se). They are maximized if the enabling provisions remove such programs from the ambit of the prohibition against discrimination (i.e. by stating that non-discrimination provisions do not apply to affirmative action programs). Consider, for example, the following statement by Laughlin and Young (1989, p. 10):

Self contained classes are viewed by the Board [York Region] as qualifying as "special programs" designed to assist the handicapped referred to in the Human Rights Code. Furthermore, the classes serve as a vehicle through which the Board can ameliorate the conditions of disadvantaged individuals, as condoned in Section 15(2) of the Charter.²⁰

If such programs are shielded from *any* review by the enabling provisions of the *Code*, then a school board could set up a special program for students with disabilities and no complaint could be lodged respecting *any* alleged discriminatory practice within the program. Ultimately, the school board could stipulate that the program did not apply to blacks, or to females, for example, and not be liable to a charge of discrimination. As far fetched as this possibility may seem, the decision in *Roberts v. Ontario (Ministry of Health)* (1989) provides evidence for this type of situation actually occurring.²¹

4.1.3 Adjudication of Complaints

This sub-theme comprises items which deal with the duty to investigate complaints, the provision for and the powers of a board of inquiry and the right to appeal decisions of the latter. The distribution of responses concerning this sub-theme is shown in table 4.3.

TABLE 4.3
Distribution of Responses: Adjudication of Complaints

Item	Responses
8. Is HRC required to investigate complaints?	
[0] NO	5
[1] YES	7
9. Is board of inquiry provided for adjudication?	
[0] NO	3
[1] YES	9
10. Can individual submit complaint to board of inquiry?	
[0] NO	11
[1] YES	1
11. Does Board of Inquiry have broad remedial authority?	
[0] NO	3
[1] YES	9
12. Can Board order be appealed on questions of fact or law?	
[0] No right to appeal	5
[1] Right to appeal on questions of law, subject to leave to appeal	0
[2] Right to appeal on questions of law	3
[3] Right to appeal on questions of fact or law, subject to leave to appeal	2
[4] Right to appeal on questions of fact or law	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C; see also note 3 re scoring of items for Nova Scotia.

Investigation of Complaints

In Canada, human rights commissions* are charged with a range of responsibilities²² and all jurisdictions provide for the investigation of complaints. The distinction in their respective *Codes* is found in the level of discretion which the commission enjoys relative to the investigation of complaints. Most jurisdictions require a complaint to be investigated, subject to certain time delays (prescription) or other specified grounds, such as a complaint judged to be "trivial, frivolous, vexatious or made in bad faith" (Ontario *Code*, s. 34(1)(b)). By contrast, three jurisdictions (AL, NB, SA) allow the Commission broad discretion, for example: "If, in the opinion of the Commission, a complaint is

* In British Columbia, the administrative body is the B.C. Human Rights Council (see note 22). For purposes of discussion, a general or multi-jurisdiction reference to a human rights commission includes the B.C. Council, unless the context indicates otherwise.

without merit, the Commission may dismiss the complaint at any stage of the proceedings" (New Brunswick *Code*, s. 18(2)). In the Northwest Territories, the appointment of an investigative officer is purely discretionary.

Board of Inquiry

All jurisdictions, except the Northwest Territories and Prince Edward Island, provide for a board of inquiry* to adjudicate disputes. However, in these two jurisdictions, the Minister is empowered to make a binding order. Québec is the only jurisdiction to make provision for the submission of a complaint to a board of inquiry by an individual, without the consent of the Commission. Elsewhere, if the complainant remains dissatisfied with the results of the investigation or the attempts to resolve the problem, it is the Commission which decides whether to refer the matter to a board of inquiry. This situation assigns the commission the dominant role in investigating and causing complaints to be adjudicated. This distinguishes the procedures for the settlement of complaints under human rights legislation from those litigated under the *Charter*.

As a generalization, if an individual wishes to pursue an action on the basis of the equality rights provisions of a *Human Rights Code*, he or she must do so using the procedures set forth therein. A complainant cannot by-pass this administrative route and apply directly to the courts for relief (*Seneca College of Applied Arts and Technology v. Bhadawria*, 1981). By contrast, if the complaint is based on alleged discriminatory provisions of a legislative act, then the individual could take a court action attacking the constitutionality of the statute in question on the basis of the *Charter*. In the latter case, the individual can personally control the action but would have to bear the costs of same. By contrast, in a board of inquiry case, the control of the proceedings remains with the commission, which also bears the costs of the case.²³

Remedial Power and Appeal

All jurisdictions providing for boards of inquiry have invested such boards with broad remedial powers to deal with a finding of discriminatory behaviour. While the scope of

* In Québec, disputes are referred to a Human Rights Tribunal, which serves the same function; for purposes of discussion, a general or multi-jurisdictional reference to boards of inquiry includes the Québec tribunal, unless the context indicates otherwise.

this power does vary somewhat, the following extract from the Newfoundland *Code* (s. 28) can serve as an example of the type of provision generally found in the *Codes*:

(1) A board of inquiry ...

(b) may, where it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do 1 or more of the following:

(i) to stop the contravention complained of,

(ii) to refrain in future from committing the same or a similar contravention,

(iii) to make available to the person discriminated against the rights, opportunities or privileges he or she was denied contrary to this Act,

(iv) to provide compensation to the person discriminated against, including compensation for all or a part of wages or income lost or expenses incurred because of the discriminatory action, and

(v) to take whatever other action the board considers appropriate....

Four jurisdictions (BC, MA, QC, SA) provide the board with authority to order the implementation of an affirmative action program; a board in Ontario *may* have such authority,²⁴ while in the remaining jurisdictions, such an order would not be permissible.

Decisions of boards of inquiry are binding on the parties but these decisions are subject to different rights of appeal, depending on the jurisdiction. Only two jurisdictions provide an unqualified right of appeal on questions of fact or law (AL, ON), while in two others (NE, QC), this right is subject to the granting of leave to appeal by the court. In three jurisdictions (MA, SA, YU), there is a right to appeal on questions of law,²⁵ while in the remaining jurisdictions, no right to appeal is provided for. However, in all cases, it is still possible to contest excess or refusal of jurisdiction, or manifest error of law.²⁶

4.1.4 Summary and Discussion of Non-Discrimination

This theme has been discussed in terms of three sub-themes: application of the prohibition against discrimination to students with disabilities, scope of this prohibition and the adjudication of complaints. A comparison of the converted scores²⁷ for these sub-themes reveals that the score for the first sub-theme is higher than that of the remaining two.

Application (items 1-2)	Scope (items 3-7)	Adjudication (items 8-12)
65	49	48

However, this is due primarily to the high rating for one item - application of non-discrimination to disability. The analyses of these sub-themes were synthesized in two ways. First, all items were rank ordered according to the total score for each item (sum of all jurisdictions); then, all jurisdictions were rank ordered according to the total score for each jurisdiction (sum of all items). The results of this synthesis are shown in tables 4.4 and 4.5 and in figures 4.1 and 4.2; all results shown are in converted scores.

TABLE 4.4
Distribution of Items: Non-Discrimination

Rank	Item	Description	Total
01	01	Application of equality rights to disability	86
02	05	Application of to the Crown	83
03	07	Sanctioned affirmative action	75
04	09	Board of inquiry for adjudication	75
05	11	Remedial authority of board of inquiry	75
06	08	Investigation of complaints	58
07	04	Primacy of equality rights over other legislation	50
08	02	Application of equality rights to public schooling	44
09	12	Right of appeal	42
10	03	Limits or standards for equality rights	33
11	06	Voluntary affirmative action	33
12	10	Submission to adjudication by individual	8

Note. Total = converted score (%) for all jurisdictions; for breakdown of responses by item, see Vol. 2, app. C.

As shown in table 4.4 and figure 4.1, the provision of non-discrimination rights to disability and the binding of the Crown are the highest ranking items. By contrast, the right of an individual to submit a complaint to binding adjudication (without the approval of the human rights commission) is practically non-existent. Sanctioned affirmative action, the adjudication of complaints by boards of inquiry and the remedial powers of the latter receive relatively high scores, while the items dealing with standards for non-discrimination and voluntary affirmative action are relatively low. The remaining items (investigation of complaints, primacy of equality rights over other legislation, application to public schooling and right of appeal) receive a mixed rating, placing them in the middle range of scores.

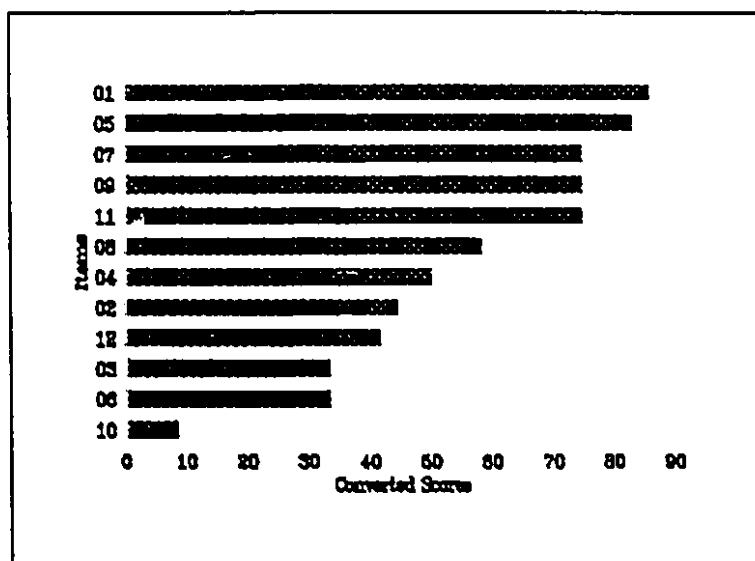


FIGURE 4.1
Distribution of Items: Non-Discrimination

Even though the score for the application of non-discrimination rights to public schooling is ranked in the mid-range, this score is viewed as problematic. It results from the fact that in all but three jurisdictions, the application of non-discrimination to education can only be inferred from the use in the *Code* of a

generic expression such as "services customarily available to the public". A review of the case law suggests that such wording may in fact remove or restrict the application of the *Codes* to public schooling (see discussion surrounding notes 8, 9 & 67). Given that one of these cases (*University of British Columbia v. Berg*, 1991) has just been argued before the Supreme Court of Canada, perhaps some more definitive judicial guidance on this issue will be forthcoming.

TABLE 4.5
Distribution of Jurisdictions: Non-Discrimination

Rank	Jurisdiction	Total
01	Ontario	77
02	Québec	73
03	Manitoba	68
04	Newfoundland	68
05	Saskatchewan	68
06	Yukon	64
07	Alberta	59
08	British Columbia	55
09	Prince Edward Island	45
10	New Brunswick	41
11	Northwest Territories	18
12	Nova Scotia	0

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in table 4.5 and figure 4.2, the distribution of jurisdictions is bounded by Ontario at the high end and Nova Scotia at the low end.²⁸ The mean response for all jurisdictions on all items was 53. The variance of the distribution is considered moderate (Std=22).²⁹ Nova Scotia and, to a lesser extent, the Northwest Territories and can be described as "outliers" but there is no particular pattern in the overall distribution.

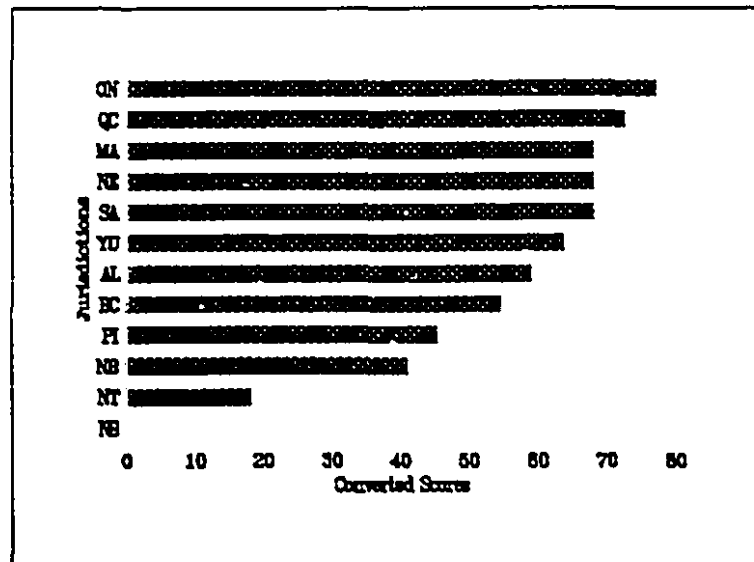


FIGURE 4.2
Distribution of Jurisdictions: Non-Discrimination

4.2 Access to Schooling

The specific research questions for this theme are as follows:

- 2.1 What are the specific rights which define *access to schooling*?
- 2.2 To what extent does each jurisdiction provide for such rights?
- 2.3 How do all jurisdictions compare in terms of the provision of such rights?

This theme is understood as admission to elementary and secondary schooling at public expense. In order to answer sub-question 2.1, it was defined by fifteen items and from these, four sub-themes were derived: right to public schooling, compulsory attendance, expulsion and additional support. The individual items are included in the discussion which follows.

The analysis and comparison of individual jurisdictions (sub-questions 2.2 & 2.3) will be presented and discussed jointly in four sections, each dealing with the above *Access* sub-themes. This will be followed by a summary and discussion of the theme as a whole. However, before beginning this presentation, there is one preliminary matter concerning the analysis of data from Alberta and the Yukon which warrants a brief comment.

Reasonable Limits in Alberta and the Yukon

The vast majority of educational rights are found in the *Education Act*^{*} and the regulations adopted under its aegis. In Alberta and the Yukon, all such rights are subject to an identical "reasonable limits" clause included in their respective *Education Acts*:

The exercise of any right or the receipt of any benefit under this Act is subject to those limitations that are reasonable in each circumstance under which the right is being exercised or the benefit is being received (s. 2).

Such an interpretative clause can be used as a guide by the courts in interpreting the scope of substantive and procedural rights provided for in other sections of the *Act* (to date there is no reported case which has considered this provision).³⁰ There is a tradition in Canadian education law which recognizes that the courts should not interfere with school board decisions in the absence of manifest bad faith or illegality. The leading case in this tradition remains *Bouchard v. School Commissioners of Saint-Mathieu-de-*

^{*} The nomenclature of education statutes in each jurisdiction varies; for purposes of discussion, the generic term *Education Act* will be used for every province.

Dixville (1950), which also has the distinction of being the only case concerning the right to education of a student with special needs to reach the Supreme Court of Canada.³¹ It is suggested that the "reasonable limits" clause is intended to remind the courts that this tradition should not be abandoned lightly.

4.2.1 Right to Public Schooling

Table 4.6 presents the distribution of responses respecting the right to public schooling. It consists of items dealing with the general right to education and the right to early and extended schooling for students with disabilities.

TABLE 4.6
Distribution of Responses: Right to Public Schooling

Item	Responses
13. Is there a right to free public schooling?	
[0] No such right is provided for	0
[1] Right to schooling subject to a general exception for disability	1
[2] Right to schooling subject to an exception for "severe" disabilities	3
[3] Universal right to free public schooling provided without exception for disability	8
14. What is the lower age limit for general right to free public schooling?	
[0] Nil	0
[1] 7 years of age	0
[2] 6 years of age	7
[3] 5 years of age	5
15. What is the upper age limit for general right to free public schooling?	
[0] Nil	0
[1] 15 years of age	1
[2] 16 years of age	1
[3] 17 years of age	0
[4] 18 years of age	2
[5] 19 years of age	1
[6] 20 years of age	4
[7] 21 years of age	3
16. Is there a right to early education for disabled?	
[0] No such right provided	10
[1] Right provided to some disabled	2
[2] Right provided to all disabled	0
17. What is the lower age limit for right to early education for disabled?	
[0] Nil	10
[1] 5 years of age	0
[2] 4 years of age	1
[3] 3 years of age	1

TABLE 4.6 - continued

Item	Responses
18. Is there a right to extended schooling for disabled?	
[0] No such right provided	10
[1] Right provided to some disabled	2
[2] Right provided to all disabled	0
19. What is the upper age limit for right to extended schooling for disabled?	
[0] Nil	10
[1] 19 years of age	0
[2] 20 years of age	0
[3] 21 years of age	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C; see also note 38 re item #15.

General Right to Schooling

Item 13 focuses on the essence of this sub-theme - to whom does such right apply? For students with disabilities, and others who traditionally have been marginalized by the education system, the right to schooling is a *platform* right, on which other rights are constructed. Legislation providing such rights to students with disabilities is often described as "mandatory", as opposed to "permissive" legislation. The importance of this right in providing a base for other more specific rights is summarized by Carlson (1989): "Nearly two decades of mandatory legislation accompanied by increased awareness of the needs of disabled persons and integration of children with disabilities have helped to establish a firm presence [of special services] in Saskatchewan schools" (p. 43).

As can be seen in table 4.6, eight jurisdictions (BC, MA, NB, NT, PI, QC, SA, YU) provide for universal access to schooling without exception with respect to disability. In all these cases, except the Northwest Territories, the language of the *Education Act* is unambiguous. In the latter *Act*, boards of education and divisional boards are required "to provide instruction to students" (ss. 34(p), 65(u)) and secondary boards are required "to admit all eligible students" (s. 82(2)(d)). However, the term "student" is not defined and there is not a specific section in the *Act* which sets forth a statement of a right to education. Three jurisdictions provide for an exception, or possible exception, for students with severe disabilities (AL, NE, ON) and Nova Scotia provides for an

exception, or possible exception, for all students with disabilities. In these cases, however, the language of the *Act* is open to interpretation, as discussed below.

The general provision of the Alberta *Act* which provides for a right to schooling makes no mention of exceptions for disability but it does stipulate that the right expressed therein is made "in accordance with the provisions of the *Act*" (s. 3). This right of access is amplified in sections 28 to 29, which include provision for a special education program for students with special needs. However, the *Act* contains the following caveat (s. 30):

(1) A board may determine that a student has special needs that cannot be met in an education program that can be provided by the board under section 28.

(2) If a board makes a determination under subsection (1) in respect of a student, the board shall refer the matter to a Special Needs Tribunal, which shall confirm the board's determination or determine that the board is able to provide the student with an education program that is appropriate to the needs of the student.

If the Tribunal confirms the board's finding, it is required to develop a "special needs plan" and determine the placement of the student, the relationship, if any, between the student and the board and the apportionment of the costs of the plan (s. 30(3)). In contrast to the language used in sections 28 and 29, which also provides for outside placement for students with special needs, the expression "special needs plan" does not mention the word "education", suggesting that this provision is designed for students whom the system considers *uneducable*. However, this provision is clearly an exception which could only be used in cases involving students with very severe problems.

The Newfoundland *Education Act* requires school boards to organize instruction, including "the means of instructing children who for any physical or mental cause require special classes ..." (s. 11(b)). However, the *Act* contains the following derogative provision:

A school board may ...

(e) cause to be examined by a qualified medical practitioner a pupil suspected by a teacher to be suffering from a communicable disease or other physical or mental condition inimical to the health or welfare of the other pupils or suspected to be so mentally deficient as to be incapable of responding to class instruction by a qualified teacher, and, upon the medical practitioner certifying the existence of the disease, condition or deficiency, exclude that pupil from school until a certificate is obtained for that pupil from a qualified medical practitioner permitting his or her return to the school (s. 12, emphasis added).

Subject to the conditions stipulated therein, this clause could be used to deny school access to students with severe problems.

In Ontario, the *Education Act* makes provision for the education of "exceptional pupils", who are defined as follows (s. 1(1)):

"exceptional pupil" means a pupil whose behavioral, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program by a committee, established under sub-paragraph iii of paragraph 5 of subsection 11(1), of the board, ...

However, the *Act* contains a derogation to the general right to education, which could be used to deny students with severe problems access to public schooling.³² Specifically, the exception is based on the following definition (s. 35):

"hard to serve pupil" means a pupil who, under this section, is determined to be unable to profit by instruction offered by a board due to a mental handicap or a mental and one or more additional handicaps.

The Ontario *Act* contains an elaborate set of procedures for identifying and placing exceptional and hard to serve pupils (Special Education Identification Placement and Review Committees [IPRC]), which will be discussed in section 4.3. For purposes of this discussion, suffice it to say that if a pupil is found to be "hard to serve", the board does not have a duty to educate the student, only to assist the parent "to locate a placement suited to the needs of the pupil and reimburse the parent or guardian for any expenses incurred by the parent or guardian in locating such placement" (s. 35(9)).

As noted in the case of Alberta, the absence of the word "educational" juxtaposed to "placement" suggests that the Ontario provision is designed for students whom the system considers *uneducable* (see *Re Maw and Scarborough Board of Education*, 1983).³³ Baldwin (1990-91) summarizes the impact of this exclusionary provision thus:

In practice, the exceptions [to the right to education] may be rare, but their rarity reflects more on the good faith of school boards and appeal panels working to develop local resources than on any statutory duty education within the local schools (p. 230).

The general right to education in the Nova Scotia *Education Act* (s. 3) makes no mention

of exceptions for disability; however, section 3 specifies that the right is subject to the *Act* and the *General Regulations*, which include the following:

Each school board shall provide for all students resident in the area under the jurisdiction of the school board who are entitled to attend school and **who are qualified to pursue the studies in the grades or courses for which they are enrolled...**

(e) special education programs and services to be prescribed by the Minister for physically and mentally handicapped students between the ages of five and twenty-one **who are capable of benefiting from such programs and services** (*General Regulations*, s. 6, emphasis added).

Given the absence of other qualifying provisions and any right of appeal, these restrictions are deemed to permit a general exclusion of students with disabilities,³⁴ the only jurisdiction in Canada which still has such legislation.³⁵

It can be argued that the exclusionary provisions of the *Education Acts* of Alberta, Newfoundland, Nova Scotia and Ontario could be challenged under the *Human Rights Code* of each jurisdiction, as well on the basis of the *Charter*.³⁶ Inasmuch as the denial of an education is based on a student's disability, it is assumed that the provision would be held to be discriminatory and the argument would turn on whether the exemptions were "reasonably justified". It is further presumed that such a defence would be more difficult to sustain in Newfoundland and Nova Scotia, where no alternate provisions for service delivery are made, in contrast to the situation in Alberta and Ontario discussed above.

The comparison of age limits is rendered difficult because of the manner in which such limits are expressed in law and the relation between age requirements and the school year.³⁷ With this caveat in mind, five jurisdictions (BC, NB, NE, NS, QC) provide for the right to education as of 5 years of age, while the remainder provide for this right as of 6 years of age. In Ontario, however, if a board decides to offer kindergarten or junior kindergarten, then the age entitlement is correspondingly lowered. There is a much greater spread in the upper age limit to school entitlement - from 15 years of age (NT) to 21 years of age (MA, ON, SA).³⁸

Early and Extended Schooling

Only two jurisdictions (NB, QC) provide a right to early and extended schooling for some

students with disabilities. In New Brunswick, the *Education Act* (s. 52(2)) sets forth this entitlement (3-21 years inclusive) in terms of students who would have been covered by the former *Auxiliary Classes Act*, which governed "the instruction and training of cerebral palsied or mentally retarded children" (s. 3(b)). Other exceptional pupils are not entitled to this additional schooling. In Québec, the *Basic School Regulation for Preschool and Elementary School Education* provides for early education (as of 4 years of age) for "... students who show disabilities due to one or more physical or mental deficiencies that cannot be compensated for with appropriate equipment or devices and that are liable to interfere with their schooling" (sched. I). A different definition is used, however, to establish entitlement to extended schooling (until 21 years of age). The *Education Act* (s. 1) refers to the definition contained in the *Act to Secure the Handicapped in the Exercise of their Rights*:

"handicapped person", or "the handicapped" in the plural, means a person limited in the performance of normal activities who is suffering, significantly and permanently, from a physical or mental deficiency, or who regularly uses a prosthesis or an orthopedic device or any other means of palliating his handicap (s. 1(g)).³⁹

Two other jurisdictions (ON, SA) explicitly provide for the possibility of, but not the right to, early childhood education for certain pupils (Ontario *Operation of Schools - General Regulation*, s. 33; Saskatchewan *Education Regulations*, s. 50(2)).

4.2.2 Compulsory Attendance

This sub-theme consists of three items: the duty to attend school and the lower and upper age limits of same. The responses to these items are shown in table 4.7.

TABLE 4.7
Distribution of Responses: Compulsory Attendance

Item	Responses
20. Is compulsory schooling provided for?	
[0] No such obligation is provided for	0
[1] Compulsory attendance subject to general exception for disability	4
[2] Compulsory attendance subject to exception for "severe" disabilities	3
[3] Compulsory school attendance provided for without exception for disability	5
21. What is the lower age limit for duty to attend school?	
[0] Nil	0
[1] 8 years of age	0
[2] 7 years of age	5
[3] 6 years of age	7
22. What is the upper age limit for duty to attend school?	
[0] Nil	0
[1] 14 years of age	0
[2] 15 years of age	10
[3] 16 years of age	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Duty to Attend School

Compulsory education, or the duty to attend school, serves to complement the right to education discussed above, which together have been described by Bargen (1961) as "the two sides of our educational coin" (p. 49). The compulsory side of the coin can be viewed as expressing the importance of education to the state and society (see *Brown v. Board of Education*, 1954; *Jones v. R.*, 1986, cited in section 1.1 above). However, given that this duty is generally imposed upon parents on behalf of their children, it can also be understood as a right of the latter, according to the Hohfeldian scheme (see section 2.2.2 above). As this duty exists in every jurisdiction in Canada, the concern of this study was with the exceptions provided for disability.

As shown in table 4.7, five jurisdictions (BC, MA, NB, PI, YU) provide for this duty, with no exception for disability. Three jurisdictions (AL, NE, ON) are viewed as implicitly providing for an exception for students with severe disabilities on the basis of the exclusion or possible exclusion of the latter from public schooling (see discussion above surrounding table 4.6). Four jurisdictions (NT, NS, QC, SA) include an exception

to the duty to attend school, which either mentions disability or which could be used to excuse on this basis:

Northwest Territories (*Education Act*, s. 131):

- (3) A child is not required to attend school where ...
 - (f) the Superintendent, after consultation with the local authority, has stated in writing that he or she is of the opinion that no suitable program of instruction is offered in the school that the child would normally attend....

Nova Scotia (*General Regulations*, s. 63):

- A child shall not be required to attend school ..., if
 - (a) the physical condition of the child is such as to render his attendance at, or instruction in, school inexpedient or impractical; or
 - (c) there is not sufficient accommodation in the school that the child is required to attend;
 and in any of such cases the child is receiving training and instruction equivalent to that which he would be receiving if he were in regular attendance in a school of the section in which he resides; or
 - (d) the mental condition of the child is such as to render his attendance at, or instruction in, school inexpedient or impractical.

Québec (*Education Act*, s. 15):

- The following students are exempt from compulsory school attendance: ...
 - (2) a student excused by the school board, at the request of his parents and after consultation with the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities established under section 185, by reason of a physical or mental handicap which prevents him from attending school.

Saskatchewan (*Education Act*, s. 156):

- A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penalty in this Act, where:
 - ...
 - (f) the director or superintendent, upon due enquiry or investigation, is of the opinion, and certifies in writing to that effect, that continued attendance at school is not productive or is detrimental to the pupil or to the school;....

Three jurisdictions reinforce the duty to attend school through linkages between the *Education Act* and youth protection legislation (NE, NS, QC),⁴⁰ as illustrated by the following provision from the Newfoundland *Child Welfare Act*: a "'child in need of protection' means ... a child who is the care and custody of a person who fails to provide adequately for the child's education or attendance at school" (s. 2(b)(vii)).

Age Limits for Compulsory Schooling

Two lower age limits for compulsory schooling are observed in Canada. Seven jurisdictions stipulate 6 years of age (AL, BC, NE, NT, NS, ON, QC), while the remainder set this duty at 7 years of age. There is more uniformity with the upper age limit. With the exception of two jurisdictions whose limit is set at 16 years of age (NE, QC), all other jurisdictions require compulsory schooling until 15 years of age inclusive.⁴¹

4.2.3 Expulsion

The third sub-theme concerns the right of a school board to expel students and thereby deny them a right to education or cancel the duty to attend school. Expulsion provisions are important in establishing rights of access to schooling because they can become a means to deny rights accorded under other sections of the *Education Act*, which is why such policies have been characterized as "back door exclusion":

Expulsion exceptions can have a significant impact on students with special needs, if their right to enter the front door of the school is circumvented by the right of the school board to usher them out the back door (W.J. Smith, 1992b, p. 42).⁴²

The distribution of responses for these items is shown in table 4.8.

TABLE 4.8
Distribution of Responses: Expulsion

Item	Responses
23. Is expulsion of students from school permitted?	
[0] Expulsion permitted	8
[1] Expulsion not allowed if grounds are disability-related	0
[2] Expulsion not allowed but long-term suspension allowed	4
[3] Neither expulsion nor long-term suspension allowed	0
24. If student expelled from one school, is there still duty to attend another school?	
[0] NO	11
[1] YES	1
25. If student expelled from one school, is there still right to education in another school?	
[0] NO	11
[1] YES	1

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As indicated in table 4.8, there is no jurisdiction in Canada which does not allow either long-term suspension or expulsion, nor is there one where expulsion or suspension is expressly forbidden if grounds are related to disability. Four jurisdictions only allow long-term suspension (BC, NT, NS, YU). In the case of British Columbia, neither the meaning of nor the maximum duration of the suspension is stipulated, so it is assumed that expulsion is not possible but that suspensions to the end of the current school year would be allowed. In the Northwest Territories and the Yukon, the suspension cannot be longer than one semester (half a school year). In Alberta, expulsion is subject to review by the Minister and in Newfoundland, expulsion is subject to the approval of the Ministry.

As a general rule, expulsion or suspension is formally recognized in the *Education Act* as a valid reason to be excused from school, as illustrated by the Yukon *Education Act*: "A student is excused from attendance at school if ... the student has been suspended by a school and has not been given permission to enroll in another school..." (s. 22(2)(d)).⁴³

British Columbia is the notable exception; in this jurisdiction alone, the compulsory attendance provision (s. 3) includes no exception for suspension (expulsion not being permitted). If a student is suspended, the board must continue to provide an educational program to the student (s. 103(2)(d)). This same provision makes this jurisdiction the only one in Canada to explicitly maintain a right (as well as the duty) to follow an educational program in the event of a suspension.

4.2.4 Additional Support

This sub-theme is defined by two items - free school transport and barrier-free access. They are viewed as support elements for access by ensuring that students with disabilities are able to get to and through the school door. The distribution of responses for these items is shown in table 4.9.

TABLE 4.9
Distribution of Responses: Additional Support

Item	Responses
26. Is there a right to free school transport?	
[0] No such right provided	8
[1] Right provided without enhancement for disabled	2
[2] Right provided with enhancement for disabled	2
[3] Right provided with free adaptive school transport for disabled	0
27. Is there a right to barrier-free access to new schools?	
[0] No standards for barrier-free access to new schools provided for	1
[1] Standards for new schools inferior to <i>NBC, 1990</i> standards provided for	4
[2] Standards for new schools equivalent to <i>NBC, 1990</i> standards provided for	7
[3] Standards for new schools superior to <i>NBC, 1990</i> standards provided for	0

Note. For each item, $n=12$; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As be seen from the pattern shown in this table, although school transportation is provided by school boards throughout Canada, in the majority of jurisdictions, this service is a privilege, not a right. In two jurisdictions (PI, YU), the general right to school transportation is recognized, while in two others (MA, SA), such right is provided with enhanced benefits for students with disabilities. The latter approach is illustrated by the *Manitoba Education Act*:

Subject to the provisions of this Act and the regulations,^[1] in all cases where transportation of pupils is required, it shall be provided for those pupils who would have more than 1.6 kilometres to walk in order to reach school, and, further, provision for transportation from home to school shall be made regardless of distance for those pupils who are unable to walk to school because of physical or other handicaps (s. 43(1)).

**Note.* No regulatory provisions have been identified which would mitigate this right.

Of the remaining seven jurisdictions, the *New Brunswick Education Act* (s. 63) and *Nova Scotia Education Act* (s. 33) appear to grant a right to transportation but the regulations adopted under the *Act*, to which the rights are subject, give the school board discretion to provide the service or not (*New Brunswick Pupil Conveyance and Boarding Regulation*, s. 3; *Nova Scotia, General Regulations*, s. 13).

The final item in this theme concerns barrier-free access to new schools and was analyzed using the standards of the *National Building Code of Canada, 1990* [NBC, 1990].⁴⁴ The original draft of the data analysis instrument included an item on this right in respect of existing schools but was eliminated when it was discovered that no jurisdiction provided any legal rights to such access.⁴⁵ It is not surprising that governments would not want to make a legal commitment to make all schools accessible but would leave such improvements to administrative discretion - i.e. subject to available funds. Nonetheless, existing schools are governed by the applicable *Human Rights Code* of each jurisdiction, which means that the failure to provide barrier-free access might well be considered discriminatory. In such a case, the critical issue would quickly become the degree of accommodation which the board of inquiry (or the courts) would require (see discussion in section 4.1, surrounding note 14).

The standards set forth in *NBC, 1990* begin with the following definition: "*Barrier-free* means that a *building* and its facilities can be approached, entered, and used by persons with physical or sensory disabilities" (s. 1.1.3.3, emphasis added). For purposes of this study, the following key standards⁴⁶ have been set forth by the researcher:

- (1) at least 1 barrier-free entrance on side-walk level or with ramp;
and
- (2) barrier-free path of travel on entrance storey to all school facilities, including classrooms, assembly areas, offices and washrooms;
and
- (3) spaces in fixed-seating area, assistive listening devices and access to telephones and drinking fountains.

The platform definition cited above goes beyond the previous definition contained in *NBC, 1985*, which defined *barrier-free access* strictly in terms of a "path of travel designed for use by persons with physical or sensory disabilities ..." (s. 1.3.2). According to *NBC, 1990*, these persons should not only be able to *access* a building but also be able to *use* its facilities. Several new standards have been introduced, including those relating to spaces in a seating area and assistive listening devices for areas such as classrooms.

Seven jurisdictions (AL, BC, NT, NS, ON, SA, YU) meet the key standards for barrier-free access set forth in *NBC, 1990*. Three jurisdictions (MA, NE, QC) have legislated standards for barrier-free access in accordance with *NBC, 1985*, which meets many, but

not all, of those set forth in *NBC, 1990*. Prince Edward Island has standards based on an early publication of the National Research Council (1977), while New Brunswick has no such standards in force.

4.2.5 Summary and Discussion of Access to Public Schooling

This theme has been presented in terms of four sub-themes: right to public schooling, compulsory attendance, expulsion and additional support. A comparison of the converted scores⁴⁷ for these sub-themes shows considerable variance among them.

Right to attend (items 13-19)	Duty to attend (items 20-22)	Expulsion (items 23-25)	Support (items 26-27)
49	76	17	33

The analyses of the foregoing sub-themes were synthesized in two ways. First, all items were rank ordered according to the total score for each item (sum of all jurisdictions). Second, all jurisdictions were rank ordered according to the total score for each jurisdiction (sum of all items). The results of this synthesis are included in tables 4.10 and 4.11 and depicted graphically in figures 4.3 and 4.4; all results shown are in converted scores.

TABLE 4.10
Distribution of Items: Access to Public Schooling

Rank	Item	Description	Total
01	13	Right to free public schooling	86
02	21	Lower age limit for duty to attend school	86
03	14	Lower age limit for right to free public schooling	81
04	15	Upper age limit for right to free public schooling	73
05	22	Upper age limit for duty to attend school	72
06	20	Provision for compulsory schooling	69
07	27	Barrier-free access to new schools	50
08	23	Provision for expulsion	22
09	19	Upper age limit for right to extended schooling	17
10	26	Right to free school transport	17
11	17	Lower age limit for right to early education	14
12	16	Right to early education	8
13	18	Right to extended schooling	8
14	24	Duty to attend school if expelled	8
15	25	Right to education if expelled	8

Note. Total = converted score (%) for all jurisdictions; for breakdown of responses by item, see Vol. 2, app. C.

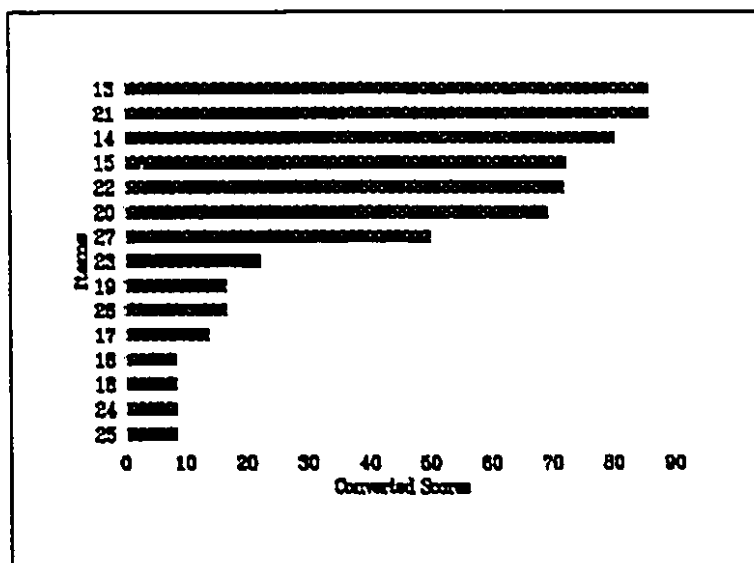


FIGURE 4.3

Distribution of Items: Access to Public Schooling

As shown in table 4.10 and figure 4.3, the highest rating arises from the right to attend school and the lower age limit for the duty to attend school, followed by the lower age limit for the right to education. The lowest rating arises from the right to early or extend schooling and the student's duty to attend school or his or her right to an education

if he or she is expelled. The upper age limits for the duty to attend and the right to education, followed by the provision for compulsory attendance, receive relatively high scores, while provisions regarding expulsion and free school transport receive relatively low scores. There are still some jurisdictions where students with disabilities can be excluded. Only slightly more than half the jurisdictions in Canada provide for barrier-free access provisions which meet the standards set forth in *NBC, 1990*.

TABLE 4.11

Distribution of Jurisdictions: Access to Public Schooling

Rank	Jurisdiction	Total
01	New Brunswick	63
02	British Columbia	58
03	Québec	58
04	Yukon	53
05	Manitoba	51
06	Saskatchewan	49
07	Nova Scotia	47
08	Ontario	47
09	Prince Edward Island	47
10	Alberta	40
11	Newfoundland	37
12	Northwest Territories	37

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in table 4.11 and figure 4.4, the distribution of jurisdictions is bounded at the high end by New Brunswick and at the low end by Newfoundland and the Northwest Territories. The mean response for all jurisdictions on all items was 49. The distribution reflects a linear pattern; the variance (Std=8) is considered to be low.⁴⁸

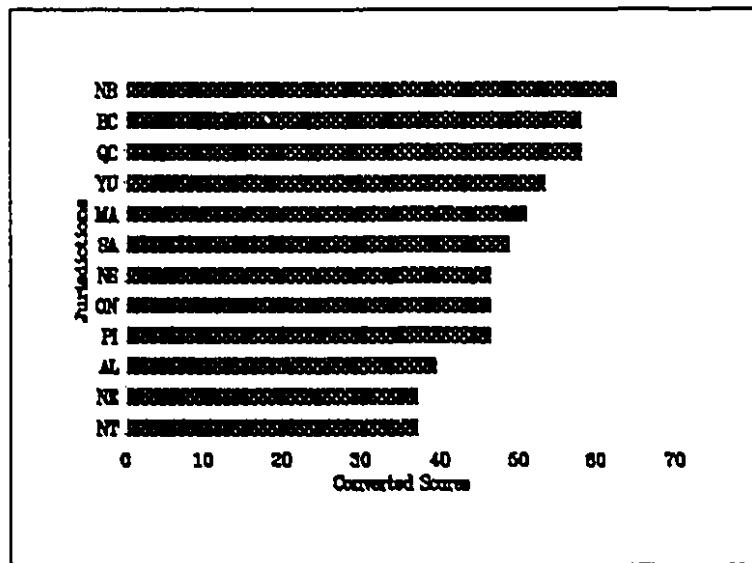


FIGURE 4.4
Distribution of Jurisdictions: Access to Public Schooling

4.3 Identification and Placement

The specific research questions for this theme are as follows:

- 3.1 What are the specific rights which define *identification and placement*?
- 3.2 To what extent does each jurisdiction provide for such rights?
- 3.3 How do all jurisdictions compare in terms of the provision of such rights?

This theme is understood as the identification of special education needs and appropriate educational placement. In order to answer sub-question 3.1, it was defined by seventeen items and from these, three sub-themes were derived: choice of schooling, assessment and appropriate placement. The individual items are included in various tables in the discussion which follows.

The analysis and comparison of individual jurisdictions (sub-questions 3.2 & 3.3) will be presented and discussed jointly in the following three sections, each dealing with one of the above sub-themes of *Identification and Placement*. This will be followed by a summary and discussion of the theme as a whole.

The theme, *Identification and Placement*, can be thought of as the "bridge" between access and service delivery. "Identification" is understood to include the range of activities associated with the detection of a student's disabilities, any handicaps which he or she might face and the presenting problems with respect to learning. It thus includes academic and other forms of assessment of the student's abilities and disabilities. "Placement", to borrow a phrase from Saskatchewan Education (1989), "refers to the settings in which a pupil's educational program is delivered" (p. 11). The distinction between settings (i.e. *where*) and programs (i.e. *what*) educational services are delivered to students is often treated simultaneously in legislative provisions, obscuring whether placement or programs or both are being guaranteed as a right in law. Such problems, when they arise, will be discussed on a jurisdiction by jurisdiction basis. Before discussing the results reported in these three sub-sections, there is one other preliminary matter which warrants discussion - the definitions of disability, or exceptionality, used in different jurisdictions.⁴⁹

Definitions of Disability

As mentioned in section 2.4.3, definitions have often been criticised because of problems associated with labelling and categorical placement; nonetheless, definitions remain important for various purposes. In terms of students' rights, definitions can expand or contract the scope of guaranteed services. Some jurisdictions include definitions in policy documents which are not part of the regulatory framework; however, three jurisdictions do provide for binding definitions (ON, QC, SA).

Ontario includes a general definition of an "exceptional pupil" in the *Education Act* (cited above on p. 103). An Ontario Education policy document (1984) provides binding definitions of individual categories of exceptionality and a definition of a "trainable retarded pupil" is included in the *Education Act* (s. 1(1)).

The Québec *Education Act* refers to "handicapped students and students with social maladjustments or learning disabilities" (s. 185) but does not define the expression therein. Binding definitions of individual disability categories are included in the annual directives of Québec Education (1991).⁵⁰ These definitions reflect the two major groupings mentioned in the above cited definition from the *Education Act*, which can be seen as equivalent to the distinction between severe and mild handicapping conditions discussed in the literature (see, for example, Wang, Reynolds & Walberg, 1988, 1989).

The retention of this duality in a legislative act is seen as problematic. In addition to the confusion created by different definitions for different purposes (see discussion in note 50), the definition of the term "handicapped" to exclude students with a learning disability (mild and severe), behavioural and social problems or a mild intellectual disability could be used as a basis for claiming that such students do not have a "handicap" in the meaning of the Québec *Human Rights Code* and cannot, therefore, claim the equality rights provided for therein.⁵¹

The Saskatchewan *Education Act* includes the following definition:

For the purposes of this section [Education of Handicapped Pupils], "pupil with a disability" includes a pupil who, under criteria prescribed in the regulations, is deemed to be unable to participate at an optimal level in the

benefits of the ordinary program of the school by reason of personal limitations attributable to physical, mental, behavioral or communication disorders (s. 184(1)).

Other definitions of individual disability categories are included in the *Education Regulations* (ss. 48-49). These categorical definitions refer strictly to "high-cost disabled pupils". A "low-cost disabled pupil" is defined in general terms as a "a pupil with a mild to moderate disabling condition who requires appropriate special educational services but who does not meet the criteria set out in section 49 for identification as a high-cost disabled pupil" (s. 48(C)).

4.3.1 Choice of Schooling

This sub-theme is made up of two items - the right to home instruction and the right to choose which school the student will attend. The ranges of responses to these items are shown in table 4.12.

TABLE 4.12
Distribution of Responses: Choice of Schooling

Item	Responses
28. Is there a right to home instruction?	
[0] No right to home instruction	0
[1] Right to provide home instruction	9
[2] Right to provide home instruction and receive support services from board or government	3
29. Do parents have a right to choose school?	
[0] No right to choose school	9
[1] Right to choose school in exceptional circumstances	2
[2] Right to choose school as a general rule	1

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Home Schooling

The right to home instruction includes important dimensions which go beyond the bounds of this study and can be thought of in relation to the "choice movement" in the public-private school debate (Harris, Ford, Wilson & Sandidge, 1991). For our purposes, this right is confined to a placement option for students with disabilities. Virtually all

jurisdictions make provision for such an option, usually subject to approval of home instruction by local or provincial/territorial education authorities. Thus, those officials who are legally responsible for providing public education are charged with ensuring that the home instruction option does not disguise a refusal to educate the child.

Three jurisdictions (AL, BC, YU) not only provide for such right but they also provide for support from school boards, or in some cases, private schools. For example, the *Alberta Home Education Program Regulation* states:

4. If a resident board or a willing non-resident board determines that the notification requirements of section 2 have been met and that a home education program meets the requirements of section 3(1), it shall

- (a) supervise the student,
- (b) provide for and maintain records of the assessment of the student's achievement,
- (c) notify the parent if there are any deficiencies in the program including the eligibility to write grade 12 diploma examinations or the granting of credits, and
- (d) in the case of a willing non-resident board, notify the resident board of the agreement to supervise the home education program.

5. A resident board or a willing non-resident board that is supervising a home education program shall

- (a) assess or provide for the assessment of the student's achievement on a regular basis and communicate those results forthwith to the parent,
- (b) inform the parent if, in the opinion of the board, reasonable achievement for that student is not being shown, and
- (c) make recommendations to the parent to assist the student in increasing his level of achievement.

Providing this level of support for home instruction converts this option from one which is tolerated by authorities to one which is fostered by public education.

Choice of School

In contrast to the ubiquitous right to choose home schooling, most jurisdictions provide no right in the matter of choosing schools within the board. In rural and remote areas, the right to school choice is, on one level, a moot point, as there is typically only one school in the community. However, for students with disabilities, school choice is often associated with the right to an integrated placement in the neighbourhood school. In this context, the right to school choice is anything but moot, especially in northern

communities (G. Donahue, 1989), as it implies the right to schooling in the home community, rather than in some remote location, far from family and friends.

Québec has the only clear statement of school choice, which is set forth thus in the *Education Act*:

Every student or, if he is not of full age, his parents, shall have a right to choose, every year, among the schools of the school board to which he belongs, the school best suited to their preferences or having the educational project best suited to their personal values.

The exercise of the right is subject to the student enrolment criteria established by the school board.

The exercise of the right does not entail the right to require transportation services where the transportation services required for the student concerned exceed the limits established by the school board (s. 4).

The conditions under which this right is exercised, especially respecting enrolment criteria (see *Education Act*, ss. 36-37, 236, 239-240), makes it clear that school choice is not an absolute right and this has been tested and confirmed in the courts (*Cyr v. Commission scolaire régionale de la Péninsule*, 1992; *Picard v. Commission scolaire Prince-Daveluy*, 1990; *Puran v. Commission scolaire les Écores*, 1989).

Ontario provides for school choice only in exceptional circumstances, such as a more accessible school in an adjoining district, or the non-availability of secondary school programs (*Education Act*, ss. 39, 41). The Yukon does not provide for a right to school choice as such; however, parental rights concerning a student's individual educational plan (see discussion in section 4.4) does temper the board's discretion in this regard. In the remaining jurisdictions, parents have no rights to school choice. In some cases, the *Education Act* is silent on the matter; in others, the board's prerogative is spelled out, as in this example from the Saskatchewan *Education Act*: "A board of education shall ... determine what school any of the children of the school division shall attend..." (s. 91(g)).

4.3.2 Assessment

This sub-theme consists of the entitlement to identification and assessment, the requirement to obtain consent for same and the right to appeal either decisions or non-decisions concerning these matters. The range of responses is shown in table 4.13.

TABLE 4.13
Distribution of Responses: Assessment

Item	Responses
30. Is there a right to identification/assessment	
[0] No right to identification/assessment	7
[1] Right to identification/assessment subject to third-party decision	4
[2] Right to identification/assessment	1
[3] Right to require particular types of identification/assessment	0
31. Is there a specific right to non-discriminatory assessment?	
[0] NO	12
[1] YES	0
32. Is there a right to multi-dimensional assessment?	
[0] NO	11
[1] YES	1
33. Is there a right to periodic re-assessment?	
[0] NO	11
[1] YES	1
34. Is consent required for identification/assessment?	
[0] No consent required	10
[1] Consent required, unless board decision affirmed by third-party ruling	0
[2] Consent required	2
35. Is there a specific right to appeal an identification/assessment?	
[0] No right to appeal	9
[1] Right to "in-house" appeal	0
[2] Right to binding third-party adjudication, subject to leave to appeal	1
[3] Right to binding third-party adjudication	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Assessment

The first item in the sub-theme of *Assessment* deals with the basic entitlement to require that a student be identified or assessed. Although such services are routinely performed in school boards throughout Canada, as will be seen, there are very few jurisdictions where a parent can claim such service as a right. This function often serves to "trigger" other rights, such as the entitlement to special services. Consequently, if the latter depend on being identified as an "exceptional pupil" and identification is a board prerogative, the student may be deprived of "rights" he or she would otherwise possess.³²

The clearest statement of rights in this regard is found in the Yukon *Education Act*. First, the school administration is required to determine "whether a student is a student with special educational needs" (s. 16(1)(a)) and procedures are set forth governing the assessment process (s. 16(2)). The *Act* also stipulates that "parents shall have the right to request for their children a determination in accordance with this section" (s. 16(3)).

In Ontario, entitlement to assessment is dealt with by the previously mentioned IPRC process, which includes a complex set of procedures governing the identification and placement of exceptional pupils, as well as the review mechanisms of these procedures (Winzer, 1982; see A. Wilson, 1983 for a detailed but clear explanation of the IPRC process).⁵³ In terms of the right to assessment, the Ontario *Education Act* states that the Minister shall "require school boards to implement procedures for early and on going identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance with which such procedures be implemented" (s. 8(3)(a)).⁵⁴ The *IPRC Regulation* gives the parent the right to refer a student to an IPRC for purposes of identification and the IPRC is then required to "obtain and consider an educational assessment of the pupil" (s. 2(3)). There is no right to other types of assessments, which may be conducted at the discretion of the IPRC (s. 2(3)(a)).

The Manitoba *Education Act* does not specifically mention parental entitlement to request an assessment but does require that every school board "screen every pupil who has not previously been screened entering the school system in that division or district, for physical, mental, emotional or learning disability" (s. 41(1)(q)). In Nova Scotia, only students covered by the *Handicapped Persons' Education Act* are entitled to receive an educational assessment (s. 12).⁵⁵ Saskatchewan is deemed to provide a *partial right* to assessment by virtue of the fact that "the failure to identify the child or pupil as a high-cost disabled pupil" (*Education Regulations*, s. 51(1)) can be appealed by the parent.⁵⁶ Moreover, the same regulation gives the school board specific responsibility for the identification and assessment of students with special needs (s. 50). No other jurisdiction provides for any specific rights to assessment.

No jurisdiction provides for the right to non-discriminatory assessment in either the

Education Act or the regulations, which means that any alleged discriminatory practices must be challenged on the basis of the general prohibition against discrimination in the *Human Rights Code* (*Re L.L. and Commission scolaire Tracy*, 1986). The provision of specific statutory entitlement to non-discrimination in education legislation would also serve to focus attention on the widespread use of standardized tests, and other means of assessment, the use of which has been found to be discriminatory in respect of students with disabilities in general and, in particular, in respect of racial and ethnic minority groups (see discussion in section 2.4.3). The Yukon is the only jurisdiction to mandate multi-dimensional assessment (*Education Act*, s. 16(2)(d)) and Ontario is the only jurisdiction to specifically require periodic reassessment (*IPRC Regulation*, ss. 8-10).

Consent and Appeal

Only two jurisdictions specifically require parental consent for student assessment (ON, YU), it being understood, that the type of assessment referred to in this item is that which goes beyond routine academic testing but does not extend to medical assessments. Three jurisdictions provide for binding third-party adjudication for the "appeal"⁵⁷ of disputes concerning identification (ON, SA, YU). However, in the case of Ontario, the referral to a Special Educational Tribunal is subject to leave to appeal (Ontario *Education Act*, s. 37(1)). Furthermore, in Ontario, third-party adjudication only becomes an option following an internal appeal procedure provided for in the *Act* and the regulations (see discussion of IPRC procedures and appeal in Vol. 2, section B.3, app. B).

The provisions of the Ontario and Yukon acts also include provision for appeal of placement and will be discussed below (see discussion surrounding note 74). By contrast, the provisions in the Saskatchewan *Education Regulations* are limited to identification:

A parent or guardian ... who disagrees with the identification of or the failure to identify the child or pupil as a high-cost disabled pupil may submit a written appeal to the Regional Director of Education (s. 51(1)).⁵⁸

As discussed above, the Alberta *Act* provides for a Special Educational Tribunal but this forum is only intended to adjudicate the "educability" of a student with a disability.

4.3.3 Appropriate Placement

This sub-theme includes the entitlement to various types of placement, as well as the

requirement for consent to same and the right to appeal board decisions regarding placement. The range of responses to these items is shown in table 4.14.

TABLE 4.14
Distribution of Responses: Appropriate Placement

Item	Responses
36. Is there a right to an appropriate placement?	
[0] No right to appropriate placement	8
[1] Right to appropriate placement subject to third-party decision	2
[2] Right to appropriate placement subject to standard of "practicability"	2
[3] Right to appropriate placement	0
37. Is there a right to a LRE placement?	
[0] No right to LRE placement	8
[1] Right to LRE placement subject to third-party decision	2
[2] Right to LRE placement subject to standard of "practicability"	2
[3] Right to LRE placement	0
38. Is there a right to regular class placement?	
[0] No right to regular class placement	7
[1] Right to regular class placement subject to third-party decision	3
[2] Right to regular class placement subject to standard of "practicability"	2
[3] Right to regular class placement	0
39. Is there a right to special placement?	
[0] No right to special class placement	8
[1] Right to special class placement subject to third-party decision	3
[2] Right to special class placement subject to standard of "practicability"	0
[3] Right to special class placement	1
40. Is there a right to placement outside the board at public expense?	
[0] No right to outside placement	9
[1] Right to outside placement subject to third-party decision	3
[2] Right to outside placement subject to standard of "practicability"	0
[3] Right to outside placement	0
41. Is consent required for special placement?	
[0] No consent required	10
[1] Consent required, unless board decision affirmed by third-party ruling	2
[2] Consent required	0
42. Is consent required for outside placement?	
[0] No consent required	10
[1] Consent required, unless board decision affirmed by third-party ruling	2
[2] Consent required	0

TABLE 4.14 - continued

Item	Responses
43. Is there a specific right to appeal placement?	
[0] No right to appeal	8
[1] Right to "in-house" appeal	1
[2] Right to binding third-party adjudication, subject to leave to appeal	1
[3] Right to binding third-party adjudication	2
44. Is there a right to maintain current placement pending appeal?	
[0] NO	11
[1] YES	1

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Appropriate, Least Restrictive and Regular Placement

The legislative provision for placement which is "appropriate" or provided in the "least restrictive environment" [LRE] refers to the inclusion of a statutory standard for adjudicating disputes over placement. The two terms are related but not synonymous. The former is more often associated with program than placement decisions (see discussion in section 4.4); the latter is often discussed on the basis of the definition found in the U.S. *Individuals with Disabilities Education Act [IDEA]*.⁵⁹ Two jurisdictions explicitly provide for both such standards (SA, YU). Two other jurisdictions (AL, ON), although they do not set forth such a standard in legislation, do provide for an appeal of placement decisions and thus, a *partial* guarantee of a placement which would meet these standards.⁶⁰ The relevant provisions for Saskatchewan and the Yukon are as follows:

Saskatchewan (*Education Regulations*, s. 52(1)(a)):

A board of education shall ... make available at no cost to their parents or guardians, special education services for disabled pupils, that are, in the opinion of the minister, appropriate, including special schools, special classrooms, resource rooms and itinerant and tutorial programs, and may provide those services for pre-school age disabled children identified pursuant to subsection 50(2), in order that disabled pupils and children can benefit from the most appropriate and least restrictive program;

Saskatchewan (*Education Act*, s. 184(2)(a)):

Where it is considered advisable, the board may exclude from attendance in a specific curricular program any pupil who, in the opinion of the director or superintendent, is incapable of responding to instruction in that

program or whose presence is detrimental to the education and welfare of other pupils in attendance in that program, but no such exclusion shall deprive a pupil of access to alternative educational services provided by boards of education to pupils with disabilities under this section;

Yukon (*Education Act*, s. 15(2)):

A student who is entitled to an Individualized Education Plan shall have the program delivered in the least restrictive and most enabling environment to the extent that is considered practicable by the deputy minister or by a School Board in consultation with professional staff and parents, having due regard for the educational needs and rights of all students.

While the Yukon Act explicitly refers to the setting, the Saskatchewan provisions do so indirectly by referring to "the most appropriate and least restrictive program" (emphasis added). Since the expression "least restrictive" is generally used to refer to placement, the provision is deemed to apply to both programs and placement.⁶¹

As alluded to in section 2.4.3, the right to an LRE placement does not mean the right to a regular class placement, although the latter is considered by many as the ultimate goal of an LRE policy (see discussion in H.R. Turnbull, 1990, pp. 279-280). The LRE provision was never meant to end segregation of the handicapped the way the *Brown* (1954) decision was meant to end racial segregation; it was only intended to reduce it (Sarason & Doris, 1979).

Two jurisdictions (BC, NB), perhaps with these notions in mind, provide, in lieu of an LRE provision, for the right to regular class placement in the following terms:

British Columbia (*Special Needs Student Order*, s. 1(2)):

Unless the educational needs of a handicapped student indicate that the student's educational program should be provided otherwise, a board shall provide that student with an educational program in classrooms where that student is integrated with other students who do not have handicaps.

New Brunswick (*Education Act*, s. 53(4)):

A school board shall place exceptional pupils such that they receive special education programs and services in circumstances where exceptional pupils can participate with pupils who are not exceptional pupils within regular classroom settings to the extent that is considered practicable by the school board having due regard for the educational needs of all pupils.

The British Columbia regulation eliminates the unfettered discretion of school boards, as previously noted in *Bales v. School District 23* (1984; see discussion above in note 19). Perner and Roberts (1989) describe the New Brunswick provision as a critical step in reorienting service delivery from the "cascade" model (see discussion in section 2.4.3 above) to one where the regular class teacher has primary responsibility for the student's educational program.

In all of the legislative provisions cited above (SA, YU, BC, NB), the right to appropriate, least restrictive or regular placement, as the case may be, is made subject to a standard of "practicability". The language used varies from one jurisdiction to the other; however, in each case, the intent is to circumscribe the extent to which such placement is deemed to be feasible or workable. This notion is similar to the "reasonable limits" standard discussed in section 4.1 regarding non-discrimination. As discussed in relation to this earlier theme, such a standard can vary from a *de minimus* one to the point of "undue hardship", or to some other level, as will be discussed below.

The British Columbia provision refers only to the needs of the student with disabilities in order to determine whether such placement is practicable, whereas the New Brunswick and Yukon provisions refer to the needs of *all* students. The Saskatchewan provision is silent in this regard. The British Columbia standard is the most far reaching; regular class placement is stated as a rebuttable presumption, with the needs of the student with disabilities as the only argument which could be advanced to rebut this presumption. In New Brunswick and the Yukon, and possibly Saskatchewan, the needs of other students could be advanced. However, it would not appear that a school board, in any of these four jurisdictions, could rebut the presumption simply on the basis of cost or inconvenience. With one exception, none of these provisions have been clarified by the courts and the scope of their protection remains a matter of speculation.

The exception (*Robichaud v. Commission scolaire numéro 39*, 1989) concerned a petition for an interlocutory injunction which was granted by the trial judge but reversed on appeal.⁶² The trial judge's comments do not reflect a sympathetic attitude toward the objectives of the New Brunswick statute and cast a shadow on the eventual reconciliation

of the rights of students with disabilities with the rights of other students:

It appears to me that we are dealing head on with the conflict between individual and collective rights.... a conflict between the majority of pupils to pursue a traditional method of instruction, one which seeks excellence, and the rights of individuals to be promoted and to have their particular needs protected and their particular problems corrected, all at the same time.

...

It is clear that excellence must be sought. We live in a system of intense competition and free trade. Pupils must be provided with the best in the circumstances and, at the same time, we ask that handicapped persons be integrated into the same classes and that they be provided with exceptional services.

On the basis of my past experience, this approach appears to be unworkable (p. 378).

Jean, J. states that he has no choice but to apply the law as it is and says that he does not want his decision to be misunderstood "as imposing limits and shackles on all those involved in the field of education" (p. 379). His reaction to the support for individualized instruction in the *Schools Act* is equally revealing: "I find this to be a strange notion that a pupil in a given class can function at a rhythm which differs from that of the others" (p. 381). Finally, he comes close to saying that the forced integration pending trial may provide the board with evidence that integration does not work.

As reflected in the foregoing remarks by Jean, J., the presumed opposition between the rights of students with disabilities and those of other students is often referred to as a conflict of *individual* versus *collective* rights (see discussion in section 2.2.1) and this view has been echoed in several Québec cases. Following *Bouchard* (1950), these cases demonstrate the role of the judiciary in *protecting* the majority of *normal* students from the incursion of *sub-normals*. *Doré v. Commission scolaire de Drummondville* (1980) concerned an eleven year old student with autism. André Doré was denied continued access to educational services, the board claiming that the child was uneducable, undisciplined and insubordinate, that he could not be integrated into any class (including special classes), that his behaviour prevented other children from learning and that he should be institutionalized. The trial judge rejected the parents' claim that André was being denied a right to education and the decision was affirmed on appeal.⁶³ The same

attitude is found in *Saint-Martin v. Commission scolaire de Tracy* (1989) and *Picard* (1990), which was also affirmed on appeal.⁶⁴

In three jurisdictions (AL, ON, YU), a partial right to a regular placement is inferred from the provision of an appeal process. None of the other jurisdictions provide any such right (however, see discussion re Québec *Education Act* below, p. 128).

Special and Outside Placements

Despite the attention which is paid to the rights of students with disabilities to be integrated into the mainstream of regular education, the importance of providing for the right to alternate placements should not be ignored. As stated by H.R. Turnbull (1990), providing EEO for students with disabilities, means providing for "access to different resources for different purposes" (p. 71). Thus, the right to an "appropriate" placement, as discussed above, does not mean *per force* a regular class placement - it may mean this for some persons, but for others, the maintenance of a continuum of services is still necessary (Con-Blowers & McLeod, 1989; Fuchs & Fuchs, 1991). For purposes of this discussion, the issue is whether the law provides for the *right* to special placements, regardless of one's view on the appropriateness of same.

Three jurisdictions (AL, ON, YU) are deemed to provide a partial right to special (inside the board) and outside placement (in other school boards, private schools, etc.) by virtue of their appeal provisions⁶⁵ but only the Newfoundland *Education Act* explicitly requires boards to organize special classes:

A school board shall ... organize the means of instructing children who for any physical or mental cause require special classes, either by the establishment of special classes in its schools or by making arrangements with another school board or with an educational body or authority within Canada for the education of those children; ... (s. 11(b)).

This type of provision, once commonplace in Canadian law (see note 35), is now the exception rather than the rule.

The Québec *Education Act*, while not providing a right to either a regular or special placement, does contain a requirement for the enactment of delegated legislation by school boards, which might provide such rights.⁶⁶ Moreover, in a very recent case (*Re*

Québec (Commission des droits de la personne) and Commission scolaire régionale Chauveau, 1993), the Québec Human Rights Tribunal declared that the regular class should be considered as the norm for equality in education (see text surrounding note 93).

No jurisdiction provides an explicit right to outside placement; however, this is not to suggest that such placements are not made available, only that they remain a privilege, not a right, as illustrated from the following extract from the *Alberta School Act*:

Where ... the parent of that student wishes to send the student to a school other than a school

(i) operated by the board, or

(ii) that the board directed the student to attend under subsection (1)(b), the board may, subject to subsection (7),⁶⁷ provide all, part or none of the funds necessary for placing the student in a school chosen by the parent (s. 28(2)(b)).

* Note. Subsection (7) has been repealed.

The discretion of school boards respecting the payment of fees for outside placement for a student with a disability in Alberta has been maintained by the courts (*Calgary Board of Education v. Deyell*, 1984), albeit on the basis of a slightly different wording of the *Act*. This decision raises questions about the application of the *Alberta Human Rights Code* to education⁶⁷ and the following statement by the Court of Appeal (affirming the judgement) indicates the importance of providing specific statutory rights to education (pp. 737-738):

Assuming that the [Code] ... offers a sword and not a shield, the real issue between the Board and the complainant is what amounts to effective education. The [Code] ... does not give a handicapped child the right necessarily to a private education, and therefore does not give the child any right to any financial help when he chooses a private school over a public school.... It is not consistent with the nature and purpose of the [Code] ... that a Board of inquiry undertake a study of the effectiveness of the educational policy of duly established educational authority.

As noted in section 3.2.3, for purposes of this study, *permissive* legislative provisions are only deemed to be important if they permit a school board (or some other agency) to do something that it would not otherwise be allowed to do. In setting forth the discretion of school boards concerning outside placement decisions, some *Acts* (e.g. Manitoba) specify the authority of boards to "enter into an agreement with the government, or any

minister of the government on behalf of the government, or any agency of the government or any other school board or any person" (Manitoba *Education Act*, s. 48(1)(p)). In other cases, the Acts are silent on the scope of such authority (e.g. Prince Edward Island) or the wording is confusing (e.g. Québec *Education Act*, ss. 213-214).⁶⁸ The Ontario *Education Act* makes detailed provision for inter-board agreements but is silent on the placement of students in private schools at public expense; the latter has been found to be *ultra vires* the authority of a school board.⁶⁹

Several jurisdictions have established centralized schools for students with disabilities and the Atlantic provinces have made joint arrangements for such schools (see note 55). Such schools are viewed by some as the last vestiges of the era of the institutionalization of persons with disabilities and by others as a necessary mode of service delivery for students with disabilities.⁷⁰ However, the creation and maintenance of these schools is no less discretionary than the like provision for ordinary schools.⁷¹

In *Trofimenkoff v. Saskatchewan* (1991), the government of Saskatchewan, decided, after extensive consultation, to close the provincial school for the deaf and so notified parents. The parents initiated an action to stop the closure which was rejected by the Court of Queen's Bench and affirmed on appeal. The plaintiffs alleged, *inter alia*, that the school closure (more particularly the elimination of the "congregated" (i.e. segregated) program offered by the school) was discriminatory under the Saskatchewan *Human Rights Code* and a breach of their *Charter* rights. Both of these assertions were rejected by the trial judge who also found that the Minister had acted properly and within his authority.⁷²

Consent and Appeal

The issue of school board discretion leads to the question of parental consent respecting special placement (inside the board), as well as placement outside the board. As was the case for consent respecting assessment, only Ontario and the Yukon provide any legislated rights to consent respecting placement. However, in the case of placement, the partial right to consent arises from the appeal process.⁷³ In other words, if the parents do not wish to consent to a given placement, they may appeal the proposed placement. If the appeal tribunal upholds the school board's position, then consent is not required. As

discussed above, the issue of board discretion in effecting outside placements has been the subject of several Québec cases (see note 68).

Manitoba Education provides for an appeal process of placement, including conciliation and *binding* arbitration; however, these provisions are contained in a policy document which is not deemed to be part of the regulatory framework (see discussion in Vol. 2, section A.2, app. A). New Brunswick provides for an internal appeal mechanism but only three jurisdictions provide for third-party adjudication of placement decisions⁷⁴ (AL, ON, YU).⁷⁵ In Alberta, the appeal of a school board decision is referred to the Minister in respect of "the placement of a student in a special education program" (s. 104(1)(a)). Given the absence of specific language to the contrary,⁷⁶ it is assumed that such a program could be delivered in special, as well as regular settings.

Ontario was the first jurisdiction in Canada to legislate an appeal process for the resolution of disputes concerning special education services (*Act to Amend the Education Act*, 1980), popularly known by its pre-passage name, Bill 82. Inspired by, but not mirroring, the U.S. *IDEA*, this *Act* has been described as everything from "Canada's boldest education initiative" (MacKay, 1984a, p. 49) to "not much of a law" (J.A.C. Smith, 1981, p. 208; see also, Elkin, 1982; Hodder, 1984; A. Wilson, 1983; Winzer, 1982). In brief (see note in Vol. 2, section B.3, app. B for details), the process begins with referral of a student to an IPRC (see discussion above following table 4.13). If the parents disagree with the placement decision of the IPRC, they may appeal the matter to the school board. In this eventuality, the school board appoints an appeal board which makes non-binding recommendations to the school board. If the parents remain dissatisfied with the outcome of the internal appeal, they may seek leave to appeal from the provincial Special Education Tribunal [SET]. If leave is granted, the appeal will either be heard by the SET itself (with consent of both parties) or be referred to a regional tribunal [RSET]. Subject to normal rules regarding judicial review, the decision of the tribunal (SET or RSET) is final and binding on the parties.

Ontario is the only jurisdiction with a body of case law emanating from special education appeal boards and tribunals.⁷⁷ Metcalf (1987) studied the results of eighteen appeal

boards and found that two thirds of the decisions supported the school board position.⁷⁸ Godsell (1992) has analyzed reported decisions from external tribunals; he concludes that the tribunal process "has expanded the scope of the educational rights of exceptional children in a number of areas" (p. 163). However, Godsell's analysis is based on the notion of "contingent rights", an expression which seems more appropriate for the granting of rights by subordinate legislation by bodies such as school boards, than by quasi-judicial decisions, such as those made by special education tribunals.⁷⁹

The appeal process provided for in the Yukon *Education Act* (ss. 17, 157-165) does not have an internal component; disagreements concerning placement are referred directly to the Education Appeal Tribunal, which, like the Ontario tribunal, has the authority, subject to normal rules regarding judicial review, to make an order which is final and binding on the parties.

Finally, Ontario and the Yukon are the only jurisdictions to stipulate with regard to what happens to the placement of a student pending appeal. The Ontario *IPRC Regulation* provides for a "stay-put" provision pending appeal:

A notice of appeal under section 4 acts as a stay of proceedings of a committee in relation to the placement of a pupil (s. 12(1)).

By contrast, the Yukon *Act* stipulates the contrary:

When an appeal is made to the Education Appeal Tribunal, the student shall be enrolled in the program determined in accordance with section 16 until the Education Appeal Tribunal makes its decision (s. 17(2)).

The provision of legislative norms for placement is arguably one of the most important rights which can be conferred upon students. It is not a rhetorical accident that the contemporary debate regarding special education is framed in terms of placement.⁸⁰ As will be discussed below (see discussion surrounding note 96), there is a close nexus between placement and service delivery. In a form of synecdoche, placement has come to represent all component parts of the educational process. Unfortunately, it has become enveloped in "flames of controversy" (Lowenthal, 1990) and obscured by polemics and hyperbole (Marfo & Nesbit, 1989; Mostert, 1991). The difficulty in determining placement rights in such a situation is correspondingly heightened.

The absence of rights means that the courts will not interfere in the substantive aspects of placement decisions, though they will require an appropriate level of procedural fairness (*Yarmoloy v. Banff School District No. 102*, 1985). In that case, the court cited with approval a decision concerning the National Harbours Board to describe its role vis à vis a school board: "A court can compel a body, such as the Board, to carry out its duty. It cannot direct a body, where it has a discretion in respect of mode, as to how it shall carry out the duty" (p. 394). In the absence of express statutory provisions, school board discretion concerning placement, not student rights, will continue to govern this important issue, as was held in *Antonsen v. Board of School Trustees District No. 39 (Vancouver)* (1989, cited in J.C. Anderson, 1990c; see also *Sufficient Accommodation and Tuition*, 1989) and, even more recently, in *Dechant v. Calgary Board of Education* (1990, cited in J.C. Anderson, 1991).

4.3.4 Summary and Discussion of Identification and Placement

This theme has been presented in terms of three sub-themes: choice of schooling, assessment and appropriate placement. A comparison of the converted scores⁸¹ of the analysis of these sub-themes shows that the score for the first sub-theme is higher than that of the remaining two.

School Choice (items 28-29)	Assessment (items 30-35)	Placement (items 36-44)
40	17	17

The high score in the first sub-theme is due to the first item (home schooling, 63), while the second (choice of school) rates at the same level as the other sub-themes (17).

The analyses of the foregoing sub-themes were synthesized in two ways. First, all items were rank ordered according to the total score for each item (sum of all jurisdictions). Second, all jurisdictions were rank ordered according to the total score for each jurisdiction (sum of all items). The results of this synthesis are included in tables 4.15 and 4.16 and depicted graphically in figures 4.5 and 4.6; all results shown are in converted scores.

TABLE 4.15

Distribution of Items: Identification and Placement

Rank	Item	Description	Total
01	28	Right to home instruction	63
02	30	Right to identification/assessment	25
03	43	Specific right to appeal placement	25
04	35	Specific right to appeal identification/placement	22
05	38	Right to regular class placement	19
06	29	Right to choose school	17
07	34	Consent required for identification/assessment	17
08	36	Right to appropriate placement	17
09	37	Right to LRE placement	17
10	39	Right to a special placement	17
11	32	Right to multi-dimensional assessment	8
12	33	Right to periodic re-assessment	8
13	40	Right to placement outside the board	8
14	41	Consent required for special placement	8
15	42	Consent required for outside placement	8
16	44	Right to maintain placement during appeal	8
17	31	Right to non-discriminatory assessment	0

Note. Total = converted score (%) for all jurisdictions; for breakdown of responses by item, see Vol. 2, app. C.

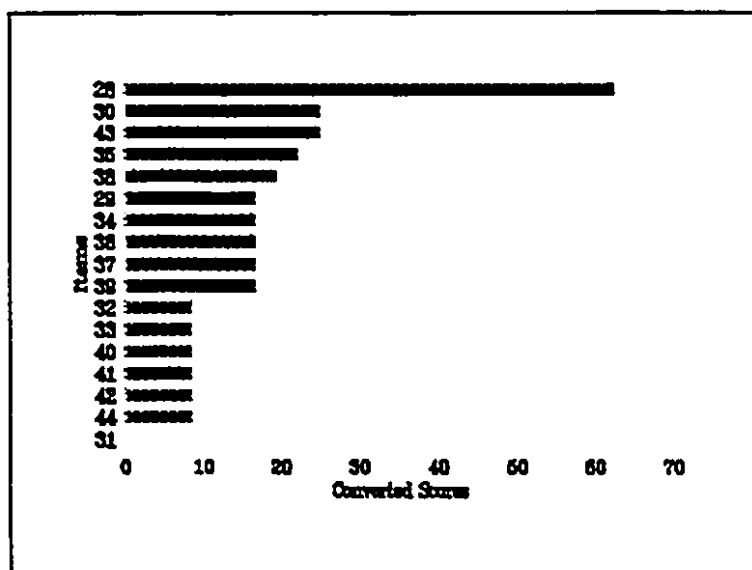


FIGURE 4.5

Distribution of Items: Identification and Placement

As shown in table 4.15 and figure 4.5, the right to home schooling is the (positive) exception in this theme, the remainder of the distribution by item reflects a step pattern from low to non-existent. Except for the top outlier, not one item scores above 25. Since this theme is seen as a bridge between access and service delivery, it

would appear that once parents choose the public school option, this bridge becomes a controlled access route.

TABLE 4.16

Distribution of Jurisdictions: Identification and Placement

Rank	Jurisdiction	Total
01	Yukon	61
02	Ontario	50
03	Alberta	26
04	Saskatchewan	24
05	British Columbia	11
06	New Brunswick	11
07	Newfoundland	11
08	Manitoba	8
09	Nova Scotia	8
10	Québec	8
11	Northwest Territories	3
12	Prince Edward Island	3

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in table 4.16 and figure 4.6, the distribution of jurisdictions is bounded at the high end by the Yukon and at the other by the Northwest Territories and Prince Edward Island. The mean response for all jurisdictions on all items was 19. The variance (Std=18) is considered to be moderate.⁸² The

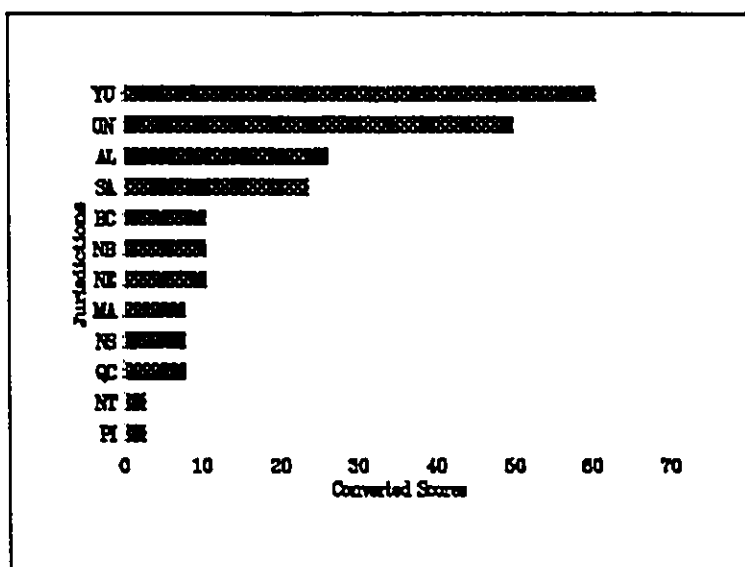


FIGURE 4.6

Distribution of Jurisdictions: Identification and Placement

distribution is skewed

toward the low end in a four-step pattern, with eight jurisdictions at the low end.

2 @ 19-23

2 @ 9-10

6 @ 3-4

2 @ 1

4.4 Service Delivery

The specific research questions for this theme are as follows:

- 4.1 What are the specific rights which define *service delivery*?
- 4.2 To what extent does each jurisdiction provide for such rights?
- 4.3 How do all jurisdictions compare in terms of the provision of such rights?

This theme is understood as the provision of appropriate educational and disability related services (to benefit from education). In order to answer sub-question 4.1, it was defined by nine items and from these, three sub-themes were derived: appropriate education, instructional services and special services. Individual items are included in various tables in the discussion which follows.

The analysis and comparison of individual jurisdictions (sub-questions 4.2 & 4.3) will be presented and discussed jointly in the following three sections, each dealing with one of the above sub-themes of *Service Delivery*. This will be followed by a summary and discussion of the theme as a whole.

4.4.1 Appropriate Education

The first sub-theme comprises two items: appropriate education and minority/second language instruction. The responses for these items are shown in table 4.17.

TABLE 4.17
Distribution of Responses: Appropriate Education

Item	Responses
45. Is there a right to appropriate education for disabled?	
[0] No right to appropriate education	6
[1] Right to subject to third-party decision	0
[2] Right to appropriate education	3
[3] Right to appropriate education according to IEP	3
46. Is there a right to enhanced minority or second language instruction for disabled?	
[0] NO	11
[1] YES	1

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Appropriate Education

Three jurisdictions provide for the right to an appropriate education according to an individualized education plan [IEP] (ON, QC, YU).⁸³ Since the term IEP can be interpreted in a variety of ways, for purposes of this item, it is understood to mean a statement of goals for the student with a disability and an indication of the services to be provided in order to meet these goals. The provision of a legislated standard for "appropriate" education is a key element in providing for more than simple access to school and for circumscribing traditional school board discretion in service delivery. Such a standard may be complemented by or stand in lieu of detailed regulatory provisions.⁸⁴

The notion of "appropriate education" for students with disabilities, like the concept of the "least restrictive environment" finds its legislative inspiration in the U.S. *IDEA*.⁸⁵ "Appropriate education" has been construed by the courts and commentators to mean everything from a threshold level of educational benefit to that which is designed to maximize the student's potential (Broadwell & Walden, 1988; Osborne, 1988, 1992; The Best Interests Standard, 1992; H.R. Turnbull, 1986; Yanok, 1986; Yudof, 1984). Much of the American literature dealing with appropriate education is framed in terms of the first case to reach the United States Supreme Court for a ruling on the scope of this term (*Board of Education v. Rowley*, 1982). The Supreme Court decided that it did not mean the right to the "best" education possible but it certainly entitled the student to a "reasonable" level of meaningful service.⁸⁶

The scope of an appropriate education standard with reference to an IEP is illustrated by the Yukon *Education Act*:

Students who, by virtue of intellectual, communicative, behavioral, physical, or multiple exceptionalities are in need of special education programs, are entitled to receive a program outlined in an Individualized Education Plan (s. 15(1)).

"Individualized Education Plan" (IEP) ... the educational program for a student as determined by a school based team, containing a description of the student's present level of functioning; long term or annual goals; short term goals or specific behavioral objectives; special resources required; suggested instructional materials, methods and strategies; IEP review dates; persons responsible for the implementation of the IEP, including parents; and parents' written, informed consent for implementation; ... (s. 1).

In this provision, the standard is defined, not in relation to an abstract level of service, but in relation to the student's individual needs. In theory, such a provision ought to provide for the child-centred process suggested by H.R. Turnbull (see note 85) and D.H. Vickers (1981).⁸⁷ However, as with any similar judicial standard, its true meaning will only become clear when interpreted by the courts.

Three other jurisdictions provide for a standard of appropriate education, without reference to an IEP (BC, NT, SA). The Saskatchewan provision, like those referred to above (ON, QC, YU), refers exclusively to students with special needs; however, in British Columbia and the Northwest Territories, this right is set forth for all pupils, as exemplified by the British Columbia *Education Act*:

In this Act ... "educational program" means an organized set of learning activities that, in the opinion of

(a) the board, in the case of learning activities provided by the board,

(b) the minister, in the case of learning activities in a Provincial school, or

(c) the parent, in the case of learning activities provided to a child registered under section 13,

is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy (s. 1(1)).

This approach has obvious advantages to students who do not have a disability - they too are thereby entitled to an appropriate education.⁸⁸ In addition, it means that a student does not have to be identified and labelled as "exceptional" or "handicapped" in order to gain entitlement to educational services appropriate to his or her needs. In the six remaining jurisdictions, there is no legislative standard for appropriate education.

Minority/Second Language Instruction

The second item in this sub-theme of appropriate education concerns the right to "minority language" or "second language" instruction for students with disabilities.⁸⁹ The provision of instruction in other than the student's first language is likely to compound his or her problems, as well as confounding the differentiation of those problems which are the result of the disability from those arising from instruction in the second language. Although the minimum standard of entitlement to minority language education is protected by the *Charter* (see discussion in section 1.3.2 above), the

standards set by law and practice differ from one jurisdiction to another. No attempt was made to assess such differences, merely to determine whether there was any right to such services for students with disabilities. Québec is the only jurisdiction to provide such a right but it is also the jurisdiction with the most extensive legislative framework on minority language rights.

In Québec, the language of instruction is governed by the *Charter of the French Language* which stipulates that "instruction in the kindergarten classes and in the elementary and secondary schools shall be in French, except where this chapter allows otherwise" (s. 72). A general exception covers children whose parents received the majority of their elementary schooling in English in Québec (s. 73);⁹⁰ in addition, there are other derogations provided, including the following:

Children having serious learning disabilities must be exempted from the application of this chapter. The brothers and sisters of such children may also be exempted if they are not already attending school in Quebec.

The Government, by regulation, may define the classes of children envisaged in the preceding paragraph and determine the procedure to be allowed in view of obtaining such an exemption (s. 81).

The expression "serious learning disabilities" adds yet another definitional construct to those discussed above (see discussion surrounding note 50). The nature of and the procedures for identifying students are set forth in the *Exemptions for Children with Serious Learning Disabilities Regulation*. As assessment procedures are not generally mandated in Québec, it appears that this regulation is designed more to limit the scope of this exemption than to provide for enhanced rights for students with disabilities.

4.4.2 Instructional Services

This sub-theme consists of two items: free instructional materials and the adaptation of regular services. The responses for these items are shown in table 4.18.

TABLE 4.18
Distribution of Responses: Instructional Services

Item	Responses
47. Is there a right to free instructional materials?	
[0] NO	4
[1] YES	8
48. Is adaptation of regular educational services for disabled required?	
[0] No right to adaptation of regular education services	8
[1] Right to adaptation of regular education services subject to third-party decision	2
[2] Right to adaptation of regular education services	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Free Instructional Materials

Eight jurisdictions provide for the right to free instructional materials to students (BC, MA, NB, NS, ON, PI, QC, SA) but the scope of this right varies. In Ontario, for example, a school board is required to distribute free textbooks but retains discretion in the distribution of other school supplies (*Education Act*, ss. 170(1)(n), 171(13)). The Québec *Education Act* provides perhaps the broadest right in this regard:

Students other than those enrolled in adult education have a right to the free use of textbooks and other instructional material required for the teaching of programs of studies.

The right of free use does not extend to documents in which students write, draw or cut out.

Instructional material does not include pencils, paper and other objects of a like nature (s. 7).

Alberta is included among the four jurisdictions not providing any such right (AL, NE, NT, YU); however, the relevant provision has recently been the subject of a court case.⁹¹

Adaptation of Regular Services

The requirement to adapt regular educational services to meet the needs of students with disabilities is an important element in reversing the presumption that it is the student who must adapt to the school and not the opposite and can therefore be viewed as supportive of the policy goal of inclusive education. In two jurisdictions (ON, YU), a partial right to this adaptation is inferred from appeal procedures⁹² but this right is explicitly provided in only two jurisdictions (QC, SA). The Québec *Education Act* (ss. 222, 223,

234) has undergone significant changes in this regard (W.J. Smith, 1993):

Prior to its amendment in 1979, the *Act* spoke of "special classes", implying segregated special education. This expression was replaced by "special educational services", implying a move towards integration. This nomenclature has now been completely replaced by the obligation to "adapt the [regular] educational services provided to ... [these] students ... according to their needs", suggesting a new initiative towards educating all students in the mainstream of regular education (p. 173, footnotes omitted).

Garon (1992) argues that the adaptation provisions of the *Education Act* are the "conséquence naturelle du droit à l'égalité reconnu par la *Charte* [québécoise]" (p. 85). She further states that the type of accommodation required by the courts in employment cases (e.g. *Re Ontario Human Rights Commission and Simpsons Sears Ltd.*, 1985) should be applied in other fields, such as education (see also, Bosset, 1989). The nexus of adaptation and equality provided the basis for the decision in two recent cases of the Québec Human Rights Tribunal. In *Re Québec (Commission des droits de la personne) and Commission scolaire Saint-Jean-sur-Richelieu* (1991), David Marcil, a elementary student with multiple disabilities, and in *Re Québec (Commission des droits de la personne) and Commission scolaire régionale Chauveau* (1993), Danny Rouette, a secondary age student with William's syndrome, were denied a regular class placement. In the first case, *Saint-Jean*, Rivet, J., noted the evolution of Québec school law respecting students with disabilities, especially the latest revision of the *Act* (1988). She emphasized the importance of adapting regular services in order to meet the individual needs of students and facilitate their academic success and social integration. This case served as a precedent for *Chauveau*, in which Rivet, J. declared that the regular class, with the provision of appropriate adaptation and support was the norm against which all placement and programming decisions must be judged.⁹³

The Saskatchewan *Education Act* speaks of the right of a student "to receive instruction appropriate to his age and level of educational achievement" (s. 144(1)); the teacher is required to "plan and organize the learning activities of the class with due regard for individual differences and needs of the pupils" (s. 227(b)) and, at his or her discretion,

the rate of progress of any pupil or group of pupils in completing the work of any Level may be accelerated or decelerated and the content of any of the courses taken by that pupil or group of pupils may ... be altered, augmented or otherwise adjusted as the teacher considers advisable and in the interests of the pupils (s. 169(2)).

The *Education Regulations* (s. 52(1)(c)) also require the school board to "provide special instruction materials and any modified facilities and reduced pupil-teacher ratio that, in the opinion of the board of education, is appropriate". Although some of the language in these provisions is discretionary, their combined effect provides for the adaptation of educational services for students with disabilities.

4.4.3 Special Education Services

This sub-theme includes items relating to the provision of special education services to students with disabilities, as well as the requirement for consent for, and the right to appeal the delivery of such services. The range of responses is included in table 4.19.

TABLE 4.19
Distribution of Responses: Special Educational Services

Item	Responses
49. Is there a right to special education services for disabled?	
[0] No right to special education services	7
[1] Right to special education services subject to third-party decision	0
[2] Right to special education services	5
50. Is there a right to reduced class size for special classes?	
[0] NO	11
[1] YES	1
51. Is there a right to reduced student/staff ratios for special classes?	
[0] NO	12
[1] YES	0
52. Is consent required for special education services?	
[0] No consent required	11
[1] Consent required, unless board decision affirmed by third-party ruling	1
[2] Consent required	0
53. Is there a specific right to appeal service delivery?	
[0] No right to appeal	11
[1] Right to "in-house" appeal	0
[2] Right to binding third-party adjudication, subject to leave to appeal	0
[3] Right to binding third-party adjudication	1

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Special Services

Five jurisdictions explicitly provide for the right to special education services for students with disabilities (NS, ON, QC, SA, YU). Special education services include those which are intended to directly enhance the learning process for a student with a disability (e.g. FM system for student with a hearing impairment) and personal care services, primarily intended to provide for the health and hygiene needs of the student. Increasingly, the use of new technology is becoming an important element in providing appropriate services (Kozma & Croninger, 1992). As discussed in relation to the right to schooling, the Nova Scotia provision is couched in restrictive terms (text cited on p. 104). The Saskatchewan provisions are discussed above in relation to placement (text cited on p. 124).

In Québec, school boards must "establish a program for each student service and special educational service contemplated in the basic school regulation ..." (*Education Act*, s. 224). The regulations enumerate and define the various services referred to in the *Act*, which include, *inter alia*: guidance services, psychological services, psychoeducational and special education services, speech therapy services, and health and social services in the school (*Basic School Regulations for Preschool and Elementary Education*; *Basic School Regulations for Secondary Education*; see also extracts included in Vol. 2, app. O). Although the scope of services contemplated by these provisions is broad, a school board enjoys a large measure of discretion in deciding what services it will offer, as discussed above (see note 66) with respect to the board's special education by-law.

Both the Yukon and Ontario provisions are formulated in relation to a student's right to an IEP. The Yukon provision is cited above (see p. 137). The Ontario *Education Act* requires boards (see note 83) to provide special education programs and services:

"special education program" means, in respect of an exceptional pupil, an educational program that is based on and modified by the results of continuous assessment and evaluation and that includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional pupil.

"special education services" means facilities and resources, including support personnel and equipment, necessary for developing and implementing a special education program; ... (s. 1(1)).

In both these jurisdictions, such services are available to identified students; however, in

the case of a failure to identify, the parents have recourse to third-party adjudication (see discussion above following table 4.13).

The Alberta *Education Act* makes provision for special services but entitlement is dependent on being identified as a special needs student, which is a board prerogative (not subject to appeal); this provision is thus illustrative of a provision which appears to confer a right but actually only provides for a privilege:

A board may determine that a student is, by virtue of the student's behavioral, communicational, intellectual, learning or physical characteristics, or a combination of those characteristics, a student in need of a special education program.

A student who is determined by a board to be in need of a special education program is entitled to have access to a special education program provided in accordance with section 28 (s. 29(1)(2)).

Smaller Classes and Staff Ratios

Ontario is the only jurisdiction to provide for smaller class size norms for students with disabilities (*Operation of Schools - General Regulation*, s. 35); no jurisdiction provides for reduced staff/student ratios as a right for students with disabilities but the Saskatchewan *Education Regulations* do make reference to the latter (s. 52 (1)(c), cited above, p. 142).⁹⁴

Consent and Appeal

The Yukon is the only jurisdiction where consent regarding service delivery (as opposed to placement) is stipulated. In the Yukon, the "informed consent" of parents is required with respect to the student's IEP, which includes the service delivery plan (text cited above, p. 137). In Ontario, although there is no right to consent per se, "special services" are provided to "exceptional pupils" (s. 1(1)) and the identification of such pupils does require consent, unless the appeal tribunal decides otherwise (see discussion above in section 4.4.2). No other jurisdiction has any legislated provision concerning consent to special services.

Once again, the Yukon is the only jurisdiction where service delivery (as provided for in the IEP) can be appealed.⁹⁵ In Ontario, the right to appeal identification and placement

does not extend to service delivery or the appropriateness of educational programs. However, when ruling on the appropriateness of educational placements, questions pertaining to service delivery have been raised in several Ontario cases (Ray, Garber & Wilson, 1990-91).⁹⁶ On the basis of a review of these cases, especially *Ormerod* (1987), it is therefore concluded that although the *Education Act* does not provide for appeal on matters of service delivery, parents may seek review of placement decisions and *indirectly* appeal matters relating to service delivery.

4.4.4 Summary and Discussion of Service Delivery

This theme has been presented in terms of three sub-themes: appropriate education, instructional services and special services. A comparison of the converted scores⁹⁷ of these sub-themes shows that the final sub-theme is ranked considerably lower than the first two but this skewed result is due largely to the two items dealing with class size and staff/student ratios.

Appropriate Ed. (items 45-46)	Instruc. Srv. (items 47-48)	Special Srv. (items 49-53)
33	39	14

The analyses of the foregoing sub-themes were synthesized in two ways. First, all items were rank ordered according to the total score for each item (sum of all jurisdictions). Second, all jurisdictions were rank ordered according to the total score for each jurisdiction (sum of all items). The results of this synthesis are included in tables 4.20 and 4.21 and depicted graphically in figures 4.7 and 4.8; all results shown are in converted scores.

TABLE 4.20
Distribution of Items: Service Delivery

Rank	Item	Description	Total
01	47	Right to free instructional materials	67
02	45	Right to appropriate education	42
03	49	Right to special education services	42
04	48	Required adaptation of regular education services	25
05	46	Enhanced minority/second language instruction	8
06	50	Right to reduced class size	8
07	53	Specific right to appeal service delivery	8
08	52	Consent required for special education services	4
09	51	Right to reduced staff/student ratios	0

Note. Total = converted score (%) for all jurisdictions; for breakdown of responses by item, see Vol. 2, app. C.

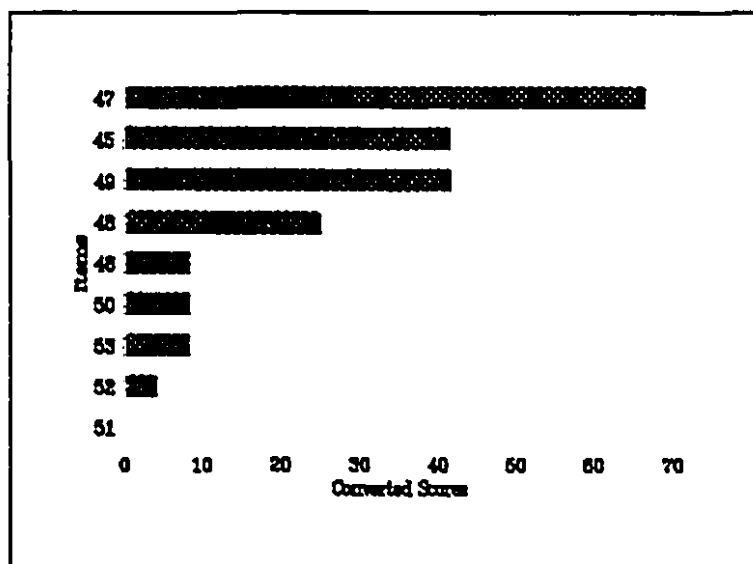


FIGURE 4.7
Distribution of Items: Service Delivery

As shown in table 4.20 and figure 4.7, the right to free instructional materials is the only item to be widely provided throughout Canada. Only three jurisdictions guarantee a right to appropriate education *and* special education services, each of which receives a composite rating of 42. The majority of items included in this

theme are rarely the subject of legislative treatment in any jurisdiction.

TABLE 4.21
Distribution of jurisdictions: Service Delivery

Rank	Jurisdiction	Total
01	Yukon	63
02	Québec	56
03	Ontario	50
04	Saskatchewan	44
05	British Columbia	19
06	Nova Scotia	19
07	Northwest Territories	13
08	Manitoba	6
09	New Brunswick	6
10	Prince Edward Island	6
11	Alberta	0
12	Newfoundland	0

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in table 4.21 and figure 4.8, the distribution of jurisdictions is bounded by the Yukon at the high end and Alberta and Newfoundland at the other. The mean response for all jurisdictions on all items was 23. The variance of the distribution (Std=22) is considered moderate.⁹⁸

There is a bi-polar pattern in the distribution, with two jurisdictions providing for no rights at all in this theme:

10-7

(YU, ON, QC, SA)

(3-0)

(BC, NS, NT, MA, NB, PI, AL, NE)

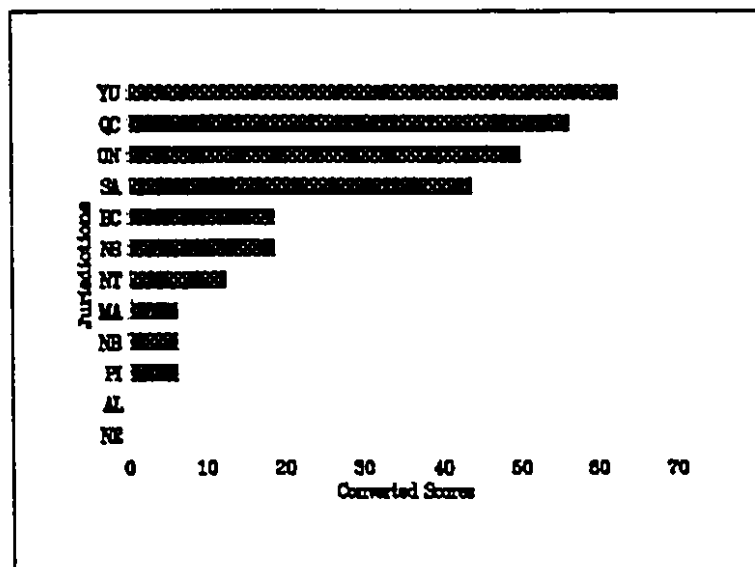


FIGURE 4.8
Distribution of Jurisdictions: Service Delivery

4.5 Parental Participation

The specific research questions for this theme are as follows:

- 5.1 What are the specific rights which define *parental participation*?
- 5.2 To what extent does each jurisdiction provide for such rights?
- 5.3 How do all jurisdictions compare in terms of the provision of such rights?

This theme is understood as the participation of parents in the education of their children, at all stages of the process. In order to answer sub-question 5.1, it was defined by seven items and from these, three sub-themes were derived: collective participation, individual-level participation and a general appeal mechanism. The individual items are included in various tables in the discussion which follows.

The analysis and comparison of individual jurisdictions (sub-questions 5.2 & 5.3) will be presented and discussed in the following three sections, each dealing with one of the above sub-themes of *Parental Participation*. This will be followed by a summary and discussion of the theme as a whole.

4.5.1 Collective Participation

This sub-theme comprises three items dealing with the participation of parents at the board and school levels, as well as provision for the parents of students with disabilities. The range of responses to these items is shown in table 4.22.

TABLE 4.22
Distribution of Responses: Collective Participation

Item		Responses
54.	Are school boards required to provide for board-level participation of parents?	
[0]	NO	10
[1]	YES	2
55.	Are school boards required to provide for school-level participation of parents?	
[0]	NO	8
[1]	YES	4
56.	Are school boards required to provide for participation of parents of disabled?	
[0]	NO	10
[1]	YES	2

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Collective participation is understood as the means by which parents participate in the educational process on a group basis. Such participation may involve sharing information, consultation or decision-making. As recently reported by Martin (1992-93), the right of parents to collective participation in the education of their children is the exception rather than the rule in Canada. The analysis of this sub-theme supports Martin's conclusions.

Only two jurisdictions (QC, SA) provide for the general participation of parents as a statutory right. In Québec, the 1988 revision of the *Education Act* was intended, among other goals, to enhance the role and stature of parents in the educational process (Champoux-Lesage, 1989). According to the *Act*, (s. 189), each board shall have a parent advisory committee, comprised of a representative of each school committee (discussed below). In Saskatchewan, parents are entitled to form such a committee but must make written application to the school board in order to do so (*Education Regulations*, s. 39). In two jurisdictions (BC, ON), the formation of a board-level advisory committee for parents is provided for, not as a right, but at the discretion of the school board (British Columbia *Education Act*, s. 85(2)(b); Ontario *Education Act*, ss. 201, 205). Finally, according to the New Brunswick *Education Act*, the Minister may provide for such participation of minority language parents (s. 3(2)).

The situation is only slightly different in terms of parental participation at the school-level. Four jurisdictions (AL, ON, QC, YU) provide for collective participation at this level. In three of these jurisdictions, the formation of the committee requires the request or application of the parents to establish it (Alberta *Education Act*, s. 17; British Columbia *Education Act*, s. 8; Yukon *Education Act*, s. 116(1)(p)). In Québec, the *Education Act* provides for the formation of a "school committee" and an "orientation committee" (*Education Act*, ss. 55, 83); the former is composed exclusively of parents and appoints members to the latter, which includes both staff and parent representatives.

The formal involvement of parents in Québec education has a long history (Henchey & Burgesss, 1987; Lucas, Lusthaus & Gibbs, 1978-79; Québec Education, 1979; Salomon & Comeau, 1992). Perspectives on the involvement of parents and others in Québec

schools vary but one thing is clear, "future changes in education will require much broader consultation than has been the case in the past" (Chalouth, 1992, p. 11).

There are only two jurisdictions which provide for advisory committees composed of parents of students with disabilities (ON, QC). In Ontario, the Special Education Advisory Committee is mandated to "make recommendations to the board in respect of any matter affecting the establishment and development of special education programs and services in respect of exceptional pupils of the board" (*Education Act*, s. 206(8)). In the Québec *Education Act*, the mandate of the advisory committee is stipulated thus:

(1) to advise the school board on norms for the organization of educational services to handicapped students and students with social maladjustments or learning disabilities;

(2) to advise the school board on the allocation of financial resources to the services intended for those students.

The committee may also advise the school board on the implementation of an individualized education plan for a handicapped student or a student with social maladjustments or learning disabilities (s. 187).

4.5.2 Individual-Level Participation

This sub-theme deals with the participation of parents at an individual level, that is, on behalf of their own children. The range of responses respecting is shown in table 4.23.

TABLE 4.23

Distribution of Responses: Individual-Level Participation

Item	Responses
57. Are boards required to involve parents of disabled in monitoring of student's progress?	
[0] NO	8
[1] YES	4
58. Is the confidentiality of student records provided for?	
[0] NO	6
[1] YES	6
59. Do parents have right of access to student records?	
[0] NO	4
[1] YES	8

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Four jurisdictions provide for the involvement of parents in the monitoring of their child's progress (BC, ON, QC, YU) but the scope of the provisions provided varies considerably. The British Columbia *Education Act* only provides for a right for a student or a parent "to consult with a teacher or administrative officer with regard to that student's educational program" (s. 4 [students], s. 7(2) [parents]). In Ontario, parental participation is assured through the IPRC process (see discussion in section 4.3; see also Vol. 2, section B.3, app. B).

In Québec, the right of parents to be involved in the development of a student's program (set forth in an IEP) is clearly stated but the right to continuing involvement is less clear:

The principal, with the assistance of the parents of a handicapped student or of a student with a social maladjustment or a learning disability, of the staff providing services to the student, and of the student himself, unless he is unable to give such assistance, shall establish an individualized education plan adapted to the needs of the student. The plan shall comply with the norms prescribed by by-law of the school board.

The principal shall see to the implementation and periodical evaluation of the plan (*Education Act*, s. 47).

The parents are not mentioned in the second paragraph, which given the specificity of the first, would seem to exclude them from ongoing evaluation. However, provisions of the regulations give parents of students with disabilities the right, in addition to that which applies to all parents, to receive information and be involved in their child's education:

Not less than once a month, information shall be provided ... to the parents of students for whom a special education program [IEP] providing for that information was prepared.

That information is intended to foster collaboration between the parents and the school in correcting learning difficulties and behavioral problems, as soon as they appear, in the implementation of the special education program [IEP] (*Elementary School Regulation*, s. 51(3)).

McFarlane (1989) stresses the importance of parental participation in the Yukon and this importance is reflected in the Yukon *Education Act*. The *Act* contains the most extensive treatment of parental rights in this regard in Canada. After stating that the creation of the student's IEP must be developed in consultation with the parents (s. 16(1)), it states:

16. (2) ...

(b) the parent of the student shall receive written information concerning the procedures outlined in this section, ...

(e) the results of the assessment report shall be provided and

explained to the parent,

(f) a parent and, where appropriate, the student, shall be consulted prior to the determination of and during the implementation of an Individualized Education Plan, and

(g) the parents shall be provided with information concerning the right of appeal to the Education Appeal Tribunal.

(3) Parents shall have the right to request for their children a determination in accordance with this section.

(4) Parents shall be invited to be members of a school based team that is established for their child.

18. (1) Parents of students attending school are entitled

(a) to be informed of the progress, behaviour and attendance of their children,

(b) upon reasonable notice to the principal and teacher, to observe the instruction of their children if the parental visitation does not impede the instruction of other children,

(c) to appeal decisions that significantly affect the education, health or safety of their children, and

(d) to be consulted in the development of any specialized education programs prepared for their children.

(2) A parent of a student attending a school may and at the request of a teacher or principal shall consult with the teacher or principal with respect to the student's educational program.

The last two items in this sub-theme of *Individual Participation* concern the right to confidentiality of and access to student records. Six jurisdictions provide for both of these rights (AL, BC, ON, QC, SA, YU), while two (MA, NB) provide for access but not confidentiality. These rights are provided for by the *Education Act*, by a general *Freedom of Information Act*, or by both *Acts*. The scope of the provisions of these jurisdictions varies considerably but no detailed analysis of the different texts was undertaken. For purposes of this study, the aim of the inquiry was simply to establish if such rights were provided. The Saskatchewan *Education Act* provides an example of a concise statement of principle on both issues (s. 146):

All records of a school pertaining to a pupil are confidential, but access is to be granted, under any conditions that may be prescribed by the board of education, to:

(a) a pupil who requests access and whose parent or guardian is in attendance when access is granted;

(b) a pupil who is 16 or more years of age and who is living

- independently of a parent or guardian;
- (c) duly authorized officers of the department;
- (d) school officials designated by the board of education;
- (e) a youth worker as defined in the *Young Offenders Act* (Canada), as amended from time to time, who requests access for the purposes of that Act;
- (f) a parent or guardian of a pupil, where the pupil is dependent on the parent or guardian.

The following extract from the *Ontario Student Record (OSR) Guideline, 1989* (ss. 4.3-4.4) illustrates a clear and concise statement about the confidentiality of student records:

(4.3) Only supervisory officers and the principal and teachers of the school shall have access to the OSR, for the purpose of improving the instruction of the student, without the written consent of the adult student or of the parent(s) or guardian(s) of a student who is not an adult.

(4.4) No individual (including board officials) other than those identified previously in subsection 4.3 shall have access to the OSR without the written consent of the adult student or of the parent(s) or guardian(s) of a student who is not an adult. The OSR shall not be produced in the course of any legal proceedings, except as provided for below.

In other cases (e.g. Québec), the provisions are more complex, requiring a level of analysis beyond the scope of this study to determine the extent of the "exceptions to the rule" of confidentiality.

Some education professionals feel that access to student records should be restricted because of the need for appropriate explanations by board personnel. The *Alberta Education Act* reflects this preoccupation. It provides for the right of a parent or student 16 years of age or older to examine a student record, including tests and other evaluative material (s. 18(2)). In such a case, however, the *Act* specifies the following:

An individual referred to in subsection (2) is entitled to review the test, test result, evaluation or information referred to in subsection (3) only at a time when a person who is competent to explain and interpret the test, test result, evaluation or information is available to provide him with an explanation and interpretation of that test, test result, evaluation or information (s. 18(4)).

4.5.3 General Appeal Mechanism

This final sub-theme consists of only one item, the range of responses to which is shown in table 4.24.

TABLE 4.24

Distribution of Responses: General Appeal Mechanism

Item	Responses
60. Is there a general right to appeal board decisions?	
[0] No right to appeal	8
[1] Right to "in-house" appeal	4
[2] Right to binding third-party adjudication, subject to leave to appeal	0
[3] Right to binding third-party adjudication	0

Note. For each item, n=12; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

Previous items dealing with appeals were concerned with *specific* issues - identification, placement and service delivery. In this sub-theme, the right of appeal is understood to encompass a *general* right to appeal a broad range of board decisions affecting students. Hence, the right to appeal the aforementioned specific issues was not deemed to provide such a general right.

Four jurisdictions provide for an internal appeal mechanism of a general nature (AL, BC, QC, YU). In all cases, the school board is the final arbiter of any appeal, as illustrated by the British Columbia *Education Act* (s. 11):

(1) In subsections (2) and (4) "decision" includes the failure of an employee to make a decision.

(2) Where a decision of an employee of a board significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.

(3) For the purpose of hearing appeals under this section, a board shall, by bylaw, establish an appeal procedure.

(4) A board may refuse to hear an appeal under this section, unless the appellant discusses the decision under appeal with one or more persons as directed by the board.

(5) A board may establish one or more committees for the purpose of investigating appeals under this section.

(6) A board may make any decision that it considers appropriate in respect

of the matter that is appealed to it under this section and the decision of the board is final.

(7) A board shall make a decision under this section as soon as practicable after receiving an appeal and shall promptly report that decision to the person making the appeal.

The Alberta *Education Act* does provide for some subjects to be appealed to the Minister (ss. 104-105) but internal appeal is the general rule. New Brunswick does not have a general appeal provision but some matters may be subject to internal appeal (*School Administration Regulation*, s. 53.1-53.21). The remaining jurisdictions (MA, NE, NS, NT, ON, PI, SA) make no provision for a general right of appeal.

4.5.4 Summary and Discussion of Parental Participation

This theme has been presented in terms of three sub-themes: collective participation, individual-level participation and a general appeal mechanism. When the converted scores of these sub-themes are compared,⁹⁹ the scores for the three sub-themes vary in an even step pattern.

Collective (items 54-56)	Individual (items 57-59)	General Appeal (item 60)
22	50	11

The analyses of the foregoing sub-themes were synthesized in two ways. First, all items were rank ordered according to the total score for each item (sum of all jurisdictions). Second, all jurisdictions were rank ordered according to the total score for each jurisdiction (sum of all items). The results of this synthesis are included in tables 4.25 and 4.26 and depicted graphically in figures 4.9 and 4.10; all results shown are in converted scores.

TABLE 4.25
Distribution of Items: Parental Participation

Rank	Item	Description	Total
01	59	Access to student records	67
02	58	Confidentiality of student records	50
03	55	School-level participation of parents	33
04	57	Involvement in monitoring of student's progress	33
05	60	General appeal mechanism	33
06	54	Board-level participation of parents	17
07	56	Participation of parents of students with disabilities	17

Note. Total = converted score (%) for all jurisdictions; for breakdown of responses by item, see Vol. 2, app. C.

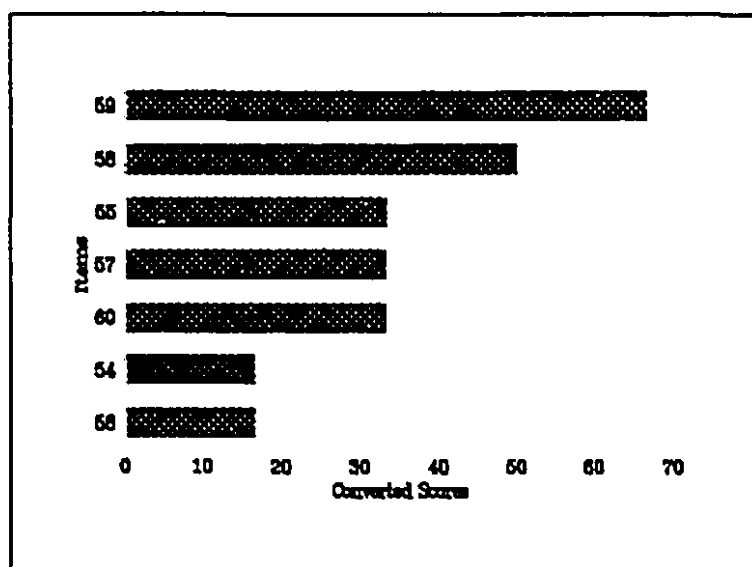


FIGURE 4.9
Distribution of Items: Parental Participation

The only right that is widely provided for is access to student records, followed by the right to confidentiality. The rights to school-level participation of parents, the monitoring of a student's progress and a general appeal mechanism are rarely found, while board-level participation of parents and participation of parents of

students with disabilities is practically never found.

TABLE 4.26
Distribution of Jurisdictions: Parental Participation

Rank	Jurisdiction	Total
01	Québec	77
02	British Columbia	56
03	Yukon	56
04	Alberta	44
05	Ontario	44
06	Saskatchewan	33
07	Manitoba	11
08	New Brunswick	11
09	Newfoundland	0
10	Northwest Territories	0
11	Nova Scotia	0
12	Prince Edward Island	0

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in table 4.26 and figure 4.10, the distribution of jurisdictions is bounded, at the high end, by Québec, which does provide for extensive parental rights. At the other end, are Newfoundland, the Northwest Territories, Nova Scotia and Prince Edward Island, which provide no such rights at all. The mean response for

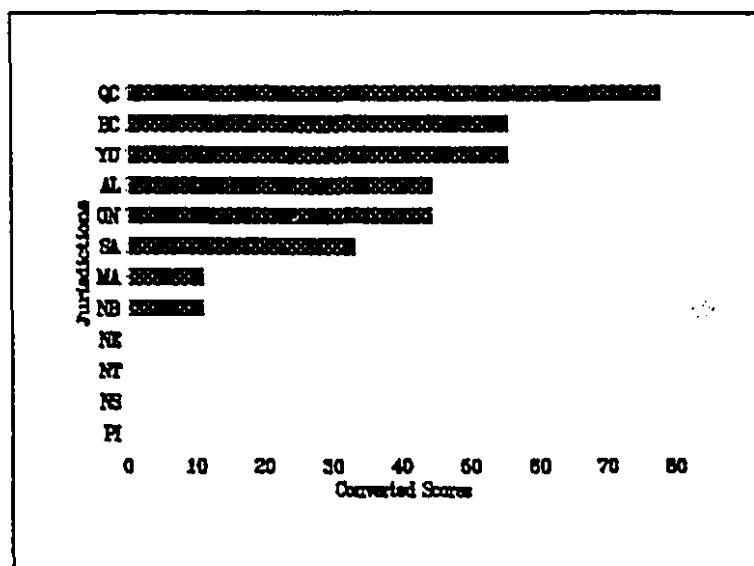


FIGURE 4.10
Distribution of Jurisdictions: Parental Rights

all jurisdictions on all items was 28. The variance of the distribution (Std=26) is considered high.¹⁰⁰ Between the extremes of high rights and no rights at all, there is slight pattern in the distribution between jurisdictions with some parental rights and those with practically none.

Endnotes - Chapter 4

1. It is generally held that prior to the enactment of statutory rights to equality, no such right was provided at common law (*Christie v. York Corporation*, 1940). See also Hunter, 1976; Tarnopolsky, 1978.
2. For purposes of this discussion, a prohibition against discrimination is deemed to provide for equality rights.
3. One jurisdiction (Nova Scotia) is coded in table 4.1 as not including disability because of its non-application to youth (see discussion which follows on p. 85; see also Vol. 2, section B.2, app. B). As a result of this interpretation, all responses to items 1 to 12 concerning non-discrimination (tables 4.1 to 4.3) are coded "0" for Nova Scotia, which will not be considered in the remainder of this section.
4. Brun (1992) suggests that the definition from the *Act to Secure the Handicapped in the Exercise of their Rights*, which defines a handicapped person as one whose condition is significant and permanent (s. 1(g)), should apply and this interpretation has been adopted by the courts (see, for example, *Québec (Commission des droits de la personne) v. Ville de Laval*, 1983). However, it is suggested the change in the wording of the *Québec Charter of Human Rights and Freedoms* replacing "handicapped person" with "handicap" (s. 10) renders the above definition inoperative, although there is as yet no case law on point. The Commission des droits de la personne (1987) has adopted a definition which is less restrictive: "Un désavantage résultant d'une déficience, soit une perte, une malformation ou une anomalie d'un organe, d'une structure ou d'une fonction mentale, psychologique, physiologique ou anatomique" (p. 499) but it does not have the force of law (C. Dupont, Direction des affaires juridiques, Québec Education, personal communication, December 4, 1992). See also discussion in section 4.3.
5. The provision of the Newfoundland *Code* has been successfully used to expunge vexatious comments from a student's personal file (*Matthews v. Memorial University of Newfoundland*, 1989).
6. Similarly, the Québec *Code* (s. 48) also contains a provision prohibiting exploitation:

Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.
7. The Yukon *Education Act* contains the following: "The Canadian Charter of Rights and Freedoms and the Human Rights Act shall apply to the delivery of optional education provided for in this Division" (s. 28). Since this division of the *Act* applies to home schooling, it appears to be intended to ensure that such education is not shielded from, *inter alia*, the provisions of the *Code*. It would thus appear that the Legislature assumed that the *Code* applied to education offered by public schools but felt it necessary to stipulate that this situation continued in the case of home schooling.

At first blush, the reference to the *Charter* in this provision is more difficult to understand, as stipulating that the *Charter* applies, or does not apply, to a particular legislative provision is *ultra vires* the authority of any Legislature. It can never "opt into" *Charter* scrutiny and can only "opt out", if it avails itself of the "notwithstanding provision of the *Charter* (s. 33). It is therefore assumed that the reference to the *Charter* is intended to remove any doubt that the provision of education by home schooling might be considered as service delivery by private actors and therefore not subject to *Charter* scrutiny.
8. In *Re Saskatchewan Human Rights Commission and Department of Social Services* (1988), the court held that social assistance provided under the *Saskatchewan Assistance Act* constituted a "service available to the public". Recognizing the controversy and importance of this interpretation, Vancise, J.A. set forth the criteria which should be used to determine whether a particular public service should be so considered (p. 269):

An examination of these cases reveals that government services offered, or customarily offered to the public, have one or more of the following characteristics:

 1. The Act providing the service is general in nature;
 2. The agency or department is carrying out a statutorily imposed duty;
 3. There is a statutorily imposed obligation on the user of the service to participate in this service;

4. The legal or administrative function is one of general application to all members of the public;
5. Eligibility criteria and procedures for gaining access to the service are provided;
6. Not all members of the public require the service or can qualify for the service by reason of a failure to satisfy the eligibility requirements.

See also, *Attis v. New Brunswick (School District 15)*, 1991; *Hobson v. British Columbia Institute of Technology*, 1988; *Pandori v. Peel Board of Education*, 1990.

9. See *Beattie v. Acadia University*, 1976; *Bloedel v. University of Calgary*, 1980; *Bourke v. Westlock School Division No. 37*, 1986; *Calgary Board of Education v. Deyell*, 1984; *Gay Alliance Toward Equality v. Vancouver Sun*, 1979; *Re Peters and University Hospital Board*, 1983; *Sonnenberg v. Centre universitaire St-Louis-Maillet*, 1988; *University of British Columbia v. Berg*, 1991. Generally, see Tarnopolsky & Pentney, 1985; see also discussion of *Deyell*, surrounding note 67.

10. The Saskatchewan provision stipulates that every person shall "enjoy the right to education ... without discrimination ..." which could be interpreted to mean that the section does not accord a right to education per se but merely that such right (to the extent it exists independently of the *Code*) shall be exercised without discrimination. However, the same wording "enjoy the right to ..." is used in other sections, notably, Part I, the Saskatchewan Bill of Rights (e.g. "Every person and every class of persons shall enjoy the right to freedom from arbitrary arrest or detention" (s. 7). Furthermore, where the Legislature did not intend to confer a right, but rather merely prohibit discrimination, a different wording is used (e.g. "No person shall: (a) deny to any person or class of persons the opportunity to purchase any commercial unit ...", s. 10(1)). Accordingly, it is concluded that the Saskatchewan *Code* confers a positive right to education, and not merely a negative right to non-discrimination. This right is subject to the primacy clause in the *Code* (s. 44, cited below on p. 89) and the limitations set forth in s. 31 (especially, s. 31(9)(9.1)).

11. The Québec provision is couched in terms which make the *right* to education conditional upon the scope and the standards provided for by law. In other words, if there were no *Education Act* conferring a right to education, this section of the *Code* would not create such a right (H. Côté, 1984; Morin, 1989). The structure of the Québec *Code* is more convoluted than the Saskatchewan one. Rather than stipulate that "... discrimination is prohibited in respect of the following ...", it sets forth the right to equality in more general terms (s. 10):

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

This provision applies to education because the latter is included in the *Code* as a human right (Samson, 1988).

The *Code* also contains a primacy clause (s. 52) but it applies only to those rights enumerated in ss. 1-38, hence to equality rights (s. 10) but not to education (s. 40). Chénard (1991) views this as problematic; he does not explain his reasoning but appears to suggest, with reference to *Doré* (1980; see text surrounding note 63), that the *Education Act* could not be challenged as non-discriminatory because it does not come under the ambit of s. 52 (i.e. requiring any derogation from the *Code* to be expressly stipulated). In other words, education rights must respect equality rights but education rights are subject to the standards prescribed by law; therefore, equality rights in education are likewise subject to these standards, which may permit actions which would otherwise be deemed to be discriminatory.

It is argued that the correct interpretation is that education legislation cannot be discriminatory in the absence of an express derogation to that effect. Removing the right to education (s. 40) from the ambit of s. 52 recognizes the different status of the economic and social rights contained in this part of the *Code* (ss. 39-48). By stating that such rights (e.g. education (s. 40) and social measures (s. 45)) are subject to the standards set by law and by removing these sections from the ambit of the primacy clause (s. 52), the Legislature ensured that no one could argue that (in this example) the educational and social services provided by the State did not meet the level required by the *Code*.

By contrast, equality rights are guaranteed primacy and every legislative act must respect such rights unless it contains an express derogation to that effect. It is submitted that such requirement applies to educational

legislation as much as it does to any other. The Legislature appears to have adopted this interpretation, as evidenced by the inclusion of the following derogation in the *Education Act*: "The provisions of this Act which grant rights and privileges to a religious affiliation shall apply despite sections 3 and 10 of the Charter of human rights and freedoms" (s. 726). Such a provision would not be required, if equality rights did not apply to the *Act* in general.

Consequent upon the foregoing, the combined effect of these provisions is to prohibit discrimination in public education and provide a positive right to same but, unlike Saskatchewan, only to the extent provided for in other legislative acts.

12. For example, the Saskatchewan *Code* contains the following derogation to the right to education cited above: Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or disability, where it enrolls persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrolls persons who are disabled (s. 13(2)).

One could interpret this provision to mean that if a school were operated by a religious order, it would be permissible to exclude students with disabilities. Contrast this with the language of the Québec *Code*:

A distinction, exclusion or preference ... justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory (s. 20, emphasis added).

In *L'Association A.D.G.Q. v. Catholic School Commission of Montreal* (1979), it was held that the refusal of the school board to rent facilities to a gay rights group, based on Catholic dogma concerning homosexuality, could not be justified on the basis of s. 20. See also analysis of s. 20 by Beetz, J. in *Brossard (Ville) v. Québec (Commission des droits de la personne)* (1988).

13. For example, the Ontario *Code* states that "this Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*" (s. 19(1)) and the Québec *Education Act* states that "the provisions of this Act which grant rights and privileges to a religious affiliation shall operate notwithstanding the provisions of ... [ss. 2(a) & 15 of the *Charter*]" (s. 727). The reach of constitutional protection accorded denominational schools under section 93 of the *Constitution Act, 1867* has long been debated in Canada and is presently before the Supreme Court again in *Reference Re Education Act of Québec* (1990). The potential for conflict between denominational rights, and other rights, such as gender (*Caldwell v. Stuart*, 1984; see also Parker-Jenkins & Osborne, 1985), language (*Griffin v. Commission scolaire régionale Blainville Deux-Montagnes*, cited in J.C. Anderson, 1990b) and disability (*Hickling v. Lanark*, 1986), remains, with the courts as the final arbiter of these competing constitutional interests.

14. The Yukon *Code* (excepting s. 14), was proclaimed in force on 1 July 1987 (S.Y., 1990, Table of Public Statutes, p. 9, note) but the current *Building Standards Act* was only proclaimed in force on 9 June 1992 (Y. Gaz. 1992.I.198). The exception illustrates the difficulty of limiting standards, while satisfying the obligations of the *Charter*. On the one hand, it could be argued that the text has the effect of stating that the standard of reasonable accommodation for physical disabilities in respect of existing buildings is that set forth in the *Building Code* then applicable. In such a case, a *Charter* challenge might hinge on whether such standards constituted "reasonable limits prescribed by law". On the other hand, one could argue that the effect of the exception is to deny a person with a physical disability any rights in respect of access to such facilities; in such a case, the provision would probably not stand up to *Charter* scrutiny.

15. Similarly, in a federal state such as Canada, paramountcy refers to the doctrine, whereby valid federal acts prevail over valid provincial acts when there is a conflict between the two (see Hogg, 1992, chap. 16).

16. In Canada, as in other Commonwealth countries, it is common to refer to the state or government as "the Crown". Because Canada is a federal state, each jurisdiction is formally referred to as the Crown in right of Alberta, in right of Canada, etc. This practice reflects the division of powers in Canada and hence the doctrine of the "divisibility of the Crown" for all legal purposes (see Hogg, 1992, chap. 10).

17. Section 86 of the Québec *Charter of Human Rights and Freedoms* states that "an affirmative action program is deemed non-discriminatory if it is established in conformity with the [Québec] Charter [of Human Rights and Freedoms]". Section 87, which provides for the approval of all affirmative action programs by the Commission des droits de la personne, is not in force and the remaining relevant sections (ss. 88-91) refer to programs recommended

by the Commission. There is a *Regulation Respecting Affirmative Action Programs* and it refers only to programs implemented upon the recommendation of the Commission or by court order (s. 1). Consequently, given the lack of clear language to the contrary, it is concluded that voluntary programs are not permitted by the *Québec Code*.

18. Discrimination may be direct - action aimed at an individual who is a member of a target group (e.g. persons with disabilities) - or it may be indirect - action that is not so aimed but which nonetheless is discriminatory because of the impact the action has with respect to a member of the target group. This latter type of discrimination is often termed *adverse effect discrimination* and is not permitted under the *Charter* (*Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, 1990; *Ontario Human Rights Commission and Simpsons-Sears Ltd.*, 1985). Generally, see Tarnopolsky and Pentney (1985).

19. This was certainly the case in *Bales v. School District 23 (Central Okanagan)* (1984), an action seeking the integration of a child with a disability. Rejecting the claim to be educated in an ordinary school, Taylor, J. stated:

Nor do I accept the contention that the placement of a handicapped child such as Arron in a properly-conducted segregated school ... can be regarded as a deprivation of liberty or security of the person, or as an act of discrimination. Insofar as special education involves discrimination between handicapped and non-handicapped, the distinction is drawn for the purpose of providing the handicapped with the special treatment they require. Where, as here, the segregation involved is reasonably directed to the achievement of that objective - even if it may exceed the degree of segregation now considered by experts to be strictly necessary - it cannot be characterized as discrimination in an objectionable sense (p. 221).

It should be noted that *Bales* was litigated prior to the coming into force of the equality provisions of the *Charter*; had they been in effect, one can speculate that a different result might have ensued (MacKay, 1985).

20. By construing self-contained classes as affirmative action, this statement represents the antithesis of inclusive education, which posits that segregated programs are *ipso facto* discriminatory (see chapter 2, note 25).

21. In *Roberts v. Ontario (Ministry of Health)* (1989), the case was litigated on the basis of the interpretation of the following provision of the *Ontario Code*:

A right under Part I [Freedom from Discrimination] is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I (s. 14(1)).

In this case, the Ontario government operated a special program which supplied various assistive devices to persons with disabilities but restricted the program to persons under 23 years of age (with intention to gradually raise the age limit as time went on). The complainant, who would otherwise qualify for the program, was denied benefits because of age (he was 73). The board of inquiry agreed that denial on the basis of age was contrary to section 1 of the *Code* (non-discrimination) but rejected the complaint because the program was shielded from a charge of discrimination by virtue of the provisions of section 14(1). The decision was affirmed on appeal; however, judging from an *obiter dictum* in the appeal decision, it appears that the validity of the original decision under the *Charter* was not challenged. The appeal decision also made it clear that the only issue requiring interpretation, for purposes of judicial review, was whether the program constituted a "special program" under section 14(1), which it clearly was.

In other words, the language of section 14(1) shields a *bona fide* special program from review on the grounds of discrimination - either on the basis of the ground used to justify the program (in this case, disability) or on some other ground (in this case, age). For another example, see discussion of the Nova Scotia *Code* and public schooling in Vol. 2, app. B.

22. The one exception is British Columbia. There used to be a commission in British Columbia but it was abolished and replaced with the B.C. Human Rights Council (S.B.C., 1984, c. 22). The Council maintains only the investigative and adjudicative functions of the former commission.

23. In the above-noted Québec exception, where an individual can proceed with a complaint without the concurrence of the Commission, he or she becomes responsible for all costs involved.

24. The Ontario *Code* empowers the board to "direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices ..." (s. 41(1)(a)). Requiring a party to adopt an affirmative action program may exceed the compliance standards set forth in the *Code*; however, the references therein to "future practices" may provide support for such an order in the light of the ruling by the Supreme Court of Canada in *Action travail des femmes* (1987). See also discussion in Keene (1992).

25. Distinguishing questions of fact and law is not always clear cut. For example, in *Re Peters and University Hospital Board* (1983), a blind person with a guide-dog was restricted from visiting a patient in a hospital, raising the issue of whether visitor facilities in a hospital constituted services "available to the public" (see note 9). Bayda, C.J.A., decided that the question involved a mixture of fact and law, which were difficult to distinguish. As the right of appeal was restricted to questions of law, the distinction was a determinative point, not an academic one.

26. It is assumed that the inclusion of a "privative clause" to deny any right of appeal (e.g., provision which states that board's decision is "final and binding") does not preclude judicial review respecting excess of jurisdiction or "manifest error" in law. Such an action may be taken on the basis of a common law writ of *certiorari* or on the basis of a statutory enactment (see, for example, Ontario *Judicial Review Procedure Act*).

27. The maximum raw score for each item, and consequently for each theme (or sub-theme) varies (see summary in table 3.5 above and details in Vol. 2, app. A, table A.3). In order to compare individual items and themes (or sub-themes), it was therefore necessary to convert the raw scores to a common base. This was done by using the following formula.

$$\text{converted score} = \frac{\text{raw score}}{\text{max score}} \times 100$$

Since the maximum raw score which any one jurisdiction could obtain on an individual item or theme (or sub-theme) was the same, there was no need to convert these scores for purposes of comparison. However, in order to avoid confusion, it was decided to present all data in the form of converted scores. It should also be noted, as stated in the limitations of this study (see section 3.5 above), that neither raw nor converted scores have any *absolute* meaning. They were used strictly to provide a *relative* comparison of items, themes or jurisdictions, as the case may be. Consequently, all qualifying adjectives used in the discussion to describe any score (e.g. of one jurisdiction) as "high", "middle", "low", etc., is intended to describe the score in relation to other scores (e.g. of other jurisdictions), not in relation to any absolute standard.

28. It should be remembered that Nova Scotia's "score" of 0 arises because of the non-application of the *Code* to public schooling (see note in section B.2, app. B); if the provision deemed to exclude public schooling were repealed, Nova Scotia would have had a total score of 12, well within the mid-range. Assuming such a repeal, this score would be computed as follows:

Q#01 - 1; Q#02 - 1; Q#03 - 1; Q#04 - 0; Q#05 - 1; Q#06 - 0;
Q#07 - 1; Q#08 - 1; Q#09 - 1; Q#10 - 0; Q#11 - 1; Q#12 - 2.

29. The variance in the distribution is measured by the standard deviation (std) from the mean (me). For purposes of comparison, the variance of the distribution (in converted scores) is considered to be high, moderate or low, according to the following decision rule.

high variance	Std $\geq$ 25
moderate variance	Std $>$ 10 and $<$ 25
low variance	Std $\leq$ 10

30. This type of provision bears obvious resemblance to the "reasonable limits" clause of the *Charter* (s.1), as well as to the "reasonable accommodation" standards of the *Human Rights Codes* discussed above (section 4.1.2). However such limits or standards are not usually found in "ordinary" statutes. Moreover, the clause differs significantly from the interpretative clauses of the *Charter* dealing with aboriginal rights, gender equality, denominational schools, multiculturalism and legislative powers (ss. 25-31) which serve not merely to "temper" the meaning of another clause but act as an interpretative "prism" to alter the meaning assigned to other substantive rights enumerated in the *Charter* (Pentney, 1989).

31. In *Bouchard v. School Commissioners of Saint-Mathieu-de-Dixville* (1950), Rinfret, C.J.C., made the following statement (p. 482):

Dans toutes ces questions administratives, il est de règle qu'une large discrétion doit être laissée aux commissaires d'écoles de la même façon que, pour les conseillers municipaux, il est de jurisprudence de ne pas intervenir dans leurs décisions, à moins d'y découvrir un parti-pris ou une injustice manifeste, ou bien entendu, une irrégularité ou une illégalité.

32. It should be noted that these sections of the *Education Act* may be repealed in the near future by a bill currently before the Ontario Legislature (Bill 37, 1992). However, inasmuch as this bill has not gone beyond first reading since it was tabled in June, 1992, its content was not taken into account in the discussion which follows.

33. In *Re Maw and Scarborough Board of Education* (1983), the Court was called upon to rule on the right of a child to a "hard to serve hearing", which turned on whether the child was a "resident pupil" of the board. In considering the matter, the Court stated:

In our view, the scheme of this legislation [*Education Act*] involves the imposition of a statutory obligation to supply an education to the entire spectrum of Ontario's educable students. The system employed in the discharge of this statutory obligation recognizes the "exceptional pupil" whose needs are dealt with in various ways, through appropriate special education. The Act also recognizes the existence of children who cannot be dealt with within the perimeters of the education system, including its special education branch [of the Ministry]. These children are referred to as "hard to serve pupils" (p. 696, emphasis added).

34. Baldwin (1990-91) reaches the same conclusion regarding the exclusionary effect of the regulatory provisions. However, he suggests that the regulations may be invalid, based on the a general provision contained in the *Education Act*. Section 4(a)(xii) states that the regulations must not be inconsistent with the Act and must be "deemed necessary to give full effect to this Act and to carry out its provisions according to their true intent and meaning".

35. This type of exclusionary clause was typical of many jurisdictions in the past, as illustrated by this extract from the Québec *Education Act* prior to its amendment in 1979:

Every school board ... may establish and maintain in operation in their school special classes for children who are unable, by reason of physical or mental deficiency, to avail themselves of the instruction given in the regular classes (R.S. 1964, c. 235, s. 568 [R.S.Q., c. I-14, s. 480]).

36. A challenge to the Nova Scotia *Act* could assume that the *Human Rights Code* applied to public schooling. If the *Code* were held not to apply (as suggested by this study), the action could serve to test attack the constitutionality of the *Code* as well, based on the latter's presumed violation of the *Charter* by its blanket denial of equality rights to youth (see Vol. 2, app. B).

37. Contrast, for example, expressions such as "up to 21 years" and "to 21 years inclusive". Often, the beginning age of school entitlement is expressed as "5 years" in the *Act* but the regulations specify that this age requirement is deemed to be met if, for example, the child's birthday occurs prior to December 31. Technically, in a jurisdiction where school begins on September 1, the right to education begins (in this example) at 4 years, 8 months. As a detailed comparison of jurisdictions (in years & months) was deemed unnecessary, an estimate (in whole years) was used for comparison (see note re item #14 et al. in Vol. 2, table A.2, app. A).

38. Item #15 (upper age limit for right to schooling) contains a higher number of response categories than any other item. The potential impact of this larger range has been deemed not to be problematic (see discussion in section 3.4 above and Vol. 2, section A.6, app. A).

39. The use of different definitions in Québec is seen as problematic; see discussion in section 4.3.

40. The Québec *Youth Protection Act* authorizes the Youth Court to issue various orders, when it considers "that the security or the development of the child is in danger" (s. 91), and "where the Court concludes that the rights of a child in difficulty have been wronged by persons, bodies¹ or establishments, it may order the situation to be corrected" (s. 91(d)).

* Note. The term "bodies" is defined to include school boards (s. 1(d)).

In *Protection de la jeunesse - 460* (1980), the Youth Court issued an order requiring a school board to provide certain specified services to a youth in difficulty. Upon application of the school board for a writ of evocation, the Superior Court quashed the order, stating that the Youth Court had exceeded its jurisdiction, inasmuch as it did not have the "pouvoir général de contrôle ou de surveillance sur les corps politiques" (p. 2843). If the case was correctly decided, it reduces, or possibly eliminates, some of the protection for youth in difficulty which the *Youth Protection Act* had been thought to provide.

41. Once again, the vocabulary used in different acts creates confusion regarding age provisions; in this analysis, a requirement to attend school *until* age 16 is interpreted as providing 15 years as an upper age limit (i.e. as soon as the student reaches 16 years, he or she is allowed to leave school). See also note 37.

42. The aforementioned *Bouchard* case (see discussion surrounding note 31) dealt with the expulsion of two students whose were described as "arriérés mentalement" (p. 483) and who were judged to be "habituellement insubordonnés ... une mauvaise influence sur les autres enfants" (p. 485). Citing with approval the testimony of a physician called by the parents, who stated that in his opinion "qu'il vaudrait mieux mettre ces enfants dans une institution spéciale" (p. 481), the Court rejected the parents' appeal. This case is still cited as authority to deal with cases involving students whose disability *interferes* with the rights of other students. See for example, *Doré v. Commission scolaire de Drummondville*, 1980; *Picard v. Commission scolaire Prince-Daveluy*, 1990; see also discussion in notes 63 and 64.

43. It is interesting to note that whereas express exceptions to the duty to attend school are generally included, the opposite is true respecting the right to education. However, the right to education is generally linked to residency requirements (in a school board) and is either explicitly or implicitly subject to other provisions of the *Act*. Consequently, the student who is expelled, forfeits his or her right to attend school.

44. The *National Building Code of Canada* is prepared by the Associate Committee on the National Building Code, which is a standing committee of the National Research Council. It is not a regulatory instrument per se; rather, it serves as a model of minimal standards for the construction of new buildings and the major renovation of existing ones. It is developed following wide consultation with experts from throughout the country and thus enjoys a large measure of support. It becomes part of the regulatory framework in a given jurisdiction when the government decides to adopt the *Code*, with or without modifications, or adopt its own code, using the *National Building Code* as a prototype. First published in 1941, *NBC, 1990* is the tenth edition; moreover, minor revisions are published periodically between editions.

45. In Québec, section 69 of the *Act to Secure the Handicapped in the Exercise of their Rights* requires owners of buildings not subject to the provincial code (for new buildings) to submit a plan to ensure that buildings built before 1976 are accessible to persons with disabilities. However, the obligation to submit such a plan only comes into force according to the timetable and standards set by regulation. No such regulations have ever been adopted.

46. Given the complexity of building standards contained in *NBC, 1990*, it was decided to identify several key variables for purposes of comparison across jurisdictions (see note in Vol. 2, table A.2, app. A, and extracts from *NBC, 1990* and *NBC, 1985* in Vol. 2, app. E).

47. See note 27 for formula and discussion re converted scores.

48. See note 29 for decision rule used to compare variance.

49. The presence of legislated definitions was not deemed to create rights *per force*, as the definitions might be harmful to, rather than supportive of, students' rights. It was also felt that the diversity and complexity of the various definitions could not adequately be expressed in a rights paradigm, as used in the data analysis instrument. Hence the decision to present and discuss definitions outside this framework.

50. The reference in the Québec *Education Act* to the definition of a "handicapped person" (cited above on p. 105) refers only to entitlement to extended schooling. Similarly, there is a specific definition in the regulations to establish entitlement for early childhood education (cited above, p. 105). Furthermore, there is a separate set of definitions

to establish entitlement to English language instruction for persons not otherwise eligible for same (see discussion following table 4.14). It should also be noted that the expression "learning disability" in the Québec *Education Act* is the official translation of "difficulté d'apprentissage", which would normally be rendered in English by "learning difficulty". The English version does not reflect the meaning of the expression, as used by Québec Education, which defines the expression more broadly than is generally associated with the expression "(specific) learning disability".

51. The only decided cases on point (*Re Québec (Commission des droits de la personne) and Commission scolaire Saint-Jean-sur-Richelieu*, 1991; *Re Québec (Commission des droits de la personne) and Commission scolaire régionale Chauveau*, 1993) concerned a student who fell within the "handicapped" grouping.

52. See notes in Vol. 2, table A.2, app. A concerning the relation between board prerogatives and the triggering mechanism for other rights.

53. Given the complexity and uniqueness in the Canadian legislative scene of the Ontario IPRC process, a separate note has been included in Vol. 2, section B.3, app. B.

54. It does not appear that the Minister has ever issued any legally binding directives on the basis of this authority. The Ministry *Special Education Information Handbook* (1984) states that the *IPRC Regulation* "is the legal basis upon which school boards develop and implement the procedures for identifying, placing, and reviewing the placement of pupils ..." (p. 51). The same document refers to (and includes in an appendix a copy of) a Deputy Ministerial Policy/Program Memorandum (No. 11, 1982) on this subject; however, the legal status of this document is not made clear (see discussion in Vol. 2, section A.2, app. A).

55. This Act created the Atlantic Provinces Special Education Authority [APSEA], an agency located in Halifax, by inter-provincial agreement among the four Atlantic provinces (see MacLelland, 1989 for a brief description). It provides for the education of "handicapped persons", that is, someone "who is handicapped visually or aurally, or who has a related or associated handicap, or is learning disabled or is handicapped as defined by subsequent agreement between the parties hereto" (*APSEA Agreement*, s. 1(d)).

56. See note regarding this presumption in Vol. 2, table A.2, app. A.

57. In legal terms, "the right of appeal" normally refers to the right of a litigant to request a court to set aside a decision of a subordinate judicial (or quasi-judicial) body, either by substituting its own judgment or by ordering a new trial (or hearing). In this study, the right to appeal decisions of human rights boards of inquiry exemplifies the general usage of this expression (see discussion in section 4.1.3 above). In this section and those following, the expression "right of appeal" is understood as used in educational legislation with respect to the appeal of decisions concerning assessment, placement or service delivery. In this context, parents may appeal the decision of an internal committee to the school board, a board decision to the Minister or to an outside body. In these cases, the term "appeal" is loosely used and can be more properly thought of as third-party adjudication of disputes (see note to Q#30 et al. in Vol. 2, table A.2, app. A).

58. According to Saskatchewan Education, there have been no appeal decisions rendered to date (M. Lipp, Director of Special Education, personal communication, January 26, 1993).

59. The *IDEA* requires states participating in the federal funding program (see discussion in section 2.4.1):
to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (20 USCS § 1412(5)(B)).

60. This inference is based on the premise that the "appeal process" (see note 57) provides a *procedural* approach, rather than a *substantive* approach to the provision of rights (see note 85). It can be argued that some rights are difficult to articulate in a clear standard because of the amorphous nature of some issues, differences in professional opinion or other contextual features. Rather than attempting to qualify a written standard, the legislature may opt

for a provision which provides for a process to arrive at a solution; although the means is quite different, the aim remains the same, to provide a right to a given benefit (see decision rule for items 30 et al. in Vol. 2, table A.2, app. A).

61. Normally, the expression "appropriate program" would not be deemed to include placement; however the juxtaposition of both terms was interpreted to imply that both programs and placement must be appropriate *and* least restrictive.

62. Baldwin (1990-91) suggests that the appellate decision can be interpreted as a retrenchment of school board prerogatives despite the statutory provisions regarding regular class placement. However, the Court of Appeal was not concerned with the substantive rights granted by the *Act* but only with the grounds for an injunction, pending a hearing on the merits. Such a hearing, and the jurisprudence which might have ensued, never occurred, as the case was subsequently settled out of court (see also Liang, 1989-90).

63. The trial judge in *Doré* (1980) declared that schools were not meant to be treatment centres for serious illnesses; rather, Nichols, J. declared: "Sa vocation est collective et, pour atteindre cet objectif, les commissaires ont le devoir de renvoyer les insubordonnés qui empêchent d'atteindre cet objectif.... Cela signifie que l'intérêt particulier doit céder le pas à l'intérêt commun en matière de l'éducation" (p. 171).

64. Marie-Joëlle Picard was an 8 year old student with multiple handicaps who was denied continued placement in a regular class; her teacher contended that the child could not function as part of the group and that her presence "créait en soi un dérangement dans le déroulement de mes activités pédagogiques régulières" (p. 170). She was transferred to a special school in another board by virtue of inter-board agreement. The trial judge dismissed the action to quash the transfer because of a lack of claim in light of the *Education Act* but also for more fundamental reasons:

Il faut conclure que la seule injustice qu'il pourrait y avoir, tant vis-à-vis l'enfant Marie-Joëlle que vis-à-vis ses compagnons de classe, serait de modifier la décision de la commission scolaire défenderesse de fournir à l'enfant Marie-Joëlle des services conformes à son véritable intérêt tout en respectant le droit fondamental des autres élèves ... et de leur enseignante de recevoir et de donner en toute quiétude les services éducatifs usuels.

.... [Le tribunal conclut] que l'intégration scolaire, préconisée pour un enfant souffrant de troubles d'apprentissage comme Marie-Joëlle, n'est qu'une fumisterie pédagogique contraire à l'intérêt de l'enfant et contraire également à l'intérêt de compagnons de classe de cette enfant qui, ont eux aussi, des droits fondamentaux (*Picard*, 1990, pp. 175-176).

65. See note 60 concerning the inference made to partial rights from the appeal process.

66. The provision from the Québec *Education Act* is as follows:

235. Every school board shall adopt, by by-law, after consultation with the [special education] advisory committee ..., standards for the organization of educational services for such student with a view to facilitating their learning and social integration.

Matters prescribed in the by-law shall include:

- (1) procedures for evaluating [these students]...;
- (2) methods for integrating these students into regular classes or groups and into regular school activities as well as the support services required for their integration ...;
- (3) terms and conditions for grouping those students in specialized schools, classes...;
- (4) methods for preparing and evaluating the [IEP] ... intended for such students.

It can be argued that the preamble militates in favour of an integrated placement because the by-law is supposed to be "facilitating their learning and social integration" (emphasis added). However, the French version of this expression ("faciliter leur apprentissages et leur insertion sociale") indicates that the intent of the provision, in terms of an integration imperative, envisages socialization more than complete integration. This is consistent with the prevailing view in Québec policy that integration is a social rather than an academic construct (see for example, Champoux-Lesage, 1989; Québec Education, 1990, 1992).

Aside from the obligation to treat these matters in a by-law and the caveat concerning learning and social integration, the school board has complete discretion to decide on the content of the by-law; the *Act* does not provide any prescriptive direction in this regard. However, once the board adopts such a by-law, any rights contained therein

bind the board until they are amended or revoked by the latter (see discussion regarding *Robitaille-Rousseau* (1990) in note 80). As delegated legislation, such rights are also subject to *Charter* scrutiny (W.J. Smith, 1991-92).

67. It should be noted that the decision of the Court of Queen's Bench in *Deyell* (affirmed on appeal) granted an order to prohibit a human rights board of inquiry from hearing a complaint which alleged that the board's refusal was discriminatory. The issues in the case surrounding discrimination have become moot. The Alberta *Human Rights Code* at the time limited disability-based discrimination to physical disability and s. 15 of the *Charter* was not yet in force.

However, Veit, J. also dealt with the issue of whether there was anything in the case which was "customarily available to the public". Citing with approval *Schmidt v. Calgary Board of Education* (1975) which characterized education as such a service, she held that discretionary grants for the purposes of providing alternate placement for students with disabilities did not constitute a service customarily available to the public and that therefore the board of inquiry had no jurisdiction. This reasoning implies that if the service in question is not generally available to students, but is provided by board discretion, a student who alleges that the denial of service was discriminatory may not be able to seek redress by means of a human rights complaint.

The reasoning expressed by Veit, J. has been cited with approval by the British Columbia Court of Appeal in *University of British Columbia v. Berg* (1991). In reviewing several cases dealing with what constitutes "services customarily available to the public", Legg, J.A. concludes that:

The providing of a service which requires the exercise of a discretion is a circumstance which may weigh against it being a service customarily available to the public.... I do not go so far as to say that in all cases where providing of a service is discretionary, the service may not be said to be a service customarily available to members of the public. There may be instances where such services, although discretionary, are services customarily available to the public (p. 509).

If the intent of the various legislatures whose *Human Rights Codes* contain such language is to ensure that all aspects of public schooling come under the ambit of the *Code*, then these cases suggest that they should follow the lead of Manitoba in reaction to *Winnipeg School division No. 1 v. McArthur* (1982) and amend the *Code* to remove all doubt.

68. In one case prior to the adoption of the current version of the *Education Act* (1988), *McMillan v. Sainte-Foy (Commission scolaire)* (1980), the court held that the board could not discharge its obligations to students with special needs by "contracting out". However, the reasoning of this decision was flawed. The school board decided not to contest the judgement (it had acquiesced to the substantive petition of the parents); instead, it sought and obtained a declaratory judgement that the *Act* gave it the power to provide for extra-board placements without parental consent (*Sainte-Foy (Commission scolaire) v. Office des personnes handicapées du Québec*, 1981). The provisions of the revised *Act* have been tested in *Godbout v. Commission scolaire de l'Asbesterie* (1992). In this case, a petition for an injunction was granted in respect of the transfer of a student, described as moderately mentally handicapped, to a school of another school board. The trial judge narrowly construed the board's authority to effect such a transfer but an appeal on this ruling is pending.

69. In *Hukowich v. Timmins Board of Education* (1985), parents sought reimbursement for the costs of tuition for placement of a student with a learning disability in a private school outside the province. The tribunal rejected the petition, stating that, in its view, school boards did not have the authority to make such an expenditure, even if the placement were warranted on an examination of the merits of the case.

70. Although opinion concerning the place of institutional schools varies considerably, the movement to close such schools is most vigorously defended by the associations representing persons with developmental disabilities (see for example, Horth, 1988; Ruff, 1986; Steinbach, 1991). By contrast, advocates for persons with hearing impairments have continued to militate in favour of specialized educational facilities for the deaf (see for example, Clarke & Winzer, 1983; Rodda, Grove & Finch, 1986; Winzer, 1983), as have certain advocates for students with learning disabilities (Beuree, 1989; Wiener & Siegel, 1992).

71. Subject to precise statutory language to the contrary, the authority of school boards to modify schools (e.g. by changing the vocation of a school from an English to a French school) or by closing a school altogether is well established in Canadian law (see, for example, *Crawford v. Ottawa Board of Education*, 1970; *Damus v. St. Boniface School Division No. 4*, 1979; *Govan Local School Board v. Last Mountain School Division No. 29*, 1991; *Re Hardy and Minister of Education*, 1985; *Re Leblanc and Saskatoon East School Division No. 41*, 1980; see also discussion

in Fair Procedures for School Closures, 1991). However, in keeping with the general principles of administrative law, such discretion must be exercised fairly and allow for a reasonable measure of natural justice.

72. The trial judge in *Trofimenkoff* noted that the plaintiffs had requested that the human rights commission investigate their complaint and had been refused; the passage cited from the commission's response to the plaintiffs is instructive:

In our opinion, simply closing the School for the Deaf is not a discriminatory act.

We can agree that a segregated school setting can be one form of affirmative action for ensuring that disadvantaged students receive equal treatment in their education.... To date, our focus has been to require that the mainstream school system do anything possible to ensure that special needs students receive equal treatment in our schools (p. 409).

Matheson, J. simply accepted the commission response as a "complete answer" to the alleged violation of the *Code*.

He likewise rejected the alleged violation of *Charter* equality rights thus: "There are no provisions in the [Education] Act or regulations which could form the basis of an allegation of discrimination against hearing impaired students" (p. 410). Noting the obligations of school boards in Saskatchewan to provide for the education of students with disabilities, he further stated:

It is therefore apparent that not only does the legislation not discriminate against disabled students, it requires boards of education to make special provision for the education of such individuals. Section 15(1) of the Charter, which guarantees the right to the equal protection and equal benefit "of the law" without discrimination, cannot, therefore, be utilized by the plaintiffs....

The evidence available does not reveal that any board of education has failed to fulfil its statutory mandate. More and more hearing impaired students are being accommodated each year in the regular school system. Whether the quality of the educational services is comparable to that provided by the school is not a matter which may be investigated under the guise of discrimination by a law (p. 411, emphasis added).

The implications of this last statement will be discussed in the following section.

Matheson, J. found it unnecessary to deal with the allegation of a violation of the plaintiff's *Charter* rights under s. 7 (right to life, liberty and security of the person) except as it *might* apply to procedural fairness. Finally, he rejected the argument that the school should remain open under the public policy doctrine of "legitimate expectation" (for this case, see discussion in J.C. Anderson, 1992; generally, see Hogg, 1992, s. 12.3(a)).

73. See note 57 concerning the meaning of "appeal", as used in this section.

74. As alluded to in the discussion surrounding note 58, the appeal provisions of the Saskatchewan *Education Regulations* do not include placement as a listed ground for appeal. The original provision (Sask. Reg. 309/86, s. 51(1)) was repealed (Sask. Reg. 485/90) and replaced with the text cited above (at note 58); the following ground was eliminated from the subsection in question:

the placement of or the failure to place the child or pupil who is identified as a high-cost pupil in a special education program; ... (s. 51(1)(b)).

According to Saskatchewan Education (M. Lipp, Director of Special Education, personal communication, December 18, 1992), this amendment was made because the reference to placement, in addition to identification, was thought to be redundant and therefore the *Regulation*, as amended, still provides for the right to appeal placement, which is a responsibility conferred on the director of education (s. 50(1)).

In the opinion of the researcher, section 51(1), as amended, does not support the referral of a dispute over placement to the Regional Director of Education. The appeal process as set forth therein is a derogation of the normal recourse of a parent in the event of an alleged breach by the school board of its obligations toward a student, which is an action in court. As such, the regional appeal process must explicitly stipulate the inclusion of placement in order to depart from this general norm. It is further suggested that if a regional appeal committee chose to rule on a placement decision that the school board could have the order quashed by judicial review.

75. According to Alberta Education, there have been 122 ministerial reviews from 1989-90 to date, with special education placement and payment of fees being the two issues predominating. Of these, the majority concern cases of students with a learning disability whose parents are seeking a funded placement in a private school. In the majority of cases, school board decisions are affirmed by the review process (T. Gee, Director, Appeals and Student Attendance Secretariat, personal communication, January 26, 1993). The review committee reports and the Minister's decisions are confidential and could not be made available to the researcher.

According to Yukon Education, no appeal decisions have been rendered to date regarding special education placement or services (J. Webster, Director, Special Education, personal communication, January 26, 1993). For Ontario decisions, see note 77.

76. The terms "special education program" is referred to elsewhere in the *Act* (ss. 1(v), 29) but is not defined.

77. The following cases have been reported by Ontario Education: *Barger v. North York Board of Education*, 1984; *Casault v. Carleton Board of Education*, 1985; *Dolmage v. Muskoka Board of Education*, 1984; *Fripp v. Nipissing Board of Education*, 1986; *Hukowich v. Timmins Board of Education*, 1985; *Kavelman v. Waterloo County Board of Education*, 1985; *Labute v. Windsor Board of Education*, 1988; *Lewis v. York Region Board of Education*, 1985; *Murray v. Brant County Board of Education*, 1986; *Ormerod v. Wentworth County Board of Education*, 1987; *Razaqpur v. Carleton Roman Catholic Separate School Board*, 1988; *Rowett v. York Region Board of Education*, 1986; *Stone v. Toronto Board of Education*, 1985; *Vanderwyk v. Etobicoke Board of Education*, 1984.

78. Metcalf (1987) reports that there was generally greater satisfaction among superintendents than parents with the process, which tended to be more competitive than cooperative:

The appeal experience did not lead to changes in communication between parents and school systems. Parents' educational planning for the student was influenced more frequently than was the school system's planning. There were no changes reported at the system level as a result of appeals (p. v).

79. The term "contingent rights" was apparently coined by Heward and Lloyd-Smith (1990) in respect of the British *Education Act* and is also used by A. Wilson (1989) in relation to Ontario special education legislation. It is a confusing term, meant to designate those principles and procedures which are "dependent for their implementation upon decisions at the local level ..." (Heward & Lloyd-Smith, 1990, p. 31). These authors use the term in apposition to *substantive* measures (or rights), which the law formally requires (termed more accurately as *directive* provisions by A. Wilson (1989). Godsell seems to be using the term to imply that the tribunals are empowered to accord rights, not otherwise granted by statute, hence the expansion of rights which are *contingent* upon the decisions of the tribunals.

Although it is appropriate to speak of judicial and quasi-judicial decisions expanding (or contracting) the scope of rights through interpretation (e.g. Ray, Garber & Wilson, 1990-91), the description of tribunal rulings by Godsell as providing for "the vesting of contingent rights" (e.g. p. 108) tends to obfuscate the tribunal's role, rather than elucidate it and confounds the contribution of tribunal rulings to the determination of students' rights. Although tribunals may be considered as quasi-judicial bodies, their function is more akin to that performed by an "interest arbitration" panel than those of a "rights arbitration" panel (see note 57). The quintessential function of the tribunals is to decide upon the placement of the pupil when the parents and the school board cannot agree on same. In so doing, they must interpret the law and may do so in a manner which expands upon the previously understood meaning of the *Act*.

They cannot *add* new rights; if they did, their decisions would likely be quashed by judicial review. School boards, by contrast, can provide *contingent rights* in the sense used by Heward and Lloyd-Smith (1990) but when they do so, they do so by virtue of their authority to enact subordinate legislation, as provided for by their enabling statute.

80. This preoccupation is also reflected in the case law. In addition to cases already discussed, *Robitaille-Rousseau v. Commission scolaire Montcalm* (1990) provides a vignette of the determination of the parents to have their child placed in a regular setting and the equally strong determination of certain members of the school community to exclude him. Rémi Rousseau was a 10 year old student with a developmental disability, who was denied continued placement in a regular classroom, following pressure from the teachers of the school, and this despite a recommendation for integration by a school-level committee. After a protracted and bitter struggle (Robitaille-Rousseau, 1984), the parents won their case. Ironically, the case was decided, not on the basis of any statutory right, but on the basis of a local placement policy of the school board, which the court found had not been respected by the board. This case demonstrates "the fragility of the rights of the child whose hard earned right (three years of litigation and five court decisions), could be wiped out by a single board resolution" (W.J. Smith, 1991b, p. 91).

81. See note 27 for formula and discussion re converted scores.

82. See note 29 for decision rule used to compare variance.

83. A. Wilson (1989), while recognizing that the definition of a special education program in the *Education Act* (s. 1(1)) provides for a holistic, child-centred approach to special education, concludes that this definition is permissive, as "nothing in the remaining Act or regulations requires that all exceptional pupil receive such programs" (p. 82). This study has reached a contrary conclusion. The Act enjoins the Minister "to ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services" ... (s. 8(3)); furthermore, the Act stipulates that "every board shall ... provide or enter into an agreement with another board to provide in accordance with the regulations special education programs and special education services for its exceptional pupils ... (s. 170(7)).

84. As discussed previously (e.g. text surrounding notes 67 and 71), subject to normal standards of good faith and procedural fairness, the courts will not generally interfere with school board decisions, where the latter are not subject to specific statutory prescriptions or standards. Several *Education Acts* contain enabling language for regulatory standards but the latter are not always adopted. In such a case, Québec courts have held that school boards have the latitude to set the scope and level of services which they see fit to provide (*Doré*, 1980; *McMillan*, 1980; see also *H. Côté*, 1984). Although these cases were decided on the basis of the former Act, the revised Act also provides for special education service regulations (s. 450), which have never been adopted.

85. Unlike the LRE requirement (see note 59), "appropriate education" is not defined per se in the *IDEA* (§ 1401(18)); the guarantee of appropriate education is provided by means of an IEP, which is defined in the Act (§ 1401(20)) and through a comprehensive process. Appropriate education "is child-centered and process-oriented, not system-centered or result-oriented; it takes account of educational 'inputs,' not 'outputs'" (*H.R. Turnbull*, 1990, p. 125).

86. In *Rowley*, the parents wanted the school board to supply their daughter Amy, a deaf child who was integrated in a regular classroom, with a sign language interpreter, as part of her IEP. The Supreme Court interpreted the *IDEA* standard for an appropriate education thus:

We hold that it [the State] satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade (pp. 203-204).

87. D.H. Vickers suggests that the following elements are essential in defining appropriate education:

1. special [sic] designed educational programs;
2. in conformity with individual education plans;
3. education which will be as suitable for the handicapped or exceptional child as for the non-handicapped child;
4. education to be based upon proper evaluation and assessment of the *whole* child ...;
5. there must be attention to the educational setting; and
6. there must be procedural safeguards (1981, pp. 98-99).

88. The impact of the lack of such a provision in the United States has been noted by Van Geel (1988): The non-handicapped child does not enjoy either a right to an individualized program or to the procedures used for the educational placement of the handicapped, because neither the legislatures nor the courts have imposed such a requirement on the schools (p. 633).

89. "Minority language" instruction refers to the language rights protected by s. 23 of the *Charter* (see discussion in section 1.3.2 above). "Second language" instruction is instruction in a language other than the student's first language which does not qualify as minority language education under the *Charter*.

90. The "Canada clause" of the *Charter* (s. 23(1)(b)), which guarantees minority language rights to children whose parents received their primary education in Canada also applies (*Québec (A.G.) v. Quebec Protestant School Boards*, 1984; see also Irving, 1986).

91. Section 44(2)(i) of the *Education Act* states that "a board may ... charge fees with respect to instructional fees or materials". In *Calgary Board of Education v. Thompson* (1992), Cairns, J. criticized the provision for vagueness (i.e. its failure to stipulate whom could be charged fees) and rejected a board appeal of a lower court decision in favour of a parent who refused to pay such fees. However, this does mean that a board is required to provide free materials. Since there does not appear to be another section of the *Act* which could be interpreted as providing, even indirectly, for a right to free materials, a board could simply decide to refuse to supply such materials and leave it to the parents to purchase, or not, the necessary supplies.

92. See note 60 concerning the inference of a partial right from the appeal process.

93. In Rivet, J.'s analysis of applicable law in *Saint-Jean* (1991), she described the most recent changes to the *Québec Education Act* thus:

À ce propos, nous relevons en premier lieu, dans la législation plus récente, la volonté manifeste du législateur québécois de privilégier une organisation scolaire fondée à la fois sur la reconnaissance des besoins individuels des élèves handicapés et sur l'adaptation des services éducatifs offerts (art. 234 de la loi), et ce, dans le but principal de faciliter tant les apprentissages que l'insertion sociale de ces derniers (p. 3033).

The tribunal held that the board's action constituted direct discrimination, ordered at least partial integration of David into a regular class and ordered the payment of material and moral damages.

In *Chauveau* (1993), while noting that special classes were not *per force* discriminatory, Rivet, J. set forth, for the first time in Québec law, the regular class as an equality norm. In brief, she stated that as a general principle, benefiting from a liberal interpretation, the right to education without discrimination for students with disabilities means the right to a regular class placement with appropriate support. Any placement or programming decision which departs from this principle should be regarded restrictively on a case-by-case basis, according to rigorous standards.

The tribunal held that the board's action constituted both direct and indirect discrimination, ordered the integration of Danny into a regular class and ordered the payment of material and moral damages. The tribunal further held that the board's general mode of service delivery constituted systemic discrimination. In a landmark decision, the tribunal ordered the board to devise and implement an affirmative action program within the next five months. A motion for leave to appeal and for a stay in the affirmative action order pending appeal has been granted.

94. It is recognized that in some jurisdictions, provisions governing class size or staff/student ratios may form part of a collective agreement which is binding on school boards (e.g. *Agreement Binding The Employer Bargaining Committee for [Québec] Protestant School Boards*, 1990). Similarly, different jurisdictions may use such factors in computing legislative grants for school boards (e.g. Ministère de l'Éducation du Québec, Direction générale du financement, 1992a, 1992b). However, as discussed in sections 3.2 and 3.3, such documents, even when binding on school boards, do not create rights for students or parents.

95. See note 57 concerning the appeal process.

96. The first tribunal decision dealing with placement was *Dolmage* (1985), in which the leave to appeal was denied and affirmed by judicial review. Eberle, J. noted, in *obiter*, that the *IPRC Regulation* provided for the identification of "the needs of the pupil" and "the placement of the pupil" (s. 2(3)); he concluded that the two clauses were related but separate functions of the IPRC and that decisions regarding the latter had to consider the availability of programs and services (pp. 554-555). However, it should be noted that this case was adjudicated during the "phase-in" period of the Ontario *Education Amendment Act* (1980). The tribunal ruling in *Ormerod* (1987) took place after the date by which all school boards were expected to have completed the implementation of the provisions of the *Act* (1 September 1985) and is therefore more useful as a precedent. The tribunal was first called upon to rule on a preliminary objection raised by the school board, namely that the relief sought by the parents concerned service delivery, which the tribunal had no jurisdiction to review. The tribunal made reference to *Dolmage* but also noted that in the *IPRC Regulation*, the IPRC was specifically enjoined to consider the "needs of the pupil" respecting a review of placement (s. 10(1)(b)), a fact apparently ignored in the *Dolmage* decision. The objection was overruled.

by the tribunal, which concluded:

In making a determination as to placement, an I.P.R.C. must consider the nature and content of the program, and the services necessary for developing and implementing a special education program ... and that these should be considered as to their appropriateness in meeting the needs of the pupil" (p. 4).

97. See note 27 for formula and discussion re converted scores.

98. See note 29 for decision rule used to compare variance.

99. See note 27 for formula and discussion re converted scores.

100. See note 29 for decision rule used to compare variance.

5.0 SUMMARY AND CONCLUSIONS

The purpose of this study was to conduct a comparative analysis of the legislative action of each jurisdiction in Canada, as of December 31, 1992, relating to the provision of equal educational opportunity to students with disabilities. In order to fulfil this purpose, a framework for the analysis of legal rights for students with disabilities was constructed and used to undertake a content analysis of the legislation in each jurisdiction and provide a comparison of the results.

Five analytical themes emerged from an empirical testing of the EEO construct derived from the review of the literature: non-discrimination, access to schooling, identification and placement, service delivery, and parental participation. Only primary source data were used, namely the Constitution of Canada, especially the *Charter*, the statutes and regulations of each province and territory, as well as any administrative decisions having the force of law. The analysis was conducted using an instrument consisting of sixty items in order to measure the legislative action taken in each jurisdiction with respect to the five analytical themes.

The analytical framework and the instrument were validated by feedback from various experts and pilot testing. The sources and data and the results of the preliminary data analysis were validated by respondents from each provincial and territorial department of education. The final results of the analysis were validated by means of several tests. In addition to detailed methodological notes, extracts of the legislative action analyzed were included in appendices to provide an "audit trail" for the reader.

This chapter first summarizes the findings of the study with respect to the five major research questions. The second and third sections present a synthesis and various complementary analyses, and a profile of individual jurisdictions. Finally, implications for further research are presented and the overall conclusions of the study set forth.

5.1 Summary of the Findings

The major research questions corresponded to the five analytical themes developed by this study and were stated as follows:

1. How does the legislative action in each jurisdiction provide for non-discrimination?
2. How does the legislative action in each jurisdiction provide for access to schooling?
3. How does the legislative action in each jurisdiction provide for identification and placement?
4. How does the legislative action in each jurisdiction provide for service delivery?
5. How does the legislative action in each jurisdiction provide for parental participation?

Each major question was answered using the following model set of sub-questions:

- .1 What are the specific rights which define the theme?
- .2 To what extent does each jurisdiction provide for such rights?
- .3 How do all jurisdictions compare in terms of the provision of such rights?

The findings for each major research question are summarized below. Following the same pattern used in chapter 4, the rights identified for each theme will first be summarized (sub-question .1). Thereafter, the combined results of the analysis of individual jurisdictions and the comparison of these results will be summarized together (sub-questions .2 & .3). This comparison will include a discussion of the individual items comprising the theme and the ranking of jurisdictions with respect to the theme as a whole. All results shown are in converted scores.¹

5.1.1 Research Question #1: Non-Discrimination

The summary of findings for this question is presented below.

Rights Defined by This Theme

Non-Discrimination is the equal protection and benefit of law without discrimination on the basis of disability. It was defined by twelve items and from these, three sub-themes were derived: application of the prohibition against discrimination to students with disabilities, scope of this prohibition and the adjudication of complaints.

Analysis and Comparison of Jurisdictions

The most significant finding of the study with respect to this question is that the non-discrimination provisions of the Nova Scotia *Human Rights Code* do not apply to youth and senior citizens. Consequently, public education is excluded from the prohibition against discrimination contained in the *Code*.

All *Human Rights Codes* prohibit discrimination on the basis of disability. Québec and Saskatchewan provide for education as a human right. However, with the exception of Manitoba, in all other jurisdictions, the application to public schooling must be inferred from the use in the *Code* of a generic expression such as "services customarily available to the public". A review of the case law suggests that the lack of a specific reference to education in most *Codes* may restrict or even exclude public schooling in these jurisdictions from the ambit of the non-discrimination provisions.

1	ON
2	QC
3	MA
4	NE
5	SA
6	YU
7	AL
8	BC
9	PI
10	NB
11	NT
12	NS

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the top ranked jurisdiction is Ontario whose total score (77) is more than 1 standard deviation [std] (22) above the distribution mean (53), followed by Québec (73). There are two jurisdictions whose scores fall more than 1 std below the mean - the Northwest Territories (18) and Nova Scotia (0). There was no particular pattern in the distribution.

5.1.2 Research Question #2: Access to Schooling

The summary of findings for this question is presented below.

Rights Defined by This Theme

Access to Schooling means admission to elementary/secondary school at public expense. It was defined by fifteen items and from these, four sub-themes were derived: right to public schooling, compulsory attendance, expulsion and additional support.

Analysis and Comparison of Jurisdictions

The key finding of this study with respect to this question is that, while the right to education is "universal", it is not always provided without exception because of disability. The Nova Scotia *Education Regulations* limit this right to students "who are capable of benefiting" from schooling, permitting a general exclusion on the basis of disability. The Alberta, Ontario and Newfoundland *Acts* include provisions which restrict this right for students with severe disabilities who are not considered to be "educable".

Only New Brunswick and Québec provide a right to early/extended schooling for some students with disabilities. The right to expel or suspend students is still the general rule. British Columbia is the only jurisdiction where a right and a duty to follow an educational program remain in force during a suspension (expulsion not allowed in BC). Only seven jurisdictions provide for barrier-free access for new schools which meet the standards set forth in the *National Building Code, 1990*.

1	NB
2	BC
3	QC
4	YU
5	MA
6	SA
7	NS
8	ON
9	PI
10	AL
11	NE
12	NT

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the top ranked jurisdiction is New Brunswick, followed by British Columbia and Québec, whose scores (63, 58, 58) exceed the mean of the distribution (49) by more than 1 std (8). At the low end are Alberta, Newfoundland and the Northwest Territories, whose scores (40, 37, 37) fall below the mean by more than 1 std. There was no particular pattern in the distribution.

5.1.3 Research Question #3: Identification and Placement

The summary of findings for this question is presented below.

Rights Defined by This Theme

Identification and Placement refers to the identification of special education needs and appropriate placement. It was defined by seventeen items and from these, three sub-themes were derived: choice of schooling, assessment and appropriate placement.

Analysis and Comparison of Jurisdictions

The most notable finding of the study with respect to this question is that, in most jurisdictions, very few rights to identification and placement are provided. The analysis shows that the right to home schooling is the positive anomaly in this theme; by contrast, with the exception of Québec, students or parents have little or no right respecting school choice. Since this theme is seen as a bridge between access and service delivery, once parents choose the public school option, this bridge becomes a "controlled access route".

There are some exceptions to this general trend. Ontario and the Yukon provide for parental consent and third-party adjudication with respect to assessment. Saskatchewan and the Yukon provide for the right to an appropriate and least restrictive placement; British Columbia and New Brunswick provide for a right to a regular class placement. In all these four cases, the right is subject to the needs of the student or other limits, the scope of which is yet to be determined by the courts.

1	YU
2	ON
3	AL
4	SA
5	BC
6	NB
7	NE
8	MA
9	NS
10	QC
11	NT
12	PI

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is the Yukon, followed by Ontario, whose scores (61, 50) exceed the distribution mean (18) by more than 1 std (18). At the other end are the Northwest Territories and Prince Edward Island whose scores (3, 3) are almost 1 std below the mean. The distribution is skewed in a four-step pattern, with eight jurisdictions at the low end.

5.1.4 Research Question #4: Service Delivery

The summary of findings for this question is presented below.

Rights Defined by This Theme

Service Delivery is the provision of appropriate educational and disability related services (in order to benefit from education). It was defined by nine items and from these, three sub-themes were derived: appropriate education, instructional and special services.

Analysis and Comparison of Jurisdictions

The most notable finding of the study with respect to this question is that, in most jurisdictions, except for free instructional materials, very few rights to service delivery are provided. Six jurisdictions make no provision for any standard of appropriate education and seven provide no rights to special services. Except for the Yukon, service delivery is not subject to third-party adjudication.

Ontario, Québec and the Yukon provide students with disabilities with the right to an appropriate education according to an individual educational plan (IEP). A similar standard, without reference to an IEP, is also found in British Columbia, the Northwest Territories and Saskatchewan. In B.C. and the Territories, this right applies to *all* students, not just to those with disabilities (eliminating the need for labelling for service entitlement). Québec and Saskatchewan require the adaptation of regular educational services for students with disabilities, which fosters both inclusive education, and individualized programming.

1	YU
2	QC
3	ON
4	SA
5	BC
6	NS
7	NT
8	MA
9	NB
10	PI
11	AL
12	NE

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is the Yukon, followed by Québec and Ontario, whose scores (63, 56, 50) exceed the distribution mean (23) by more than 1 std (22). At the low end are Alberta and Newfoundland, with zero scores (more than 1 std below the mean). There is a bi-polar pattern in the distribution, with four jurisdictions with scores from 44 to 63 and eight with scores from 0 to 19.

5.1.5 Research Question #5: Parental Participation

The summary of findings for this question is presented below.

Rights Defined by This Theme

Parental Participation is understood as the participation of parents in the education of their children, at all stages of the process. It was defined by seven items and from these, three sub-themes were derived: collective participation, individual-level participation and a general appeal mechanism.

Analysis and Comparison of Jurisdictions

The key finding of this study with respect to this question is that, with the exception of one item and one jurisdiction, parents do not generally have a high level of rights to participate in the education of their children. The exceptional item is the right of students and parents to access student records, provided for in eight jurisdictions. The exceptional jurisdiction is Québec, which provides for all aspects of this theme except a general right to third-party adjudication of disputes.

Ontario and Québec make specific provision for the collective participation of parents of students with disabilities. On an individual level, the Yukon *Education Act* includes the most extensive provision for the involvement of parents in monitoring the progress of their child through the IEP process.

1	QC
2	BC
3	YU
4	AL
5	ON
6	SA
7	MA
8	NB
9	NE
10	NT
11	NS
12	PI

The ranking of all jurisdictions based on total scores for this question is shown in the side bar above. As can be seen, the highest ranking jurisdiction is Québec, whose score (78) is almost 2 std (26) above the mean (28), followed by British Columbia and the Yukon (56, 56) (more than 1 std above the mean). At the other end, are Newfoundland, the Northwest Territories, Nova Scotia and Prince Edward Island with zero scores (more than 1 std below the mean). Between these two extremes, there is slight step pattern in the distribution between jurisdictions with some parental rights and those with very few.

5.2 Synthesis and Complementary Analyses

This section contains a synthesis of the analysis by theme and by jurisdiction, followed by various complementary analyses used to verify the validity of the overall results and rankings of jurisdictions.

5.2.1 Synthesis of Analysis

The synthesis of the analysis by theme is illustrated in figure 5.1.

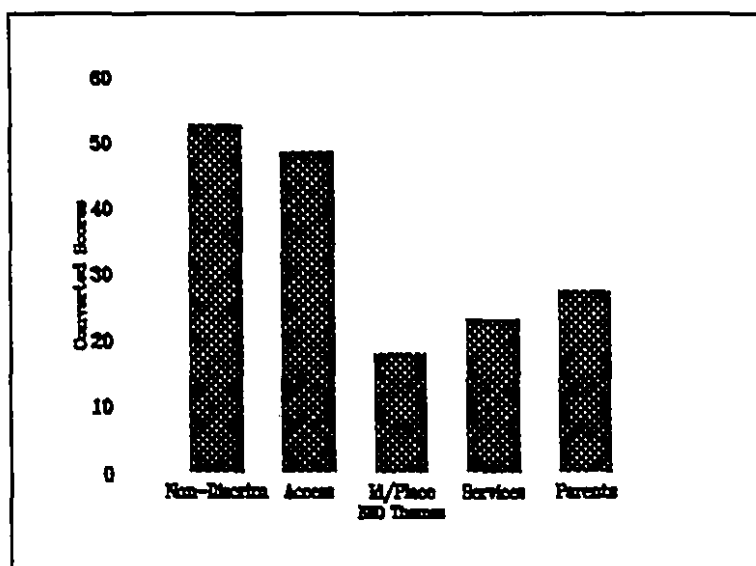


FIGURE 5.1
EEO Themes: Mean Scores

Note. Total for each theme = converted (%) mean score from sum of all items in that theme.

As depicted by this figure, the highest mean converted scores² were obtained with respect to the *non-discrimination* (53) and *access to schooling* (49) themes. There is a sharp fall-off to the theme in third position, *parental participation* (28), with a further drop to *service delivery* (23) and *identification/placement* (18). Since this figure illustrates mean scores for

each theme, it does not reflect the extent of rights provided in any given jurisdiction in Canada; rather, it serves to abstract the level of rights generally available (i.e. on average) across jurisdictions.

This synthesis of the analysis by jurisdiction is shown in table 5.1 and figure 5.2. It should be recalled that the analysis of the data does not provide any *absolute* comparison among jurisdictions. Rather, the overall ranking of the twelve jurisdictions reflects the *relative* standing of all jurisdictions in relation to the provision of EEO for students with disabilities, as measured by the definition of the five analytical themes.

TABLE 5.1
Distribution of Jurisdictions: All Items

Rank	Jurisdiction	Total
01	Yukon	59
02	Ontario	53
03	Québec	47
04	Saskatchewan	43
05	British Columbia	38
06	Alberta	34
07	Manitoba	33
08	New Brunswick	33
09	Newfoundland	27
10	Prince Edward Island	25
11	Nova Scotia	20
12	Northwest Territories	18

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

As shown in the table 5.1 and figure 5.2, the distribution of overall results is bounded by the Yukon on the high end and the Northwest Territories on the other end. The mean score (for all 60 items) for all jurisdictions is 36. On average, some level of rights is observed for 26 items (max=60).³

The variance of the distribution (std=12) is considered moderate.⁴ There is a discernable three-step pattern, with four jurisdictions in each group (I=high, II=middle and III=low).

I (43-59)

YU, ON, QC, SA

II (33-38)

BC, AL, MA, NB

III (18-27)

NE, PI, NS, NT

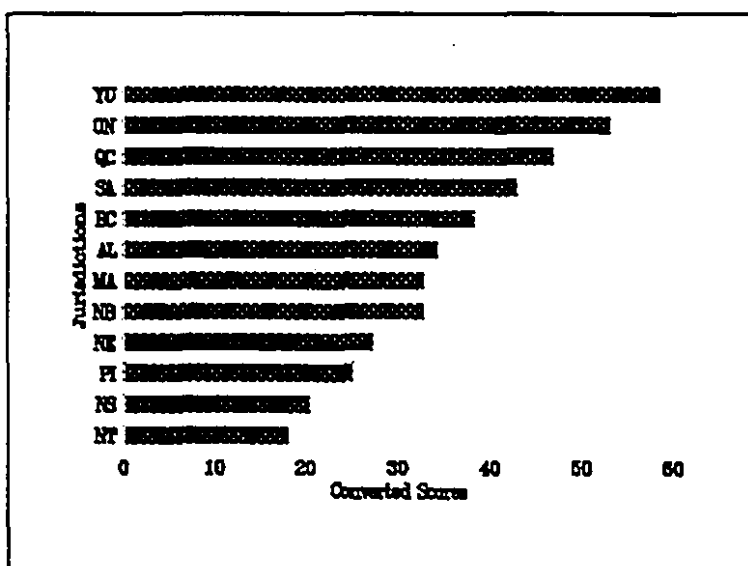


FIGURE 5.2
Distribution of Jurisdictions: All Items

5.2.2 Complementary Analyses

Various analyses were undertaken in order to complement and verify the validity of the overall results and the ranking of jurisdictions. Each of these complementary analyses will be briefly described.

Impact of Student Population

The student population in each jurisdiction varies considerably (see table 5.2 below). In this study, each jurisdiction was treated as an equal entity for purposes of analysis and comparison, and for good reason. The rights of students in general, and students with disabilities in particular, are equally important, regardless of the size of the jurisdiction. However, for purposes of abstracting what is "generally available" to students in Canada, one cannot ignore the relative number of students in each jurisdiction.⁵

Accordingly, the converted mean scores for EEO themes were weighted to take into account the student population of each jurisdiction. The results of this procedure indicate that the pattern of weighted theme scores is very similar to that observed in figure 5.1 above, reflecting the fact that two of the jurisdictions with the highest unweighted scores (ON, QC) account for 60% of the student population; the weighted scores for all themes are higher for this same reason.⁶ This serendipitous finding, that the level of rights available varies with the number of students benefiting from such rights, implies that the overall findings of the study are relatively generalizable.

It is also interesting to note the relation between the relative size of the student population and the overall ranking of each jurisdiction (see table 5.2 below). With three notable exceptions, the level of rights varies with the size of the jurisdiction. In contrast to this trend, the Yukon, Canada's smallest jurisdiction, has the highest level of rights; Saskatchewan ranks higher and Nova Scotia ranks lower than their respective sizes would suggest.

TABLE 5.2
Distribution of Jurisdictions: Student Population

Jurisdiction	EEO Rank ^a	Pop Rank	Student Population (1988-89) ^b
Yukon	01	12	4 752
Ontario	02	01	1 828 677
Québec	03	02	1 090 205
Saskatchewan	04	06	205 202
British Columbia	05	03	519 205
Alberta	06	04	463 544
Manitoba	07	05	209 778
New Brunswick	08	08	138 106
Newfoundland	09	09	129 119
Prince Edward Island	10	10	24 909
Nova Scotia	11	07	171 094
Northwest Territories	12	11	12 803

^a For scores corresponding to EEO Rank, see table 5.1 above.

^b Source: *A statistical portrait of elementary and secondary education in Canada* (table 3, p. 74) by Canadian Education Statistics Council, 1990: Ottawa/Toronto: Statistics Canada/Council of Ministers of Education (Canada).

Consistency Across Themes

Since the overall distribution of jurisdictions (table 5.1 above) represents the sum of the distributions for the five individual themes, it is possible that the aggregate might mirror patterns observed in particular themes or that it might "wash out" any such patterns. In order to determine the relation, if any, between the overall distribution and the individual themes, a test was conducted using the pattern observed in the aggregate as the basis of comparison. In brief, the aim was to discover the number of times a jurisdiction's score in the distribution for individual themes (max=5) fell in the same grouping (high, middle or low) as observed in the aggregate distribution (see illustration of the aggregate pattern above following figure 5.2).⁷ The results of this test are shown in table 5.3.

TABLE 5.3
Grouping of Jurisdictions: Across Themes

Group	Jurisdiction	Total
I	Yukon	4
	Ontario	4
	Québec	4
	Saskatchewan	3
II	British Columbia	3
	Alberta	2
	Manitoba	5
	New Brunswick	3
III	Newfoundland	3
	Prince Edward Island	5
	Nova Scotia	4
	Northwest Territories	4

Note. Total = number of times (max=5) a jurisdiction's score in the distribution for individual themes fell in the same grouping (high, middle or low) as observed in overall results (table 5.1 above).

The pattern of overall results is consistent across all themes. All jurisdictions but one (AL) appear in the same grouping at least 3 out of 5 times and seven appear in the same one at least 4 out 5 times. In other words, a jurisdiction which ranks high, middle or low in overall results, tends to rank high, middle or low, as the case may be, in all themes.

Validity of Jurisdiction Rankings

In order to test the reliability of the ranking which resulted from the overall analysis, four procedures were carried out. First, recognizing that some jurisdictions might have high scores on items of lesser importance, while not providing for more important rights, the scores for the fifteen *key rights* (see discussion below, p. 186) were ranked separately. Second, to measure the potential impact of the different response ranges of individual items on the total score, all sixty items were rescored as either "0" or "1", thereby flattening the distribution to reflect either the presence or absence of rights in each jurisdiction.⁸ Third, item #15 on the instrument (upper age limit for public schooling) was rescored to see if its uniquely high number of response categories (max=7) affected the total score. Fourth, the impact of the variance in the number of items and total scores

for each theme was measured (for details about these procedures, see Vol. 2, section A.6, app. A). The results of these procedures is illustrated in figure 5.3.

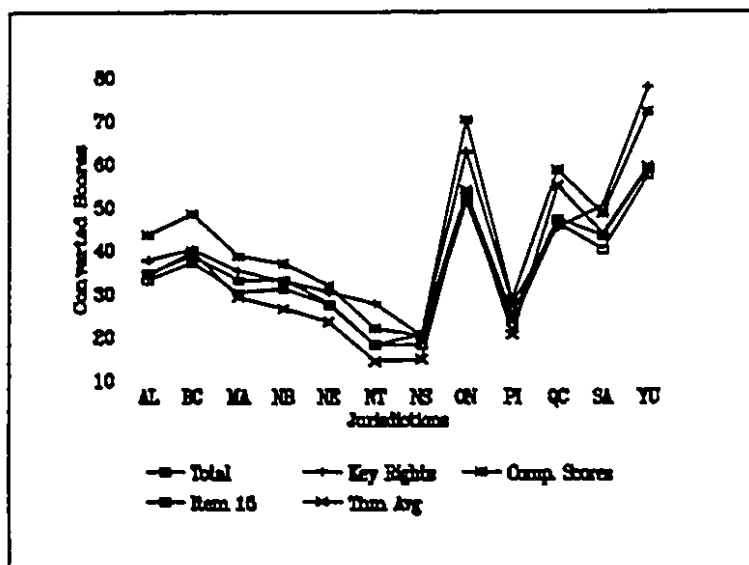


FIGURE 5.3
Validation of Rankings

As shown in figure 5.3, the pattern is very similar in each case. Furthermore, by superimposing the grouping of jurisdictions "by thirds" (see table 5.3 above), the groupings of the five rankings are identical. Not one jurisdiction appears in a different grouping from that in which it appeared in table 5.3. Moreover, every jurisdiction appears in

either the same rank in which it appeared in table 5.1 (above) or in an adjacent rank. Consequently, the rankings set forth in table 5.1 hold, whether one considers total scores, key rights, compressed scores, a rescored item 15 or an average of the five themes.

It is therefore concluded that the rank ordering of jurisdictions in table 5.1 is a reliable indication of the level of rights provided in any one jurisdiction, *relative to* those provided in another. As discussed above in section 3.4.4 (see also Vol. 2, section A.5, app. A), the response categories on the data analysis instrument were meant to reflect an interval scale, not an absolute scale (i.e. where category "a" is deemed to be higher than category "b" but where the absolute difference between "a" and "b" is not known). Thus, in interpreting the ranking of jurisdictions, one cannot say, for example, that one jurisdiction has 2.5 times more rights than another. However, the analysis does reveal the relative level of rights provided in different jurisdictions and one can assert that jurisdictions which rank very low, have very few rights in comparison with those which rank very high.

Key Rights

Each of the five EEO themes are defined by a number of specific rights, each of which was expressed as an individual item on the data analysis instrument. Even a cursory glance at these items (see Vol. 2, table A.2, app. A) reveals that some items are much more important than others. While recognizing that it is a matter of opinion as to which items should be considered the *most* important, the author, following consultation with various experts in the field, identified fifteen *key rights*, which he considered were the most important from the total list of sixty items.

The enumeration of these key rights is included in table 5.4. The distribution of scores for these rights is shown in figure 5.4; the ranking of distributions is shown in table 5.5.

TABLE 5.4
Enumeration of Key Rights

Item	Description
01	Application of prohibition against non-discrimination to disability
02	Application of prohibition against non-discrimination to public schooling
13	Right to free public schooling
20	Duty to attend school
27	Barrier-free access to new schools
30	Right to identification/assessment
35	Right to appeal identification/assessment
38	Right to regular class placement
39	Right to special placement
43	Right to appeal placement
45	Right to appropriate education
49	Right to special education services
53	Right to appeal service delivery
56	Participation of parents of students with disabilities
57	Involvement in monitoring of student's progress

As shown in figure 5.4, the application of non-discrimination to disability and the right to free public schooling receive the highest scores (86), followed by the duty to attend school (69). The right to appeal service delivery receives the lowest score (8), followed by the right to special placement and participation of parents

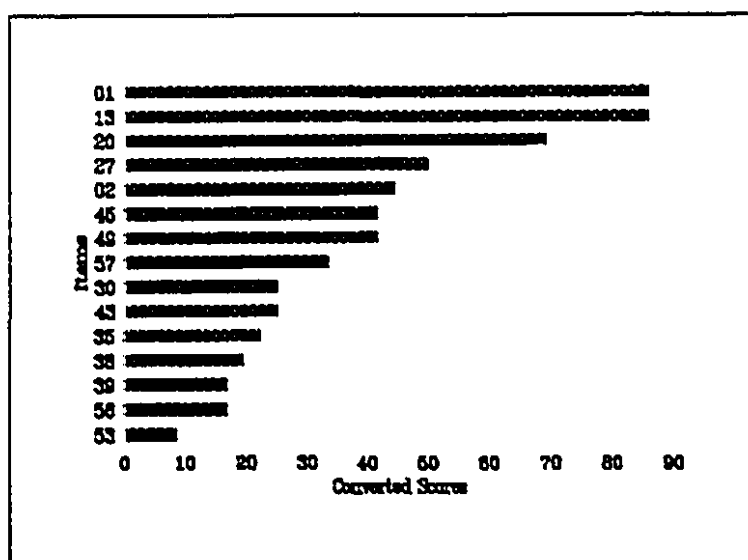


FIGURE 5.4
Distribution of Items: Key Rights

of students with disabilities (17). Other key rights receive scores which vary from 19 to 50. As alluded to above (see discussion surrounding figure 5.3), the distribution of jurisdictions shown in table 5.5 is very similar to that observed for total scores (see table 5.1). The Yukon exceeds the mean (40) by more than 2 std (16) and Ontario by more than 1 std, while Nova Scotia is the only jurisdiction to fall more than 1 std below the mean.

TABLE 5.5
Distribution of Jurisdictions: Key Rights

Rank	Jurisdiction	Total
01	Yukon	78
02	Ontario	63
03	Saskatchewan	50
04	Québec	45
05	British Columbia	40
06	Alberta	38
07	Manitoba	35
08	New Brunswick	33
09	Newfoundland	30
10	Northwest Territories	28
11	Prince Edward Island	28
12	Nova Scotia	20

Note. Total = converted score (%) for all items; for breakdown of responses by jurisdiction, see Vol. 2, app. C.

5.3 Profiles of Individual Jurisdictions

This section provides a profile of each jurisdiction. For a tabulation of raw and converted scores for each jurisdiction, see table C.2, Vol II, app. 2.

Alberta

Alberta ranks 6, in terms of its total score on all items (34), just slightly below the national mean (36). Some level of rights is observed for 26 items, which is equal to the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals for access (40) and service

delivery (0) fall more than 1 std below the national means.⁹ The most significant finding for Alberta is the complete absence of any rights regarding service delivery.

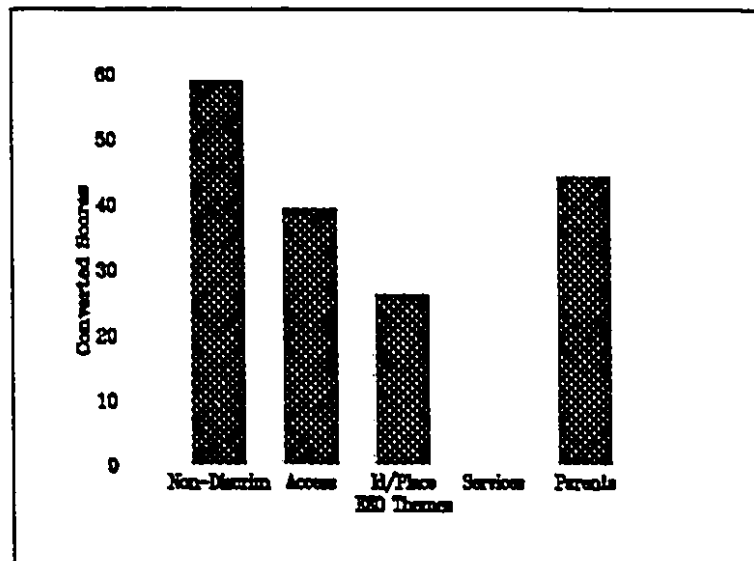


FIGURE 5.5
EEO Themes: Alberta

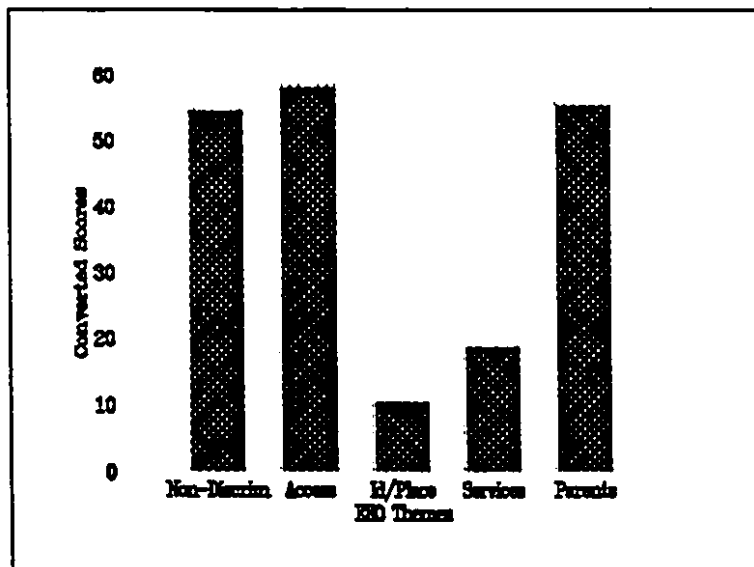


FIGURE 5.6
EEO Themes: British Columbia

British Columbia

British Columbia ranks 5, in terms of its total score on all items (38), slightly above the national mean (36). Some level of rights is observed for 29 items, also slightly above the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals

for access (58) and parental participation (56) are slightly more than 1 std above the national means.¹⁰ British Columbia has the distinction of being the only jurisdiction to provide for a continuing right to an education program and duty to follow same for students who have been suspended from school (expulsion not permitted).

Manitoba

Manitoba ranks 7 in terms of its total score on all items (33), slightly less than the national mean (36). Some level of rights is observed for 23 items, again slightly less than the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the total for identification and placement (18) falls more than 1 std below the national mean.¹¹

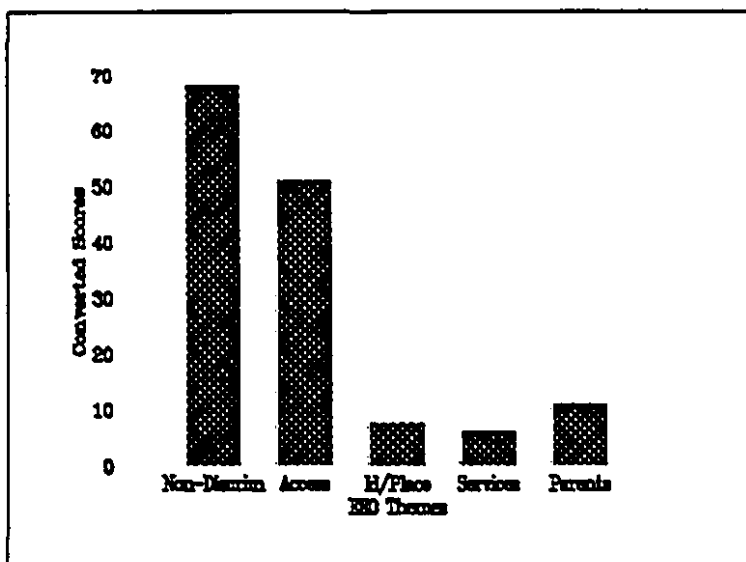


FIGURE 5.7
EEO Themes: Manitoba

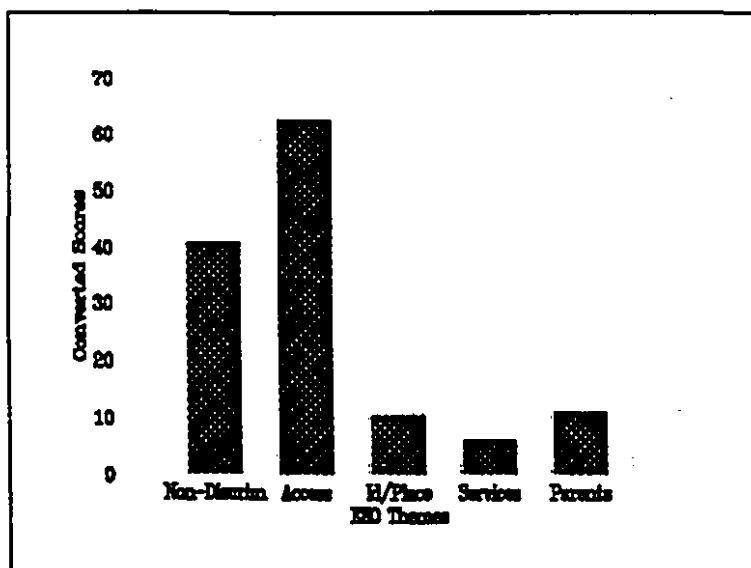


FIGURE 5.8
EEO Themes: New Brunswick

New Brunswick

New Brunswick ranks 8, in terms of its total score on all items (33), slightly less than the national mean (36). Some level of rights is observed for 22 items, again slightly less than the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the total

for access (63) exceeds the national mean by more than 1 std.¹² New Brunswick is one of only two jurisdictions in Canada to provide for early education and extended schooling for some students with disabilities and one of only two jurisdictions to provide for a right to regular class placement. On the other hand, it is the only jurisdiction in Canada which does not have any legislated standards for barrier-free access to new schools.

Newfoundland

Newfoundland ranks 9, in terms of its total score on all items (27), somewhat below the national mean (36). Some level of rights is observed for 19 items, which is again somewhat lower than the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals for access

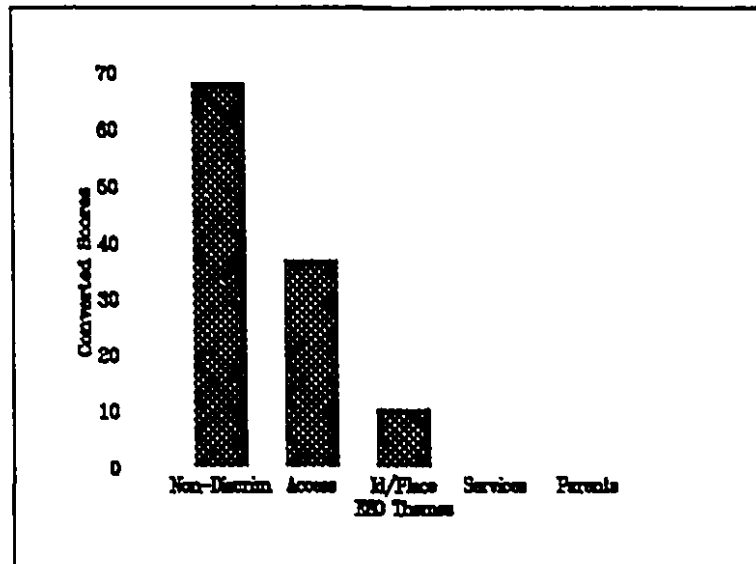


FIGURE 5.9

EEO Themes: Newfoundland

(37), service delivery (0) and parental participation (0) fall more than 1 std below the national means.¹³ The most significant finding for Newfoundland is the complete absence of any rights regarding these latter two themes. However, Newfoundland is the only jurisdiction to stipulate the right to special placement.

Northwest Territories

The Northwest Territories ranks 12, in terms of its total score on all items (18), which is more than 1 std (12) below the national mean (36). Some level of rights is observed for 13 items, also more than 1 std (10) below the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals for non-discrimination (18), access (37) and parental participation (0) fall below the national means by more than 1 std.¹⁴ The most significant finding respecting the Northwest Territories is its position as the lowest ranked jurisdiction in Canada. In addition, it is the only jurisdiction where

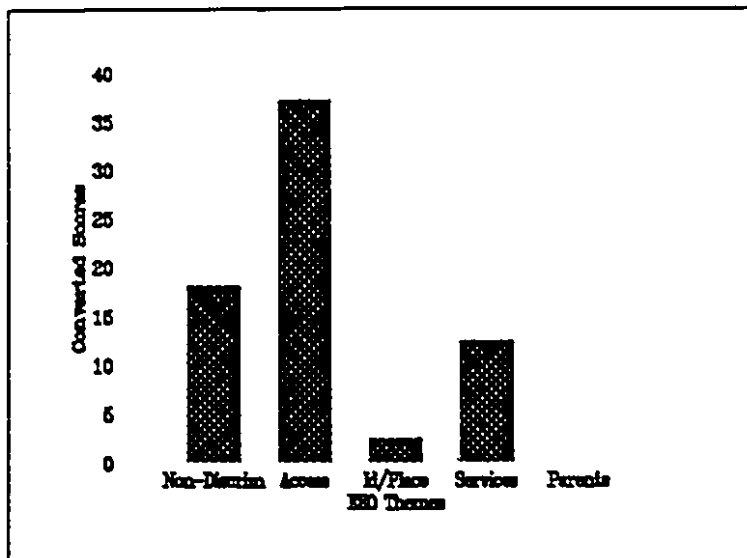


FIGURE 5.10
EEO Themes: Northwest Territories

the Crown is not bound by the equality rights provisions of the *Human Rights Code* and the only one where the right to education does not extend beyond 15 years.

Nova Scotia

Nova Scotia ranks 11, in terms of its total score on all items (20), more than 1 std (12) below the national mean (36). Some level of rights is observed for 12 items, which is also more than 1 std (10) below the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals

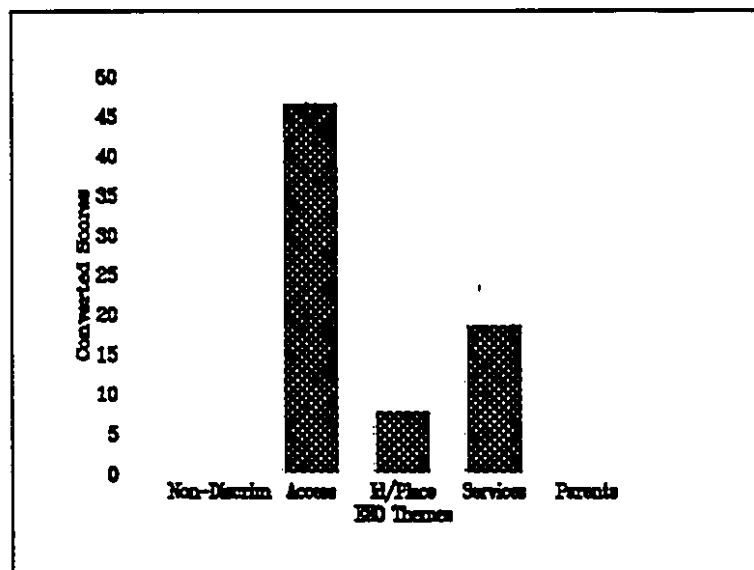


FIGURE 5.11
EEO Themes: Nova Scotia

for non-discrimination (0) and parental participation (0) fall more than 1 std below the national mean.¹⁵ The most significant finding respecting Nova Scotia is the non-application of the *Human Rights Code* to youth, and hence to public schooling, making it the only jurisdiction in Canada to exempt youth from the equality provisions of the *Code*. Moreover, Nova Scotia is the only jurisdiction to provide for a general exception

for disability respecting compulsory schooling. The combination of these factors accounts for Nova Scotia's position as the second lowest ranked jurisdiction in Canada.

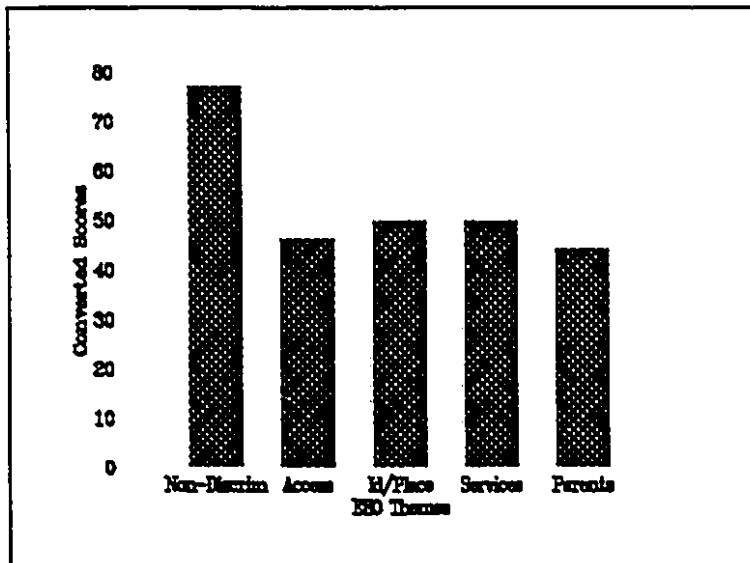


FIGURE 5.12
EEO Themes: Ontario

Ontario

Ontario ranks 2, in terms of its total score on all items (53), which exceeds the national mean (36) by more than 1 std (12). Some level of rights is observed for 42 items, which is also more than 1 std (10) above the national mean (26). In comparison to the average pattern for all jurisdictions (see figure

5.4), the totals for non-discrimination (77), identification/placement (50) and service delivery (50) exceed the national means by more than 1 std.¹⁶ The most significant finding with respect to Ontario is its position as the second ranking jurisdiction in Canada. Moreover, it is the only jurisdiction to provide for periodic reassessment, one of only two to provide for consent respecting identification and assessment and one of only three to provide for third-party adjudication of identification or assessment decisions. It is the only jurisdiction to include a "stay-put" provision regarding placement pending appeal and the only one to legislate special class size norms.

Prince Edward Island

Prince Edward Island ranks 10, in terms of its total score on all items (25), which is almost 1 std (12) below the national mean (36). Some level of rights is observed for 17 items, which is also almost 1 std (10) below the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the total for parental participation (0) falls below the national mean by more than 1 std.¹⁷ The most significant finding with respect to this jurisdiction is that while students have a comparable right to access

to schooling as is generally found in Canada, they have few rights regarding what happens in school.

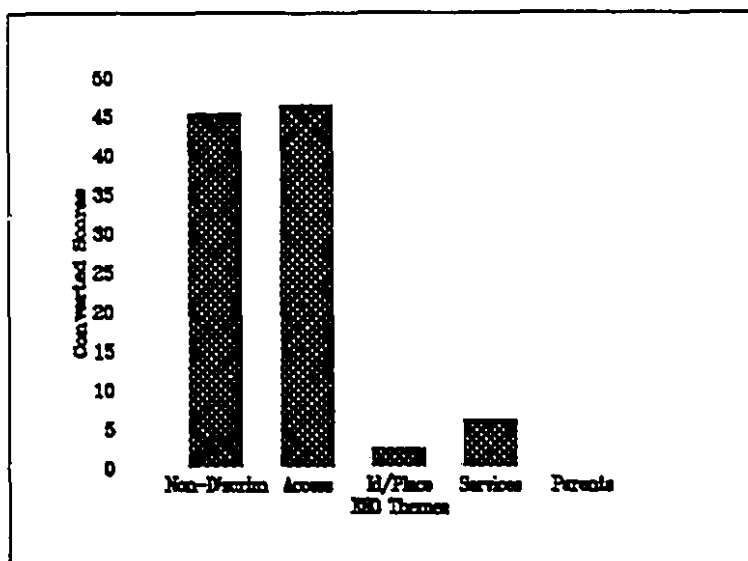


FIGURE 5.13

EEO Themes: Prince Edward Island

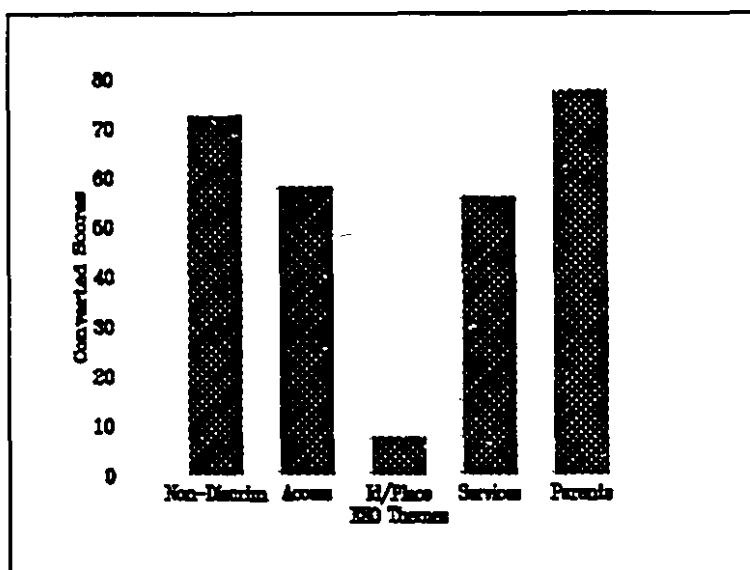


FIGURE 5.14

EEO Themes: Québec

Québec

Québec ranks 3, in terms of its total score on all items (47), which is almost 1 std (12) above the national mean (36). Some level of rights is observed for 35 items, which is also almost 1 std (10) above the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the totals

for access (58), service delivery (56) and parental participation (78) exceed the national means by more than 1 std.¹⁸ The most significant finding for Québec, in addition to its position as the third ranked jurisdiction, is the high level of rights accorded to parents. Québec is also one of only two jurisdictions to provide for early education and extended schooling for some students with disabilities, the only one to provide a general right to school choice and one of only two to provide the adaptation of regular education services

for students with disabilities.

Saskatchewan

Saskatchewan ranks 4, in terms of its total score on all items (43), well above the national mean (36). Some level of rights is observed for 29 items, slightly above the national mean (26). In comparison to the average pattern for all jurisdictions (see figure 5.4), the total for service delivery is almost 1 std

above the national mean.¹⁹ The most significant finding for Saskatchewan is its consistent profile with respect to various rights. Saskatchewan is one of only two jurisdictions to provide for an appropriate and least restrictive placement, the adaptation of regular services for students with disabilities and board-level participation of parents.

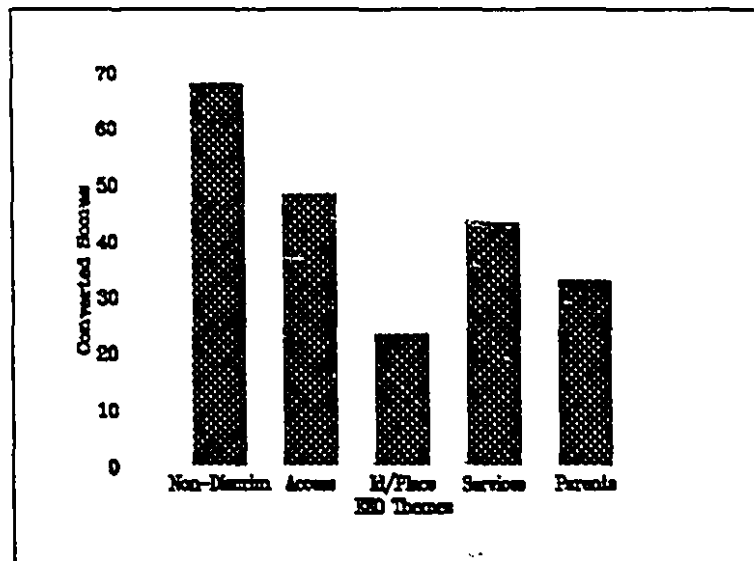


FIGURE 5.15
EEO Themes: Saskatchewan

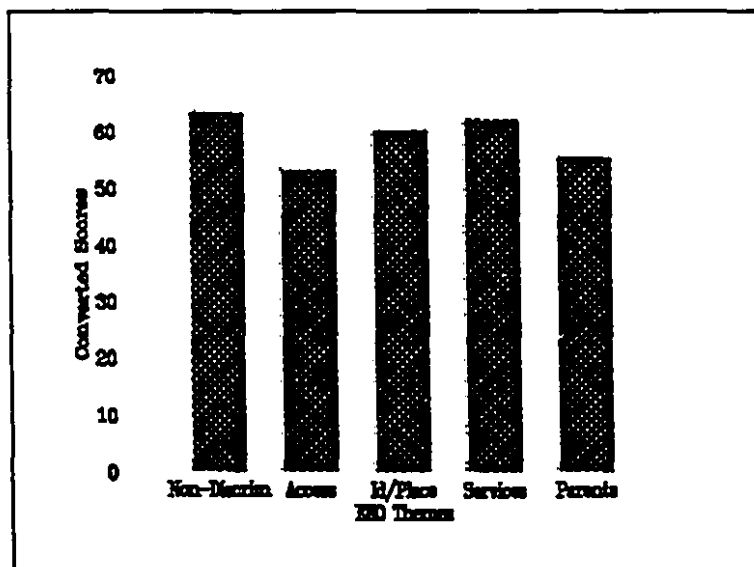


FIGURE 5.16
EEO Themes: Yukon

Yukon

The Yukon ranks 1, in terms of its total score on all items (59), almost 2 std (12) above the national mean (36). Some level of rights is observed for 43 items, which exceeds the national mean (26) by more than 1 std (10). In comparison to the average pattern for all jurisdictions

(see figure 5.4), the totals for identification/placement, service delivery and parental participation exceed the national means by more than 1 std.²⁰ The most significant finding with respect to the Yukon is its position as the top ranked jurisdiction in Canada. Moreover, it is the only jurisdiction in Canada to provide for a right to a multi-dimensional assessment and for the right of third-party adjudication of service delivery. It is one of only two jurisdictions to provide for consent respecting identification and assessment, appropriate and least restrictive placement and the right to appeal placement and one of only three to provide for the appeal of identification and assessment decisions.

5.4 Implications for Future Research and Public Policy

The need for this study was originally perceived during an analysis of Québec government policy respecting the education of students with disabilities (W.J. Smith, 1989). First, the research of background literature indicated the paucity of research data on educational policy for the education of students in Québec in particular, but also in Canada generally. Furthermore, in many cases, Canadian studies devote considerable space to the analysis of American policy and case law, which is more abundant and easier to locate. The conduct of this inquiry three years later reveals that the situation has not changed much. This study has also revealed problems associated with collecting primary source data in Canada to conduct such research.

While U.S. scholars may criticize the *scope* of available data (e.g., Hagerty & Abramson, 1987), Canadian scholars are still faced with the *lack* of appropriate data. There is no national clearing house in Canada for educational policy data. Statistics Canada provides some excellent financial and other statistical data. Unfortunately, to date it has not shown any interest in collecting and disseminating non-quantitative data. The Council of Ministers of Education (Canada) and the Canadian Education Association have made significant contributions to the examination of topics of national interest but their efforts are clearly shackled by a general lack of funds. The federal government remains conspicuous by its absence in any national initiatives to further the study and development of educational policy in Canada. The researcher is therefore left to deal with twelve independent jurisdictions and an equal variety of approaches to the collection and publication of policy data.

The majority of legislative action is contained in published statutes and regulations of each jurisdiction; unfortunately, as noted in Vol. 2, section A.1, app. A, the form of such publications varies considerably from one jurisdiction to another. In some cases, the indexing of materials is poor or non-existent, while in others, there is a considerable time-lag between the enactment and publication (in widely available form) of legislative action. Assuming the inordinate difficulty to develop uniformity across the country in this regard, some other means of facilitating access to and use of such materials is called for. The complexity of conducting national studies which depend on such materials requires the organization of a national data base which researchers and other interested parties could access electronically. Such an initiative would make a major contribution to the conduct of educational policy research in Canada and, hopefully, diminish the number of published studies which rely on secondary sources and out-of-date legislative material to discuss the current "state of the art" in the field of educational policy and law.

The results of this study also suggest the need for the development of appropriate frameworks for the analysis of educational policy, especially when comparing policy issues across jurisdictions. As a field of inquiry, policy research recognizes the need for eclectic approaches to research problems and the use of both qualitative and quantitative methodologies. As Howe (1992) states, it is time we "got over" the quantitative qualitative debate. As summarized by Howe in an earlier article (1988): "paradigms must demonstrate their worth in terms of how they inform, and are *informed by*, research methods that are successively employed" (p. 10). The methodology employed by this study suggests that one can, and should, combine techniques of qualitative content analysis with the codification and quantification of results, *where possible*. This study also demonstrates the need to continue to develop effective means to confirm the "trustworthiness" of the final research product (Guba & Lincoln, 1989).

This study has focused on one instrument of educational policy - legislative action, and on one set of policy actors - provincial/territorial governments. As stated in chapter 1, it is recognized that this focus was narrow - deliberately so, in order to permit a detailed analysis of one dimension of Canadian educational policy respecting the education of students with disabilities. Even with regards to the single dimension chosen, the author

makes no claim to have exhausted the treatment of legal rights to EEO for students with disabilities. Mention has been made of certain legislative provisions which appeared to be contrary to the standards set forth in the *Charter* but no systematic investigation of Canadian legislation in light of the *Charter* was undertaken. Given the lack of Canadian case law on this specific type of legislation, there is a need to develop an appropriate analytical framework to examine provincial legislation from the perspective of *Charter* rights. Other specific issues, for example, consent and confidentiality of student records, warrant further investigation, taking into account the rights to such matters which may be provided at common law.

The focus of this study has left other important dimensions of public policy respecting the education of students to be explored in further studies. Governments do not rely exclusively on legislation to set forth and implement particular policies. In addition to establishing a regulatory framework, governments provide resources and other forms of support to foster and sustain particular initiatives. In a given jurisdiction, the government may elect to provide funds to develop services, rather than attempting to achieve results through legislation. Thus, as already noted, school transportation is routinely provided in Canada and governments provide funds to make existing buildings barrier-free, even though the level of rights in regard to these issues is very low. There is therefore a need to examine these other aspects of government policy in order to develop a comprehensive portrait of all means taken to provide for EEO to students with disabilities.

Similarly, it is recognized that even a comprehensive examination of government policy only tells part of the story. Government policy is implemented at the local level by school boards, which in turn enact policies, disburse resources and carry out a variety of tasks which may foster or hinder the provision of EEO to the students in their respective jurisdictions. In different school districts, the *de facto* level of benefits enjoyed by students may be considerably higher - or lower, than that set by provincial *de jure* standards. There is therefore a need for a systematic survey of educational policy at the board level as a further extension of the investigation undertaken by this study.

Ultimately, however, education is not provided by governments, or even by school boards.

It is provided by teachers and other personnel in thousands of classrooms throughout the country. Only by examining what is happening inside the school, will one begin to understand what rights and other benefits are actually enjoyed by students with disabilities. Finally, it is imperative to inquire into what happens to these students when they leave school. Do they graduate? Do they find employment? Are they happy and successful? What changes are suggested in EEO inputs and throughputs which might improve observed outputs? Without an examination of these issues, the inquiry into educational policy for students with disabilities remains incomplete (Bruininks, Thurlow & Ysseldyke, 1992).

5.5 Conclusion

This study has provided a structured analysis of the legislative action of every jurisdiction and territory in Canada with respect to the education of students with disabilities at the elementary and secondary level. A conceptual framework, grounded in the conceptual literature, was developed to describe the construct of *equal educational opportunity* in terms of government policy, specifically focusing on legislative action. An analytical framework was then developed to provide a structured means to compare the legislative action taken in each jurisdiction. Five EEO themes were systematically investigated: non-discrimination, access to schooling, identification/placement, service delivery and parental participation.

The analysis has shown a diversity in the level and type of rights provided for in different jurisdictions. Overall, four jurisdictions, the Yukon, Ontario, Québec and Saskatchewan, provide for a relatively high level of rights; four others, British Columbia, Alberta, Manitoba and New Brunswick, provide a middle level of rights, while the remaining four, Newfoundland, Prince Edward Island, Nova Scotia and the Northwest Territories provide a relatively low level of rights. Non-discrimination and access received the highest ratings, while parental participation, service delivery and identification/placement received considerably lower ratings.

The Yukon *Education Act* has been noted throughout this study as exemplary of the rights required to protect the interests of students with disabilities. It is the most recent

comprehensive revision of education legislation in Canada and reflects the time, effort and consultation which were expended on its drafting (Alwarid, 1990; Burgess, 1990). However, it appears that the rights of students in much of the country to an education in accordance with legally set standards has not improved since the often cited, but unreported, case of *Carrière v. County of Lamont* (1978). In that case, O'Byrne, J. stated that the courts could rule on the right of the child (a student with cerebral palsy) to attend school but not what happened, once the child was admitted: "I do not have the authority to direct the Board to do what must be done or the manner in which this Order is to be complied with. That is a matter for the Board to decide" (cited in *Yarmoloy v. Banff School District No. 101*, 1985, p. 394).

It is the conclusion of this study that while there are many examples of rights provided to students with disabilities, the absence of rights is more generally observed to be the rule. When the scores for all jurisdictions are averaged, only 18 out of 60 items on the data analysis instrument receive an aggregate score of 50 or higher, with an overall mean of 36 for all items (max=100). There are five jurisdictions in which no rights are reported at all for at least one EEO theme. Although the level of rights observed is generally higher in larger jurisdictions, the examples of the smallest jurisdiction, the Yukon, with the highest level of rights and Saskatchewan, with a relatively high rating, demonstrate that the provision of rights is not strictly a matter of size.

As suggested by Asch (1989) and H.R. Turnbull (1978), rights are not the only answer to the barriers faced by students with disabilities but they are a critical means for moving from a charity mode to the minority rights paradigm suggested by Hahn (1989) and others. The importance of rights is eloquently summarized by Minow (1990):

There is something too valuable in the aspiration of rights, and something too neglectful of the power embedded in assertions of another's need, to abandon the rhetoric of rights. That is why I join in the effort to reclaim and reinvent rights.... It [rights rhetoric] enables a devastating, if rhetorical, exposure of and challenge to hierarchies of power....

The language of rights helps people to articulate standards for judging conduct without pretending to have found the ultimate and unalterable truth....

Interpreting rights as features of relationships, contingent upon

renegotiations within a community committed to this mode of solving problems, pins law not on some force beyond human control but on human responsibility for the patterns of relationships promoted or hindered by this process (pp. 307, 308, 309).

Even if education is not constitutionally protected, as suggested by some, no one would dispute its importance on both an individual and collective level. As stated by La Forest, J. in *Jones v. R.* (1986): "Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society" (p. 592). Similarly, the words of Warren, C.J. in *Brown v. Board of Education* are as relevant today as they were in 1954: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education" (p. 592). The school is a microcosm of society, where we gain knowledge and skills and where we learn to get along with each other; to deny a child a right to full inclusion in this process is a denial of his or her fundamental human rights and should not be tolerated in a free and democratic society.

Endnotes - Chapter 5

1. See chapter 4, note 27, for formula and discussion re converted scores.
2. See chapter 4, note 27, for formula and discussion re converted scores.
3. This average is equal to the mean of "compressed scores" for all jurisdictions; see note 8.
4. See chapter 4, note 29, for decision rule to compare variance.
5. To ignore these differences is analogous to tabulating test scores in a school with 2 000 students and computing an average score for the school, then conducting a like exercise in a school of 100 students and finally summing the two averages and dividing by 2 to produce an "average" result for all students.
6. High weighted scores for a given theme indicate that a large number of students (regardless of the number of jurisdictions) benefit from the rights subsumed under that theme, whereas, high unweighted scores indicate that these rights are provided in a large number of jurisdictions (regardless of the number of students).
7. The distribution of scores of each of the five themes was divided into thirds (I=high third; II=middle third; III=low third). Because of tie scores, there is some overlap in the ranges of each grouping (e.g. for the first theme, non-discrimination, the top third of scores range from 68 to 77; the middle third range from 55 to 68 and the low third range from 0 to 45). The ranges for all themes are shown below.

Group	Themes:				
	<u>Non-Discr.</u>	<u>Access</u>	<u>Id/Place</u>	<u>Services</u>	<u>Parents</u>
I	68-77	53-63	24-61	44-63	44-78
II	55-68	47-51	8-11	6-19	11-44
III	0-45	37-47	3-8	0-6	0

The three step pattern observed in the overall distribution was then superimposed on the distributions for individual themes, to determine the number of times a province appeared in the same grouping (high, middle or low) as it did in the total distribution. (e.g. As Ontario fell in group I (high) of the overall distribution, the five distributions of individual themes were examined to determine how many times Ontario fell in group I of each.)

8. The sum of the binary scores for each item (1 or 0) was calculated for each jurisdiction to determine the number of items (max=60) for which some level of rights existed. The mean of this distribution (26) indicates the average number of items for which some level of rights exists across all jurisdictions. The variance of this distribution was also calculated (std=10), indicating a low level of variance across jurisdictions.

9. The national means and variances for all themes are shown below:

	<u>Non-Dis</u>	<u>Access</u>	<u>Id/Place</u>	<u>Service</u>	<u>Parents</u>
Me	53	49	18	23	28
Std	22	8	18	22	26

10. For the national mean and variance of each theme, see note 9.
11. For the national mean and variance of each theme, see note 9.
12. For the national mean and variance of each theme, see note 9.
13. For the national mean and variance of each theme, see note 9.
14. For the national mean and variance of each theme, see note 9.
15. For the national mean and variance of each theme, see note 9.
16. For the national mean and variance of each theme, see note 9.

17. For the national mean and variance of each theme, see note 9.
18. For the national mean and variance of each theme, see note 9.
19. For the national mean and variance of each theme, see note 9.
20. For the national mean and variance of each theme, see note 9.

REFERENCES

Primary Source Materials

Regulatory and Administrative Sources*InternationalStatutes and Other Regulatory Material

Convention on the Rights of the Child, Official Records of the General Assembly, Forty-Fourth Session, Doc. A/RES/44/25.

Declaration on the Rights of Disabled Persons, G.A. Res. 3447, 30 UN GAOR, Supp.(No. 34) 92, UN Doc. A/10034 (1975).

Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856, 26 UN GAOR, Supp.(No. 29) 99, UN Doc. A/8429 (1971).

Declaration of the Rights of the Child, G.A. Res. 1386, 14 UN GAOR, Supp.(No. 16) 19, UN Doc. A/4354 (1959).

[European] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 221.

International Covenant on Civil and Political Rights, (1976) 999 U.N.T.S. 171, [1976] C.T.S. 47.

International Covenant on Economic, Social and Cultural Rights, (1976) 993 U.N.T.S. 3, [1976] C.T.S. 46.

Optional Protocol to the International Covenant on Civil and Political Rights, (1976) 999 U.N.T.S. 171, [1976] C.T.S. 47.

Universal Declaration of Human Rights, 10 December 1948, G.A. Res. 217 A (III), UN Doc. A/810, at 71 (1948).

* "Regulatory" material refers primarily to statutes and regulations published in the *Official Gazette* of each jurisdiction. All regulations and other subordinate legislation are listed under the organizing statute, under whose aegis they were adopted. It also includes other documents which have the force of law (e.g. provincial collective agreement). "Administrative" material refers to government documents which do not have the force of law (e.g. non-binding policy guidelines).

Normally, references to legislative amendments are limited to specific footnotes where such information is required (*Canadian Guide to Uniform Legal Citation*, 1992). Contrary to this convention, parenthetical information regarding amendments has been included in this reference list. This was done to permit the reader to verify precisely which legislative acts were used as a basis of this study.

Canada*Statutes and Other Regulatory Material

Act to Amend the Indian Act, S.C., 1985, c. 27.

Canada Act 1982 (U.K.), 1982, c.11.

Canadian Bill of Rights, R.S.C. 1985, App. III.

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

Canadian Human Rights Act, R.S.C., 1985, c. H-6.

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3 (formerly *British North America Act, 1867*).

Constitution Act, 1982, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11.

Constitution Acts: 1867-1982 (Office Consolidation, October 1 1989). Ottawa: Department of Justice, Canada.

Indian Act, R.S.C., 1985, c. I-5.

Young Offenders Act, R.S.C. 1985, Y-1.

Administrative (Non-Regulatory) Documents

National Research Council of Canada. (1977). *Building standards for the handicapped* (Supplement to the *National Building Code of Canada, 1977*). Ottawa: Author.

National Research Council of Canada. (1985). *National Building Code of Canada, 1985* (Including errata and revisions as of January 1989). Ottawa: Author.**

National Research Council of Canada. (1990). *National Building Code of Canada, 1990* (Including errata and revisions as of September 1992). Ottawa: Author.*

* For purposes of this study, "Canadian" primary source materials refer to those which apply to all or several provincial or territorial jurisdictions, as opposed to those which would apply only to the federal jurisdiction.

** The *National Building Code* is not a regulatory document *per se* but may become part of the regulatory framework if so adopted by a province or territory.

AlbertaStatutes and Other Regulatory Material

Alberta Bill of Rights, R.S.A. 1980, c. A-16 (looseleaf edition).

Child Welfare Act, S.A. 1984, c. C-8.1

Department of Education Act, R.S.A. 1980, c. D-17, as am. S.A. 1981, c. 12, c. 66, S.A. 1988, c. S-3.1 (looseleaf edition).

Alberta School for the Deaf Regulation, Alta Reg. 203/91.

Individual's Rights Protection Act R.S.A. 1980, c. I-2, as am. S.A. 1985 c. 15, c. 33, S.A. 1988, c. E-10.2, S.A. 1990, c. 23 (looseleaf edition).

Commission Procedure Regulation, Alta Reg. 150/90.

Interpretation Act, R.S.A. 1980, c. I-7.

Regulations Act, R.S.A. 1980, c. R-13.

Safety Codes Act, S.A. 1991, c. S-0.5 (n.y.p.).

School Act, S.A. 1988, c. S-3.1, as am. S.A. 1990, c. 36 (office consolidation, 12 July 1990).

Early Childhood Services Regulation, Alta Reg. 35/89.

French Language Immersion Regulation, Alta Reg. 36/89.

Home Education Program Regulation, Alta Reg. 37/89.

Languages Other Than English or French Regulation, Alta Reg. 38/89.

Private Schools Regulation, Alta Reg. 39/89.

Student Evaluation Regulation, Alta Reg. 40/89.

Superintendent of Schools Regulation, Alta Reg. 41/89.

Student Record Regulation, Alta Reg. 213/89.

Uniform Building Standards Act, R.S.A. 1980, c. U-4, as am. R.S.A., c. A-44.1 (Supp.), as rep. by S.A. 1991, c. S-0.5 (n.y.p.) (looseleaf edition).

Alberta Building Code, 1990 (promulgated by Alberta Building Standards Council, 24 July 1990, including errata and revisions to February 1991).

Alberta Building Regulation, 1991, Alta Reg. 109/91.

Administrative (Non-Regulatory) Documents

Alberta Education. (1989). *Education in Alberta: Facts and figures 1989*. Edmonton: Author.

Alberta Education. (1991). *Education Programs: Special education* (02-02-01, 10 September 1991). Edmonton: Author.

Alberta Education. (1991). *Education Programs: Students in institutions* (02-02-03, 10 September 1991). Edmonton: Author.

Alberta Education. (1991). *Integrating exceptional students into the mainstream* (Background paper). Edmonton: Author.

Alberta Education. (1991). *Referrals and appeals: Special Needs Tribunal* (03-01-01, 10 September 1991). Edmonton: Author.

Alberta Education. (1991). *Meeting the individual needs of Alberta students: A framework for positive change* (Discussion paper). Edmonton: Author.

Alberta Education. (1991). *Special Education Review Action Plan*. Edmonton: Author.

Alberta Education. (1992). *Special Education Manual*. Edmonton: Author.

Alberta Education Response Centre. (1991). *Schools and the community: A necessary partnership: A guide to interagency collaboration*. Edmonton: Author.

British Columbia

Statutes and Other Regulatory Material

Building Safety Standards Act, S.B.C. 1981, c. 11, as am. S.B.C. 1983, c. 10, S.B.C. 1985, c. 6, c. 34, S.B.C. 1989, c. 48, c. 59.

Civil Rights Protection Act, S.B.C. 1981, c. 12.

Family and Child Service Act, S.B.C. 1980, c. 11.

Human Rights Act, S.B.C. 1984, c. 22, as am. S.B.C. 1985, c. 51, S.B.C. 1989, c. 40, S.B.C. 1989, c. 53, 1992, c. 43 (office consolidation, 16 October 1992) .

Human Rights Code, R.S.B.C. 1979, c. 186, as rep. by *Human Rights Act*, S.B.C. 1984, c. 22.

Human Rights Code Board of Inquiry Regulations, B.C. Reg. 151/75, as am. B.C. Reg. 137/82.

Interpretation Act, R.S.B.C. c. 206, as am. S.B.C. 1989, c. 64.

Municipal Act, R.S.B.C. 1979, c. 290, as am. S.B.C. 1980, c. 18, S.B.C. 1985, c. 20, S.B.C. 1986, c. 2, S.B.C. 1987, c. 14.

Building Regulations of British Columbia, B.C. Reg. 192/87, as am. up to B.C. Reg. 339/87.

Premier's Advisory Council for Persons with Disabilities Act, S.B.C. 1988, c. 54.

Regulations Act, S.B.C. 1983, c. 10, as am. S.B.C. 1990, c. 33, repealing R.S.B.C. c. 361.

School Act, S.B.C. 1989, c. 61, as am. S.B.C. 1990, c. 2, S.B.C. 1990, c. 38, S.B.C. 1991, c. 13, S.B.C. 1991, c. 14; S.B.C. 1992, c. 51; S.B.C. 1992, c. 68; S.B.C. 1992, c. 70 (office consolidation, 8 October 1992).

School Regulation, B.C. Reg. 265/89, as am. to B.C. Reg. 264/91 (looseleaf edition).

Investigation by Superintendent Order, Ministerial Order 151/89.

Jericho Hill Provincial Resource Program Order, Ministerial Order 315/90.

Local Programs Order, Ministerial Order 147/89, as am. M123/90, M275/90.

Special Needs Students Order, Ministerial Order 150/89.

Support Services for Schools Order, Ministerial Order 149/89.

Independent School Act, S.B.C. 1989, c. 51.

Independent School Regulation, B.C. Reg. 262/89, as am. to B.C. Reg. 447/90 (looseleaf edition).

Teaching Profession Act, S.B.C., 1987, c. 19, as am. S.B.C., 1988, c. 46, S.B.C., 1989, c. 61, S.B.C., 1990, c. 38.

Administrative (Non-Regulatory) Documents

British Columbia Ministry of Education. (1985). *Special programs: A manual of policies, procedures and guidelines*. Victoria: Author.

ManitobaStatutes and Other Regulatory Material

Age of Majority Act, R.S.M. 1987, c. A-7.

Blind And Deaf Person's Maintenance and Education Act, R.S.M. 1987, c. B-60, as am. S.M. 1987-88, c. 44.

Buildings and Mobile Homes Act, R.S.M. 1987, c. B-93, as am. S.M. 1988-89, c. 13.

Manitoba Building Code, Man. Reg. 155/88.

Child and Family Services Act, S.M. 1985-86, c. 8, C.C.S.M., c. 80, as am. S.M. 1989-90, c.3.

Education Administration Act, R.S.M. 1987, c. E-10, as am. S.M. 1989-90, c. 50.

Education Administration Regulation, Man. Reg. 468/88.

Freedom of Information Act, S.M. 1985-86, C.C.S.M. F-175, as am. S.M. 1988-89, c. 13.

Access to Records Regulation, Man. Reg. 296/88.

Human Rights Code, S.M. 1987-88, c. 45.

Complaint Form Regulation, Man. Reg. 447/87.

Interpretation Act, R.S.M. 1987, c. I-80, as am. to S.N.B. 1985, c. 4.

Public Schools Act, R.S.M. 1987, c. P-250, as am. S.M. 1987-88, c. 67, S.M. 1988-89, c. 11, c. 13, c. 15, S.M. 1989-90, c. 24, c. 49.

Languages of Instruction and Study Regulation, Man. Reg. 469/88.

Persons Having Care and Charge of Pupils Regulation, Man. Reg. 464/88.

School Buses Regulation, Man. Reg. 465/88, as am. Man. Reg. 256/90.

School Days, Hours and Vacations Regulation, Man. Reg. 470/88, as am. Man. Reg. 41/89, Man. Reg. 147/90, Man. Reg. 42/91, Man. Reg. 108/92.

School Year Regulation, Man. Reg. 471/88.

Regulations Act, S.M. 1988-89, c. 7, as am. S.N.B. 1980, c. 80, S.N.B. 1983, c 79.

Administrative (Non-Regulatory) Documents

Manitoba Education and Training. (1989). *Special education in Manitoba: Policy and procedural guidelines for the education of students with special needs in the public school system*. Winnipeg: Author.

Transitional planning process (Protocol of the Manitoba Ministers of Family Services, Health, and Education and Training), 11 December 1989.

New BrunswickStatutes and Other Regulatory Material

Agreement between the Board of Managaement and the New Brunswick Teachers Federation (1 September 1988 - 31 August 1991), 28 June 1989.

Auxiliary Classes Act, R.S.N.B. 1973, c. A-19, as am. S.N.B. 1974, c. 3 (Sup.), S.N.B. 1975, c. 9, S.N.B. 1976, c. 18, S.N.B. 1982, c. 8, as rep. *Act to Amend the Schools Act*, S.N.B. 1986, c. 75.

Education of Aurally or Visually Handicapped Persons Act, S.N.B., 1975, c. E-1.2, as rep. *Schools Act*, S.N.B. 1990, c. S-5.1.

Human Rights Act [Human Rights Code], R.S.N.B. 1973, c. H-11 as am. to S.N.B. 1987, c. 26 (looseleaf edition, 31 March 1989), S.N.B. 1990, c. 61.

Interpretation Act, R.S.N.B. 1973, c. I-13, as am. S.N.B. 1982, c. 33.

Regulations Act, R.S.N.B. 1973, c. R-7.

Premier's Council on the Status of Disabled Persons Act, S.N.B. 1982, c. P-14.1.

Right to Information Act, S.N.B. 1978, c. R-10.3, as am. S.N.B. 1979, c. 41, 1982, c. 58, S.N.B. 1985, c. 67, S.N.B. 1986, c. 72.

Schools Act, R.S.N.B. 1973, c. S-5, as rep. *Schools Act*, S.N.B. 1990, c. S-5.1.

Advisory Committees Regulation, N.B. Reg. 83/203 (looseleaf edition, 1 November 1984).

Pupil Conveyance and Boarding Regulation, N.B. Reg. 89/104 (looseleaf edition, 30 September 1989).

Schools Act, S.N.B. 1990, c. S-5.1, as am. S.N.B. 1990, c. 61, S.N.B. 1991, c. 31 (office consolidation, 1 January 1992).

School Administration Regulation, N.B. Reg. 84/51 (looseleaf edition, 30 September 1992).

Section 16 School Board Regulation, N.B. Reg. 91/186 (looseleaf edition, 31 December 1991).

Support services to education: Program service standards. Agreement between the Departments of Health and Community Services, and Education, 1 October 1990.

Administrative (Non-Regulatory) Documents

Barrier-free design: Access to and use of buildings by physically disabled people. (1988). Fredericton: Ministry of Supply and Services, Buildings Division.

Legislative Assembly of New Brunswick. (1990). *Second report of the special committee on social policy development: Final report on the review of school integration*. Fredericton: Author.

Ministère de l'Éducation du Nouveau-Brunswick. (1991). *L'éducation des élèves exceptionnel(le)s* (Guide administratif à l'intention des conseils scolaires du Nouveau-Brunswick). Fredericton: Author.

New Brunswick Department of Education. (1988). *Working guidelines on integration*. Fredericton: Author.

New Brunswick Department of Education. (1991). *Government response to the final report on the review of school integration*. Unpublished manuscript.

New Brunswick Department of Education. (1991). *Guidelines for a special education plan*. Fredericton: Author.

New Brunswick Department of Education, Student Services Branch. (1991). *Guidelines for serving preschool children under the Schools Act*. Fredericton: Author.

New Brunswick Department of Education. (1992). *Guidelines to accompany the New Brunswick Student Record Folder*. Fredericton: Author.

Perner, D.E. (1991). *Active life for disabled youth: Integration in the school*. Fredericton: New Brunswick Department of Education, Student Services Branch.

Newfoundland

Statutes and Other Regulatory Material

Buildings Accessibility Act, R.S.N. 1990, c. B-10.

Buildings Accessibility Regulations, 1982, Nfld Reg. 38/82, as am. Nfld Reg. 208/86, Nfld Reg. 140/88, Nfld Reg. 138/90.

Child Welfare Act, R.S.N. 1990, c. C-12.

Department of Education Act, R.S.N. 1990, c. D-9.

Freedom of Information Act, R.S.N. 1990, c. F-25.

Freedom of Information Regulations, 1981, Nfld Reg. 195/81, as am. Nfld Reg. 223/87.

Human Rights Code, R.S.N. 1990, c. H-14.

Interpretation Act, R.S.N. 1990, c. I-19.

School Attendance Act, R.S.N. 1990, c. S-9.

Schools Act, R.S.N. 1990, c. S-12.

The Schools Act (Teachers' Staffing) Regulations, 1987, Nfld Reg. 21/89, as am. Nfld Reg. 109/90.

The Schools Act (Transportation of Pupils) Regulations, 1979, Nfld Reg. 198/79.

Statutes and Subordinate Legislation Act, R.S.N. 1990, c. S-27.

Administrative (Non-Regulatory) Documents

Newfoundland Department of Education, Student Support Services. (n.d.). *Provincial child abuse policy and guidelines* (Draft version). St. Johns: Author.

Newfoundland Department of Education. (n.d.). *The school psychologist in Newfoundland and Labrador* (Draft version). St. Johns: Author.

Newfoundland Department of Education. (1992). *Special education policy manual* (Rev. ed.). St. Johns: Author.

Northwest Territories

Statutes and Other Regulatory Material

Education Act, R.S.N.W.T. 1988, c. E-1, as am. S.N.W.T. 1988, c. 3 (Supp.), R.S.N.W.T. 1988, c. 34, (Supp.), including subsequent corrections, R.S.N.W.T. 1988, c. 109 (Supp.) (office consolidation, 1991).

Education Regulations, R.R.N.W.T. 1980, Reg. 57, as am. N.W.T. Reg. 010-81, N.W.T. Reg. 031-81, N.W.T. Reg. 086-81, N.W.T. Reg. 028-83, N.W.T. Reg. 055-84, N.W.T. Reg. 053-86, N.W.T. Reg. 013-90 (office consolidation, 15 April 1990), as am. N.W.T. Reg. 012-91.

Fair Practices Act, R.S.N.W.T. 1988, c. F-2.

Fire Prevention Act, R.S.N.W.T. 1988, c. F-6.

Fire Prevention Regulations, N.W.T. Reg. 036-81, as am. N.W.T. Reg. 153-82, N.W.T. Reg. 021-83, S.N.W.T. 1985(1), c. 4, s. 9, N.W.T. Reg. 001-88, N.W.T. 024-89, Reg. 073-90.

Interpretation Act, R.S.N.W.T. 1988, I-8.

Statutory Instruments Act, R.S.N.W.T. 1988, c. S-13.

Administrative (Non-Regulatory) Documents

Northwest Territories Education. (n.d.). *A departmental directive and guidelines for special needs education*. Yellowknife: Author.

Northwest Territories Education. (n.d.). *Special needs education profile* (Interim edition). Yellowknife: Author.

Northwest Territories Education. (1992). *Inclusive schooling policy* (Draft version). Yellowknife: Author.

Nova Scotia

Statutes and Other Regulatory Material

Agreement between the Minister of Education and the Nova Scotia Teachers' Union, 23 February 1990.

Blind Person's Rights Act, R.S.N.S. 1989, c. 40.

Building Access Act, R.S.N.S. 1989, c. 45.

Building Code Act, R.S.N.S. 1989, c. 46, as am. S.N.S. 1990, c. 19.

Provincial Building Code Regulations, N.S. Reg. 45/87, as am. N.S. Reg. 148/91.

Child and Family Services Act, S.N.S. 1990, c. 5.

Education Act, R.S.N.S. 1989, c. 136, as am. S.N.S. 1990, c. 19, S.N.S. 1991, c. 6.

General Regulations, N.S. Reg. 226/84, as am. N.S. Reg. 223/86, N.S. Reg. 115/88, N.S. Reg. 13/90 (amendments re grants are omitted).

Education Assistance Act, R.S.N.S. 1989, c. 137.

Education of the Blind Act R.S.N.S. 1989, c. 138.

Freedom of Information Act, S.N.S. 1990, c. 11.

Handicapped Persons' Education Act, R.S.N.S. 1989, c. 194, as am. S.N.S. 1990, c. 29.

Atlantic Provinces Special Education Authority, O.C. 75-838, as am. O.C. 78-752, N.S. Reg. 143/80, N.S. Reg. 113/85, N.S. Reg. 293/90.

Handicapped Persons Education Act and APSEA Agreement and Regulations (including amendments to 31 December 1990). (1990). Halifax: Atlantic Provinces Special Education Authority.

Human Rights Code, R.S.N.S. 1989, c. 214, as am. S.N.S. 1991, c. 12.

Regulations Respecting Boards of Inquiry, N.S. Reg. 221/91.

Interpretation Act, R.S.N.S. 1989, c. 235.

Regulations Act, R.S.N.S. 1989, c. 393.

School Boards Act, S.N.S. 1991, c. 6.

Administrative (Non-Regulatory) Documents

Nova Scotia Department of Education. (1979). *Special education curriculum guide for trainable mentally hadicapped students*. Halifax: Author.

Nova Scotia Department of Education. (1980). *Administrative handbook: Special education*. Halifax: Author.

Nova Scotia Department of Education. (1980). *Special education curriculum guide for teachers of educable mentally handicapped students, ages 5-21*. Halifax: Author.

Nova Scotia Department of Education. (1981). *Learning disabilities: A supplementary document for teachers and administrators*. Halifax: Author.

Nova Scotia Department of Education. (1981). *Special education* (Senior Management, Bulletin #5). Halifax: Author.

Nova Scotia Department of Education. (1983). *Speech and language services: A special education handbook*. Halifax: Author.

Nova Scotia Department of Education. (1984). *Special education resource programs: An administrative handbook*. Halifax: Author.

Nova Scotia Department of Education. (1988). *Nova Scotia student cumulative record folder completion instructions*. Halifax: Author.

Nova Scotia Department of Education. (1988). *Policy statement on special needs placement* (P & R Release No. A-2: 1988-89). Halifax: Author.

Nova Scotia Department of Education. (1991). *Statement on integration* (P & R Release No. A-2: 1991-92). Halifax: Author.

Nova Scotia Department of Education. (n.d.). *Public school programs: 1991-1993*. Halifax: Author.

Ontario

Statutes and Other Regulatory Material

Act to Amend the Education Act, 1974, S.O., 1980, c. 61.

Bill 37, *Special Education Statute Law Amendment Act, 1992*, S.O., 1992 (1st reading, June 22 1991).

Building Code Act, R.S.O., 1990, c. B.13.

Building Code, O.Reg. 413/90, as am. O. Reg. 400/91.

Child and Family Services Act, R.S.O. 1990, c. C-11.

Development Services Act, R.S.O. 1990, c. D-11.

Education Act, R.S.O., 1990, c. E.2, as am. to S.O. 1992, c. 17 (office consolidation).

Categories of Exceptionality [published in *Special Education Handbook* (Ontario Ministry of Education, 1984 below)].

Ontario Schools for the Blind and the Deaf, R.R.O. 1990, 296.

Ontario Ministry of Education. (1989). *Ontario Student Record Guideline, 1989*. Toronto: Author.

Operation of Schools - General, R.R.O. 1990, 298.

Regional Tribunals, R.R.O. 1990, 303.

Special Education Identification Placement and Review Committees and Appeals, R.R.O. 1990, 305.

Special Education Programs and Services, R.R.O. 1990, 306.

Supervised Alternative Learning for Excused Pupils, R.R.O. 1990, 308.

Human Rights Code, R.S.O. 1990, c. H-19.

Interpretation Act, R.S.O. 1990, c. I.11.

Judicial Review Procedure Act, R.S.O. 1990, c. J.1.

Municipal Freedom of Information and Protection of Privacy Act, 1987, R.S.O. 1990, c. M-56.

Regulations Act, R.S.O. 1990, c. R.21.

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.

Teaching Profession Act, R.S.O. 1990, c. T.2.

Vocational Rehabilitation Services Act, R.S.O. 1990, c. V.5.

Administrative (Non-Regulatory) Documents

Ontario Human Rights Commission (1990). *Discrimination Because of Handicap*. Toronto: Author.

Ontario Ministry of Community and Social Services & Ministry of Education (1982). *Education programs in government-approved facilities for the care and treatment of children with special needs*. Toronto: Author.

Ontario Ministry of Education (1986). *Designing for the physically disabled*. Toronto: Author.

Ontario Ministry of Education, Special Education Branch (1984). *Special education information handbook* (includes Categories of Exceptionality, as well as various deputy ministerial Policy/Program Memoranda). Toronto: Author.

Ontario Ministry of Education, Special Education Branch (1985a). *Special Education Monographs: No. 1: The Special Education Appeal Board*. Toronto: Author.

Ontario Ministry of Education, Special Education Branch (1985b). *Special Education Monographs: No. 2: Special Education Identification, Placement and Review Committees*. Toronto: Author.

Ontario Ministry of Education, Special Education Branch (1986). *Special Education Monographs: No. 3: Exceptional pupils with mild intellectual handicaps in secondary schools*. Toronto: Author.

Ontario Ministry of Education, Special Education Branch (1990). *Special Education Monographs: No. 4: Students with autism*. Toronto: Author.

Ontario Ministry of Education (1991). *Alternative educational programs and services for deaf, blind, and deaf-blind exceptional pupils* (Policy/Program Memorandum No. 76C).

Ontario Ministry of Education. (1992). *Consultation paper on the integration of exceptional pupils: An invitation to respond*. Toronto: Author.

Prince Edward Island

Statutes and Other Regulatory Material

Access To Public Buildings Act, R.S.P.E.I. 1988, c. A-2.

Human Rights Act, R.S.P.E.I. 1988, c. H-12., as am. to S.P.E.I. 1989 (2d), c. 3 (looseleaf edition, 1989 update).

Interpretation Act, R.S.P.E.I. 1988, c. I-8.

Memorandum of Agreement between the Province of Prince Edward Island and the Prince Edward island Teachers' Federation, 27 June 1991.

Provincial Building Code Act, R.S.P.E.I. 1988, c. P-24.

Regulations Revision Act, R.S.P.E.I. 1988, c. R-11.

Rehabilitation of Disabled Persons Act, R.S.P.E.I. 1988, c. R-12.

School Act, R.S.P.E.I. 1988, c. S-2 (office consolidation, 01-02-90).

School Act Regulations, EC 674/76, as am. to EC 442/90 (looseleaf edition, June 1990 update).

Administrative (Non-Regulatory) Documents

Prince Edward Island Minister of Education. (1990). *Special education policy statement* (circular No. 90-003). Charlottetown: Prince Edward Island Department of Education.

QuébecStatutes and Other Regulatory Material

Act Respecting Access to Documents Held by Public Bodies, R.S.Q., c. A-2.1, as am. S.Q. 1992, c. 21.

Act Respecting Health and Social Services, R.S.Q., c. S-5.

Act Respecting Private Education, S.Q. 1992, c. 68.

Act Respecting the Conseil supérieur de l'éducation, R.S.Q., c. C-60, as am. S.Q. 1990, c. 8.

Act Respecting the ministère de l'Éducation, R.S.Q., c. M-15, as am. S.Q. 1992, c. 68.

Regulation Respecting Certain Delegations of Power, O.C. 1589-89, 10 October 1989, G.O.Q. 1989.II.4021.

Act Respecting the Process of the Negotiation of the Collective Agreements in the Public and Parapublic Sectors, R.S.Q., c. R-8.2, as am. S.Q. 1992, c. 21.

Act to Secure the Handicapped in the Exercise of their Rights, R.S.Q., c. E-20.1, as am. S.Q. 1988, c. 51, c. 84.

(*Règlement de l'Office des personnes handicapées du Québec*, R.R.Q. E-20.1, r. 1., mod. par D. 1375-87, 2 septembre 1987, G.O.Q. 1987.II.5760.)

Agreement binding the Comité patronal de négociation des commissions scolaires pour catholiques (CPNCC) and The Provincial Association of Catholic Teachers (PACT), 23 May 1990.

Agreement binding The Employer Bargaining Committee for Protestant School Boards (CPNCP) and The Provincial Association of Protestant Teachers (PAPT), 11 May 1990.

Charter of Human Rights and Freedoms, R.S.Q., c.C-12, as am. S.Q. 1990, c.4.

Regulation Respecting Affirmative Action Programs, R.R.Q., c. C-12, r. 0.1, as am. O.C. 1172-86, September 1 1986, G.O.Q. 1986.II.2084.

Charter of the French Language, R.S.Q., c. C-11, as am. S.Q. 1992, c. 21, c. 61, c. 68.

Exemption for Children with Serious Learning Disabilities Regulation, R.R.Q., c. C-11, r. 5.1.

Request for Instruction in English Regulation, R.R.Q., c. C-11, r. 4.1.

Civil Code of Lower Canada (Office consolidation, July 1991).

Civil Code of Québec (Office consolidation, July 1991).

Civil Code of Québec, S.Q. 1991, c. 64.

Education Act, R.S.Q., c. I-13.3, as am. S.Q. 1992, c. 21, c. 23, c. 68 (formerly c. I-14).

Basic School Regulations for Preschool and Elementary School Education, R.R.Q., c. I-13.3, r.3.

Basic School Regulations for Secondary School Education, R.R.Q., c. I-13.3, r.4.

Ministère de l'Éducation du Québec. (1991). *General education in the youth sector: Preschool, elementary school and secondary school: 1992-93 directives* (AE-10-92-01A). Québec: Author.

Ministère de l'Éducation du Québec. (1992). *Instructions: 1992-93*. Québec: Author.

Regulation Respecting Regional Committees and the Central Parents' Committee of Every School Board of the Island of Montréal that Establishes Regions or Districts, R.R.Q., c. I-14, r.4.

Regulation Respecting School Committees and Parents' Committees, R.R.Q., c. I-14, r.3.

Regulation Respecting Student Transportation, O.C. 647-91, 8 May 1991, G.O.Q.1991.II.1699.

Entente entre le Comité patronal de négociation des commissions scolaires pour catholiques (CPNCC) et La Centrale d'enseignement du Québec (CEQ), 27 avril 1990.

Interpretation Act, R.S.Q. I-16.

Loi sur les services de santé et les services sociaux et modifiant diverse dispositions législatives, L.Q. 1991, c. 42.

Public Buildings Safety Act, R.S.Q., c. S-3, as am. S.Q. 1986, c. 58.

Application of a Building Code, O.C. 912-84, 11 April 1984, G.O.Q. 1984.II.1525.

Application of a Building Code - 1985, O.C. 2448-85, 27 November 1985, G.O.Q. 1985.II.4276.

Application of a Building Code - 1985 - Amendments, O.C. 1008-88, 22 June 1988, G.O.Q. 1988.II.2813.

Building Code, O.C. 3326-76, 29 September 1976, G.O.Q. 1976.II.6505.

Building Code, R.R.Q., c. S-3, r. 2.

Building Code - 1985 Regulation, 16 December 1986, G.O.Q. 1987.II.185.

Regulation Respecting Elevators, Escalators, Dumbwaiters, Moving Walks, Freight Platform Lifts and Elevating Devices for Disabled Persons, R.R.Q., c. S-3, r. 1.1.

(Règlement sur les ascenseurs ... personnes handicapées, erratum 3 août 1988, G.O.Q. 1988.II.4549.)

Regulation Respecting Safety in Public Buildings, R.R.Q., c. S-3, r. 4, as am. O.C. 2449-85, 27 November 1985, G.O.Q. 1985.II.4280.

Regulations Act, R.S.Q., c. R-18.1.

Youth Protection Act, R.S.Q., c. P-34.1, as am. S.Q. 1987, c. 44.

Administrative (Non-Regulatory) Documents

Commission des droits de la personne du Québec. (1987). Les notions de déficience et de désavantage dans la définition du motif handicap. *Droits et Libertés au Québec*, 3, 499-503.

Dupont, C. (1991). *L'adaptation scolaire et la loi sur l'instruction publique: Un défi légal, administratif ou éducatif?* Québec: Ministère de l'Éducation.

Entente entre le ministère de la Santé et des Services sociaux et le ministère de l'Éducation relativement aux services à l'intention des jeunes handicapés ou en difficulté d'adaptation d'âge scolaire. (1990). Québec: Government of Québec.

Ministère de la Santé et des Services sociaux du Québec. (1988). *L'intégration des personnes présentant une déficience intellectuelle: Un impératif humain et social.* Québec: Author.

Ministère de l'Éducation du Québec. (1978). *Primary and secondary education in Québec* (Green paper). Québec: Author.

- Ministère de l'Éducation du Québec. (1979). *The schools of Québec: Policy statement and plan of action*. Québec: Author.
- Ministère de l'Éducation du Québec. (1979). *The schools of Québec: Policy statement and plan of action: Children with difficulties in learning and adaptation*. Québec: Author.
- Ministère de l'Éducation du Québec. (1980). *Adapting schools to their milieux: Policy statement for schools in economically disadvantaged areas*. Québec: Author.
- Ministère de l'Éducation du Québec. (1986). *Individualized paths for learning: Policy statement*. Québec: Author.
- Ministère de l'Éducation du Québec. (1986). *School: A place to grow: Organizational framework for student services*. Québec: Author.
- Ministère de l'Éducation du Québec. (1990). *Special education: In light of the new Education Act* (consultation document). Québec: Author.
- Ministère de l'Éducation du Québec. (1992). *Educational success for all: Special education policy update*. Québec: Author.
- Ministère de l'Éducation du Québec. (1992). *Joining forces: Plan of action on educational success*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction de l'adaptation scolaire et des services complémentaires. (1992). *Cadre de référence pour l'établissement des plans d'intervention pour les élèves handicapés et les élèves en difficulté d'adaptation ou d'apprentissage*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction générale des programmes. (1987). *Individualized paths for learning: Guide to educational organization and planning*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction générale des programmes. (1988). *Individualized paths for learning: Students aged 16 to 18 life skills education and work skills education: Planning guide*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction générale des ressources informationnelles. (1990). *Effectif scolaire 1990-91: Guide de la déclaration d'effectif scolaire (DCS)*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction générale du financement (1992a). *Règles budgétaires pour l'année scolaire 1992-1993: Commissions scolaires*. Québec: Author.
- Ministère de l'Éducation du Québec, Direction générale du financement (1992b). *Règles budgétaires pour l'année scolaire 1992-1993: Commissions scolaires: Document*

complémentaire sur la méthode de calcul des paramètres d'allocation. Québec: Author.

Saskatchewan

Statutes and Other Regulatory Material

Education Act, R.S.S. 1978, c. E-0.1, office consolidation (1 September 1990).

Education Regulations, 1986, R.R.S. c. E-0.1, Reg. 1, as am. Sask. Reg. 117/86, Sask. Reg. 32/90.

Independent Schools Regulations, R.R.S. c. E-0.1, Reg. 11.

Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01.

Freedom of Information and Protection of Privacy Regulations, R.R.S. c. F-22.01, r. 1, as am. Sask. Reg. 53/92.

Interpretation Act, R.S.S. 1978, C. I-11

Regulations Act, S.S. 1989-90, c. R-16.1.

Saskatchewan Human Rights Code, R.S.S. 1978, c. S-24.1, as am. S.S. 1980-81, c. 41, c. 81, S.S. 1989-90, c. 23 (looseleaf edition, release no. 50).

Saskatchewan Human Rights Code Regulations, Sask. Reg. 216/79, as am. Sask. Reg. 258/79, Sask. Reg. 9/91.

Uniform Building and Accessibility Standards Act, S.S. 1983-84, c. U-1.2, as am. S.S. 1986-87-88, c. 60, S.S. 1989-90, c. 62.

Uniform Building and Accessibility Standards Regulations, R.R.S. U-1.2, r. 5.

Administrative (Non-Regulatory) Documents

Saskatchewan Education. (1989). *Special education policy manual*. Regina: Author.

Yukon

Statutes and Other Regulatory Material

Access to Information Act, R.S.Y. 1986, c. 1, as am. S.Y. 1989-90, c. 16.

Buildings Standards Act, S.Y. 1991, c. 1.

Buildings Standards Act Regulation, Y.T.O.I.C. 1992/77.

Education Act, S.Y. 1989-90, c. 25.

School Committee By-Election Regulations, M.O. 1990/02, Y.T. Gaz. 1990.II.211.

School Committee Regulations, Y.T.O.I.C. 1990/141.

School Council Election Regulations, Y.T.O.I.C. 1990/142.

Separate School Regulation, Y.T.O.I.C. 1991/231.

Human Rights Act, R.S.Y. 1986 (Supp.), c. 11.

Interpretation Act, R.S.Y. 1986, c. 93.

Regulations Act, R.S.Y. 1986, c. 151.

Administrative (Non-Regulatory) Documents

Yukon Department of Education. (1989, September). *Special education services provided by the Department of Education* (Administrative circular). Whitehorse: Author.

Yukon Department of Education. (1989, September). *Coordination of cases of student with special educational needs* (Administrative circular). Whitehorse: Author.

Yukon Department of Education. (1992). *An introduction to the Special Programs Branch*. Whitehorse: Author.

United States

Education for All Handicapped Children Act of 1975 (Pub. L. 94-142).

Individuals with Disabilities Education Act, 20 U.S.C., § 1400 *et seq.* (formerly *Education of the Handicapped Act*) (Supp. 1992).

United States Constitution.

Case Law*

- Action travail des femmes v. C.N.R.* (1987), 40 D.L.R. (4th) 193 (S.C.C.).
- Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. 143, [1989] 2 W.W.R. 289.
- L'Association A.D.G.Q. v. Catholic School Commission of Montreal* (1979), 112 D.L.R. (3d) 230 (Que. Sup. Ct.).
- Attis v. New Brunswick (School District 15)* (1991), 15 C.H.R.R. D/339 (N.B. H.R. Bd. of Inquiry), rev'd in part (*sub nom. Ross v. Moncton Board of School Trustees, District, No. 15*) (1991), 86 D.R.L. (4th) 749 (N.B.Q.B.).
- Blainey and Ontario Hockey Association, Re* (1986), 26 D.L.R. (4th) 728 (C.A. Ont.), rev'g 21 D.L.R. (4th) 599 (Ont. H.C.); original complaint subsequently upheld (1987), 9 C.H.R.R. D/4549 (Ont. H.R. Bd. of Inquiry).
- Bales v. S.D. #23 (Central Okanagan)*, [1984] 54 B.C.L.R. 203 (B.C.S.C.).
- Barger v. North York Board of Education* (27 June 1984) (Ont. Regional Special Education Trib.).
- Beattie v. Acadia University* (1976), 72 D.L.R. (3d) 718 (N.S. S.C.A.D.).
- Black v. Law Society of Alberta*, [1989] 4 W.W.R. 1 (S.C.C.), aff'g (1986), 27 D.L.R. (4th) 527 (Alta. C.A.).
- Bloedel v. University of Calgary* (1980), 1 C.H.R.R. D/25 (Alta. H.R. Bd. of Inquiry).
- Board of Education v. Rowley*, 458 U.S. 176 (1982).
- Bouchard v. School Commissioners of Saint-Mathieu-de-Dixville*, [1950] S.C.R. 479.
- Bourque v. Westlock School Division No. 37* (1986), 8 C.H.R.R. D/3746 (Alta. Q.B.).
- Brossard (Ville) v. Québec (Commission des droits de la personne)* (1988), 53 D.L.R. (4th) 609 (S.C.C.).
- Brown v. Board of Education*, 347 U.S. 483 (1954).
- Caldwell v. Stuart* [1984] 2 S.C.R. 603.
- Calgary Board of Education v. Deyell* (1984), 8 C.H.R.R. D/3668 (Alta. Q.B.), aff'd (*sub nom. Alberta (Department of Education) v. Alberta (Human Rights Commission)*) (1986), 27 D.L.R. (4th) 735, 9 C.H.R.R. D/4979 (Alta. C.A.).

* Although no attempt has been made to provide a reference to all sources reporting the cases listed below, when multiple citations were known to the researcher, they were included. In the case of multiple references to the same case, quotations in the text of the study always refer to the first listed citation.

Calgary Board of Education v. Thompson (6 April 1992), Calgary 9101/18563 (Alta. Q.B.).

Carrière v. County of Lamont (1978), Edmonton 107/134 (Alta. S.C.T.D.).

Casault v. Carleton Board of Education (1985) (Ont. Regional Special Education Trib.).

Central Alberta Dairy Pool v. Alberta (Human Rights Commission) (1990), 72 D.L.R. (4th) 417 (S.C.C.).

Christie v. York Corporation, [1940] S.C.R. 139.

Crawford v. Ottawa Board of Education (1970), 17 D.L.R. (3d) 271 (Ont. C.A.), aff'g (1970), 15 D.L.R. (3d) 141 (Ont. H.C.).

Cyr v. Commission scolaire régionale de la Péninsule (7 January 1992), Gaspé 110-05-000134-912, J.E. 92-641 (Que. Sup. Ct.).

Damus v. St. Boniface School Division No. 4 (1979), 108 D.L.R. (3d) 530 (Man. Q.B.).

Dennis v. U.S., 339 U.S. 162 (1950).

Dolmage v. Muskoka Board of Education (1985), 49 O.R. (2d) 546 (Ont. H.C.), aff'g Ont. Special Education Trib. (28 February 1984).

Doré v. Commission scolaire de Drummondville (1980), [1981] C.S.160, aff'd (1982), [1983] 4 C.H.R.R. 1377 (Que. C.A.).

Elwood v. Halifax County Bedford District School Board (1 June 1987), Minutes of Settlement (N.S.S.C.).

Ford v. A.G. Québec (1988), 54 D.L.R. (4th) 577, [1988] 2 S.C.R. 712.

Fripp v. Nipissing Board of Education (18 July 1986) (Ont. Regional Special Education Trib.).

Gay Alliance Toward Equality v. Vancouver Sun (1979), 97 D.L.R. (3d) 577 (S.C.C.).

Gillingham v. Westminster Guard & Patrol Ltd. (1991), 13 C.H.R.R. D/495 (B.C. H.R. Council.).

Godbout v. Commission scolaire de l'Asbesterie (27 January 1992), St-Francois 450-05-000423-919, J.E. 92-388 (Que. Sup. Ct.).

Govan Local School Board v. Last Mountain School Division No. 29 (1991), 83 D.L.R. (4th) 685 (Sask. C.A.).

Hardy and Minister of Education, Re (1985), 22 D.L.R. (4th) 394 (B.C.S.C.).

Hickling v. Lanark, Leeds and Genville County S.C.R.S.B. (1986), 7 C.H.R.R. D/3546 (Ont. H.R. Bd. of Inquiry), rev'd (1987), 40 D.L.R. (4th) 316 (Ont. H.C.), aff'd (1989), 57 D.L.R. (4th) 479 (Ont. C.A.).

Hobson v. British Columbia Institute of Technology (1988), 9 C.H.R.R. D/4666 (B.C. H.R. Council).

Hukowich v. Timmins Board of Education (13 September 1985) (Ont. Special Education Trib.).

Hysert v. Carleton Board of Education (8 April 1991), Ottawa 8752/88, Minutes of Settlement (Ont. H.C.).

Irwin Toy Ltd. v. A.G. Québec, [1989] 1 S.C.R. 927.

Jones v. R., [1986] 2 S.C.R. 284, 25 C.R.R. 63.

Jones v. Technical University of Nova Scotia (1990), 16 C.H.R.R. D/8 (N.S.S.C.T.D.).

Kavelman v. Waterloo County Board of Education (03 September 1985) (Ont. Regional Special Education Trib.).

L.L. and Commission scolaire Tracy, Re, [1986] D.L.Q. 478 (C.D.P.Q.).

Labute v. Windsor Board of Education (29 August 1988) (Ont. Special Education Trib.).

Leblanc and Saskatoon East School Division No. 41, Re (1980), 117 D.L.R. (3d) 600 (Sask. C.A.).

Lewis v. York Region Board of Education (10 September 1985) (Ont. Special Education Trib.).

Mahe v. Alberta [1990] 1 S.C.R. 342.

Matthews v. Memorial University of Newfoundland (1989), 15 C.H.R.R. D/399 (Nfld. H.R. Bd. of Inquiry).

Maw and Scarborough Board of Education, Re (1983), 43 O.R. (2d) 694 (Ont. H.C.), aff'd (*sub nom. Townsend and Board of Education for Etobicoke, Re*) (1986), 27 D.L.R. (4th) 103, 54 O.R. (2d) 449 (Ont. C.A.).

McKinney v. University of Guelph (1990), 76 D.L.R. (4th) 545 (S.C.C.).

McLeod v. Salmon Arm School Trustees (1952), 2 D.L.R. 562 (B.C.C.A.).

McMillan v. Commission scolaire de Sainte-Foy (1980), [1981] C.S. 172.

Myers v. Peel County Board of Education (1981), 123 D.L.R. (3d) 1, [1981] 2 S.C.R. 21.

Mills v. D.C. Board of Education, 348 F.Supp. 866 (1972).

Murray v. Brant County Board of Education (17 July 1986) (Ont. Special Education Trib.).

Ogg-Moss v. R. (1984), 11 D.L.R. (4th) 549 (S.C.C.).

Ontario Human Rights Commission v. Borough of Etobicoke (1982), 132 D.L.R. (3d) 14 (S.C.C.).

Ontario Human Rights Commission and Simpsons-Sears Ltd., Re (1985), 23 D.L.R. (4th) 321, [1985] 2 S.C.R. 536.

Operation Dismantle v. R., [1985] 1 S.C.R. 440.

Ormerod v. Wentworth County Board of Education (05 June 1987) (Ont. Special Education Trib.).

Osborne v. Canada, [1991] 2 S.C.R. 69.

Palmer v. Thompson, 403 U.S. 217 (1971).

Pandori v. Peel Board of Education (1990), 12 C.H.R.R. D/364 (Ont. H.R. Bd. of Inquiry); motion to quash refused (*sub nom. Peel Board of Education v. Ontario Human Rights Commission*) (1990), 72 O.R. (2d) 593 (Ont. H.C.); aff'd (1991), 80 D.L.R. (4th) 475 (Ont. H.C.); leave to appeal to Ont. C.A. refused (1991), 3 O.R. (3d) 531n (Ont. C.A.).

Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania, 334 F.Supp. 1257 (1971).

Peters and University Hospital Board, Re (1983), 147 D.L.R. (3d) 385 (Sask. C.A.).

Picard v. Commission scolaire Prince-Daveluy (1990), [1991] R.J.Q. 167 (Que. Sup. Ct), aff'd (17 September 1992), Arthabaska 200-09-000813-904 (Que. C.A.).

Plessy v. Ferguson, 163 U.S. 537 (1896).

Protection de la jeunesse - 460, [1990] R.J.Q. 2836 (Que. Sup. Ct).

Puran v. Commission scolaire les Écores (1989), [1990] R.J.Q. 576 (Que. Sup. Ct).

Québec (A.G.) v. Quebec Protestant School Boards (1984), 10 D.L.R. (4th) 321, [1984], 2 S.C.R. 66.

Québec (Commission des droits de la personne) v. Ville de Laval, [1983] C.S. 961.

Québec (Commission des droits de la personne) and Commission scolaire régionale Chauveau, Re (9 February 1993), Québec 200-53-000005-913, J.E. 93-445 (Que.

Human Rights Trib.); leave to appeal granted; rev'd in part re execution of judgement pending appeal.

Québec (Commission des droits de la personne) and Commission scolaire Saint-Jean-sur-Richelieu, Re, [1991] R.J.Q. 3003 (Human Rights Trib.); leave to appeal granted; rev'd in part re execution of judgement pending appeal (1992), 44 Q.A.C. 130 (Que. C.A.).

R. v. Big M Drug Mart, [1985] 1 S.C.R. 295.

R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713.

R. v. Oakes, [1986] 1 S.C.R. 103.

R. v. Rahey [1987] 1 S.C.R. 588.

R. v. Therens (1985), 18 D.L.R. (4th) 655, 1 S.C.R. 613.

R. v. Turpin, [1989] 1 S.C.R. 1296, 69 C.R. (3d) 97 (S.C.C.).

R. v. Varga (1985), 7 O.A.C. 350 (Ont. C.A.).

Razaqpur v. Carleton Roman Catholic Separate School Board (16 December 1988) (Ont. Special Education Trib.).

Reference Re Education Act of Québec, [1990] R.J.Q. 2498 (Que. C.A.).

Reference Re Public Service Employee Relations Act, [1987] 1 S.C.R. 313.

Roberts v. Ontario (Ministry of Health) (1989), 10 C.H.R.R. D/6353 (Ont. H.R. Bd. of Inquiry), aff'd (18 December 1990), Toronto 467/89 (Ont. H.C.).

Robichaud v. Commission scolaire numéro 39 (1989), 99 N.B.R. (2d) 341 (N.B.C.A.), rev'g 95 N.B.R. (2d) 375 (N.B.Q.B.); complaint subsequently settled out of court, *Canadian School Law Commentary* (1990, No. 4-10-7).

Robitaille-Rousseau v. Commission scolaire Montcalm (12 December 1990), Québec 200-05-002068-877, J.E. 91-378 (Que. Sup. Ct.).

Rowett v. York Region Board of Education (1989), 69 O.R. (2d) 543 (Ont. C.A.), rev'g 63 O.R. (2d) 767 (Ont. H.C.); Ont. Regional Special Education Trib. (June-August 1986).

R.W.D.S.U. v. Dolphin Delivery Ltd. (1986), 33 D.L.R. (4th) 174, [1986] 2 S.C.R. 573.

Saint-Martin v. Commission scolaire de Tracy (27 September 1989), Richelieu, 765-05-000240-892, (Que. Sup. Ct.).

Sainte-Foy (Commission scolaire) v. Office des personnes handicapées du Québec (14 May 1981), Québec 200-05-000414-818 (Que. Sup. Ct.).

Saskatchewan Human Rights Commission and Canadian Odeon Theatres Ltd., Re (1985), 18 D.L.R. (4th) 93 (Sask. C.A.), rev'g 137 D.L.R. (3d) 759 (Sask. Q.B.).

Saskatchewan Human Rights Commission and Department of Social Services, Re (1988), 52 D.L.R. (4th) 253 (Sask. C.A.).

Schmidt v. Calgary Board of Education. (1975), 57 D.L.R. (3d) 746, [1975] 6 W.W.R. 279 (Alta. S.C.), rev'd (1976), 72 D.L.R. (3d) 330, [1976] 6 W.W.R. 717 (Alta. C.A.).

Schewchuk v. Ricard, [1986] 4 W.W.R. 289 (B.C.C.A.).

Seneca College of Applied Arts and Technology v. Bhadauria (1981), 124 D.L.R. (3d) 193, [1981] 2 S.C.R. 181.

Sniders v. Nova Scotia (A.G.) (1988), 10 C.H.R.R. D/5785 (N.S.C.A.).

Sonnenberg v. Centre universitaire St-Louis-Mailler (1988), 9 C.H.R.R. D/5100 (N.B. H.R. Bd. of Inquiry).

Stone v. Toronto Board of Education (1985) (Ont. Regional Special Education Trib.).

Trofimenkoff v. Saskatchewan (Minister of Education) (1991), 4 W.W.R. 402, aff'd [1991] 6 W.W.R. 97 (Sask. C.A.).

University of British Columbia v. Berg (1991), 81 D.R.L.(4th) 497 (B.C.C.A.), leave to appeal to S.C.C. granted.

U.S. v. Texas, 342 F.Supp. 24 (E.D. Tex. 1972), aff'd 466 F.2d 518 (5th Cir. 1972).

Vanderwyk v. Etobicoke Board of Education (07 February 1984) (Ont. Special Education Trib.).

Winnipeg School Division No. 1 and Craton, Re (1985), 21 D.L.R. (4th) 1, [1985] 2 S.C.R. 150.

Winnipeg School Division No. 1 v. McArthur (1982), 133 D.L.R. (3d) 305, [1982] 3 W.W.R. 342 (Man. Q.B.).

Yarmoloy v. Banff School District No. 102 (1985), 63 A.R. 390 (Alta. Q.B.).

Secondary Source Materials

Periodicals

- Abberley, P. (1987). The concept of oppression and the development of a social theory of disability. *Disability, Handicap & Society*, 2, 5-19.
- Alwarid, S. (1990). A reply to Professor Burgess. *McGill Journal of Education*, 25, 403-406.
- Anderson, J.C. (1990b). English Catholic rights in Quebec. *The Canadian School Executive*, 9(10), 18-20.
- Anderson, J.C. (1990c). Sufficient accommodation and tuition for special education student. *The Canadian School Executive*, 9(8), 30-32.
- Anderson, J.C. (1991). School board has right to determine placement. *The Canadian School Executive*, 10(7), 31-32.
- Anderson, J.C. (1992). Closure of school for the deaf. *The Canadian School Executive*, 12(5), 32-34.
- Apple, M.W. (1988). What reform talk does: Creating new inequalities in education. *Educational Administration Quarterly*, 24, 272-281.
- Armour, L. (1975). Social principle, law and education. *Western Ontario Law Review*, 14, 131-148.
- Astin, A.W. (1990). Educational assessment and educational equity. *American Journal of Education*, 98, 458-478.
- Ayim, M. (1986). The need for the legal protection of children's rights in Canada. *Canadian Journal of Education*, 11, 338-352.
- Bacharach, S.B. (1988). Four themes of reform: An editorial essay. *Educational Administration Quarterly*, 24, 484-496.
- Baldwin, R.S. (1990-91). The legal dimensions of parental control in special education. *Education and Law Journal*, 3, 217-261.
- Barnartt, S.N. & Seelman, K. (1988). A comparison of federal laws toward disabled and racial/ethnic groups in the USA. *Disability, Handicap & Society*, 3, 37-48.
- Bartlett, L. (1989). Disciplining handicapped students: Legal issues in the light of Honig v. Doe. *Exceptional Children*, 55, 357-366.
- Barton, L. (1986). The politics of special education needs. *Disability, Handicap & Society*, 1, 273-290.

- Bator, P.M. (1986). Equality as a constitutional value. *Harvard Journal of Law and Public Policy*, 9, 21-24.
- Bayefsky, A.F. (1982). The Human Rights Committee and the case of Sandra Lovelace. *Canadian Yearbook of International Law*, 20, 244-266.
- Behn, R.D. (1985). Insight: Policy analysts, clients, and social scientists. *Journal of Policy Analysis and Management*, 4, 428-432.
- Berlin, M.L. (1984-85). Reasonable accommodation: A positive duty to ensure equal opportunity. 2 *Canadian Human Rights Yearbook*, 37-167.
- Berne, R. (1988). Equity issues in school finance. *Journal of Education Finance*, 14, 159-180.
- Biklen, D.P. (1988). The myth of clinical judgment. *Journal of Social Issues*, 44, 127-140.
- Black, W. & Smith, L. (1989). Note: Canadian citizenship and the right to practice law. *Canadian Bar Review*, 68, 591-615.
- Blackstone, W.T. (1969). Human rights, equality, and education. *Educational Theory*, 19, 288-298.
- Blits, J.H. (1990). Equality of opportunity and the problem of nature. *Educational Theory*, 40, 309-319.
- Bogart, W.A. (1986-87). "Appropriate and just": Section 24 of the Canadian Charter of Rights and Freedoms and the question of judicial legitimacy. *Dalhousie Law Journal*, 10, 81-102.
- Borsay, A. (1986). Personal trouble or public issue?: Towards a model of policy for people with physical and mental disabilities. *Disability, Handicap & Society*, 1, 179-195.
- Bovbjerg, R.R. (1985). What is policy analysis? *Journal of Policy Analysis and Management*, 5, 154-158.
- Bowd, A.D. (1992). Integration and mainstreaming in cultural context: Canadian and American approaches. *International Journal of Disability, Development and Education*, 39, 19-31.
- Bowman, M.J. (1991). Educational inequalities and opportunities in economic perspective. *Oxford Review of Education*, 17, 189-209.
- Brandt, R. (Ed.). (1992). Untracking for equity. [Special issue]. *Educational Leadership*, 50(2).

- Broadwell, C.A. & Walden, J.C. (1988). "Free appropriate public education" after Rowley: An analysis of recent court decisions. *Journal of Law and Education*, 17, 35-51.
- Brookover, W.B. & Lezotte, L. (1981). Educational equity: A democratic principle at the crossroads. *Urban Review*, 13, 65-71.
- Bruininks, R.H., Hauber, F.A. & Kudla, M.J. (1980). National survey of community residential facilities: A profile of facilities and residents in 1977. *American Journal of Mental Deficiency*, 84, 47-478.
- Bruininks, R.H., Thurlow, M.L. & Ysseldyke, J.E. (1992). Assessing the right outcomes: Prospects for improving education for youth with disabilities. *Education and Training in Mental Retardation*, 27, 93-100.
- Burbules, N.C. (1990). Equal opportunity or equal education. *Educational Theory*, 40, 221-226.
- Burbules, N.C., Lord, B.T. & Sherman, A.L. (1982). Equity, equal opportunity, and education. *Educational Evaluation and Policy Analysis*, 4, 169-187.
- Burgess, D.A. (1990). The Yukon Education Act: Commentary and discussion on recent legislation. *McGill Journal of Education*, 25, 175-186.
- Caron, M. (1984). L'utilisation du droit international aux fins d'interprétation et application de la Charte des droits et libertés de la personne du Québec. *Revue québécoise de droit international*, 1, 307-317.
- Caron, M. (1985). Le droit à l'égalité dans le Code civil et dans la Charte des droits et libertés de la personne. *Revue du Barreau*, 45, 345-375.
- Carrier, J.G. (1990). Special education and the explanation of pupil performance. *Disability, Handicap & Society*, 5, 211-226.
- Chalouh, L. (1992). Decentralizing control of education in Quebec: The orientation committee. *Canadian School Executive*, 12(6), 11-15.
- Chambers, J. (1987). Adequate education for all: A right, an achievable goal. *Harvard Civil Rights-Civil Liberties Law Review*, 22, 55-74.
- Chemerinsky, E. (1983). In defense of equality: A reply to professor Westen. *Michigan Law Review*, 81, 575-599.
- Clarke, B.R. & Winzer, M.A. (1983). A concise history of the education of the deaf in Canada. *The ACEHI Journal*, 9, 36-51.
- Cloutier, E. (1976). Les conceptions américaine, canadienne-anglaise et canadienne-française de l'idée d'égalité. *Canadian Journal of Political Science*, 9, 581-604.

- Cohen, D.K. & Garet, M.S. (1975). Reforming educational policy with applied social research. *Harvard Educational Review*, 45, 17-43.
- Cohen, M. & Bayefsky, A.F. (1983). The Canadian Charter of Rights and Freedoms and public international law. *Canadian Bar Review*, 61, 265-313.
- Coleman, J.S. (1968). The concept of equality of educational opportunity. *Harvard Educational Review*, 38, 7-22.
- Coleman, J.S. (1973). Equality of opportunity and equality of results. *Harvard Educational Review*, 43, 129-137.
- Coleman, P. & LaRocque, L. (1983). Linking educational research and educational policy via policy-relevant research. *Alberta Journal of Educational Research*, 29, 242-255.
- Colker, R. (1987). The anti-subordination principle: Applications. *Wisconsin Women's Law Journal*, 3, 59-80.
- Commission des droits de la personne du Québec. (1987). Les notions de déficience et de désavantage dans la définition du motif handicap. *Droits et Libertés au Québec*, 3, 499-503.
- Cook, P.J. & Vaupel, J.W. (1985). Insight: What policy analysts do: Three research styles. *Journal of Policy Analysis and Management*, 4, 427-428.
- Cruikshank, D. (1983). Human rights and Charter rights in special education. *B.C. Journal of Special Education*, 7, 205-220.
- Crux, S.C. (1989). Special education legislation: Humanitarianism or legalized deviance and control? *Education Canada*, 29 (1), 24-31.
- Cuban, L. (1990). Reforming again, again, and again. *Educational Researcher*, 19(1), 3-13.
- Cummins, J. (1986). Empowering minority students: A framework for intervention. *Harvard Educational Review*, 56, 18-36.
- D'Amato, A. (1983). Is equality a totally empty idea?. *Michigan Law Review*, 81, 600-603.
- Davis, A. & Smith, M. L. (1984). The history and politics of an evaluation: The Colorado Learning Disability Study. *Educational Evaluation and Policy Analysis*, 6, 27-37.
- Davis, W.E. (1989). The regular education initiative debate: Its promises and problems. *Exceptional Children*, 56, 440-446.

- Deno, E. (1970). Special education as developmental capital. *Exceptional Children*, 37, 229-237.
- Edmister, P. & Ekstrand, R. E. (1987). Preschool programming: Legal and educational issues. *Exceptional Children*, 54, 130-136.
- Eichler, M. (1988). The elusive ideal: Defining equality. *Canadian Human Rights Yearbook*, 5, 167-188.
- Elkin, W.F. (1982). Rethinking Bill 82: A critical examination of mandatory special education legislation in Ontario. *Ottawa Law Review*, 14, 314-339.
- Elliot, D.W. (1989). Comment: Andrews v. Law Society of British Columbia and section 15(1) of the Charter: The emperor's new clothes? *McGill Law Journal*, 35, 235-252.
- Ennis, R. (1976). Equality of educational opportunity. *Educational Theory*, 26, 3-18.
- Erler, E.J. (1982). Equal protection and personal rights: The regime of the "discrete and insular minority". *Georgia Law Review*, 16, 407-444.
- Fair procedures for school closures. (1991). *School Law Commentary*, 6(4), 1-3.
- Feinberg, W. (1975). Equality under two conflicting models of educational development. *Theory and Society*, 2, 183-210.
- Fine, M. & Asch, A. (1988). Disability beyond stigma: Social interaction, discrimination, and activism. *Journal of Social Issues*, 44, 3-21.
- Finn, C.E., Jr. (1988a). Rejoinder to Shavelson and Berliner. *Educational Researcher*, 17(1), 12-14.
- Finn, C.E., Jr. (1988b). What ails education research. *Educational Researcher*, 17(1), 5-8.
- Firestone, W.A., Furman, S.H. & Kirst, M.W. (1991). State educational reform since 1983: Appraisal and the future. *Educational Policy*, 5, 233-250.
- Fleming, T. (1981). The equality question: Uncertainties in educational thought and democratic idealism. *Journal of Educational Thought*, 5, 137-145.
- Foster, W.F. (1992-93). Child abuse in schools: The statutory and common law obligations of educators. *Education and Law Journal*, 4, 1-59.
- Foster, W.F. & Pinheiro, G. (1988). Constitutional protection of the right to an education. *Dalhousie Law Journal*, 11, 759-832.
- Frank, J.P. & Munro, R.F. (1950). The original understanding of "equal protection of the laws". *Columbia Law Review*, 50, 131-169.

- Frederickson, H.G. (1990). Public administration and social equity. *Public Administration*, 50, 228-237.
- Friedman, L.S. & Wiseman, M. (1978). Understanding the equity consequences of school finance reform. *Harvard Educational Review*, 48, 193-225.
- Fulcher, G. (1990). Students with special needs: Lessons from comparisons. *Journal of Educational Policy*, 5, 347-358.
- Gartner, A. & Lipsky, D.K. (1987). Beyond special education: Toward a quality system for all students. *Harvard Educational Review*, 57, 367-395.
- Gent, P.J. & Mulhauser (1988). Public integration of students with handicaps: Where it's been, where it's going, and how it's getting there. *Journal of the Association of Persons with Severe Handicaps*, 13, 188-196.
- George, R.P. (1989). Individual rights, collective interests, public law, and American politics. *Law and Philosophy*, 8, 245-261.
- Gerber, D.A. (1990). Listening to disabled people: The problem of voice and authority in Robert B. Edgerton's *The cloak of competence*. *Disability, Handicap & Society*, 5, 3-23.
- Gibson, D. (1989). Non-destructive Charter responses to legislative inequalities. *Alberta Law Review*, 27, 181-190.
- Gilbert, F. (1986). Integrated education in Québec: Breaking the barriers. *Entourage*, 1(4), 6-10.
- Ginsberg, M.I. & Lesser, L. (1981). Current developments in economic and social rights: A United States perspective. *Human Rights Law Journal*, 2, 237-256.
- Giroux, H.A. (1984). Public philosophy and the crisis in education. *Harvard Educational Review*, 54, 186-194.
- Glass, G.V. (1987). What works: Politics and research. *Educational Researcher*, 16(3), 5-10.
- Goguen, L. & Leslie, P. (1980). Special education administrative policy development: Toward comprehensive education for all children. *Special Education in Canada*, 54, 22-24.
- Gold, M. (1982). A principled approach to equality rights. *Supreme Court Law Review*, 4, 131-161.
- Gold, M. (1989). Comment: *Andrews v. Law Society of British Columbia*. *McGill Law Journal*, 34, 1063-1079.

- Goldberg, S.S. (1989). The failure of legalization in education; Alternative dispute resolution and the Education for all Handicapped Children Act of 1975. *Journal of Law and Education*, 18, 441-454.
- Goldberg, S.S. & Kuriloff, P.J. (1991). Evaluating the fairness of special education hearings. *Exceptional Children*, 57, 546-555.
- Greenawalt, K. (1983). How empty is the idea of equality? *Columbia Law Review*, 83, 1167-1185.
- Grey, J.H. (1988). Equality rights: An analysis. *Revue de droit, Université de Sherbrooke*, 20, 183-230.
- Guba, E.G. (1984). The effect of definitions of "policy" on the nature and outcomes of policy analysis. *Educational Leadership*, 42 (2), 63-70.
- Guess, D, Benson, H.A. & Siegel-Causey, E. (1985). Concepts and issues related to choice-making and autonomy among persons with severe disabilities. *Journal of the Association of Persons with Severe Handicaps*, 10, 79-86.
- Gunther, G. (1972). The Supreme Court, 1971 Term - foreward: In search of evolving doctrine on a changing court: A model for a newer equal protection. *Harvard Law Review*, 86, 1-106.
- Guthrie, J.T. (1984). Research: Policy studies. *Journal of Reading*, 27, 670-672.
- Guthrie, J.W. (1980). An assessment of educational policy research. *Educational Evaluation and Policy Analysis*, 2(5), 41-55.
- Haggerty, D.E. & Sacks, E.S. (1977). Education of the handicaped: Towards a definition of an appropriate education. *Temple Law Quarterly*, 50, 961-994.
- Hagerty, G.J. & Abramson, M. (1987). Impediments to implementing national policy change for mildly handicpped students. *Exceptional Children*, 53, 315-323.
- Hahn, H. (1986). Public support for rehabilitation programs: The analysis of U.S. disability policy. *Disability, Handicap & Society*, 1, 121-137.
- Hahn, H. (1988). The politics of physical differences: Disability and discrimination. *Journal of Social Issues*, 44, 39-47.
- Hammill, D.D. (1990). On defining learning disabilities: An emerging consensus. *Journal of Learning Disabilities*, 23, 74-84.
- Hanson, E.M. (1991). Educational restructuring in the USA: Movements of the 1980's. *Journal of Educational Administration*, 29(4), 30-38.

- Harris, J.J. III, Ford, D.Y., Wilson, P.I. & Sandidge, R.F. (1991). What should our public choose? The debate over school choice policy. *Education and Urban Society*, 23, 159-174.
- Hayward, A. (1985). International law and the interpretation of the Canadian Charter of Rights and Freedoms: Uses and justifications. *University of Western Ontario Law Review*, 23, 9-20.
- Heidenheimer, A.J. (1986). Comparative public policy studies examined: An odyssey in four parts. *International Social Science Journal*, 38, 159-177.
- Henkin, L. (1981). Economic-social rights as 'rights': A United States perspective. *Human Rights Law Journal*, 2, 223-236.
- Heward, C. & Lloyd-Smith, M. (1990). Assessing the impact of legislation on special education policy: An historical analysis. *Journal of Education Policy*, 5, 21-36.
- Higgins, S. & Barresi, J. (1979). The changing focus of public policy. *Exceptional Children*, 45, 270-277.
- Higgins, S., Ross, J.W. & Hockenberry, C. (1979). Options and alternative: Policy decisions yet to be made. *Exceptional Children*, 46, 34-39.
- Hodapp, R.M. & Zigler, E. (1992). Integration and development: Reconciling two conflicting perspectives. *McGill Journal of Education*, 27, 279-291.
- Hodder, C.J. (1984). The Education Act (Ontario): A review. *Interchange*, 15 (3), 44-53.
- Hogg, P.W. (1990). Interpreting the Charter of Rights: Generosity and justification. *Osgoode Hall Law Journal*, 28, 817-838.
- Horowitz, H.W. (1966). Unseparate but unequal. *UCLA Law Review*, 13, 1147-1172.
- Horth, R. (1988). La longue marche de démarginalisation des personnes vivant avec des différences au niveau intellectuel. *Canadian Journal of Special Education*, 4, 177-180.
- Howe, K.R. (1988). Against the quantitative-qualitative incompatibility thesis - or dogmas die hard. *Educational Researcher*, 17(8), 10-16.
- Howe, K.R. (1989). In defense of outcomes-based conceptions of equal educational opportunity. *Educational Theory*, 39, 317-336.
- Howe, K.R. (1990). Equal opportunity is equal education (within limits). *Educational Theory*, 40, 227-230.
- Howe, K.R. (1992). Getting over the quantitative-qualitative debate. *American Journal of Education*, 100, 236-256.

- Howe, K.R. & Miramontes, O.B. (1991). A framework for ethical deliberation in special education. *Journal of Special Education*, 25, 7-25.
- Hoyle, J. (1992). Stress in mothers of the disabled. *Canadian Women's Studies*, 12(3), 67-71.
- Hubsch, A.W. (1989). Education and self-government: The right to education under state constitutional law. *Journal of Law and Education*, 18, 93-140.
- Hudson, B. (1988). Do people with a mental handicap have rights? *Disability, Handicap and Society*, 3, 227-237.
- Hunter, I.A. (1976). Human rights legislation in Canada. *University of Western Ontario Law Review*, 15, 21-58.
- Hyatt, S.K. (1981). Litigating the rights of handicapped children to an appropriate education: Procedures and remedies. *UCLA Law Review*, 29, 1-66.
- Iannaccone, L. (1981). Problems in legislation as a vehicle for educational change. *Exceptional Education Quarterly*, 2(2), 69-79.
- James, T. (1991). State authority and the politics of educational change. *Review of Research in Education*, 17, 169-224.
- Jencks, C. (1973). Inequality in retrospect. *Harvard Educational Review*, 43, 138-164.
- Jones, T.H. (1981). Equal educational opportunity revisited. *Journal of Education Finance*, 6, 471-484.
- Jongbloed, L. & Crichton, A. (1990). Difficulties in shifting from individualistic to socio-political policy regarding disability in Canada. *Disability, Handicap & Society*, 5, 25-36.
- Jung, D. & Kirp, D. (1984). Law as an instrument of educational policy-making. *The American Journal of Comparative Law*, 32, 625-678.
- Kaestle, C.F. (1993). The awful reputation of educational research. *Educational Researcher*, 22(1), 23, 26-31.
- Karagianis, L.D. & Nesbit, W.C. (1980). Special education: Public policy in Canada. *Education Canada*, 20 (2), 5-10.
- Karst, K. (1983). Why equality matters. *Georgia Law Review*, 17, 245-289.
- Kauffman, J.M. (1980). Where special education for disturbed children is going: A personal view. *Exceptional Children*, 46, 522-527.

- Kaufman, M.J., Gortlieb, Agard, J.A. & Kukic, M.B. (1975). Mainstreaming: Toward an explication of the construct. *Focus on Exceptional Children*, 7(3), 1-12.
- Keeton, A. (1979-80). Special education: A right or a privilege in Ontario? *Interchange*, 10(3), 66-77.
- Keogh, B.K. (1990). Narrowing the gap between policy and practice. *Exceptional Children*, 57, 186-190.
- Kimmins, R., Hunter, W.J. & MacKay, A.W. (1985). Educational legislation and litigation pertaining to the practice of school psychology in Canada. *Canadian Journal of School Psychology*, 1, 1-10.
- Kirp, D.L. (1968). The poor, the schools and equal protection. *Harvard Educational Review*, 38, 635-668.
- Kirp, D.L. (1973). Schools as sorters: The constitution and policy implications of student classification. *University of Pennsylvania Law Review*, 121, 705-797.
- Kirp, D.L. (1977). Law, politics and equal educational opportunity: The limits of judicial involvement. *Harvard Educational Review*, 47, 117-137.
- Kiviniemi, M. (1986). Public policies and their targets: A typology of the concept of implementation. *International Social Science Journal*, 38, 251-265.
- Kornisar, B.P. & Coombs, J.R. (1964). The concept of equality in education. *Studies in Philosophy and Education*, 2, 223-244.
- Kozma, R.B. & Croninger, R.G. (1992). Technology and the fate of at-risk students. *Education and Urban Society*, 24, 440-453.
- Lapati, A.D. (1976). Education: Privilege, claim, or right? *Educational Theory*, 26, 19-28.
- Lea, S.J. (1988). Mental retardation: Social construction or clinical reality? *Disability, Handicap & Society*, 3, 63-69.
- Leinhardt, G. & Pally, A. (1982). Restrictive educational settings: Exile or haven? *Review of Educational Research*, 52, 557-578.
- Liang, S.S. (1989-90). Case note: Special education: Robichaud v. Commission scolaire #39. *Education and Law Journal*, 2, 339-341.
- Lieberman, L.M. (1985). Special education and regular education: A merger made in heaven? *Exceptional Children*, 51, 513-516.
- Lieberman, M. (1959). Equality of educational opportunity. *Harvard Educational Review*, 29, 167-183.

- Little, D.M., Williams, T.L., Ward, L.S., Fraser, B.L. & Churchill, M.A. (1991). Two solitudes: To integrate or not to integrate? That is not the question. To mainstream or not to mainstream? That is the question: A survey and status report of policy and praxis in Canada. *Canadian Journal of Special Education*, 7, 1-15.
- Lowenthal, B. (1990). The United States regular education initiative: Flames of controversy. *B.C. Journal of Special Education*, 14, 273-277.
- Lucas, B.G., Lusthaus, C.S. & Gibbs, H. (1978). Parent advisory committees in Quebec: An experiment in mandated parental participation. *Interchange*, 10, 26-40.
- Lucas, J.R. (1965). Against equality. *Philosophy*, 40, 296-307.
- Lucas, J.R. (1977). Against equality again. *Philosophy*, 52, 255-280.
- Lufler, H.S. Jr. (1980). Compliance and the courts. *Review of Research in Education*, 8, 336-358.
- Lusthaus, E. (1985a). Euthanasia of persons with severe handicaps: Refuting the rationalizations. *Journal of the Association of Persons with Severe Handicaps*, 10, 87-94.
- Lusthaus, E. (1985b). Involuntary euthanasia and current attempts to define persons with mental retardation as less than human. *Mental Retardation*, 23, 148-154.
- Lusthaus, E. (1991). Drastic actions: The results of viewing people as less than human. *Developmental Disabilities Bulletin*, 19, 28-48.
- Lusthaus, E., Gazith, K. & Lusthaus, C. (1992). Each belongs: A rationale for full inclusion. *McGill Journal of Education*, 27, 293-310.
- Lusthaus, E., Hanrahan, J. & Lusthaus, C. (1979). Issues in improving quality of life. *Mental Retardation*, 29(3), 24-27.
- Lusthaus, E. & Lusthaus, C. (1978). The dignity of risk. *Exceptional Parent*, 8(3), 30-32.
- MacKay, A.W. (1984b). Public education in Nova Scotia: Legal rights, fleeting privileges or political rhetoric? *Dalhousie Law Journal*, 8, 137-183.
- MacKay, A.W. (1985). Case Comment: Bales v. Bd. of Sch. Trustees: Parents, School Boards and Reasonable Special Education. *Administrative Law Reports*, 8, 225-230.
- MacKay, A.W. (1986b). The equality provisions of the Charter and education: A structural analysis. *Canadian Journal of Education*, 11, 293-312.
- MacKay, A.W. (1987a). The Charter of Rights: Blessing or curse. *Canadian Journal for Exceptional Children*, 3, 118-127.

- MacKay, A.W. (1987b). The Elwood case: Vindicating the educational rights of the disabled. *Canadian Journal of Special Education*, 3, 103-116.
- MacKay, A.W. & Krinke, G. (1987). Special education and the Charter: The right to equal benefit of the law - A response. *Canadian Journal of Law and Society*, 2, 73-95.
- Madden, N.A. & Slavin, R.E. (1983). Mainstreaming students with mild handicaps: Academic and social outcomes. *Review of Educational Research*, 53, 519-569.
- Magsino, R.F. (1982a). Rights in Canadian education. *The CSSE Yearbook*, 9, 37-48.
- Magsino, R.F. (1982b). Students, parents, educators: An approach to conflict of rights. *Interchange*, 13(3), 1-17.
- Magsino, R.F. (1988-89). Student rights and the Charter: An analysis of legal and extra-legal considerations. *Education and Law Journal*, 1, 233-260.
- Magsino, R.F. (1992). Education rights under the Charter. *Canadian School Executive*, 12(6), 28-30.
- Marjoribanks, K. (1975). Equal educational opportunity: A definition. *Oxford Review of Education*, 1, 25-26.
- Marjoribanks, K. (1991). Education and equality: A review. *Oxford Review of Education*, 17, 211-221.
- Manley-Casimir, M.E. (1974). School governance as discretionary justice. *School Review*, 82, 347-362.
- Manley-Casimir, M.E. (1979). The rights of the child at school. *Education Canada*, 19(3), 9-13, 25.
- Manley-Casimir, M.E. (1982). Canadian and U.S. legal traditions: Implications for administrative practice. *The Canadian School Executive*, 2(5), 18-21.
- Manley-Casimir, M.E. & Housego, I.E. (1970). Equality of educational opportunity: A Canadian perspective. *Alberta Journal of Educational Research*, 26, 79-87.
- Manley-Casimir, M.E. & Pitsula, P. (1988-89). The Charter, culture and the public school curriculum: Emerging perspectives and guidelines. *Education and Law Journal*, 1, 37-69.
- Manley-Casimir, M.E. & Sussel, T.A. (1986b). The equality provisions of the Canadian Charter of Rights and educational policy: Preparations for implementation. *Interchange*, 17(3), 1-14.

- Marcil-Lacoste, L. (1989-1990). Les problèmes contemporains de l'égalité. *Canadian Human Rights Yearbook*, 6, 47-63.
- Marcoulides, G.A. & Heck, R.H. (1990). Educational policy issues for the 1990's: Balancing equity and excellence in implementing the reform agenda. *Urban Education*, 25, 304-316.
- Martin, Y.M. (1992-93). A comparative legislative analysis of parental participation policy in British Columbia, Alberta and Quebec. *Education and Law Journal*, 4, 61-85.
- McBride, S. (1989a). Rights of special needs students. *B.C. Journal of Special Education*, 13, 101-108.
- McBride, S. (1990). Leadership roles and responsibilities in operationalizing the Royal Commission: A special education perspective. *B.C. Journal of Special Education*, 14, 1-11.
- McCarthy, M.M. (1986). Research in educational administration: Promising signs for the future. *Educational Administration Quarterly*, 22, 3-20.
- McCarthy, M.M. & Thomas, S.B. (1977). The right to an education: New trends emerging from special education litigation. *NOLPE School Law Journal*, 7, 76-87.
- McConnell, H. & Pyra, J. (1989-90). The impact of some aspects of the Constitution and the Canadian Charter of Rights and Freedoms on education. *Education and Law Journal*, 2, 1-48.
- McDonnell, L.M. (1988). Can education research speak to state policy? *Theory into Practice*, 27, 91-97.
- McDonnell, L.M. & Elmore, R.F. (1987). Getting the job done: Alternate policy instruments. *Educational Evaluation and Policy Analysis*, 9, 133-152.
- McLaughlin, M. (1987). Learning from experience: Lessons from policy implementation. *Educational Evaluation and Policy Analysis*, 9, 171-178.
- McLaughlin, R.N. (1979). English, American and Canadian views of equality before the law. *Chitty's Law Journal*, 27, 1-12.
- Mehan, H. (1992). Understanding inequality in schools: The contribution of interpretive studies. *Sociology of Education*, 65, 1-20.
- Meisels, S.J. (1985). A functional analysis of the evolution of public policy for handicapped young children. *Educational Evaluation and Policy Analysis*, 7, 115-126.

- Menacker, J. (1990). Equal educational opportunity: Is it an issue of race or socioeconomic status? *Urban Education*, 25, 317-325.
- Minow, M. (1985). Learning to live with the dilemma of difference: Bilingual and special education. *Law and Contemporary Problems*, 48, 157-211.
- Morel, A. (1986). La coexistence des Chartes canadienne et québécoise: Problèmes d'interaction. *Revue de droit, Université de Sherbrooke*, 17, 49-83.
- Mostert, M.P. (1991). The regular education initiative: Strategy for denial of handicap and the perpetuation of difference. *Disability, Handicap & Society*, 1, 91-101.
- Murphy, J. (1989). Educational reform and equity: A reexamination of prevailing thought. *Planning and Changing*, 20, 172-179.
- Murray-Register, B. (1981). Public policy on special education in Canada. *Education and Training of the Mentally Retarded*, 16 (1), 87-90.
- Nagel, S.S. (1985). An overview of the policy studies literature: 1970-1985. *Behavioral and Social Sciences Librarian*, 4(4), 49-59.
- National Joint Committee on Learning Disabilities. (1992). School reform: Opportunities for excellence and equity for individuals with learning disabilities. *Journal of Learning Disabilities*, 25, 276-280.
- Nelson, C.E., Roberts, J., Maederer, C.M., Wertheimer, B. & Johnson, B. (1987). The utilization of social science information by policymakers. *American Behavioral Scientist*, 30, 569-577.
- Nicholls, A.C. & Martin, Y.M. (1983). Judicial decisions and the public schools. *Canadian Journal of Education*, 8, 97-116.
- Note: Developments in the law - equal protection. (1969). *Harvard Law Review*, 82, 1065-1192.
- Note: Enforcing the right to an "appropriate" education: The Education for All Handicapped Children Act of 1975. (1979). *Harvard Law Review*, 92, 1103-1125.
- Nwabuogu, M.N. (1984). On the meaning and application of equal educational opportunity: A review article. *Journal of Education Finance*, 10, 64-82.
- Obiakor, F.E., Patton, J.M. & Ford, B.A. (1992). Issues in the education of African-American youth in special education settings [Special Issue]. *Exceptional Children*, 59(2).
- Odden, A. (1987). Education reform and services to poor children: Can the two policies be compatible? *Educational Evaluation and Policy Analysis*, 9, 231-243.

- Oliver, M. (1986). Social policy and disability: Some theoretical issues. *Disability, Handicap & Society, 1*, 5-17.
- O'Reilly, R.R. (1991). The role of the courts in placement decisions. *Exceptionality Education Canada, 1*, 1-23.
- Ornstein, A.C. (1982). Education of the disadvantaged: A 20-year review. *Educational Research, 24*, 197-211.
- Osborne, A.G., Jr. (1988). The Supreme Court's interpretation of the Education for all Handicapped Children Act. *Remedial and Special Education, 9*(3), 21-25.
- Osborne, A.G., Jr. (1992). Legal standards for an appropriate education in the post-Rowley era. *Exceptional Children, 58*, 488-494.
- Parker-Jenkins, M. & Osborne, J.A. (1985). Rights in conflict: The case of Margaret Caldwell. *Canadian Journal of Education, 10*, 66-76.
- Perry, M.J. (1979). Modern equal protection: A conceptualization and appraisal. *Columbia Law Review, 79*, 1073-1084.
- Pitsula, P. & Manley-Casimir, M.E. (1989-90). The Charter, educational administration and U.S. case-law: Contrasting legal norms and traditions. *Education and Law Journal, 2*, 49-72.
- Poirier, D. & Goguen, L. (1986). The Canadian Charter of Rights and the right to education for exceptional children. *Canadian Journal of Education, 11*, 231-244.
- Porter, G.L. & Richler, D. (1990). Changing special education practice: Law, advocacy and innovation. *Canadian Journal of Community Mental Health, 9* (2), 65-78.
- Prasse, D.P. (1988). Legal influence and educational policy in special education. *Exceptional Children, 54*, 302-309.
- Prasse, D.P. & Reschly, D.J. (1986). Larry P.: A case of segregation, testing, or program efficacy? *Exceptional Children, 52*, 333-346.
- Prunty, J. (1985). Signposts for a critical educational policy analysis. *Australian Journal of Education, 29*, 133-140.
- Ray, W.S., Garber, M. & Wilson, A. (1990-91). Placement under Bill 82: A legal analysis. *Education and Law Journal, 3*, 263-284.
- Reese, W.J. (1988). Public schools and the common good. *Educational Theory, 38*, 431-440.
- Reynolds, M.C. (1962). A framework for considering some issues in special education. *Exceptional Children, 28*, 367-70.

- Reynolds, M.C., Brandl, J. & Copeland, W.C. (Eds.).(1983). Symposium on public policy and educating handicapped persons. [Special Issue]. *Policy Studies Review*, 2(Special #1).
- Richards, S.K. & Williams, L.G. (1973). Comment: Toward a legal theory of the right to education of the mentally retarded. *Ohio State Law Journal*, 34, 554-585.
- Rioux, M.H. (1991). Exchanging charity for rights: A challenge for the 1990's. *Entourage*, 6(2), 3-5.
- Robitaille-Rousseau, M. (1984). At school together. *Just Cause*, 2(3), 7-8.
- Rodda, M., Grove, C. & Finch, B.M. (1986). Mainstreaming and the education of deaf students. *Alberta Journal of Educational Research*, 32, 140-153.
- Ross, J. (1986). Levels of review in American equal protection and under the Charter. *Alberta Law Review*, 24, 441-461.
- Rossi, P.H., Wright, J.D. & Wright, S.R. (1978). The theory and practice of applied social research. *Evaluation Quarterly*, 2, 171-191.
- Rubenson, K. (1989). The functions of policy oriented social research. *Policy Explorations*, 4(2/3), 4-10.
- Ruff, K. (1986). Hôpital Rivière-des-prairies - Not a place to call home. *Entourage*, 1(2), 6-12.
- Salomon, A. & Comeau, J. (1992). L'école et la famille: Ensemble ou chacun de son côté? *Education Canada*, 32(3), 11-15.
- Savage, L. (1988). Equality and excellence in educational discourse: The case of British Columbia. *Policy Explorations*, 3(3), 9-18.
- Scheer, J. & Groce, N. (1988). Impairment as a human constant: Cross-cultural and historical perspectives on variation. *Journal of Social Issues*, 44, 23-37.
- Schmeiser, D.A. & Wood, R.J. (1984-85). Student rights under the Charter. *Saskatchewan Law Review*, 49, 49-67.
- Scotch, R.K. (1988). Disability as the basis for a social movement: Advocacy and the politics of definition. *Journal of Social Issues*, 44, 159-172.
- Semmel, M.L., Gottlieb, J. & Robinson, N.M. (1979). Mainstreaming: Perspectives on educating handicapped children in the public school. *Review of Research in Education*, 7, 223-279.
- Shavelson, R.J. & Berliner, D.C. (1988). Erosion of the educational research infrastructure: A reply to Finn. *Educational Researcher*, 17(1), 9-12.

- Sheppard, N.C. (1989). Comment: Recognition of the disadvantaging of women: The promise of *Andrews v. Law Society of British Columbia*. *McGill Law Review*, 35, 207-234.
- Sheriff, P.E. (1983). State theory, social science, and government commissions. *American Behavioral Scientist*, 26, 669-680.
- Shor, I. (1986). Equality is excellence: Transforming teacher education and the learning process. *Harvard Educational Review*, 56, 406-426.
- Skrlic, T.M. (1991). The special education paradox: Equity as the way to excellence. *Harvard Educational Review*, 62, 148-206.
- Slavin, R.E. (1990). On making a difference. *Educational Researcher*, 19(3), 30-34, 44.
- Smith, J.A.C. (1980). The right to an appropriate education: A comparative study. *Ottawa Law Review*, 12, 367-391.
- Smith, J.A.C. (1981). The Education Amendment Act. *Ottawa Law Review*, 13, 199-209.
- Smith, L. (1991). The equality rights. *Manitoba Law Journal*, 20, 377-391.
- Smith, W.J. (1991a). The backdrop to mainstreaming: The legal framework. *Professional Forum*, 1(3), 2-3.
- Smith, W.J. (1991-92). Rights and freedoms in education: The application of the Charter to public school boards. *Education and Law Journal*, 4, 107-161.
- Smith, W.J. (1992c). Special education policy in Québec: Evolution or status quo? *Education Canada*, 32(1), 40-48.
- Smith, W.J. (1993). Case comment: Inclusive education for students with disabilities. *Education and Law Journal*, 5, 167-178.
- Smith, W.J. (in press). The funding of inclusive education: A case study of critical policy issues. *Exceptionality Education Canada*.
- Snow, J. (1991). Dreaming, speaking, and creating: What I know about community. *Developmental Disabilities Bulletin*, 19, 12-27.
- St Claire, L. (1986). Mental retardation: Impairment or handicap? *Disability, Handicap & Society*, 1, 233-243.
- Steinbach, A. (1991). The closing of an institution: Life in the William F. Roberts. *Entourage*, 6(3), 10-11.

- Stratford, B. (1991). Human rights and equal opportunities for people with mental handicap - with particular reference to Down syndrome. *International Journal of Disability, Development and Education*, 39, 3=13.
- Strike, K.A. (1985). Is there conflict between equity and excellence? *Educational Evaluation and Policy Analysis*, 7, 409-416.
- Sufficient accommodation and tuition. (1989). *School Law Commentary*, 4(4), Case file no. 4-4-2.
- Sussel, T. & Manley-Casimir, M.E. (1987). Special education and the Charter: The right to equal benefit of the law. *Canadian Journal of Law and Society*, 2, 45-71.
- Sutton, R.E. (1991). Equity and computers in the schools: A decade of research. *Review of Educational Research*, 61, 475-503.
- Swanson, A.D. (1989). Restructuring educational governance: A challenge for the 1990's. *Educational Administration Quarterly*, 25, 268-293.
- Tabari, P.J. (1989). Recent developments: The Supreme Court, 1987 term. *Harvard Journal of Law and Public Policy*, 12, 235-246.
- Taylor, J.M., Tucker, J.A. & Galagan, J.E. (1986). The Luke S. class action suit: A lesson in system change. *Exceptional Children*, 52, 376-382.
- Taylor, R.L. (1980). Use of the AAMD classification system: A review of recent research. *American Journal of Mental Deficiency*, 85(3), 116-119.
- Taylor, S.J. (1988). Caught in the continuum: A critical analysis of the least restrictive environment. *Journal of the Association of Persons with Severe Handicaps*, 13, 41-53.
- The best interests standard: Is it appropriate in mass education [Special issue]? (1992). *EduLaw School Newsletter*, 3(8).
- Thibert, C. (1979). L'éducation spéciale au Québec hier et aujourd'hui. *McGill Journal of Education*, 14, 275-288.
- Thurston, P.W. (1980). Is good law good education? *Review of Research in Education*, 8, 296-335.
- Tillery, W.L. & Carfioli, J.C. (1986). Frederick L.: A review of the litigation in context. *Exceptional Children*, 52, 367-375.
- Treherne, D. & Rawlyk, S. (1979). Canadian legislative processes: Special education. *McGill Journal of Education*, 14, 265-274.

- Turnbull, A.P. (1982). Preschool mainstreaming: A policy and implementation analysis. *Educational Evaluation and Policy Analysis*, 4, 281-291.
- Turnbull, A.P. & Turnbull, H.R. III. (1985). Developing independence. *Journal of Adolescent Health Care* 6, 108-119.
- Turnbull, H.R. III (1986). Appropriate education and Rowley. *Exceptional Children*, 52, 347-352.
- Tyack, D.B. (1976). Ways of seeing: An essay on the history of compulsory schooling. *Harvard Educational Review*, 46, 355-389.
- Tyack, D.B. (1991). Public school reform: Policy talk and institutional practice. *American Journal of Education*, 100, 1-19.
- Tyack, D.B. & James, T. (1986). State government and American public education: Exploring the "primeval forest". *History of Educational Quarterly*, 26, 39-69.
- Vergason, G.A. & Anderegg, M.L. (1989). Save the baby! A response to "Integrating the children of the second system". *Phi Delta Kappan*, 71, 61-63.
- Verstegen, D.A. (1990). Invidiousness and inviolability in public education finance. *Educational Administration Quarterly*, 26, 205-234.
- Vickers, D.H. (1981). Special students, special laws and special programs. *B.C. Journal of Special Education*, 5 (2), 92-102.
- Vickers, J.M. (1983). Major equality issues of the Eighties. *Canadian Human Rights Yearbook*, 1, 47-82.
- Walmsley, S.A. (1978). A life and death issue. *Mental Retardation*, 16, 387-389.
- Wang, M.C., Reynolds, M.C. & Walberg, H.J. (1989b). Who benefits from segregation and murky water? *Phi Delta Kappan*, 71, 64-67.
- Weinberg, L.A. (1981). The problem of defending equal rights for the handicapped. *Educational Theory*, 31, 177-187.
- Weiss, C.H. (1982). Knowledge utilization in decision making: Reflections on the terms of the discussion. *Research in Sociology of Education and Socialization*, 3, 17-41.
- Weiss, C.H. (1989). Congressional committees as users of analysis. *Journal of Policy Analysis and Management*, 8, 411-431.
- Welton, J. & Evans, J. (1986). The development and implementation of special education policy: Where did the 1981 Act fit in? *Public Administration*, 64, 209-227.
- Westen, P. (1982). The empty idea of equality. *Harvard Law Review*, 95, 537-596.

- Westen, P. (1983a). The meaning of equality in law: Science, math and morals: A reply. *Michigan Law Review*, 81, 604-663.
- Westen, P. (1983b). To lure the tarantula from its hole: A response. *Columbia Law Review*, 83, 1186-1208.
- Wiener, J. & Siegel, L. (1992). A Canadian perspective on learning disabilities. *Journal of Learning Disabilities*, 25, 340-350, 371.
- Wilgosh, L. (1990). Issues in education and daily living for families of children with disabilities. *Alberta Journal of Educational Research*, 4, 299-309.
- Winzer, M. (1982). Bill 82: Idea and reality. *B.C. Journal of Special Education*, 6 (2), 159-169.
- Winzer, M. (1983). Educational reform in Upper Canada: John Barrett McGann and the "deaf mutes". *The ACEHI Journal*, 9, 155-171.
- Wolfensberger, W. (1981). The extermination of handicapped people in World War II Germany. *Mental Retardation*, 19, 1-7.
- Wood, F. H., Johnson, J. L. & Jenkins, J. R. (1986). The Lora case: Nonbiased referral, assessment, and placement procedures. *Exceptional Children*, 52, 323-331.
- Woodill, G. (1991). The emergence of special education in Ontario, 1799-1924. *Canadian Children*, 16, 75-97.
- Yanok, J. (1986). Free appropriate public education for handicapped children: Congressional intent and judicial interpretation. *Remedial and Special Education*, 7(2), 49-53.
- Yeakey, C.C. (1981). Schooling: A political analysis of the distribution of power and privilege. *Oxford Review of Education*, 7, 173-191.
- Yeakey, C.C. (1983). Emerging policy research in educational research and decisionmaking. *Review of Research in Education*, 10, 255-301.
- Yeakey, C.C. (1987). Critical thought and administrative theory: Conceptual approaches to the study of decision-making. *Planning and Changing*, 18, 23-32.
- Yeakey, C.C. & Johnston, G.S. (1985). High school reform: A critique and a broader construct of social reality. *Education and Urban Society*, 17, 157-170.
- Yell, M.L. (1989). Honig v. Doe: The suspension and expulsion of handicapped students. *Exceptional Children*, 56, 60-69.
- Yudof, M.G. (1973). Equal educational opportunity. *Texas Law Review*, 51, 411-504.

Yudof, M.G. (1984). Education for the handicapped: Rowley in perspective. *American Journal of Education*, 92, 163-177.

Zigler, E., Hodapp, R.M. & Edison, M.R. (1990). From theory to practice in the care and education of mentally retarded individuals. *American Journal on Mental Retardation*, 95, 1-12.

Zirkel, P.A. (1989). Sink or swim in the mainstream. *Phi Delta Kappan*, 70, 411-413.

Books, Reports and Other Publications

- Abella, R.S. (1984). *Equality in employment* (Report of the Royal Commission on Equality in Employment). Ottawa: Ministry of Supply and Services.
- Abeson, A. & Ballard, J. (1976). State and federal policy for exceptional children. In F.J. Weintraub, A. Abeson, J. Ballard & M.L. LaVor (Eds.), *Public policy and the education of exceptional children* (pp. 83-95). Reston, VA: The Council for Exceptional Children.
- Alston, P., Parker, S. & Seymour, J. (Eds.). (1992). *Children, rights, and the law*. Oxford: Clarendon Press.
- Anderson, G. (1990). *Fundamentals of educational research*. London: Falmer Press.
- Anderson, J.C. (1986). Effect of the Charter of Rights and Freedoms on provincial school legislation. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 183-201). Calgary: Detselig.
- Anderson, J.C. (1990a). Administration and school boards issues. In G.-A. Beaudoin (Ed.), *As the Charter evolves* (pp. 205-219). Cowansville Qc: Yvon Blais.
- Anderson, J.C. & Anderson, J.E. (1979). *Natural justice: Its definition and application to the termination of school system employees* (Paper presented for the Second Congress of the Canadian School Trustees' Association). Edmonton: Alberta School Trustees' Association.
- Apple, M.W. (1989). How equality has been redefined in the conservative restoration. In W.G. Secada (Ed.), *Equity in education* (pp. 7-25). New York: Falmer Press.
- Asch, A. (1989). Has the law made a difference?: What some disabled students have to say. In D.K. Lipsky & A. Gartner (Eds.), *Beyond separate education: Quality education for all* (pp. 181-205). Baltimore: Brookes Publishing.
- Baker, D. (1990). Anticipating the next generation of equality issues in employment for disabled people in Canada. In R.L. Cholewinski (Ed.), *Human rights in Canada: Into the 1990's and beyond* (pp. 41-55). Ottawa: University of Ottawa, Human Rights Research and Education Centre.
- Ballance, E. & Kendall, D. C. (1969). *Report on legislation and services for exceptional children in Canada* (rev. ed.). Canada: Canadian Committee of the Council for Exceptional Children.
- Bargen, P.F. (1961). *The legal status of the Canadian public school pupil*. Toronto: MacMillan.

- Barton, L. & Smith, M. (1989). Equality, rights and primary education. In C. Roaf & H. Bines (Eds.), *Needs, rights and opportunities: Developing approaches to special education* (pp. 76-89). London: Falmer Press.
- Bastarache, M. (Ed.). (1987) *Language Rights in Canada*. Montréal: Yvon Blais.
- Bastarache, M. (1989). Education rights of provincial official language minorities (section 23). In G.-A. Beaudoin & E. Ratushny (Eds.), *The Canadian Charter of Rights and Freedoms* (2nd ed., pp. 687-705). Toronto: Carswell.
- Bateman, B.D. & Herr, C.M. (1981). Law and special education. In J.M. Kauffman & D.P. Hallahan (Eds.), *Handbook of special education* (pp. 330-360). Englewood Cliffs, NJ: Prentice-Hall.
- Bayefsky, A. F. (1985). Defining equality rights. In A. F. Bayefsky & M. Eberts (Eds.), *Equality rights and the Canadian Charter of Rights and Freedoms* (pp. 1-79). Toronto: Carswell.
- Bayefsky, A. (1986). The principle of equality or non-discrimination in international law: Implications for equality rights in the Charter. In L. Smith (Ed.), *Righting the balance: Canada's new equality rights* (pp. 117-143). Saskatoon: Canadian Human Rights Reporter Inc.
- Beachell, L. & Peters, Y. (1990). Omnibus legislation: A strategy for the nineties. In R.L. Cholewinski (Ed.), *Human rights in Canada: Into the 1990's and beyond* (pp. 57-62). Ottawa: University of Ottawa, Human Rights Research and Education Centre.
- Beaudoin, G.-A. & Ratushny, E. (1989). *The Canadian Charter of Rights and Freedoms* (2nd ed.). Toronto: Carswell.
- Bedau, H.A. (1967). Egalitarianism and the idea of equality. In J.R. Pennock & J.W. Chapman (Eds.), *Nomos IX: Equality* (Yearbook of the American Society for Political and Legal Philosophy, pp. 3-27). New York: Atherton Press.
- Berelson, B. (1954). Content Analysis. In G. Lindzey (Ed.), *Handbook of social psychology: Vol 1: Theory and method* (pp. 488-522). Reading, MA: Addison-Wesley.
- Best, J.W. (1977). *Research in education* (3rd ed.). Englewood Cliffs, NJ: Prentice-Hall.
- Beuree, G. (1989). Special education in Nova Scotia: Nova Scotia revisited. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 117-125). Vancouver: Centre for Human Development and Research.
- Bezeau, L.M. (1989). *Educational administration for Canadian teachers*. Toronto: Copp Clark Pitman.

- Biklen, D.P. (1989). Making difference ordinary. In S. Stainback, W. Stainback & M. Forest (Eds.), *Educating all students in the mainstream of regular education* (pp. 235-248). Baltimore: Paul Brookes.
- Biklen, D.P. (1991). Social policy, social systems, and educational practice. In L.H. Meyer, C.A. Peck & L. Brown (Eds.), *Critical issues in the lives of people with severe disabilities* (pp. 387-389). Baltimore: Paul Brookes.
- Biklen, D.P. (1992). *Schooling without labels: Parents, educators, and inclusive education*. Philadelphia: Temple University Press.
- Black's law dictionary* (1990). (6th ed.). St. Paul, MN: West.
- Blatt, B. (1970). *Exodus from pandemonium: Human abuse and a reformation of public policy*. Boston: Allyn & Bacon Inc.
- Blatt, B. (1981). *In and out of mental retardation: Essays on educability, disability, and human policy*. Baltimore: University Park Press.
- Bogdan, R. & Taylor, S.J. (1982). *The social meaning of mental retardation*. Toronto: University of Toronto Press.
- Bosset, P. (1989). *La discrimination indirecte dans le domaine de l'emploi: Aspects juridiques*. Cowansville QC: Yvon Blais.
- Bosset, P. & Caron, M. (1989). Un nouvel outil de lutte contre la discrimination: Les programmes d'accès à l'égalité. In Les éditions Thémis (Ed.). *De la Charte québécoise des droits et libertés: Origine, nature et défis* (pp. 151-204). Montréal: Thémis.
- Boyd, W.L. (1988). Policy analysis, educational policy, and management: Through a glass darkly? In N. Boyan (Ed.), *The handbook of research in educational administration* (pp. 501-522). New York: Longman.
- Brisson, D.W. (1978). Manitoba - special needs working group. In Canadian Education Association (Ed.), *Educational research and policy formation* (CEA/CERA Research Conference, Calgary, September, 1977, pp. 53-62). Toronto: Canadian Education Association.
- Brown, A.F. (1991). *Legal handbook for school administrators* (2nd ed.). Toronto: Carswell.
- Brun, H. (1992). *Chartes des droits de la personne: Legislation, jurisprudence et doctrine* (5th ed.). Montreal: Wilson & Lafleur.
- Canadian Education Statistics Council. (1990). *A statistical portrait of elementary and secondary education in Canada*. Ottawa: Statistics Canada.

- Canadian guide to uniform legal citation* (McGill Law Journal, 3rd ed.). (1992). Toronto: Carswell.
- Carlson, L. (1989). Special education in Saskatchewan. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 39-45). Vancouver: Centre for Human Development and Research.
- Carmichael, D., Pocklington, T. & Pyrcz, G. (1991). *Democracy and rights in Canada*. Toronto: Harcourt Brace Jovanovich.
- Caron, M. (1988). The Charte québécoise, complément indispensable de la Charte constitutionnelle. In G.-A. Beaudoin (Ed.), *Your clients and the Charter: Liberty and equality* (pp. 301-320). Cowansville Qc: Yvon Blais.
- Castellani, P.J. (1987). *The political economy of developmental disabilities*. Baltimore: Paul Brookes.
- CEC Model Statutes. (1976). In F.J. Weintraub, A. Abeson, J. Ballard & M.L. LaVor (Eds.), *Public policy and the education of exceptional children* (pp. 195-211). Reston, VA: The Council for Exceptional Children.
- Champoux-Lesage, P. (1989). Special education in Quebec: Summary of present and future prospects. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (J. Edwards, trans., pp. 193-102). Vancouver: Centre for Human Development and Research.
- Chénard, D. (1991). Le contrôle judiciaire de l'administration scolaire et l'intégration des élèves intellectuellement handicapés. In P. Chagnon, (Ed.). *Développements récents en droit scolaire (1991)* (Service de la formation permanente du Barreau du Québec, pp. 237-287). Cowansville: Yvon Blais.
- Coleman, J.S. (1972). *Policy research in the social sciences*. Morristown, NJ: General Learning Press.
- Coleman, J.S., Campbell, E.Q., Hobson, C.J., McPartland, J., Mood, A.M., Weinfeld, F.D. & York, R.L. (1966). *Equality of educational opportunity*. Washington, D.C.: U.S. Government Printing Office.
- Commission on Emotional and Learning Disorders in Children. (1970). *One million children*. Toronto: Author.
- Con-Blowers, E.A. & McLeod, E.J. (1989). Special education in Alberta. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 19-27). Vancouver: Centre for Human Development and Research.
- Conseil supérieur de l'éducation du Québec. (1977). *The education of Quebec children suffering from learning or emotional disorders*. Québec: Author.

- Conseil supérieur de l'éducation du Québec. (1980). *L'égalisation des chances en éducation* (Recommendation to the Minister of Education). Québec: Auteur.
- Conway, T. (1990). Background reading: The crisis of policy sciences. In S. Brooks & A.-G. Gagnon (Eds.), *Social scientists, policy, and the state* (pp. 159-177). New York: Praeger.
- Côté, H. (1984). *Le droit à l'éducation élémentaire publique au Québec*. Cowansville, Qc: Yvon Blais.
- Côté, P.-A. (1991). *The interpretation of legislation in Canada* (2nd ed.). Cowansville: Yvon Blais.
- Council of Ministers of Education (Canada). (1989). *Special education sharing project: Summary of responses*. Toronto: Author.
- Council of Ministers of Education (Canada). (1992). *School Achievement Indicators Program: Bulletin No. 2*. Toronto: Author.
- Cruickshank, D. (1986). Charter equality rights: The challenge to education law and policy. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 51-76). Calgary: Detselig.
- Csapo, M. (1980). Collect call to Ottawa. In M. Csapo & L. Goguen (Eds.), *Special education across Canada* (pp. 215-229). Vancouver: Centre for Human Development and Research.
- Csapo, M. (1989). From minor stream to mainstream: A sociological perspective. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 243-266). Vancouver: Centre for Human Development and Research.
- Csapo, M. & Goguen, L. (Eds.).(1980). *Special education across Canada: Issues and concerns for the 1980's*. Vancouver: Centre for Human Development and Research.
- Csapo, M. & Goguen, L. (Eds.).(1989). *Special education across Canada: Issues and concerns for the 1990's*. Vancouver: Centre for Human Development and Research.
- Department of Education and Science. (1978). *Special educational needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People* (The Warnock Report). London: HMSO.
- Derr, R.L. (1973). *A taxonomy of social purposes of public schools*. New York: David McKay Company.
- Dessent, T. (1988). *Making the ordinary school special*. London: Falmer Press.

- Dolmage, W.R. (1990). *A study of the roles of interest groups and the courts in Canadian educational policy development*. Unpublished doctoral dissertation, University of Saskatchewan, Saskatoon.
- Donahue, G. (1989). Special education in the Northwest Territories. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 29-37). Vancouver: Centre for Human Development and Research.
- Donahue, H.M. (1991). The number of students with special needs. In W.J. Smith (Ed.), *Students with special needs: A challenge for everyone* (report presented to the Québec Minister of Education, pp. 13-45). Montréal: The Learning Centre of Québec.
- Donahue, H.M. & Smith, W.J. (1986). *Every child's right to a free and appropriate education: A study of the funding of special education in Québec*. Montreal: Service des relations professionnelles Talleyrand Inc.
- Dorsen, N. (1967). A lawyer's look at egalitarianism and equality. In J.R. Pennock & J.W. Chapman (Eds.), *Nomos IX: Equality* (Yearbook of the American Society for Political and Legal Philosophy, pp. 28-37). New York: Atherton Press.
- Downey, L.W. (1988). *Policy analysis in education*. Calgary: Detselig.
- Dukelow, D.A. & Nuse, B. (1991). *The dictionary of Canadian law*. Toronto: Carswell.
- Dworkin, R. (1977). Social sciences and constitutional rights: The consequences of uncertainty. In R.C. Rist & R.J. Anson (Eds.), *Education, social science, and the judicial process* (pp. 20-31). New York: Teachers College Press.
- Dye, T.R. (1975). *Understanding public policy* (2nd ed.). Englewood Cliffs NJ: Prentice-Hall.
- Elliott, R. (1987). *Litigating intelligence*. Dover, MA: Auburn House.
- Engel, D.M. (1991, March). *Law in the domains of everyday life: The architecture of community and difference*. Unpublished manuscript, State University of New York at Buffalo, School of Law.
- Equality for all: Report of the Parliamentary Committee on Equality Rights* (1985). Ottawa: Supply and Services Canada.
- Esbensen, S.B. (1991). Student rights in Canada: Beyond equality. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (2nd ed., pp. 238-247). Toronto: Harcourt Brace Jovanovich.
- Evaluation of educational policy and reforms in Canada and the USA*. (1990, March). Report of a seminar sponsored by UNESCO and the International Association for Educational Assessment at Educational Testing Service, Princeton NJ.

- Evans, I.M. (1991). Testing and diagnosis: A review and evaluation. In L.H. Meyer, C.A. Peck & L. Brown (Eds.), *Critical issues in the lives of people with severe disabilities* (pp. 25-44). Baltimore: Paul Brookes Publishing Co.
- Ferguson, D.L. (1989). Severity of need and educational excellence: Public school reform and students with disabilities. In D. Biklen, D. Ferguson & A. Ford (Eds.), *Schooling and disability* (Eighty-eighth yearbook of the National Society for the Study of Education, pp. 25-58). Chicago: The University of Chicago Press.
- Ferguson, D.L., Ferguson, P.M. & Bogdan, R.C. (1987). If mainstreaming is the answer, what is the question? In V. Richardson-Koehler (Ed.), *Educators' handbook: A research perspective* (pp. 394-419). New York: Longman.
- Ferguson, P.M. & Asch, A. (1989). Lessons from life: Personal and parental perspectives on school, childhood, and disability. In D. Biklen, D. Ferguson & A. Ford (Eds.), *Schooling and disability* (Eighty-eighth yearbook of the National Society for the Study of Education, pp. 108-140). Chicago: The University of Chicago Press.
- Fleming, W.G. (1974). *Educational opportunity: The pursuit of equality*. Scarborough ON: Prentice Hall.
- Fogarty, K.H. (1987). *Equality rights and their limitations in the Charter*. Toronto: Carswell.
- Forest, M. (1991). It's about relationships. In L.H. Meyer, C.A. Peck & L. Brown (Eds.), *Critical issues in the lives of people with severe disabilities* (pp. 399-407). Baltimore: Paul Brookes Publishing Co.
- Forest, M. & Lusthaus, E. (1987). The kaleidoscope: A challenge to the cascade. In M. Forest (Ed.), *More education integration*. Toronto: G. Allan Roehrer Institute.
- Foucher, P. (1990). L'article 23 de la Charte: Bilan de sept années d'interprétation judiciaire. In G.-A. Beaudoin (Ed.), *As the Charter evolves* (pp. 161-203). Cowansville Qc: Yvon Blais.
- Frankena, W.K. (1962). The concept of social justice. In R.B. Brandt (Ed.), *Social justice* (pp. 1-29). Englewood Cliffs NJ: Prentice Hall.
- Freeland, J. (1991). Quality for what and quality for whom. In J. Chapman, L. Angus & G. Burke (Eds.), *Improving the quality of Australian schools* (pp. 60-82). Hawthorn Victoria: Australian Council for Educational Research.
- Fuchs, D. & Fuchs, L. (1991). Framing the REI debate: Abolitionists versus conservationists. In J.W. Lloyd, N.N. Singh, & A.C. Repp (Eds.), *The regular education initiative: Alternative perspectives on concepts, issues and models* (pp. 241-255). Sycamore IL: Sycamore Publishing Co.

- Gaffield, C. & West, W.G. (1978). Children's rights in the Canadian context. In H. Berkeley, C. Gaffield & W.G. West (Eds.), *Childrens' rights: Legal and educational issues* (pp. 3-14). Toronto: OISE Press.
- Gagnon, A.-G. (1990). The influence of social scientists on public policy. In S. Brooks & A.-G. Gagnon (Eds.), *Social scientists, policy, and the state* (pp. 1-18). New York: Praeger.
- Gall, G.L. (1990). *The Canadian legal system* (3rd ed.). Toronto: Carswell.
- Gall, R.S. (1993). Special needs pupils and their educational rights: An analysis of major contemporary developments. In L.L. Stewin & S.J.H. McCann, (Eds.), *Contemporary educational issues: The Canadian mosaic* (2nd ed., pp. 300-322). Toronto: Copp Clark.
- Garant, P. (1985). *Droit administratif* (2nd ed.). Cowansville: Yvon Blais.
- Garon, M. (1992). *La déficience intellectuelle et le droit à l'intégration scolaire*. Montréal: Yvon Blais.
- Gaudreau, J. & Canevaro, A. (1990). *L'éducation des personnes handicapées hier et aujourd'hui*. Montréal: Université de Montréal, Faculté des sciences de l'éducation.
- Gearheart, B.R. (1974). *Organization and administration of educational programs for exceptional children*. Springfield, IL: Thomas.
- Gibson, D. (1990). *The law of the Charter: Equality rights*. Toronto: Carswell.
- Gilbert, V.K., Martin, R.A. & Sheehan, A.T. (1991). *A hard act to follow: Notes on Ontario school law* (14th ed.). Toronto: OISE Press.
- Giles, W.H. (1988). *Schools and students*. Toronto: Carswell.
- Gilhool, T.K. (1976). Changing public policies: Roots and forces. In M.C. Reynolds (Ed.), *Mainstreaming: Origins and implications* (pp. 6-12). Reston, VA: Council for Exceptional Children.
- Gilhool, T.K. (1989). The right to an effective education: From Brown to PL 94-142 and beyond. In D.K. Lipsky & A. Gartner (Eds.), *Beyond separate education: Quality education for all* (pp. 243-253). Baltimore: Brookes Publishing.
- Godsell, E.J. (1992). *Special education tribunal adjudications in Ontario: A legal and policy analysis*. Unpublished doctoral dissertation, University of Toronto.
- Goguen, L. J. (1980). Right to education. In M. Csapo & L. Goguen (Eds.), *Special education across Canada* (pp. 175-183). Vancouver: The Centre for Human Development and Research.

- Good, T.L. & Brophy, J.E. (1986). School effects. In M.C. Wittrock (Ed.), *Handbook of research on teaching* (3rd ed., pp. 318-341). New York: MacMillan.
- Gordon, E.W. (1972). Toward defining equality of educational opportunity. In F. Mosteller & D.P. Moynihan (Eds.), *On equality of educational opportunity* (pp. 423-434). New York: Vintage Books.
- Gotlieb, A.E. (1968). *Canadian treaty-making*. Toronto: Butterworths.
- Guba, E.G. & Lincoln, Y.S. (1989). *Fourth generation evaluation*. Newbury Park CA: Sage.
- Hahn, H. (1989). The politics of special education. In D.K. Lipsky & A. Garner (Eds.), *Beyond separate education: Quality education for all* (pp. 225-241). Baltimore: Brookes Publishing.
- Hallahan, D.P. & Kauffman, J.M. (1982). *Exceptional children* (2nd ed.). Englewood Cliffs, NJ: Prentice-Hall.
- Harvey, G. & Klein, S.S. (1989). Understanding and measuring equity in education: A conceptual framework. In W.G. Secada (Ed.), *Equity in education* (pp. 43-67). New York: Falmer Press.
- Hawkesworth, M.E. (1988). *Theoretical issues in policy analysis*. Albany NY: State University of New York Press.
- Henchey, N. & Burgess, D. (1987). *Between past and future: Québec education in transition*. Calgary: Detselig Enterprises.
- Hocutt, A., Martin, E. & McKinney, J.D. (1991). Historical and legal context of mainstreaming. In J.W. Lloyd, N.N. Singh, & A.C. Repp (Eds.), *The regular education initiative: Alternative perspectives on concepts, issues and models* (pp. 17-28). Sycamore IL: Sycamore Publishing Co.
- Hogg, P.W. (1989). A comparison of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. In G.-A. Beaudoin & E. Ratushny (Eds.), *The Canadian Charter of Rights and Freedoms* (2nd ed., pp. 1-20). Toronto: Carswell.
- Hogg, P.W. (1992). *Constitutional law of Canada* (3rd ed.). Toronto: Carswell.
- Hohfeld, W.N. (1964). Fundamental legal conceptions. In W.W. Cook (Ed.), *Fundamental legal conceptions* (pp. 23-114). New Haven CT: Yale University Press. (Original work published in 1913).
- Holland, D.C. & McGowan, J.P. (1989). *Delegated legislation in Canada*. Toronto: Carswell.

- House, P. & Coleman J. (1980). Realities of public policy analysis. In S.S. Nagel (Ed.), *Improving policy analysis* (pp. 183-199). Beverly Hills, CA: Sage Publications.
- Hurlbert, E.L. & Hurlbert, M.A. (1992). *School law under the Charter of Rights and Freedoms* (2nd ed.). Calgary: University of Calgary Press.
- Hurn, C.J. (1985). *The limits and possibilities of schooling: An introduction to the sociology of education* (2nd ed.). Boston: Allyn & Bacon.
- Irving, C. (1986). The Quebec Bill 101 experience: A case study. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 115-123). Calgary: Detselig.
- Jory, D. (1991). Principles of change: A parent's perspective on the education system. In G.L. Porter & D. Richler (Eds.), *Changing Canadian schools: Perspectives on disability and inclusion* (pp. 75-88). Toronto: G. Allan Roeher Institute.
- Juriansz, R. (1988). Section 15 and the human rights codes. In G.-A. Beaudoin (Ed.), *Your clients and the Charter: Liberty and equality* (pp. 321-367). Cowansville Qc: Yvon Blais.
- Keene, J. (1992). *Human rights in Ontario* (2nd ed.). Toronto: Carswell.
- Kirp, D.L. (1983). Professionalism as a policy choice: British special education in comparative perspective. In J.G. Chambers & W.T. Hartman (Eds.), *Special education policies: Their history, implementation and finance* (pp. 74-112). Philadelphia: Temple University Press.
- Knopff, R. (1989). *Human rights and social technology: The new war on discrimination*. Ottawa: Carleton University Press.
- Krinke, G. (1989). Integration of the disabled: An emerging equality issue. In G.M. Dickinson & A.W. MacKay (Eds.). (1989). *Rights, freedoms and the education system in Canada: Cases and materials* (pp. 266-273). Toronto: Emond Montgomery.
- Krippendorff, K. (1980). *Content analysis: An introduction to its methodology*. Beverly Hill, CA: Sage Publications.
- Kysela, G.M., French, F. & Brenton-Haden, S. (1993). Legislation and policy involving children with special needs. In L.L. Stewin & S.J.H. McCann, (Eds.), *Contemporary educational issues: The Canadian mosaic* (2nd ed., pp. 279-299). Toronto: Copp Clark.
- Laughlin, W.J. & Young, G.A. (1989, May). *Review of selected cases in special education*. Paper presented at CEA Short Course in Educational Leadership, Banff, AL.

- Lawson, R.F. & Woock, R.R. (1987). Policy and policy actors in Canadian education. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (pp. 133-142). Toronto: Harcourt, Brace, Jovanovich.
- Lazerson, M. (1983). The origins of special education. In J.G. Chambers & W.T. Hartman (Eds.), *Special education policies: Their history, implementation and finance* (pp. 15-47). Philadelphia: Temple University Press.
- Lederman, S.N. & Ristic, A. (1986). The relation between federal and provincial human rights legislation and Charter equality rights. In L. Smith (Ed.), *Righting the balance: Canada's new equality rights* (pp. 83-116). Saskatoon: Canadian Human Rights Reporter Inc.
- Lepofsky, M.D. & Bickenbach, J.E. (1985). Equality rights and the physically handicapped. In A. F. Bayefsky & M. Eberts (Eds.), *Equality rights and the Canadian Charter of Rights and Freedoms* (pp. 323-380). Toronto: Carswell.
- Lessard, C. (1991). Equality and inequality in Canadian education. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (2nd ed., pp. 142-157). Toronto: Harcourt, Brace, Jovanovich.
- Levesque, M. (1979). *L'égalité des chances en éducation*. Québec: Conseil supérieur de l'éducation du Québec.
- Lincoln, Y.S. & Guba, E.G. (1985). *Naturalistic inquiry*. Beverly Hills, CA: Sage Publications.
- Lindquist, E.A. (1990). The third community, policy inquiry, and social scientists. In S. Brooks & A.-G. Gagnon (Eds.), *Social scientists, policy, and the state* (pp. 21-51). New York: Praeger.
- Lippman, L. & Goldberg, I.I. (1973). *Right to education: Anatomy of the Pennsylvania case and its implications for exceptional children*. New York: Teachers College Press.
- Lipsky, D.K. (1989). The role of parents. In D.K. Lipsky & A. Gartner (Eds.), *Beyond separate education: Quality education for all* (pp. 159-179). Baltimore: Brookes Publishing.
- Lipsky, D.K. & Gartner, A. (1989a). (Eds.). *Beyond separate education: Quality education for all*. Baltimore: Brookes Publishing.
- Lipsky, D.K. & Gartner, A. (1989b). Building the future. In D.K. Lipsky & A. Gartner (Eds.), *Beyond separate education: Quality education for all* (pp. 255-290). Baltimore: Brookes Publishing.

- Lipsky, D.K. & Gartner, A. (1989c). The current situation. In D.K. Lipsky & A. Gartner (Eds.), *Beyond separate education: Quality education for all* (pp. 3-24). Baltimore: Brookes Publishing.
- Lloyd, J.W., Singh, N.N. & Repp, A.C. (Eds.). (1991). *The regular education initiative: Alternative perspectives on concepts, issues and models*. Sycamore IL: Sycamore Publishing Co.
- Lusthaus, E. (1987). The rights of persons with disabilities. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (pp. 247-262). Toronto: Harcourt Brace Jovanovich.
- Machan, T.R. (1989). *Individuals and their rights*. La Salle IL: Open Court Publishing.
- MacKay, A.W. (1984a). *Education law in Canada*. Toronto: Emond-Montgomery.
- MacKay, A.W. (1986a). The Charter of Rights and Freedoms: Implications for students. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 9-50). Calgary: Detselig.
- MacKay, A.W. (1991). The rights paradigm in the age of the Charter. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (2nd ed., pp. 202-216). Toronto: Harcourt, Brace, Jovanovich.
- MacKay, A.W. & Sutherland, L.L. (1992). *Teachers and the law: A practical guide for educators*. Toronto: Emond Montgomery.
- MacLelland, E. (1989). Special education on Prince Edward Island. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 127-131). Vancouver: Centre for Human Development and Research.
- MacMillan, D.L., Keogh, B.K. & Jones, R.L. (1986). Special education research on mildly handicapped learners. In M.C. Wittrock (Ed.), *Handbook of research on teaching* (3rd ed., pp. 686-724). New York: MacMillan.
- Magnuson, R. (1980). *A brief history of Québec education: From New France to parti québécois*. Montreal: Harvest House.
- Magnuson, R. (1985). La qualité de l'éducation et la socialisation de l'enfant en Europe et en Amérique du nord. In G. Bibeau (Ed.), *La qualité en éducation: Enjeux et perspectives: Actes du colloque organisé par la Faculté des sciences de l'éducation de l'Université de Montréal tenu à Montréal les 10 et 11 novembre 1983*. Montréal: Université de Montréal, Faculté des sciences de l'éducation.
- Magsino, R.F. (1978). Student rights in Canada: Nonsense upon stilts? In H. Berkeley, C. Gaffield & W.G. West. (Eds.), *Children's rights: Legal and educational issues* (pp. 89-107). Toronto: OISE Press.

- Magsino, R.F. (1991). The family: Parents' and children's rights. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (2nd ed., pp. 248-264). Toronto: Harcourt Brace Jovanovich.
- Majchrzak, A. (1984). *Methods for policy research*. Newbury Park CA: Sage Publications.
- Manley-Casimir, M.E. & Sussel, T.A. (Eds.). (1986a). *Courts in the classroom: Education and the Charter of Rights and Freedoms*. Calgary: Detselig.
- Manley-Casimir, M.E. & Sussel, T.A. (1987). The "Chartered" path: The new rights reality in Canadian society. In R. Ghosh & D. Ray (Eds.), *Social change and education in Canada* (pp. 170-183). Toronto: Harcourt Brace Jovanovich.
- Marfo, K. & Nesbit, W.C. (1989). Egalitarian versus pedagogical concerns in education: The case of integration in special education. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 179-198). Vancouver: Centre for Human Development and Research.
- A matter of principle* (1974). Canada: Canadian Committee, The Council for Exceptional Children.
- McBride, S.R. (1989b). Special education in British Columbia: Past, present and future. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 1-13). Vancouver: Centre for Human Development and Research.
- McCallum, S.D. (1991). Access to equality in education: The power of parents. In G.L. Porter & D. Richler (Eds.), *Changing Canadian schools: Perspectives on disability and inclusion* (pp. 61-71). Toronto: G. Allan Roeher Institute.
- McDonald, D.C. (1989). *Legal rights in the Canadian Charter of Rights and Freedoms* (2nd ed.). Toronto: Carswell.
- McFarlane, P. (1989). Special education in the Yukon. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 15-18). Vancouver: Centre for Human Development and Research.
- McMurray, G. (1983). Special education. In D. Ray & V. D'Oyley (Eds.), *Human rights in Canadian education* (pp. 110-128). Dubuque IA: Kendall Hunt.
- Meehan, E.J. (1990). *Ethics for policymaking: A methodological analysis*. New York: Greenwood Press.
- Metcalf, L. (1987). *Special education appeal boards in Ontario*. Unpublished doctoral dissertation, University of Toronto, Toronto.

- Michaud, P. (1989). Equity of educational finance in Eastern Ontario. In S.B. Lawton & R. Wignall (Eds.), *Scrimping or squandering?: Financing Canadian schools* (pp. 127-139). Toronto: OISE Press.
- Minow, M. (1990). *Making all the difference: Inclusion, exclusion and American law*. Ithaca NY: Cornell University Press.
- Mitchell, D.E. (1988). Educational politics and policy: The state level. In N. Boyan (Ed.), *The handbook of research in educational administration* (pp. 453-456). New York: Longman.
- Morin, J-Y. (1989). La constitutionnalisation progressive de la Charte des droits et libertés de la personne. In Les éditions Thémis (Ed.), *De la Charte québécoise des droits et libertés: Origine, nature et défis* (pp. 25-69). Montréal: Thémis.
- Nagel, S.S. (1990). Introduction: Bridging theory and practice in policy/program evaluation. In S.S. Nagel (Ed.), *Policy theory and policy evaluation: concepts, knowledge, causes and norms* (pp. ix-xxiv). New York: Greenwood Press.
- National Commission on Excellence in Education. (1983). *A nation at risk: The imperative for educational reform*. Washington, D.C.: U.S. Government Printing Office.
- Nicholls, A.C. & Wuester, T.J. (1989). *Charter issues in education*. Vancouver: EduServ Inc.
- Nordenfelt, L. (1992). *On the notions of disability and handicap*. Linköping, Sweden: Linköping University, Department of Health and Safety.
- Norwich, B. (1990). Decision-making about special educational needs. In P. Evans & V. Varna (Eds.), *Special education: Past, present and future* (pp. 34-49). London: Falmer Press.
- Olafson, F.A. (1973). Rights and duties in education. In J.F. Doyle (Ed.), *Educational judgments: Papers in the philosophy of education* (pp. 173-195). London: Routledge & Kegan Paul.
- Olthuis, J.A. (1986). Collective rights in education. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 125-132). Calgary: Detselig.
- O'Reilly, R.R. (1992). *A review and analysis of case law on the integration of exceptional pupils into regular classrooms* (Research study commissioned by the Ontario Ministry of Education). Toronto: Queen's Printer for Ontario.
- Orelove, F.P. (1991). Educating all students: The future is now. In L.H. Meyer, C.A. Peck & L. Brown (Eds.), *Critical issues in the lives of people with severe disabilities* (pp. 67-87). Baltimore: Paul Brookes Publishing Co.

- Palumbo, D.J. (1988). *Public policy in America: Government in action*. San Diego: Harcourt Brace.
- Patmore, G.A. (1990). *An inquiry into the norm of non-discrimination in Canada*. Kingston ON: Queen's University, Industrial Relations Centre.
- Pentney, W.F. (1989). Interpreting the Charter: General principles. In G.-A. Beaudoin & E. Ratushny (Eds.), *The Canadian Charter of Rights and Freedoms* (2nd ed., pp. 21-63). Toronto: Carswell.
- Pépin, G. & Ouellette, Y. (1982). *Principes du contentieux administratif* (2nd ed.). Cowansville, Qc: Yvon Blais.
- Perner, D.E. & Roberts, D.A. (1989). Special education in New Brunswick: Approaching special regular education. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 103-115). Vancouver: Centre for Human Development and Research.
- Poirier, D. (1984). Education rights of disabled children in four Canadian provinces. In K. Connell-Thouez & B.M. Knoppers (Eds.), *Contemporary trends in family law: A national perspective* (pp. 147-165). Toronto: Carswell.
- Poirier, D., Goguen, L. & Leslie, P. (1988). *Education rights of exceptional children in Canada*. Toronto: Carswell.
- Porter, G.L. & Richler, D. (Eds.).(1991). *Changing Canadian schools: Perspectives on disability and inclusion*. Toronto: G. Allan Roeher Institute.
- Porter, J. (1965). *The vertical mosaic: An analysis of social class and power in Canada*. Toronto: University of Toronto Press.
- Porter, J. (1979). *The measure of Canadian society: Education, equality, and opportunity*. Toronto: Gage.
- Rawls, J. (1971). *A theory of justice*. Cambridge MA: Harvard University Press.
- Reid, R. F. & David, H. (1978). *Administrative law and practice* (2nd ed.). Toronto: Butterworths.
- Report of the Royal Commission of Inquiry on Education in the Province of Quebec* (Vols. 1-5).(1963-1966). Québec: Government of Québec.
- Reynolds, M.C. (1991). Classification and labeling. In J.W. Lloyd, N.N. Singh, & A.C. Repp (Eds.), *The regular education initiative: Alternative perspectives on concepts, issues and models* (pp. 29-41). Sycamore IL: Sycamore Publishing Co.
- Roaf, C. & Bines, H. (Eds.).(1989). *Needs, rights and opportunities: Developing approaches to special education*. London: Falmer Press.

- Ross, D.P. & Shillington, E.R. (1990). *An economic profile of persons with disabilities in Canada: Social trends analysis*. Ottawa: Department of the Secretary of State of Canada.
- Sackney, L.E. (1990). Federal intrusions into education through immersion and second language programs. In Y.L.J. Lam (Ed.), *Canadian public education system* (pp. 123-140). Calgary: Detselig.
- Sailor, W., Gerry, M. & Wilson, W.C. (1991). Policy implications of emergent full inclusion models for the education of students with severe disabilities. In M.C. Wang, M.C. Reynolds & H.J. Walberg (Eds.), *Handbook of special education: Research and practice: Vol IV: Emerging programs* (pp. 175-193). Oxford: Pergamon Press.
- Salisbury, R.H. & Heinz, J. (1970). A theory of policy analysis: Some preliminary applications. In I. Sharkansky (Ed.), *Policy analysis in political science* (pp. 39-60). Markham, IL: Markham.
- Salomone, R.C. (1986). *Equal education under law: Legal rights and federal policy in the post-Brown era*. New York: St. Martin's Press.
- Samson, J.K. (1988). Le droit à l'égalité et la Charte québécoise des droits et libertés de la personne. In G.-A. Beaudoin (Ed.), *Vues canadiennes et européennes des droits et libertés* (Actes des journées strasbourgeoises 1988, pp. 133-144). Cowansville, QC: Yvon Blais.
- Sanagan, G.D. (Ed.). (1979). *The encyclopedia of words and phrases legal maxims: Canada 1825 to 1978* (3rd ed.). Toronto: Richard de Boo.
- Sarason, S.B. & Doris, J. (1979). *Educational handicap, public policy, and social history: A broadened perspective on mental retardation*. New York: Free Press.
- Sarason, S.B. & Doris, J. (1982). Public policy and the handicapped: The case of mainstreaming. In A. Lieberman & M.W. McLaughlin (Eds.), *Policy making in education* (Eighty-first yearbook of the National Society for the Study of Education, pp. 23-55). Chicago: The University of Chicago Press.
- Schabas, W.A. (1991). *International human rights law and the Canadian Charter: A manual for the practitioner*. Toronto: Caswell.
- Schapiro, J.S. (1958). *Liberalism: Its meaning and history*. Princeton NJ: Van Nostrand.
- Scott-Jones, D. (1991). Families and academic achievement: Risks and resilience. In M.C. Wang, M.C. Reynolds & H.J. Walberg (Eds.), *Handbook of special education: Research and practice: Vol IV: Emerging programs* (pp. 255-267). Oxford: Pergamon Press.

- Secada, W.G. (1989). Educational equity versus equality of education: An alternative conception. In W.G. Secada (Ed.), *Equity in education* (pp. 68-88). New York: Falmer Press.
- Smith, L. (1986). A new paradigm for equality rights. In L. Smith (Ed.), *Righting the balance: Canada's new equality rights* (pp. 353-407). Saskatoon: Canadian Human Rights Reporter Inc.
- Smith, W.J. (1989). *The education of exceptional children in Québec: A study of government policy goals and legislative action*. Montréal: Service des relations professionnelles Talleyrand Inc.
- Smith, W.J. (1991b). The integration of students with special needs. In W.J. Smith (Ed.), *Students with special needs: A challenge for everyone* (report presented to the Québec Minister of Education, pp. 71-102). Montréal: The Learning Centre of Québec.
- Smith, W.J. (1992a). *Consultation paper on the integration of exceptional pupils in Ontario: Evolution or retrenchment?* Unpublished manuscript.
- Smith, W.J. (1992b, May). *Inclusive education and the law in the "special-regular" education debate*. Paper presented at the conference of the Canadian Association for the Practical Study of Law and Education, Toronto.
- Smith, W.J. (1992d). *The evolution of educational policy for students with developmental disabilities*. Unpublished manuscript, McGill University, Department of Administration and Policy Studies in Education, Montréal.
- Stainback, W., Stainback, S. & Bunch, G. (1989). Introduction and historical background. In S. Stainback, W. Stainback & M. Forest (Eds.), *Educating all students in the mainstream of regular education* (pp. 3-14). Baltimore: Brookes Publishing.
- Stainback, W., Stainback, S. & Forest, M. (Eds.). (1989). *Educating all students in the mainstream of regular education*. Baltimore: Brookes Publishing.
- Sussel, T.A. & Manley-Casimir, M.E. (1986). The Supreme Court of Canada as "national school board": The Charter and educational reform. In M.E. Manley-Casimir & T.A. Sussel (Eds.), *Courts in the classroom: Education and the Charter of Rights and Freedoms* (pp. 213-235). Calgary: Detselig.
- Swinton, K. (1982). Application of the Canadian Charter of Rights and Freedoms. In W.S. Tarnopolsky & G.-A. Beaudouin (Eds.), *Canadian Charter of Rights and Freedoms* (pp. 41-59). Toronto: Carswell.
- Tarnopolsky, W.S. (1978). *The Canadian Bill of Rights* (2nd ed.). Toronto: MacMillan.

- Tarnopolsky, W.S. & Pentney, W.F. (1985). *Discrimination and the law, including equality rights under the Charter* (including seventh cumulative supplement, November 1991). Toronto: Richard de Boo.
- Tassé, R. (1989). Application of the Canadian Charter of Rights and Freedoms. In G.-A. Beaudoin & E. Ratushny (Eds.), *Canadian Charter of Rights and Freedoms* (2nd ed., pp. 65-125). Toronto: Carswell.
- Taylor, S.J. & Searl, S. (1987). The disabled in America: History, policy and trends. In P. Knoblock (Ed.), *Understanding exceptional children and youth* (pp.5-64). Boston: Little Brown.
- Titely, E.B. Religion, culture and power: The school question in Manitoba. (1990). In E.B. Titely (Ed.), *Canadian education: Historical themes and contemporary issues* (pp. 45-77). Calgary: Detselig Enterprises.
- Tribe, L.H. (1988). *American Constitutional Law* (2nd ed.). Mineola, NY: Foundation Press.
- Turnbull, A.P. & Turnbull, H.R. III (1978). *Parents speak out: Views from the other side of the two-way mirror*. Columbus, OH: Merrill.
- Turnbull, A.P. & Turnbull, H.R. III (1990). *Families, professionals and exceptionality: A special partnership* (2nd ed.). Columbus, OH: Merrill.
- Turnbull, H.R. III. (1978). Jay's story. In A.P. Turnbull & H.R. Turnbull, III, *Parents speak out: Views from the other side of the two-way mirror* (pp. 115-128). Columbus, OH: Merrill.
- Turnbull, H.R. III (1990). *Free appropriate public education: The law and children with disabilities* (3rd ed.). Denver, CO: Love Publishing.
- Tweedie, J. (1983). The politics of legalization in special education. In J.G. Chambers & W.T. Hartman (Eds.), *Special education policies: Their history, implementation and finance* (pp. 48-73). Philadelphia: Temple University Press.
- Van Geel, T. (1988). The law and the courts. In N. Boyan (Ed.), *The handbook of research in educational administration* (pp. 623-653). New York: Longman.
- Vickers, D. & Endicott, O. (1985). Mental disability and equality rights. In A.F. Bayefsky & M. Eberts (Eds.), *Equality rights and the Canadian Charter of Rights and Freedoms* (pp. 381-409). Toronto: Carswell.
- Vlastos, G. (1962). Justice and equality. In R.B. Brandt (Ed.), *Social justice* (pp. 31-72). Englewood Cliffs NJ: Prentice Hall.

- Wang, M.C., Reynolds, M.C. & Walberg, H.J. (Eds.).(1988). *Handbook of special education: Research and practice: Vol II: Midly handicapping condinions*. Oxford: Pergamon Press.
- Wang, M.C., Reynolds, M.C. & Walberg, H.J. (Eds.).(1989a). *Handbook of special education: Research and practice: Vol III: Low incidence conditions*. Oxford: Pergamon Press.
- Weintraub, F.J. & Abeson, A. (1976). New education policies for the handicapped: The quiet revolution. In F.J. Weintraub, A. Abeson, J. Ballard & M. LaVor (Eds.), *Public policy and the education of exceptional children* (pp. 7-13). Reston, VA: Council for Exceptional Children.
- Weiss, C.H. (1983). Ideology, interests, and information: The basis of policy positions. In D. Callahan & B. Jennings (Eds.), *Ethics, the social sciences, and policy analysis* (pp. 213-245). New York: Plenum Press.
- Weiss, C.H. (1990). The uneasy partnership endures: Social science and government. In S. Brooks & A.-G. Gagnon (Eds.), *Social scientists, policy, and the state* (pp. 97-111). New York: Praeger.
- Welton, J. (1989). Incrementalism to catastrophe theory: Policy for children with special education needs. In C. Roaf & H. Bines (Eds.), *Needs, rights and opportunities: Developing approaches to special education* (pp. 20-27). London: Falmer Press.
- Wilson, A. (1983). *A consumer's guide to Bill 82: Special education in Ontario*. Toronto: OISE Press.
- Wilson, A. (1989). Ontario's "Bill 82" in retrospect". In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 81-92). Vancouver: Centre for Human Development and Research.
- Wilson, A., Cleal, T., Godsell, E. & Sheppard, W. (1989). The special education policy of Newfoundland and Labrador, 1987: An analysis of its potential impact. In M. Csapo & L. Goguen (Eds.), *Special education across Canada: Issues and concerns for the 1990's* (pp. 133-147). Vancouver: Centre for Human Development and Research.
- Wilson, J. (1985). Children and equality rights. In A.F. Bayefsky & M. Eberts (Eds.), *Equality rights and the Canadian Charter of Rights and Freedoms* (pp. 293-322). Toronto: Carswell.
- Winzer, M. (1990). *Children with exceptionalities: A Canadian perspective* (2nd ed.). Scarborough, ON: Prentice Hall.
- Wolfensberger, W. (1972). *The principle of normalization in human services*. Toronto: National Institute on Mental retardation.

- Wolfensberger, W. (1975). *The origin and nature of our institutional models*. Syracuse, NY: Human Policy Press.
- World Health Organization. (1980). *International classification of impairments, disabilities, and handicaps*. Geneva: Author.
- Yeakey, C.C. & Gordon, E.W. (1982). The policy implications of status variables and schooling. In A. Lieberman & M.W. McLaughlin (Eds.), *Policy making in education* (Eighty-first yearbook of the National Society for the Study of Education, pp. 105-132). Chicago: The University of Chicago Press.
- Ysseldyke, J.E. (1987). Classification of handicapped students. In M.C. Wang, M.C. Reynolds & H.J. Walberg (Eds.), *Handbook of special education: Research and practice: Vol I: Learner characteristics and adaptive education* (pp. 253-271). Oxford: Pergamon Press.
- Yogis, J.A. (1990). *Canadian law dictionary* (2nd ed.). New York: Barron's Press.
- Zuker, M. A. (1984, June). *Equal educational opportunity, special education and the Charter of Rights*. Paper presented at the meeting for the Learned Societies Conference, Guelph, ON.
- Zuker, M.A. (1988). *The legal context of education*. Toronto: OISE Press.
- Zuker, M.A. (1992). Education and the law in Canada: Emerging challenges in the '90s. In W.F. Foster (Ed.), *Education and law: A plea for partnership* (Proceedings of the inaugural conference of the Canadian Association for the Practical Study of Law and Education, Vancouver, May 1990, pp. 342-374). Welland ON: Éditions Soleil Publishing Inc.

Equal Educational Opportunity for Students with Disabilities in Canada

Volume II: Technical Appendices and Legislative Action

William J. Smith

Department of Administration and
Policy Studies in Education
McGill University, Montréal

May, 1993

A dissertation submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements
of the degree of Doctor of Philosophy

PREFACE

This volume contains divers supplementary material to accompany the Research Report, which is contained in volume 1. Appendix A includes methodological notes to complement the research design set forth in chapter 3. Appendix B provides three detailed notes to complement the data analysis contained in chapter 4 and appendix C includes the data analysis tables referred to therein. As further background information, excerpts from various international instruments are included in appendix D.

Appendices E through Q contain key excerpts from national and provincial legislative action. No attempt has been made to include all provisions which might have some relevance for the study but only those which are necessary and sufficient to interpret the data analysis. The reader who is interested in a complete understanding of the legislative treatment of a particular subject in a given jurisdiction, should consult the primary source documents, cited in the Reference List in volume 1.

For the convenience of the reader, the table of contents of both volumes are included.

TABLE OF CONTENTS

Topic	Page

VOLUME I:

ABSTRACT	i
RÉSUMÉ	i
ACKNOWLEDGEMENTS	iii
EXECUTIVE SUMMARY	v
TABLE OF CONTENTS	xv
LIST OF FIGURES	xxi
LIST OF TABLES	xxiii

1.0 INTRODUCTION AND OVERVIEW

1.1 <u>Introduction</u>	1
1.2 <u>Purpose and Problem Statement</u>	2
1.3 <u>Legal Framework for Equality Rights and Education in Canada</u> ...	7
1.3.1 <u>The Backdrop of International Law</u>	7
1.3.2 <u>The Canadian Constitution</u>	8
1.3.3 <u>Educational Governance: a Provincial Responsibility</u>	10
1.4 <u>Organization of the Study</u>	11
Endnotes - Chapter 1	13

2.0 REVIEW OF THE LITERATURE

2.1 <u>Introduction</u>	15
2.2 <u>Policy Studies in Education</u>	15
2.2.1 <u>Policy Research</u>	15
2.2.2 <u>Public Policies</u>	18
2.3 <u>Equality and Public Schooling</u>	24
2.3.1 <u>Concepts of Equality</u>	24
2.3.2 <u>Equality in a School Setting</u>	30

TABLE OF CONTENTS - continued

Topic	Page
2.4 <u>EEO for Students with Disabilities</u>	36
2.4.1 <u>General Considerations</u>	36
2.4.2 <u>The Minority Rights Paradigm</u>	41
2.4.3 <u>The Provision of EEO to Students with Disabilities</u>	45
2.5 <u>Conclusion</u>	54
Endnotes - Chapter 2	57

3.0 RESEARCH DESIGN

3.1 <u>Introduction</u>	61
3.2 <u>Scope of the Study</u>	61
3.3 <u>Sources of Data</u>	65
3.4 <u>Methodology</u>	67
3.4.1 <u>Developing Specific Research Questions</u>	67
3.4.2 <u>Defining the Rights Comprising Each Analytical Theme</u> ...	70
3.4.3 <u>Analysis of Rights in Each Jurisdiction</u>	71
3.4.4 <u>Comparison of Results Across Themes and Jurisdictions</u> ...	73
3.4.5 <u>Validity and Reliability</u>	74
3.5 <u>Constraints and Limitations</u>	75
Endnotes - Chapter 3	79

4.0 DATA ANALYSIS

4.1 <u>Non-Discrimination</u>	82
4.1.1 <u>Application to Students with Disabilities</u>	82
4.1.2 <u>Scope of Prohibition Against Discrimination</u>	86
4.1.3 <u>Adjudication of Complaints</u>	92
4.1.4 <u>Summary and Discussion of Non-Discrimination</u>	95
4.2 <u>Access to Schooling</u>	99
4.2.1 <u>Right to Public Schooling</u>	100
4.2.2 <u>Compulsory Attendance</u>	105

TABLE OF CONTENTS - continued

Topic	Page
4.2.3 <u>Expulsion</u>	108
4.2.4 <u>Additional Support</u>	109
4.2.5 <u>Summary and Discussion of Access to Public Schooling</u> . .	112
4.3 <u>Identification and Placement</u>	115
4.3.1 <u>Choice of Schooling</u>	117
4.3.2 <u>Assessment</u>	119
4.3.3 <u>Appropriate Placement</u>	122
4.3.4 <u>Summary and Discussion of Identification and Placement</u> .	133
4.4 <u>Service Delivery</u>	136
4.4.1 <u>Appropriate Education</u>	136
4.4.2 <u>Instructional Services</u>	139
4.4.3 <u>Special Education Services</u>	142
4.4.4 <u>Summary and Discussion of Service Delivery</u>	145
4.5 <u>Parental Participation</u>	148
4.5.1 <u>Collective Participation</u>	148
4.5.2 <u>Individual-Level Participation</u>	150
4.5.3 <u>General Appeal Mechanism</u>	153
4.5.4 <u>Summary and Discussion of Parental Participation</u>	155
Endnotes - Chapter 4	158

5.0 SUMMARY AND CONCLUSIONS

5.1 <u>Summary of the Findings</u>	174
5.1.1 <u>Research Question #1: Non-Discrimination</u>	175
5.1.2 <u>Research Question #2: Access to Schooling</u>	176
5.1.3 <u>Research Question #3: Identification and Placement</u>	177
5.1.4 <u>Research Question #4: Service Delivery</u>	178
5.1.5 <u>Research Question #5: Parental Participation</u>	179
5.2 <u>Synthesis and Complementary Analyses</u>	180
5.2.1 <u>Synthesis of Analysis</u>	180

TABLE OF CONTENTS - continued

Topic	Page
5.2.2 <u>Complementary Analyses</u>	182
5.3 <u>Profiles of Individual Jurisdictions</u>	188
5.4 <u>Implications for Future Research and Public Policy</u>	195
5.5 <u>Conclusion</u>	198
Endnotes - Chapter 5	201

REFERENCES

Primary Source Materials	203
<u>Regulatory and Administrative Sources</u>	203
<u>International</u>	203
<u>Canada</u>	204
<u>Alberta</u>	205
<u>British Columbia</u>	206
<u>Manitoba</u>	208
<u>New Brunswick</u>	209
<u>Newfoundland</u>	210
<u>Northwest Territories</u>	211
<u>Nova Scotia</u>	212
<u>Ontario</u>	214
<u>Prince Edward Island</u>	216
<u>Québec</u>	217
<u>Saskatchewan</u>	221
<u>Yukon</u>	221
<u>United States</u>	222
<u>Case Law</u>	223
Secondary Source Materials	229
<u>Periodicals</u>	229
<u>Books, Reports and Other Publications</u>	250

TABLE OF CONTENTS - continued

Topic	Page
VOLUME II:	
PREFACE	i
TABLE OF CONTENTS	iii
LIST OF FIGURES	ix
LIST OF TABLES	xi
APPENDICES	
A. METHODOLOGICAL NOTES	1
A.1 <u>Data Collection</u>	1
A.2 <u>Boundaries of the Regulatory Framework</u>	2
A.3 <u>Outline of the Methodology</u>	11
A.4 <u>Data Analysis</u>	16
A.5 <u>Comparison of Results</u>	36
A.6 <u>Validation and Reliability</u>	41
B. DATA ANALYSIS NOTES	47
B.1 <u>The Canadian Charter and Equality Rights</u>	47
B.2 <u>Nova Scotia Human Rights Code and Public Schools</u>	53
B.3 <u>Ontario Identification, Placement and Review Process</u>	59
Endnotes - Appendix B	63
C. DATA ANALYSIS TABLES	65
D. EXCERPTS FROM INTERNATIONAL INSTRUMENTS	111
E. CANADIAN LEGISLATIVE PROVISIONS	117
Endnotes - Appendix E	126

TABLE OF CONTENTS - continued

Topic	Page
F. LEGISLATIVE ACTION: ALBERTA	127
G. LEGISLATIVE ACTION: BRITISH COLUMBIA	141
H. LEGISLATIVE ACTION: MANITOBA	151
I. LEGISLATIVE ACTION: NEW BRUNSWICK	159
J. LEGISLATIVE ACTION: NEWFOUNDLAND	167
K. LEGISLATIVE ACTION: NORTHWEST TERRITORIES	173
L. LEGISLATIVE ACTION: NOVA SCOTIA	179
M. LEGISLATIVE ACTION: ONTARIO	187
N. LEGISLATIVE ACTION: PRINCE EDWARD ISLAND	215
O. LEGISLATIVE ACTION: QUÉBEC	219
P. LEGISLATIVE ACTION: SASKATCHEWAN	247
Q. LEGISLATIVE ACTION: YUKON	265

LIST OF FIGURES

Figure		Page
VOLUME I:		
2.1	<i>Public Policy Framework</i>	21
2.2	<i>Student Rights to Education</i>	22
2.3	<i>Socio-Political Model of Disability</i>	38
2.4	<i>EEO for Students with Disabilities</i>	56
4.1	<i>Distribution of Items: Non-Discrimination</i>	97
4.2	<i>Distribution of Jurisdictions: Non-Discrimination</i>	98
4.3	<i>Distribution of Items: Access to Public Schooling</i>	113
4.4	<i>Distribution of Jurisdictions: Access to Public Schooling</i>	114
4.5	<i>Distribution of Items: Identification and Placement</i>	134
4.6	<i>Distribution of Jurisdictions: Identification and Placement</i>	135
4.7	<i>Distribution of Items: Service Delivery</i>	146
4.8	<i>Distribution of Jurisdictions: Service Delivery</i>	147
4.9	<i>Distribution of Items: Parental Participation</i>	156
4.10	<i>Distribution of Jurisdictions: Parental Rights</i>	157
5.1	<i>EEO Themes: Mean Scores</i>	180
5.2	<i>Distribution of Jurisdictions: All Themes</i>	181
5.3	<i>Validation of Rankings</i>	185
5.4	<i>Distribution of Converted Scores for Key Rights</i>	187
5.5	<i>EEO Themes: Alberta</i>	188
5.6	<i>EEO Themes: British Columbia</i>	188
5.7	<i>EEO Themes: Manitoba</i>	189
5.8	<i>EEO Themes: New Brunswick</i>	189
5.9	<i>EEO Themes: Newfoundland</i>	190
5.10	<i>EEO Themes: Northwest Territories</i>	191

LIST OF FIGURES - continued

Topic	Page
5.11 <i>EEO Themes: Nova Scotia</i>	191
5.12 <i>EEO Themes: Ontario</i>	192
5.13 <i>EEO Themes: Prince Edward Island</i>	193
5.14 <i>EEO Themes: Québec</i>	193
5.15 <i>EEO Themes: Saskatchewan</i>	194
5.16 <i>EEO Themes: Yukon</i>	194

VOLUME II:

A.1 <i>EEO Themes: Unweighted and Weighted Mean Scores</i>	46
B.1 <i>Ontario IPRC and Appeal Process</i>	61

LIST OF TABLES

Table		Page
VOLUME I:		
2.1	<i>Categories of Exceptionality</i>	37
2.2	<i>Emergent EEO Themes</i>	48
3.1	<i>Principal Sources of Data</i>	65
3.2	<i>Specific Research Questions</i>	69
3.3	<i>Analytical Themes</i>	70
3.4	<i>Sample Items from the Data Analysis Instrument</i>	72
3.5	<i>Raw Scores by Analytical Theme</i>	73
4.1	<i>Distribution of Responses: Application to Students with Disabilities</i>	83
4.2	<i>Distribution of Responses: Scope of Prohibition Against Discrimination</i>	86
4.3	<i>Distribution of Responses: Adjudication of Complaints</i>	93
4.4	<i>Distribution of Items: Non-Discrimination</i>	96
4.5	<i>Distribution of Jurisdictions: Non-Discrimination</i>	97
4.6	<i>Distribution of Responses: Right to Public Schooling</i>	100
4.7	<i>Distribution of Responses: Compulsory Attendance</i>	106
4.8	<i>Distribution of Responses: Expulsion</i>	108
4.9	<i>Distribution of Responses: Additional Support</i>	110
4.10	<i>Distribution of Items: Access to Public Schooling</i>	112
4.11	<i>Distribution of Jurisdictions: Access to Public Schooling</i>	113
4.12	<i>Distribution of Responses: Choice of Schooling</i>	117
4.13	<i>Distribution of Responses: Assessment</i>	120
4.14	<i>Distribution of Responses: Appropriate Placement</i>	123
4.15	<i>Distribution of Items: Identification and Placement</i>	134
4.16	<i>Distribution of Jurisdictions: Identification and Placement</i>	135

LIST OF TABLES - continued

Topic	Page
4.17 <i>Distribution of Responses: Appropriate Education</i>	136
4.18 <i>Distribution of Responses: Instructional Services</i>	140
4.19 <i>Distribution of Responses: Special Educational Services</i>	142
4.20 <i>Distribution of Items: Service Delivery</i>	146
4.21 <i>Distribution of Jurisdictions: Service Delivery</i>	147
4.22 <i>Distribution of Responses: Collective Participation</i>	148
4.23 <i>Distribution of Responses: Individual Level Participation</i>	150
4.24 <i>Distribution of Responses: General Appeal Mechanism</i>	154
4.25 <i>Distribution of Items: Parental Participation</i>	156
4.26 <i>Distribution of Jurisdictions: Parental Participation</i>	157
5.1 <i>Distribution of Jurisdictions: All Items</i>	181
5.2 <i>Distribution of Jurisdictions: Student Population</i>	183
5.3 <i>Grouping of Jurisdictions: Across Themes</i>	184
5.4 <i>Enumeration of Key Rights</i>	186
5.5 <i>Distribution of Jurisdictions: Key Rights</i>	187
VOLUME II:	
A.1 <i>Outline of Analytical Framework</i>	11
A.2 <i>Data Analysis Instrument</i>	18
A.3 <i>Raw Scores for All Items</i>	37
A.4 <i>Data Validation by Provincial Respondents</i>	42
A.5 <i>Validation of Rankings</i>	45
C.1 <i>Key to Jurisdiction Codes</i>	65
C.2 <i>Correspondence of Raw and Converted Scores</i>	66
C.3 <i>Key to Reference Codes</i>	68
C.4 <i>Data Analysis Report by Jurisdiction</i>	73
C.5 <i>Data Analysis Report by Theme</i>	91

APPENDIX A

METHODOLOGICAL NOTES

This appendix contains supplementary information on the methodology used in this study; specifically, it contains six sections: A.1, Data Collection; A.2, Boundaries of the Regulatory Framework; A.3, Outline of the Methodology; A.4, Data Analysis; A.5, Comparison of results; A.6, Validation and Reliability.

A.1 Data Collection

The problems associated with the collection of legislative materials vary with the type of data and the jurisdiction concerned. Statutes are first published as bills, then in a volume of the statutes enacted by a jurisdiction in a given period (usually the preceding year but not always). Amendments to existing statutes are published in the same manner. Periodically (usually every 10 to 15 years), a jurisdiction publishes a series of "Revised Statutes", which consolidate all amendments of existing statutes to be included in the revision (not all existing statutes are included in the revision). In addition, several jurisdictions publish a looseleaf edition, which is continually updated with amendments, as well as periodic bound versions of individual acts (office consolidation). The indexing of statutes and the ease of identifying original acts and amendments vary considerably from jurisdiction to jurisdiction.

Regulations are published in the *Official Gazette* of each province, which appears every few weeks. Only some provinces publish periodic "revisions" of the regulations and only some publish an ongoing consolidation in looseleaf form. Moreover, the indexing of regulations and the ease of identifying original regulations and amendments vary even more than that observed for statutes from jurisdiction to jurisdiction. Some provinces have no cumulative index, requiring a search of each year's official publications. Finally, the regulations published in the Yukon *Official Gazette* contain only the name of the regulation; the actual text must be obtained from the Government Printer in Whitehorse.

Problems of legislative data collection are compounded by the time lag between the adoption of a new enactment and its publication, which, unless the researcher obtains

material directly from the legislative assembly of each jurisdiction, is in turn exacerbated by the "acquisition time" before it appears on the shelf of a law library. Furthermore, a particular library collection may contain copies of statutes and regulations, but not necessarily the consolidated versions of same. Without the consolidated versions, one is forced to work with an original statute, together with a series of separate amendments, which makes the data analysis far more cumbersome and increases the possibility of error.

The majority of administrative documents are only available through the government departments concerned with the field in question, or possibly from the government printer in each jurisdiction. Many such documents are not catalogued with the Library of Canada nor generally available in university libraries. Without the cooperation of department officials, these data are virtually inaccessible.

The author of this study is indeed fortunate to have benefited from the cooperation and assistance of every department of education in Canada in supplying the latest amendments and the most recent consolidated versions of statutes, as well as relevant administrative documents. Finally, these officials, and other persons contacted by the researcher, were instrumental in identifying and obtaining copies of unreported cases, as well as confirming the non-existence of further cases in a given jurisdiction.

A.2 Boundaries of the Regulatory Framework

As discussed in Vol. 1, section 3.3, the only administrative documents to be retained for analysis were those considered to be part of the regulatory framework for purposes of this study - i.e. those which could be advanced in support of a claim made by or for a student or parent. In other words, the determination was not based on whether boards were required to follow the directive in order to receive grants or to avoid some other administrative sanction but solely on whether the document constituted delegated legislation and created rights or obligations for students or parents. This task was clear-cut in some jurisdictions and less so in others.

The disposition of the matter for each jurisdiction is summarized below. It should be noted, however, that this discussion only considers those documents which were thought

might be part of the regulatory framework; in each case, the author of the document (omitted in this discussion) is the department of education for the jurisdiction in question. A complete list of all administrative documents reviewed from each jurisdiction is included in the Reference List.

Alberta

Education Programs: Special Education (02-02-01)

Education Programs: Students in Institutions (02-02-03)

Referrals and Appeals: Special Needs Tribunal (03-01-01)

None of the above mentioned documents is deemed to be part of the regulatory framework, even though some of the language contained therein is prescriptive (see for example, *requirement* to provide IEP in Policy 02-02-01). The Minister is empowered to make regulations on various matters (*Department of Education Act*, s. 6) but all such regulations are governed by the *Regulations Act* which stipulates (s. 3) that regulations must be published in the *Alberta Gazette*. Furthermore, the Minister may "by order adopt or approve goals and standards applicable to the provision of education in Alberta (*Education Act*, s. 25(1)(f)). Since none of the aforementioned policy documents issued by Alberta Education appear in the form of a ministerial order under this section of the *Act* (J. Ashcroft, Legislative Services Branch, Alberta Education, personal communication, December 22, 1992), they cannot be considered as delegated legislation.

British Columbia

Special Programs: A Manual of Policies, Procedures and Guidelines

The status of the above mentioned document is not problematic; it does not form part of the regulatory framework. According to the *Education Act*, the Minister has broad powers to issue ministerial orders (s. 182(2)). The *Interpretation Act* defines "regulations" (s. 41) but does not specifically mention ministerial orders; the *Regulations Act* refers to this definition (s. 1) and requires that all regulations be published in the *British Columbia Gazette* (s. 6). However, according to B.C. Education, all ministerial orders are published in the *Gazette* (S. Janzen, Director of Legislative Services, personal communication,

September 11, 1992). Finally, the above mentioned manual has been held to be non-binding (*Bales v. S.D. #23 (Central Okanagan)*, 1984).

Manitoba

Special Education in Manitoba: Policy and Procedural Guidelines for the Education of Students with Special Needs in the Public School System

The status of above mentioned document was problematic for two reasons. First, the validation of the preliminary data analysis by Manitoba Education included different interpretations for several items based on the premise that this document was binding on school boards. Second, the document itself contains several prescriptive statements, including the provision for a special needs arbitration panel with adjudicatory powers - something that one would not expect to find in a non-regulatory document. According to the *Department of Education Act*, the Minister has broad authority to make orders and regulations (s. 4(1)); however, the *Regulations Act* stipulates that such orders and regulations (s. 1) must be published in the *Manitoba Gazette* (s. 4). It was decided therefore that the above mentioned document does not form part of the regulatory framework, although, according to Manitoba Education, it is followed in practice by school boards (H. Stephan, Assistant Director, Child Care and Development, personal communication, December 17, 1992).

New Brunswick

Working Guidelines on Integration

L'éducation des élèves exceptionnel(le)s (Guide administratif à l'intention des conseils scolaires du Nouveau-Brunswick)

Guidelines for a Special Education Plan

Guidelines for Serving Preschool Children under the Schools Act

Guidelines to Accompany the New Brunswick Student Record Folder

As was the case in Manitoba, the validation of the preliminary data analysis by New Brunswick Education indicated that these documents are followed by school boards on the presumption that they are binding; however, their status was viewed as problematic.

According to the *Education Act*, the Minister has the power "to prescribe or approve" various matters, such as, instructional organization, programs, services and evaluation procedures (s. 4) but the *Act* does not specify the form that such prescriptions must take nor the legislative character of same. However, the *Regulations Act* stipulates that a "regulation" includes "any regulation, proclamation, rule or order made under the authority of any statute of New Brunswick..." (s. 1) and that all regulations must be published in the *New Brunswick Royal Gazette*. Based on this analysis, all of the above documents can be considered to fall outside the regulatory framework. However, the first two documents remain problematic because they provide guidelines for the integration of exceptional pupils which can be linked directly to specific legislative authority:

The Minister may issue guidelines to school boards for the placement of exceptional pupils in accordance with subsection (4) [integration of exceptional pupils in regular classes] (*Education Act*, s. 53(5)).

Although the language of this provision speaks of "guidelines", it is not inconceivable that such a document could contain prescriptive provisions and be deemed to be part of the regulatory framework. However, a content analysis of the documents suggests that they are intended as support documents, rather than a set of rules. Moreover, the French document is completely different in tone and intent from the English one, a state which presumably would not occur if the documents were considered to be regulatory in nature. Consequently, these documents are deemed to fall outside the regulatory framework, despite the clear legislative links. According to the New Brunswick Department of Justice, at most, they would possess a *persuasive* character in any legal proceeding (C. Spinney, personal communication, December 17, 1992).

Newfoundland

Special Education Policy Manual

The status of this document is not deemed to be problematic. In the preface, Newfoundland Education states that it "provides a model for the development of school district policies and procedures for special education services" (p. vi, emphasis added). The *Department of Education Act* does not provide for any specific regulatory power of the Minister (s. 7) and the provisions governing regulations in the *Education Act* refer

only to the Lieutenant Governor in Council (s. 98). Regulations are governed by the *Statutes and Subordinate Legislation Act*, which requires their publication in the *Newfoundland Gazette* (s. 11). Consequently, the policy document is not considered to be part of the regulatory framework, a conclusion also reached by Wilson, Cleal, Godsell & Sheppard (1989).

Northwest Territories

A Departmental Directive and Guidelines for Special Needs Education

Despite the incorporation of the term "directive" in title of this document, it is not considered to form part of the regulatory framework. The duties of the Minister enumerated in the *Education Act* (s. 2(3)) do not include any specific regulatory power and the references to regulations are confined to the Lieutenant Governor in Council (s. 147). Regulations are in turn governed by the provisions of the *Interpretation Act* and the *Statutory Instruments Act*, the latter requiring the publication of regulations in the *Northwest Territories Gazette* (s. 9).

Nova Scotia

Public School Programs: 1991-1993

Policy Statement on Special Needs Placement (P & R Release No. A-2: 1988-89)

Statement on Integration (P & R Release No. A-2: 1991-92)

The determination of the regulatory status of these documents was seen as problematic. As was the case in other jurisdictions mentioned above, the validation of the preliminary data analysis by Nova Scotia Education indicated that these documents are followed by school boards on the presumption that they are binding. Moreover, as was the case in Manitoba, one document (P & R No. A-2) includes provision for a provincial board of appeal with adjudicatory powers for disputes concerning placement - something that one would not expect to find in a non-regulatory document. According to the *Education Act*, the Minister is empowered to make regulations in specific areas such as teacher classification, duration of school time and the Nova Scotia Book Bureau (s. 5 (f)(g)(k)); he or she is also empowered to "prescribe courses of study" for use in the schools (s.

5(m)); the latter subject is also dealt with in the *General Education Regulations*:

The Minister may publish a description of the courses of study, textbooks and related material prescribed by the Minister, and such **administrative instructions and orders** as he deems necessary for the effective use of such courses, textbooks, and related material (s. 6, emphasis added).

The *Interpretation Act* defines a regulation to include:

any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution or order made in the execution of a power given by an enactment except where the definition of "regulation" as defined by the *Regulations Act* applies or where a **contrary intention appears from the enactment** (s. 7(3), emphasis added).

The *Regulations Act* requires that all regulations be listed in the *Nova Scotia Royal Gazette* (s. 4) - no present departmental policies are so listed. The *Public School Programs* document refers to the above quoted section of the *General Education Regulations*; no particular authority is cited in the aforementioned *P & R Releases*.

It can be argued that the *Program* document comes under the ambit of the above exception from the *Interpretation Act*; however, the specific reference in the former to *administrative* instructions does not support considering this document as delegated legislation. This interpretation (and the view that P & R releases are non-binding) was verified with the Office of the Attorney-General (H.A. Carey, personal communication, January 18, 1993). Consequently, neither the *Program* document nor the P and R releases are included as part of the regulatory framework for purposes of this study.

Ontario

Special Education Information Handbook

*Deputy Ministerial Policy/Program Memoranda [PPM]**

Ontario Student Records (OSR) Guideline, 1989

The *Handbook* contains the following statement:

This publication combines references to legislation, regulations, policies, and resources pertaining to the education of exceptional pupils in Ontario. It is intended to serve as an information resource to assist trustees and

* PPM are contained in an appendix to the *Special Education Information Handbook*.

administrators in implementing, reviewing, and evaluating special education programs and services (preface, emphasis added).

Of particular interest are the definitions of exceptionality included therein. The definitions are preceded by the following statement:

For the purposes of subsection 8(2) of the Education Act, R.S.O. 1980, Chapter 129 [now R.S.O., 1990, c. E-2, s. 8(3)], the exceptionalities of pupils are those set out below by exceptionality groupings, specific exceptionality identification, and specific exceptionality definition (p. 14).

The above section cited from the *Education Act* contains the following stipulation: "an act of the Minister made under this section is not a regulation within the meaning of the *Regulations Act*" (s. 8(4)) - i.e. the orders can be promulgated without the approval of the Lieutenant Governor in Council. This same section (s. 8) contains a wide variety of ministerial powers, including both administrative and regulatory powers.

According to Education Ontario, the ministerial "orders" issued under this section which stipulate that the Minister may "issue guidelines" and "require boards to comply with the guidelines" can be considered as part of the regulatory framework (D. Goldberg, Legislative Services, Ontario Education, personal communication, December 18, 1992). For purposes of this study, two key provisions employing such language are the authority to issue binding guidelines concerning pupil records (s. 8(1)(27)) and the promulgation of the definitions of exceptionality (s. 8(3)). The *Education Act* further empowers the Minister, subject to the approval of the Lieutenant Governor in Council to enact a wide variety of regulations (s.11); the latter are also subject to the prescriptions of the *Regulations Act*, which requires publication of same in the *Ontario Gazette* (s. 5).

Consequent upon the foregoing, the *Student Records Guideline* and the definitions included in the *handbook* are deemed to be part of the regulatory framework, even though the latter document generally constitutes a non-binding resource guide. The PPM are issued under the authority of the Deputy Minister; however, he or she may exercise any power vested in the Minister if the latter so delegates such authority in writing (s. 2(4)). The PPM included in the *handbook* do not appear to constitute, in their own right, any specific legislative authority; consequently, no attempt was made to ascertain whether the ultimate authority of the PPM were delegated by the Minister. Where they contain prescriptive provisions, they merely disseminate the authority set forth in acts of the

Legislature and comment upon or provide administrative and funding details with respect to same; consequently, they are not considered to be part of the regulatory framework.

Prince Edward Island

Special Education Policy Statement (circular No. 90-003)

According to the *Education Act*, the Minister may "prescribe standards of instruction for all regional administrative units" (s. 5(b)), while regulations are made by the Lieutenant Governor in Council (s. 54). The *Regulations Revision Act* defines a regulation as a "regulation, rule, order, or bylaw of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a Minister of the Crown, or an official of the government" (s. 1(b)). This same Act provides for the regulations to be revised, consolidated and published in the *Royal Gazette of Prince Edward Island*. The above mentioned policy circular is not published in the *Gazette* and is not, therefore, considered to be part of the regulatory framework.

Québec

General Education in the Youth Sector (AE-10-92-01A)

The status of the above mentioned document is not considered problematic; it is part of the regulatory framework. It is published separately from, but technically forms part of, the general set of administrative directives of Québec Education (*Instructions: 1992-93*); while the former is concerned with educational services, the remaining directives in the latter are concerned with school board management. In addition to the power of the government, and in some cases the Minister, to make regulations in the meaning of the *Regulations Act* (i.e. those published in the *Québec Official Gazette*), the Minister is given the following statutory authority:

The Minister shall ensure quality in the educational services provided by schools boards.

In order to carry out that function, the Minister shall, in particular, establish the manner in which the provisions of the basic school regulations are applied. The terms and conditions may contain any measure to allow the gradual implementation of the provisions of the basic school regulations (*Education Act*, s. 459).

The above mentioned *General Education in the Youth Sector* is the sole document adopted under this authority which is relevant to this study (C. Dupont, Québec Education, Direction des affaires juridiques, personal communication, September 11, 1992).

Saskatchewan

Special Education Policy Manual

Generally, according to the *Education Act*, subordinate regulatory provisions are regulations adopted by the Lieutenant Governor in Council (s. 372); the notable exception is a regulation adopted by the Minister for classification of teachers (s. 9(g)). The Minister has several other duties (s. 9) and powers (s. 10), all of which appear to be administrative, rather than regulatory in nature. The *Interpretation Act* defines a regulation to include "any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, bylaw, resolution or order made in the execution of a power given by a statute" (s. 2(a)) and the *Regulations Act, 1989* requires that all regulations be published in the *Saskatchewan Gazette* (s. 6). Consequently, the above mentioned document, which is not published in the *Gazette*, is not considered to be part of the regulatory framework; as stated in its preface, "it is intended primarily as a resource to school division officials" (p. i). It includes many binding policies but the regulatory authority of the latter are found in various statutes and regulations, which are identified in the document.

Yukon

No relevant policy documents were considered as potentially regulatory in nature. The powers of the Minister enumerated in the *Education Act* include the following statement: "to provide for any other matter that the Minister considers advisable to effectively administer the Act and the Yukon education system" (s. 6(1)(h)). The *Interpretation Act* defines a regulation to include "any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, bylaw, resolution or order made in the execution of a power given by an enactment" (s. 1(1)) and the *Regulations Act* requires that all regulations be listed in the *Yukon Gazette* (s. 3(1)) - no present departmental policies are so listed.

According to the *Education Act*, the Minister may also issue policies or guidelines on certain specified items, including student records, preschool education programs and the Education Appeal Tribunal (s. 307(1)(c)(d)(i)), which are not "regulations" in the meaning of the *Regulations Act*. However, the above document does not come under the ambit of this section. Furthermore, according to Yukon Education, existing departmental policies are in the process of being revised to concord with the new *Education Act*; at the time of writing they were not ready for publication (J. Webster, Director, Special Programs, personal communication, December 17, 1992).

A.3 Outline of the Methodology

The various steps used to complete the analysis are summarized in table A.1.

TABLE A.1
Outline of Analytical Framework

Step	Purpose	Procedures
A.	Draft analytical framework	1. A draft analytical framework was designed to provide for the structured analysis of legislative action respecting various EEO themes (and sub-themes). 2. This framework (version 1), including a list of individual items, was validated by submitting the draft to selected experts in the field and subsequently modified.

TABLE A.1 - continued

Step	Purpose	Procedures
B.	Draft data analysis instrument	1. Based on sample legislative data, a draft version of a data analysis instrument was developed, using the following procedures: a. the items defining the EEO themes were expressed in the form of questions which could be answered by an analysis of the legislative action taken in various jurisdictions; b. for each question, a series of possible responses was devised in order to distinguish different "levels" of rights; the possible responses for a given question were ordinally related (i.e. each response provided for a <i>higher</i> or <i>greater</i> level of rights than the previous one but the relation between levels was not known); c. various definitions and decision rules were determined in order to delimit the questions and distinguish between the various response categories (i.e. between the different levels of rights). 2. The instrument was reviewed with selected government officials in two jurisdictions and subsequently modified (version 1).
C.	Preliminary data collection	1. For constitutional provisions, statutes, regulations and case law, data were collected by a library search. 2. Based upon an analysis of the legislative acts collected in procedure 1, potential sources of administrative decisions were identified and, if available, collected.

TABLE A.1 - continued

Step	Purpose	Procedures
D.	Pilot test analytical framework and data analysis instrument	1. Four jurisdictions were chosen to pilot test the analytical framework (version 1) and the data analysis instrument (version 1). 2. The semantic content of the legislative action in the four jurisdictions was analyzed in order to answer the questions outlined in the instrument. 3. The findings were systematically coded, using a computerized database. 4. The results of this analysis were reviewed and appropriate changes made to the analytical framework (version 2), the data analysis instrument (version 2) and the decision rules governing the use of the instrument.
E.	Revise analytical framework and data analysis instrument	1. The semantic content of the legislative action of all jurisdictions was analyzed, in order to further test the analytical framework (version 2) and the data analysis instrument (version 2). 2. The findings were systematically coded, using a computerized database. 3. The results of this preliminary analysis were reviewed and appropriate changes made to the analytical framework (version 3) and the data analysis instrument (version 3). 4. The decision rules governing the use of the data analysis instrument (version 3) and the means for tabulating the results of the analysis were then finalized.

TABLE A.1 - continued

Step	Purpose	Procedures
F.	Complementary Data Collection	1. Representatives in each provincial department of education [provincial respondents] were contacted in order to: a. validate the data collected in step C(1) and identify any missing data; b. collect data only identified in step C(2) and other data not previously identified; c. receive any input on the study design which respondents had to offer. 2. On the basis of the validation and input received in procedure 1, any additional data required were collected.
G.	Data analysis	1. The semantic content of the legislative action of all jurisdictions was analyzed in order to answer the questions outlined in the data analysis instrument (version 3). 2. The results of the analysis were systematically coded and tabulated, using a computerized database. 3. The interpretation of the findings was complemented by an analysis of relevant case law.

TABLE A.1 - continued

Step	Purpose	Procedures
H.	Validation of data analysis	1. A data validation instrument was prepared for each jurisdiction, containing the following information: a. the precise questions asked and the possible responses for each; b. the answer reached by the researcher for each question for the jurisdiction; c. the sources of data for each answer. 2. A copy of the validation instrument was sent to the provincial respondents who were asked to confirm the answer reached by the researcher or provide an alternative, adding any comments or additional sources of data to be considered.
I.	Complementary data analysis	1. The data analysis instrument and the decision rules used to complete the analysis were reviewed on the basis of the validation conducted in step H. 2. The semantic content of all legislative action was reviewed on the basis of the validation conducted in step H. 3. The results of the analysis were systematically coded and tabulated, using a computerized database.
J.	Report writing	1. The results of the analysis were described and discussed, providing appropriate conclusions. 2. Extracts from the legislative action of each jurisdiction were included in separate appendices of the report in order to provide an "audit trail" for the reader.

A.4 Data Analysis

The data analysis was conducted using the Data Analysis Instrument contained in table A.2 on the basis of the following general precepts, as well as the various decision rules, as enumerated therein.

Every item in the Data Analysis Instrument applies to the legislative action taken by the jurisdiction in question. The responses are based solely on the interpretation of statute law, as it applies to the subject of this inquiry - *rights of students with disabilities* and no wider application should be inferred from the responses. Furthermore, the responses do not include any consideration of rights or obligations which may exist at common law (e.g. obtaining consent may well be a right at common law but if no statutory provision confers such right, then it does not exist as an element of the legislative action of that jurisdiction). Similarly, the responses do not imply any validity of the relevant statutory provisions in light of the *Canadian Charter*. The impact of the latter and all case law will be dealt with in the discussion.

As this inquiry is concerned with *rights*, as opposed to *privileges* or *non-rights* (see discussion in Vol. 1, sections 2.2.2 & 3.2), a decision rule was required to distinguish between the two and reduce, if not completely eliminate, any "grey area" in between. Rights often have conditions attached to them; one must meet certain criteria in order to qualify; however, provided that the conditions are so met, then the person has a right to the benefit in question.

For purposes of analysis, a right is deemed to exist, even if there is a requirement to meet certain conditions, provided that the conditions are set forth in the regulatory framework. By contrast, if the school board has the discretion to set the conditions or has the discretionary authority to approve any "triggering mechanism", then no right is deemed to exist (e.g. to be entitled to special services for the visually impaired: (a) the student must fall within the definition of that disability category included in the regulations - right deemed to exist; (b) the board has the authority to decide who is visually impaired and requires services - no right deemed to exist).

It is recognized that legislative provisions do not always fit neatly into preset categories; thus, as a further refinement, a right is deemed to exist if the condition is neither set forth nor left to the discretion of the school board (e.g. students are entitled to special class placement if they are unable to benefit from regular class instruction). By contrast, no right is deemed to exist if the claim must be based on the assertion that the school board acted in bad faith in exercising its discretionary power; in such a case, the claim is based on the right to fair treatment, rather than the right to a particular benefit.

In some cases an item may not have any possible application because the response to a previous item was "NO"; in such a case, a "NO" response is deemed to mean "NOT APPLICABLE" (e.g. Q#5, if response to Q#1 or Q#2 was "NO").

TABLE A.2
*Data Analysis Instrument**

Q#	Decision Rules
1-12.	If response to Q#1 or Q#2 = [0], then responses to Q#3 to Q#12 = [0].
1.	The term "disabled" or "disability" is deemed to be equivalent to "handicapped" or "handicap". The expression "physical and mental disability" is deemed to be equivalent to "disability", unless any definition or delineation of expression included is exclusionary. The "means to palliate a handicap" refers to the use of a guide dog, wheel chair or other remedial measure.
2.	"Public education" is defined as that provided by school boards to school-age students as defined by law; the term does not include other roles or activities engaged in by school boards (e.g. the board <i>qua</i> employer). A prohibition against discrimination is deemed to be equivalent to the provision for "equality rights".
3.	"Reasonable accommodation" is deemed to include a " <i>bona fide</i> requirement".
5.	The "Crown" refers to the state or government (federal or provincial); in this context, it refers to the executive branch of the provincial government and in particular to the department of education. It is assumed that if no provision concerning the Crown is included, either in a general interpretative statute or in the <i>Human Rights Code</i> , then the Crown is not bound.
6.	"Voluntary" affirmative action refers to the right of an organization to initiate such a program without prior approval of the human rights commission [HRC] or the courts; however, such right does not imply that its validity cannot be challenged either by application to the HRC or by judicial review. The expression "human rights commission" or "HRC" is used to refer to any government agent charged with the responsibility of administering human rights legislation.
7.	"Sanctioned" affirmative action refers to the authority of HRC or the courts to authorize the implementation of such a program; it being understood, that without such approval, the program would not be allowed.

* See note at the end of the instrument concerning the use of certain abbreviations.

TABLE A.2 - continued

Q#/r# Themes / Items / Possible Responses

Non-Discrimination

1. **Is disability included as listed ground of discrimination?**
 - [0] Disability not included
 - [1] Some forms of disability excluded
 - [2] Disability but not means to palliate a handicap included
 - [3] Disability and means to palliate a handicap included

2. **Is public education an activity to which non-discrimination rights apply?**
 - [0] Public education not included
 - [1] Public education subsumed under general activity
 - [2] Public education stipulated as activity
 - [3] Public education stipulated as human right

3. **What limits or standards for non-discrimination are stipulated?**
 - [0] No such stipulations included
 - [1] Equality rights subject to standard of "reasonable accommodation"
 - [2] Equality rights subject to standard of "undue hardship"
 - [3] Equality rights subject only to "limits prescribed by law"

4. **Does right to non-discrimination have primacy over other legislation?**
 - [0] Equality rights do not have primacy
 - [1] Equality rights have primacy subject to override
 - [2] Equality rights have primacy

5. **Is Crown bound by non-discrimination provisions?**
 - [0] NO
 - [1] YES

6. **Is voluntary affirmative action provided for?**
 - [0] NO
 - [1] YES

7. **Is sanctioned affirmative action provided for?**
 - [0] NO
 - [1] YES

* The "r#" in square brackets - [0], [1], etc. - indicates the numeric value assigned to each possible response for purposes of tabulation and comparison; see discussion surrounding table A.5.

TABLE A.2 - continued

Q#	Decision Rules
8.	No duty to investigate is deemed to exist if the HRC has broad discretion to proceed or not, or it may dismiss the complaint at any stage for any reason; however, it is understood that the duty to investigate a complaint may be subject to enumerated conditions such as, time limits (prescription) or vexatious complaints.
9.	The expression "board of inquiry" refers to any first-level tribunal established under human rights legislation for the settlement of disputes.
10.	That is, can the individual initiate adjudicative proceedings before board of inquiry without the approval of HRC (as opposed to the situation where only the HRC can file or authorize filing of a complaint); the right to appeal HRC decision not to proceed is not deemed to provide a right to proceed as an individual.
11.	That is, the board may require various forms of remedial action to be undertaken and may award damages (even if amounts are limited by law).
12.	[0] No right of appeal It is assumed that the inclusion of a "privative clause" to deny any right of appeal (e.g., provision which states that board's decision is "final and binding") does not preclude judicial review respecting excess of jurisdiction or "manifest error" in law.
13.	Exception for "severe disabilities" deemed to include exception to right to schooling where school board "unable to provide" services.
14,15, 17,19,	
21,22.	Responses to all items concerning age of school attendance attempt to provide the <i>most accurate</i> age, given applicable legislation governing precise age requirements in relation to beginning and end of school year or other dates (e.g. compulsory school attendance <i>until</i> age 16 is interpreted to mean that 15 years is the upper limit for the duty to attend school, for the student may leave school the day he or she attains 16 years; by contrast, the expression "until the end of the school year in which the student turns 16" is interpreted to mean that the upper age limit is 16 years, for the student may have a duty to attend school for up to ten months after his or her 16th birthday).

TABLE A.2 - continued

Q#/r#	Themes / Items / Possible Responses
8.	Is HRC required to investigate complaints?
[0]	NO
[1]	YES
9.	Is board of inquiry provided for adjudication?
[0]	NO
[1]	YES
10.	Can individual submit complaint to board of inquiry?
[0]	NO
[1]	YES
11.	Does Board of Inquiry have broad remedial authority?
[0]	NO
[1]	YES
12.	Can Board order be appealed on questions of fact or law?
[0]	No right to appeal
[1]	Right to appeal on questions of law, subject to leave to appeal
[2]	Right to appeal on questions of law
[3]	Right to appeal on questions of fact or law, subject to leave to appeal
[4]	Right to appeal on questions of fact or law
<u>Access to Schooling</u>	
13.	Is there a right to free public schooling?
[0]	No such right is provided for
[1]	Right to schooling subject to a general exception for disability
[2]	Right to schooling subject to an exception for "severe" disabilities
[3]	Universal right to free public schooling provided without exception for disability
14.	What is the lower age limit for general right to free public schooling?
[0]	Nil
[1]	7 years of age
[2]	6 years of age
[3]	5 years of age

TABLE A.2 - continued

Q#	Decision Rules
20.	While recognizing that compulsory school attendance is intended to benefit society; the student is also deemed to be a "direct beneficiary" of this right, which is considered as a duty imposed on parents. For purposes of this item, excused school attendance contemplates permanent or ongoing dispensation from compulsory attendance; it does not include any provision which is aimed at excusing occasional absences for sickness or other "legitimate" reasons. A "general exception" includes a provision whereby an appropriate authority may grant an exception on the basis of disability or a general exception under which disability can reasonably be inferred; however, excused school attendance for "unavoidable cause" is not deemed to subsume disability.

TABLE A.2 - continued

Q# / r# Themes / Items / Possible Responses

15. **What is the upper age limit for general right to free public schooling?**
 [0] Nil
 [1] 15 years of age
 [2] 16 years of age
 [3] 17 years of age
 [4] 18 years of age
 [5] 19 years of age
 [6] 20 years of age
 [7] 21 years of age
16. **Is there a right to early education for disabled?**
 [0] No such right provided
 [1] Right provided to some disabled
 [2] Right provided to all disabled
17. **What is the lower age limit for right to early education for disabled?**
 [0] Nil
 [1] 5 years of age
 [2] 4 years of age
 [3] 3 years of age
18. **Is there a right to extended schooling for disabled?**
 [0] No such right provided
 [1] Right provided to some disabled
 [2] Right provided to all disabled
19. **What is the upper age limit for right to extended schooling for disabled?**
 [0] Nil
 [1] 19 years of age
 [2] 20 years of age
 [3] 21 years of age
20. **Is compulsory schooling provided for?**
 [0] No such obligation is provided for
 [1] Compulsory attendance subject to general exception for disability
 [2] Compulsory attendance subject to exception for "severe" disabilities
 [3] Compulsory school attendance provided for without exception for disability

TABLE A.2 - continued

Q#	Decision Rules
23.	Regardless of the terms employed in different jurisdictions, "expulsion" is understood to mean forced, permanent (or indefinite) withdrawal from school, while "year-end suspension" refers to a long-term, but temporary, forced withdrawal (maximum to the end of the current school year). "Disability-related grounds" include reasons such as "inability to benefit from instruction" or inappropriate behaviour which can be reasonably linked to disability but does not include behaviours such as lack of assiduousness which might be attributable to any student.
24-25.	If response to Q#23 = [3] (no right to expulsion), then response to Q#24 and Q#25 = [1]; if student must move to a new school district in order to preserve duty or right to attend school, then response to Q#24 or Q#25, as the case may be, = [0].
26.	It is understood that rights to transportation may be subject to reasonable limits, such as distance, attendance area of school, student's behaviour; "enhancement for disabled" refers to waiver of any such requirements or right to specific or additional benefits for disabled.
27.	<i>National Building Code, 1990:</i> [1] (inferior to <i>NBC, 1990</i>): any one of standards in [2] not met. [2] (equivalent to <i>NBC, 1990</i>): (1) at least 1 barrier-free entrance on side-walk level or with ramp; and (2) barrier-free path of travel on entrance storey to all school facilities, including classrooms, assembly areas, offices and washrooms; and (3) spaces in fixed-seating area, assistive listening devices and access to telephones and drinking fountains; [3] (superior to <i>NBC, 1990</i>): meets all 3 standards of [2] + (1) access to all stories; or (2) barrier-free standards for classrooms or other educational facilities;

TABLE A.2 - continued

Q#/ r#	<u>Themes</u> / Items / Possible Responses
21.	What is the lower age limit for duty to attend school?
[0]	Nil
[1]	8 years of age
[2]	7 years of age
[3]	6 years of age
22.	What is the upper age limit for duty to attend school?
[0]	Nil
[1]	14 years of age
[2]	15 years of age
[3]	16 years of age
23.	Is expulsion of students from school permitted?
[0]	Expulsion permitted
[1]	Expulsion not allowed if grounds are disability-related
[2]	Expulsion not allowed but long-term suspension allowed
[3]	Neither expulsion nor long-term suspension allowed
24.	If student expelled from one school, is there still duty to attend school?
[0]	NO
[1]	YES
25.	If student expelled from one school, is there still right to education?
[0]	NO
[1]	YES
26.	Is there a right to free school transport?
[0]	No such right provided
[1]	Right provided without enhancement for disabled
[2]	Right provided with enhancement for disabled
[3]	Right provided with free adaptive school transport for disabled
27.	Is there a right to barrier-free access to new schools?
[0]	No standards for barrier-free access to new schools provided for
[1]	Standards for new schools inferior to <i>NBC, 1990</i> standards provided for
[2]	Standards for new schools equivalent to <i>NBC, 1990</i> standards provided for
[3]	Standards for new schools superior to <i>NBC, 1990</i> standards provided for

TABLE A.2 - continued

Q#	Decision Rules
28.	Home instruction is understood to be an alternative to instruction in school, as opposed to home-bound instruction for students are unable to attend school for health reasons. It is understood that this right may be subject to provincial curriculum/evaluation standards or be subject to approval by board or government.
29,	
38-40.	All items involving parental choice are deemed to subsume choice by the student if the latter is of majority age.
29.	"Exceptional circumstances" are understood to mean exceptions to a general "no choice" rule, such as unavailability of programs in local school; it is also understood that the provision of school choice as a general rule may be subject to reasonable limits such as school capacity.
30,	
36-40,	
45,	
48-49.	The second response category (r#1) in each of these items provides for a situation where no right to the benefit in question per se is specified in legislation but where there is a right to refer a dispute to third-party adjudication (i.e. the response to Q#35, or Q#43 or Q#53, as the case may be, = [2] or [3]); in such a case, the outside "appeal board" provides for <i>interest arbitration</i> or <i>dispute resolution</i> (i.e. where two parties cannot agree on a matter and the dispute is referred to a third party for a decision (e.g. determination of content of collective agreement in industrial dispute), as opposed to <i>rights arbitration</i> or <i>grievance arbitration</i> (i.e. where a party has a right by virtue of a law, contract, etc.) which he or she claims is not being granted by the other party and the complaint is referred to a third party for a decision (e.g. complaint submitted to human rights board of inquiry).
30.	General right to an assessment (r#2) means the right to have <i>some kind</i> of assessment conducted, while the enhanced right (r#3) includes the right to request a particular type, for example, a psycho-social assessment.
31.	Non-discriminatory assessment is understood to mean the use of procedures and instruments which are racially and culturally unbiased and take into account other relevant factors such as the student's language and handicapping condition.
32.	Multi-dimensional assessment is understood to mean the use of various procedures and instruments and relying on more than one type or source of information to conduct the assessment.

TABLE A.2 - continued

Q#/r# Themes / Items / Possible Responses

Identification and Placement

28. **Is there a right to home instruction?**
 [0] No right to home instruction
 [1] Right to provide home instruction
 [2] Right to provide home instruction and receive support services from board or government
29. **Do parents have a right to choose school?**
 [0] No right to choose school
 [1] Right to choose school in exceptional circumstances
 [2] Right to choose school as a general rule
30. **Is there a right to identification/assessment**
 [0] No right to identification/assessment
 [1] Right to identification/assessment subject to third-party decision
 [2] Right to identification/assessment
 [3] Right to require particular types of identification/assessment
31. **Is there a specific right to non-discriminatory assessment?**
 [0] NO
 [1] YES
32. **Is there a right to multi-dimensional assessment?**
 [0] NO
 [1] YES

TABLE A.2 - continued

Q#	Decision Rules
34.	The types of assessment contemplated by this item are those which go beyond traditional testing and evaluation of student achievement, such as intelligence and personality testing, psycho-social evaluation. However, they do not include medical examinations which are assumed to require consent according to health services legislation.
35,43, 53,60.	Items concerning right of appeal refer to specific appeal mechanisms in respect of assessment, placement and service delivery (#35, 43, 53) and a general appeal mechanism that is not issue specific (#60); they do not include the presumed right to apply for judicial review of board decisions. Third party adjudication (r#2 & r#3) may also include "in-house" appeal (r#1).
35.	An appeal of identification/assessment includes the failure to conduct same and the results of any identification/assessment conducted.
36-44.	"Placement" is understood to mean the setting where a student's educational program is delivered; unless legislation specifies otherwise, right to a particular placement is not deemed to include a right to program. Right to placement includes a change in placement, as well as the initial one.
36-40.	It is understood that standards of "practicability" may consider the needs of disabled, as well as those of other students.
36.	"Appropriate placement" is understood to mean one which is designed to meet the needs of the individual - a legislative standard for the provision of an educational placement.
37.	LRE = "least restrictive environment".
39.	A "special placement" includes a segregated class or school for disabled within the board.

TABLE A.2 - continued

Q#/r# Themes / Items / Possible Responses

33. **Is there a right to periodic re-assessment?**
 [0] NO
 [1] YES
34. **Is consent required for identification/assessment?**
 [0] No consent required
 [1] Consent required, unless board decision affirmed by third-party ruling
 [2] Consent required
35. **Is there a specific right to appeal an identification/assessment?**
 [0] No right to appeal
 [1] Right to "in-house" appeal
 [2] Right to binding third-party adjudication, subject to leave to appeal
 [3] Right to binding third-party adjudication
36. **Is there a right to an appropriate placement?**
 [0] No right to appropriate placement
 [1] Right to appropriate placement subject to third-party decision
 [2] Right to appropriate placement subject to standard of "practicability"
 [3] Right to appropriate placement
37. **Is there a right to a LRE placement?**
 [0] No right to LRE placement
 [1] Right to LRE placement subject to third-party decision
 [2] Right to LRE placement subject to standard of "practicability"
 [3] Right to LRE placement
38. **Is there a right to regular class placement?**
 [0] No right to regular class placement
 [1] Right to regular class placement subject to third-party decision
 [2] Right to regular class placement subject to standard of "practicability"
 [3] Right to regular class placement
39. **Is there a right to special placement?**
 [0] No right to special class placement
 [1] Right to special class placement subject to third-party decision
 [2] Right to special class placement subject to standard of "practicability"
 [3] Right to special class placement

TABLE A.2 - continued

Q#	Decision Rules
45.	"Appropriate education" is understood to mean an education which must be designed to meet the needs of the individual child; IEP = "individualized educational plan"; an IEP is understood to mean a statement of goals for the student identified as a student with disabilities and an indication of services or other means to be provided to achieve the goals.
46.	"Minority language instruction" is understood as that provided for in the <i>Canadian Charter</i> (s. 23); "second language instruction" includes all other non-majority language instruction.
47.	"Instructional materials" refers to textbooks, workbooks and the like but not ancillary materials such as paper, pencils, etc.; it is understood that this right may be subject to reasonable limits, such as the exclusion of non-reusable materials.

TABLE A.2 - continued

Q#/r# Themes / Items / Possible Responses

40. Is there a right to placement outside the board at public expense?

[0] No right to outside placement

[1] Right to outside placement subject to third-party decision

[2] Right to outside placement subject to standard of "practicability"

[3] Right to outside placement

41. Is consent required for special placement?

[0] No consent required

[1] Consent required, unless board decision affirmed by third-party ruling

[2] Consent required.

42. Is consent required for outside placement?

[0] No consent required

[1] Consent required, unless board decision affirmed by third-party ruling

[2] Consent required

43. Is there a specific right to appeal placement?

[0] No right to appeal

[1] Right to "in-house" appeal

[2] Right to binding third-party adjudication, subject to leave to appeal

[3] Right to binding third-party adjudication

44. Is there a right to maintain current placement pending appeal?

[0] NO

[1] YES

Services

45. Is there a right to appropriate education for disabled?

[0] No right to appropriate education

[1] Right to subject to third-party decision

[2] Right to appropriate education

[3] Right to appropriate education according to IEP

46. Is there a right to enhanced minority or second language instruction for disabled?

[0] NO

[1] YES

47. Is there a right to free instructional materials?

[0] NO

[1] YES

TABLE A.2 - continued

Q#	Decision Rules
48.	The adaptation of regular services is deemed to be provided for if the legislation requires appropriate education according to an IEP (i.e. Q#45 = [2]).
49.	Special education services include those which are intended to directly enhance the learning process for a student with a disability (e.g. FM system for student with a hearing impairment) and personal care services, primarily intended to provide for the health and hygiene needs of the student.
52.	For purposes of this item, special education services deemed not to include services provided under health services legislation.
54-56.	Participation of parents is not deemed to be provided for by committees or structures created for members of the public, when parents are not specifically mentioned as at least one reference group.

TABLE A.2 - continued

Q#/r# Themes / Items / Possible Responses

48. **Is adaptation of regular educational services for disabled required?**
 [0] No right to adaptation of regular education services
 [1] Right to adaptation of regular education services subject to third-party decision
 [2] Right to adaptation of regular education services
49. **Is there a right to special education services for disabled?**
 [0] No right to special education services
 [1] Right to special education services subject to third-party decision
 [2] Right to special education services
50. **Is there a right to reduced class size for special classes?**
 [0] NO
 [1] YES
51. **Is there a right to reduced student/staff ratios for special classes?**
 [0] NO
 [1] YES
52. **Is consent required for special education services?**
 [0] No consent required
 [1] Consent required, unless board decision affirmed by third-party ruling
 [2] Consent required
53. **Is there a specific right to appeal service delivery?**
 [0] No right to appeal
 [1] Right to "in-house" appeal
 [2] Right to binding third-party adjudication, subject to leave to appeal
 [3] Right to binding third-party adjudication

Parental Participation

54. **Are school boards required to provide for board-level participation of parents?**
 [0] NO
 [1] YES
55. **Are school boards required to provide for school-level participation of parents?**
 [0] NO
 [1] YES

TABLE A.2 - continued

Q#	Decision Rules
57.	The "involvement" of parents is understood to mean more than the requirement to transmit periodic report cards.

TABLE A.2 - continued

Q#/r#	Themes / Items / Possible Responses
56.	Are school boards required to provide for participation of parents of disabled?
[0]	NO
[1]	YES
57.	Are boards required to involve parents of disabled in monitoring student's progress?
[0]	NO
[1]	YES
58.	Is the confidentiality of student records provided for?
[0]	NO
[1]	YES
59.	Do parents have right of access to student records?
[0]	NO
[1]	YES
60.	Is there a general right to appeal board decisions?
[0]	No right to appeal
[1]	Right to "in-house" appeal
[2]	Right to binding third-party adjudication, subject to leave to appeal
[3]	Right to binding third-party adjudication

Note. Every effort has been throughout this study to use appropriate language to refer to disabilities and to persons with disabilities. As is often the case in presenting material in tabular form, this table uses a number of abbreviated expressions which depart from this general rule. It is hoped that this single exception does not detract from the presentation of the material contained therein nor diminish the importance of using appropriate language as a general rule of construction.

A.5 Comparison of Results

Several attempts were made to construct an instrument using a common format for all items, as shown below.

- A. Unqualified right
 Qualified right
 Possibility of right
 No right

- B. Enhanced right
 Universal right
 Restricted right
 Discretionary benefit
 No right/benefit

- C. Check list for presence of given element:
 (YES-NO response)

The pilot testing of the draft data analysis instrument indicated that it was not feasible to develop a common format for all items, for both theoretical and empirical reasons. In some cases, various levels of a given right can either be constructed or observed by the level of benefit, scope (to whom it applies) or specific conditions/restrictions which are applicable. In other cases, different levels of rights cannot be so distinguished - the right either exists or it doesn't.

The final form of the items included in the data analysis instrument were empirically determined. Where a range of possible responses could be distinguished, a multivariate scale was used; where the difference could be only be expressed by a binary choice (YES-NO), then this measure was adopted. In order to facilitate the tabulation the results, the following system was retained.

Multivariate response items:

response a = 0 = no right
response b = 1 = first level of right
response c = 2 = second level
response d = 3 = third level
and so on as required

Binary response items:

response a = 0 = no right
response b = 1 = existence of right

Thus all "a" responses could be counted as 0; all "b" responses as 1, "c" responses as 2, with others added on as required, without affecting the values assigned to the previous responses. Regardless of the total number of items or the levels of response retained for

a given item, the system for tabulating results did not have to be changed. The sum of the results for a given theme (and for the combination of all themes) were computed for all jurisdictions; this permitted both the synthesis of the analysis for all items in a given theme and the comparison of all jurisdictions.

It should be emphasized that no attempt was made to weight the scores to reflect the relative importance of various items included in the instrument; the "raw score" of 3 in a multivariate item does not mean that the response is three times the value of, for example, a binary item where the "raw score" is 1. Similarly, the fact that the total number of points for a given theme is higher than another does not mean that one theme is more important than the other. Consequently, the "raw score" for any jurisdiction does not have any absolute value; for this reason, "raw scores" were not standardized or scaled. However, the results of the analysis did permit jurisdictions to be rank ordered from top to bottom, with respect to overall results and individual themes. The maximum possible "raw scores" for all items and themes are included in table A.3.

TABLE A.3
Raw Scores for All Items

<u>Themes / Sub-Themes / Individual Items</u>	<u>Max Score</u>
<u>Non-Discrimination</u>	
Application to Students with Disabilities	
1. Is disability included as listed ground of discrimination?	3
2. Is public education an activity to which equality rights apply?	3
Scope of Prohibition Against Discrimination	
3. What limits or standards for equality rights are stipulated?	3
4. Do equality rights have primacy over other legislation?	2
5. Is Crown bound by equality rights provisions?	1
6. Is voluntary affirmative action provided for?	1
7. Is sanctioned affirmative action provided for?	1

TABLE A.3 - continued

<u>Themes / Sub-Themes / Individual Items</u>		<u>Max Score</u>
Adjudication of Complaints		
8.	Is HRC required to investigate complaints?	1
9.	Is board of inquiry provided for adjudication?	1
10.	Can individual submit complaint to board of inquiry?	1
11.	Does Board of Inquiry have broad remedial authority?	1
12.	Can Board order be appealed on questions of fact or law?	4
Sub-Total		22
<u>Access to Schooling</u>		
Right to Public Schooling		
13.	Is there a right to free public schooling?	3
14.	What is the lower age limit for general right to free public schooling?	3
15.	What is the upper age limit for general right to free public schooling?	7
16.	Is there a right to early education for disabled?	2
17.	What is the lower age limit for right to early education for disabled?	3
18.	Is there a right to extended schooling for disabled?	2
19.	What is the upper age limit for right extended schooling for disabled?	3
Compulsory Attendance		
20.	Is compulsory schooling provided for?	3
21.	What is the lower age limit for duty to attend school?	3
22.	What is the upper age limit for duty to attend school?	3
Expulsion		
23.	Is expulsion of students from school permitted?	3
24.	If student expelled from one school, is there still duty to attend school?	1
25.	If student expelled from one school, is there still right to education?	1
Additional Support		
26.	Is there a right to free school transport?	3
27.	Is there a right to barrier-free access to new schools?	3
Sub-Total		43

TABLE A.3 - continued

Themes / Sub-Themes / Individual Items	Max Score
<u>Identification & Placement</u>	
Choice of Schooling	
28. Is there a right to home instruction?	2
29. Do parents have a right to choose school?	2
Assessment	
30. Is there a right to identification/assessment	3
31. Is there a specific right to non-discriminatory assessment?	1
32. Is there a right to multi-dimensional assessment?	1
33. Is there a right to periodic re-assessment?	1
34. Is consent required for identification/assessment?	2
35. Is there a specific right to appeal an identification/assessment?	3
Appropriate Placement	
36. Is there a right to an appropriate placement?	3
37. Is there a right to a LRE placement?	3
38. Is there a right to regular class placement?	3
39. Is there a right to special placement?	3
40. Is there a right to placement outside the board at public expense?	3
41. Is consent required for special placement?	2
42. Is consent required for outside placement?	2
43. Is there a specific right to appeal placement?	3
44. Is there a right to maintain current placement pending appeal?	1
Sub-Total	38
<u>Services to be Provided</u>	
Appropriate Education	
45. Is there a right to appropriate education for disabled?	3
46. Is there a right to enhanced minority or second language instruction for disabled?	1
Instructional Services	
47. Is there a right to free instructional materials?	1
48. Is adaptation of regular educational services for disabled required?	2

TABLE A.3 - continued

<u>Themes / Sub-Themes / Individual Items</u>	Max Score
Special Educational Services	
49. Is there a right to special education services for disabled?	2
50. Is there a right to reduced class size for special classes?	1
51. Is there a right to reduced student/staff ratios for special classes?	1
52. Is consent required for special services?	2
53. Is there a specific right to appeal service delivery?	3
Sub-Total	16
<u>Parental Participation</u>	
Collective Participation	
54. Are school boards required to provide for board-level participation of parents?	1
55. Are school boards required to provide for school-level participation of parents?	1
56. Are school boards required to provide for participation of parents of disabled?	1
Individual-Level Participation	
57. Are boards required to involve parents of disabled in monitoring student's progress?	1
58. Is the confidentiality of student records provided for?	1
59. Do parents have right of access to student records?	1
General Appeal Mechanism	
60. Is there a general right to appeal board decisions?	3
Sub-Total	9
Grand Total	128

A.6 Validation and Reliability

The results of the both the preliminary and final analysis were tested for validity and reliability, as described below.

Preliminary Analysis

Table A.4 summarizes the analysis of the feedback from provincial respondents respecting the initial answers reached by the researcher for each jurisdiction to each of the items in the *Data Analysis Instrument*.

The number of "non responses" (col. E.) were all but confined to one jurisdiction (see table A.4, note g). When non responses are subtracted, the researcher and the respondents reached consensus on 90% (cols. A & B) and disagreed on less than 2% (col. D.) of remaining items. Approximately half of the number of items indicating differences of interpretation (col. C.) concerned the status of administrative documents in two jurisdictions and these differences were subsequently resolved (see table A.4, notes f & g), leaving only 4% of items where differences of interpretation persisted.

As indicated in the limits of this study (see Vol. 1, section 3.5), no respondent was asked to formalize his or her agreement with any changes made, nor were discussions with respondents pursued until all differences were resolved; table A.4 thus reflects the evaluation of the initial feedback. Given the analysis of the feedback, subsequent discussions with respondents and further changes in the responses made by the researcher, it is estimated that the net differences between the researcher and respondents is in the order of 2-3%, or 14 to 21 out of 720 items.

TABLE A.4
Data Validation by Provincial Respondents

Jurisdiction	A Agree ^a	B Change ^b	C Interpretation ^c	D Disagree ^d	E NR ^e
Alberta	51	0	7	2	0
British Columbia	49	2	7	2	0
Manitoba ^f	36	2	21	1	0
New Brunswick	51	2	4	2	1
Newfoundland	60	0	0	0	0
Northwest Territories	59	0	1	0	0
Nova Scotia ^g	36	0	12	0	12
Ontario	49	8	1	1	1
Prince Edward Island	59	0	1	0	0
Québec	51	2	4	3	0
Saskatchewan	56	3	0	1	0
Yukon	58	1	1	0	0
Total	615	20	59	12	14

Note. For number of responses for each jurisdiction: n=60;
for total number of responses from all jurisdictions: n=720.

^a Agree - number of items for which the respondent agreed with the answer reached by the researcher (includes cases where respondent identified additional references).

^b Change - number of items where answer reached by researcher changed on the basis of feedback received.

^c Interpretation - number of items where differences between respondent and the researcher deemed to be due to interpretation of the item on the instrument or determination of which administrative documents should be included in regulatory framework (includes cases where wording changes subsequently made to item on the basis of feedback received).

^d Disagree - number of items where, after review of feedback, disagreement remains between researcher and provincial respondent.

^e NR - number of items for which no response received from respondent.

^f 19 of 21 items (col. C.) based on respondent's premise that special education guidelines were binding; after further discussion, it was agreed that guidelines were not legally binding (see summary in table A.4).

^g 9 of 12 items (col. C.) based on respondent's premise that certain administrative documents were binding; after further discussion, the matter was resolved (see summary in table A.4); 12 items (col. E.) concerned Nova Scotia *Human Rights Act* which was deemed by the researcher to exclude youth (see discussion in app. B).

Final Results

In order to test the reliability of the ranking which resulted from the overall analysis, four procedures were carried out. The results obtained in each procedure were used to compare the ranking observed in the original rating with that observed in each of the procedures. The methodology and the results obtained are briefly described below.

Procedures

1. Key Rights Cognizant of the fact that some items on the data analysis instrument were more important than others, it was recognized that some provinces might have high scores on items of lesser importance, while not providing for more important rights. If this were so, the results of the analysis could be misleading. To test for this possibility, fifteen *key rights* (see Vol. 1, table 5.1) were identified from among the 60 items on the instrument and the scores for these items were ranked separately (max=40).

2. Compressed Scores It was recognized that the "levels of rights" reflected in the response categories of individual items were sometimes difficult to distinguish and this too might affect the overall results. Accordingly, all sixty items were rescored as either "0" or "1", thereby flattening the distribution to reflect the presence or absence of rights in each province (max=60).

3. Item #15 Item #15 on the data analysis instrument (Upper age limit for free public schooling) consisted of seven response categories (ages 15-21). As no other item on the instrument had such a high number of categories, it was possible that a high score on this one item could skew the overall rating of a given jurisdiction. Accordingly, the response categories of this item were collapsed into four categories:

[0]	Nil
[1]	≤ 17 years
[2]	18-19 years
[3]	≥ 20 years

This item was rescored and the new total score for each jurisdiction (max=124) was then computed.

4. **Theme Averages** The number of items for each theme and the maximum raw score for each vary considerably (see table A.3); consequently, a different result in overall ranking might be expected if the number of items and maximum scores were standardized for each theme. In order to test for this possibility, the scores obtained for each theme were converted to a common base:

$$\frac{\text{raw theme score}}{\text{max theme score}} \times 100$$

and then summed to provide a total converted score:

$$\frac{\sum \text{theme scores}}{\text{max total score}} \times 100$$

Results

The ranking and scores of jurisdictions resulting from the four tests, in comparison to the original ranking and scores, are shown in table A.5.

TABLE A.5
Validation of Rankings

Group/ Jurisdiction	Total ^a		Key ^b		Comp ^c		Item 15 ^d		Thm Avg ^e	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
High										
Yukon	01	59	01	78	01	72	01	57	01	59
Ontario	02	53	02	63	02	70	02	51	03	54
Québec	03	47	04	45	03	58	03	46	02	55
Saskatchewan	04	43	03	50	04	48	04	40	04	44
Moderate										
British Columbia	05	38	05	40	05	48	05	37	05	40
Alberta	06	34	06	38	06	43	06	33	06	34
Manitoba	07	33	07	35	07	38	08	30	07	29
New Brunswick	08	33	08	33	08	37	07	31	08	26
Low										
Newfoundland	09	27	09	30	09	32	09	27	09	23
Prince Edward Island	10	25	10	28	10	28	10	23	10	20
Nova Scotia	11	20	12	20	12	20	11	18	11	15
Northwest Territories	12	18	11	28	11	22	12	18	12	14

Note. Each type of rating (a, b, c, d, e) shown in converted scores (max=100); group (High, Moderate, Low) determined by ranking for Total;

^a Total = converted scores for all items;

^b Key = converted scores for 15 "key rights";

^c Comp = converted scores for compressed scores;

^d Item 15 = converted scores for total, using collapsed categories for item #15;

^e Thm Avg = converted scores for total derived from sum of theme scores.

As can be seen from table A.5, the ranking of jurisdictions is very similar in each case. Not one jurisdiction appears in a different grouping from that in which it appears for total scores; furthermore, every jurisdiction appears in either the same rank in which it appeared in total scores or in an adjacent rank. Accordingly, it was concluded that the ranking of jurisdictions by the overall scores obtained on the data analysis instrument is a valid measure of the relative position of each jurisdiction, relative to all others.

Generalizability of Results

The student population in each province varies considerably (see Vol. 1, table 5.5). In order to test the extent to which the distribution of EEO rights can be used to generalize

about Canada as a whole, the scores for all jurisdictions were converted to weighted scores to take into account the student population of each province. This was done by assigning the province with the largest student population (Ontario) a value of 1 and deriving a coefficient for each other province in relation to this constant. The mean scores for each theme were then compared with the weighted mean scores thus obtained, as shown in figure A.1.

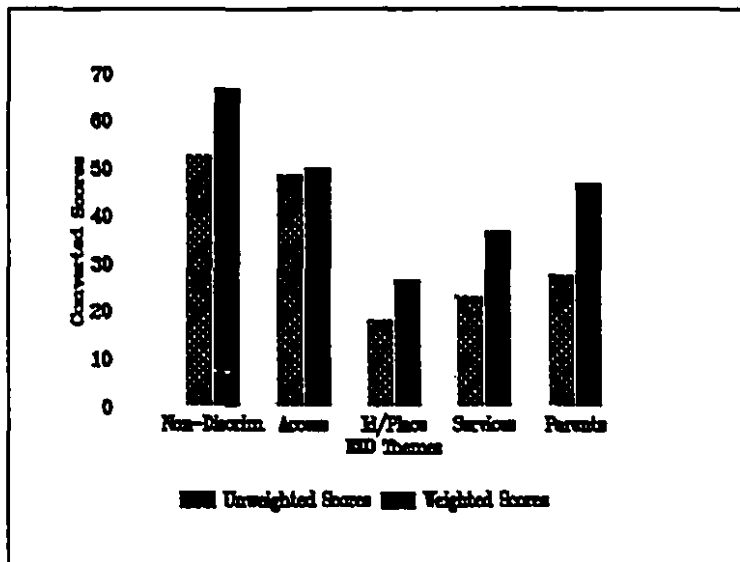


FIGURE A.1

EEO Themes: Unweighted and Weighted Mean Scores

As can be seen, the patterns of unweighted and weighted scores are very similar. The similarity in the two distributions is attributable to the fact that two of the provinces with the highest unweighted scores (ON, QC) account for 60% of the student population. Therefore, their weighted scores have the effect of maintaining

the overall mean to a level approximating that obtained with raw scores. Similarly, the slight changes in the pattern reflect the impact of these two provinces on the means of individual themes.

App. B

DATA ANALYSIS NOTES

B.1 The Canadian Charter and Equality Rights

As alluded to in Vol. 1, section 1.3.2, all legislation must not only fall within the field of legislative competence of either Parliament or the provincial/territorial legislature, it must respect the rights and freedoms set forth in the *Charter*, according to the provisions provided for therein. Any law which is found by the courts to violate the *Charter* will be held to be "of no force and effect" (*Constitution Act, 1982*, s. 52(1)). The purpose of this brief note is to provide the reader with sufficient background to consider the reference to *Charter* standards in interpreting the validity of provincial legislation.

For purposes of discussion, the following sections of the *Charter* are relevant:

1. The *Canadian Charter of Rights and Freedoms* 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.

15. (1) Every individual is equal before and under the law and has a 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.

(2) Subsection (1) does not preclude any law, program or 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.

The equality rights provided for in section 15 are thus subject to one ongoing constraint - the "reasonable limits" of section 1; they are also subject to one potential constraint - the so called "override" of section 33 (see discussion in Vol. 1, section 1.3.2). This discussion will begin with a review of the equality rights provisions, followed by a brief review of the limits on the scope of the protection afforded by these rights.

Equality Rights

The *Charter* ushered in a new era for the protection of equality rights in Canada and has been aptly characterized by L. Smith (1986) as a paradigm shift in the Canadian legal framework. The importance of the equality rights provided by section 15 is described thus by Dickson, C.J.C. (as he was then; cited in L. Smith, 1991, p. 379):

These sections [ss. 15, 28] reflect a profound concern for providing equality of rights and treatment, in a realistic and not merely formal sense, to all people of Canada. They contemplate equal justice for women, for minority groups, for the disadvantaged, for the disabled.

Whereas the Supreme Court of Canada had been criticised for its "timid" attitude to interpreting the *Canadian Bill of Rights*, it has demonstrated a markedly different attitude toward the *Charter* (Hogg, 1989). It has stated on more than one occasion that the interpretation of the *Charter* should be "a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter's protection" (*R. v. Big M. Drug Mart*, 1985, p. 345; see also, Hogg, 1990). The first equality rights case decided by Canada's highest court, *Andrews v. Law Society of British Columbia* (1989), will form the basis of this brief discussion of section 15.¹

First, it should be noted that section 15 is only concerned with the application of law. As stated by McIntyre, J., dissenting in part:² "It does not provide for equality between individuals or groups within society in a general or abstract sense" (*Andrews*, p. 163). These latter relationships are dealt with by human rights codes, statutory and common law (Swinton, 1982), such as the legislative action contemplated by this study. The purpose of the *Charter*, continues McIntyre, J., "is to ensure equality in the formulation and application of the law" (p. 171). McIntyre, J. described his vision of equality as follows:

The promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration.... [As stated by an Ontario appeal court decision]:

In our view, s. 15(1) read as a whole constitutes a compendious expression of a positive right to equality in both the substance and the administration of the law. It is an all-encompassing right governing all legislative action (p. 171).

For purposes of this discussion, the most important aspect of the *Andrews* decision is its

treatment of discrimination.

McIntyre, J., recognizing that "the worst oppression will result from discriminatory practices having the force of law" (*Andrews*, p. 172), defines discrimination thus:

Discrimination may be described as a distinction, whether intentional or not based on grounds related to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages or such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed (pp. 174-175).

McIntyre, J. also clarifies the grounds for a section 15 challenge and the nexus between equality and discrimination. He states that discrimination is limited to the grounds enumerated in section 15 or "grounds analogous to them" (p. 180). He further states that a law which makes distinctions between individuals or groups is only considered discrimination if such distinctions "involve prejudice or disadvantage" (p. 181); in other words, it must be considered invidious. This important *dictum* was reiterated in a unanimous decision of the Supreme Court in *R. v. Turpin* (1989).

Finally, the *Andrews* case decided that a two-stage analysis was appropriate for dealing with a section 15 complaint. In the first stage, the complainant must demonstrate that he or she has been the victim of discrimination based on a listed or analogous ground. If the court decides that his or her equality rights have been infringed, then the onus shifts to the defendant to demonstrate that the infringement can be justified under section 1.

Reasonable Limits

Section 1 has been described by Wilson, J. of the Supreme Court of Canada in *Operation Dismantle v. R.* (1985), as a "uniquely Canadian mechanism" (p. 491) to achieve the balancing act between absolute rights and no rights at all. Thus, section 1 contrasts starkly with the American Constitution which contains no such clause. As a result, the American courts have been required "to develop over the years a variety of implied limitations, internal to the various guaranteed rights themselves" (Gibson, 1990, p. 262).

The leading case with respect to the interpretation of section 1 is *R. v. Oakes* (1986), which expanded upon various earlier cases, notably *R. v. Big M Drug Mart Ltd.* (1985). The principles established by *Oakes* (1986) were subsequently summarized by the Chief Justice in *R. v. Edwards Books* (1986):

Two requirements must be satisfied to establish that a limit is reasonable and demonstrably justified in a free and democratic society. First, the legislative objective which the limitation is designed to promote must be of sufficient importance to warrant overriding a constitutional right. It must bear on a "pressing and substantial concern". Second, the means chosen to attain these objectives must be proportional or appropriate to the ends. The proportionality requirement, in turn, normally has three aspects: the limiting measures must be carefully designed, or rationally connected, to the objective; they must impair the right as little as possible; and their effects must not so severely trench on individual or group rights that the legislative objective, albeit important, is nevertheless outweighed by the abridgement of rights (p. 768).

The Supreme Court also stated that "the more severe the deleterious effects of a measure, the more important the objective must be" (*Oakes*, 1986, p. 140) and that "both in articulating the standard of proof and in describing the criteria comprising the proportionality requirement the Court has been careful to avoid rigid and inflexible standards" (*Edwards Books*, 1986, pp. 768-769). Finally, the Court has also made it clear that section 1 permits the limitation of rights not their abrogation.³

Early commentators, such as Bayefsky (1985), interpreted the reach of section 1 with reference to decisions based on the *European Convention of Human Rights* which contains similar language, concluding that:

- (1) "law" covers both written and unwritten or common law,
- (2) the interference in question must have some basis in domestic law,
- (3) the law must be adequately accessible, and
- (4) the law must enable the citizen to foresee, to a reasonable degree, the consequences of his or her conduct (note 345, p. 76).

Hogg (1992, p. 35/12) distils the foregoing into two rules:

- (1) the law must be adequately accessible to the public, and (2) the law must be formulated with sufficient precision to enable people to regulate their conduct by it, and provide guidance to those who apply the law.

The second rule means that a statute which is excessively vague will not be considered as a "reasonable limit" under section 1 (*Osborne v. Canada*, 1991).

The decision of the Alberta Court of Appeal in *Black v. Law Society of Alberta* (1986), affirmed by the Supreme Court of Canada, contains the following statement:

The words "prescribed by law" in s. 1 affirm that aspect of the rule which does not permit the capricious or arbitrary exercise of power. More specifically, they indicate that a violation is not protected unless it is permitted by some authority which is recognized as having a law-making function in our society, and that all members of society could know in advance, upon reasonable inquiry, what the rule is ... (p. 559).

Similarly, in *R. v. Therens* (1985), the Supreme Court made the following statement:

The requirement that the limit be prescribed by law is chiefly concerned with the distinction between a limit imposed by law and one that is arbitrary. The limit will be prescribed by law within the meaning of s. 1 if it is expressly provided for by statute or regulation, or results by necessary implication from the terms of a statute or regulation or from its operating requirements. The limit may also result from the application of a common law rule (p. 680).

For purposes of this inquiry, the distinction between limits provided for by law and those set by administrative discretion is particularly important. As discussed above in section A.5, administrative documents which do not have the force of law are not considered part of the regulatory framework. Just as such provisions cannot provide *rights*, neither can they set *limits* to rights which individuals have in law. Consequently, if a provision of a provincial statute dealing with student classification by disability, for example, was found to violate section 15 of the *Charter*, a government could not invoke an administrative policy document as a reasonable limit to shield the offending provision. As stated by the Supreme Court of Canada in *Irwin Toy Ltd. v. Québec* (1989):

Where there is no intelligible standard and where the legislature has given a plenary discretion to do whatever seems best in a wide set of circumstances, there is no "limit prescribed by law" (p. 983).

Impact of *Charter* Rights and Limits

The *Charter* does not impose positive obligations of governments to enact human rights legislation (Swinton, 1982). However, "where the government has undertaken to legislate on human rights, it is required to provide those benefits and protection to all classes" (Lederman & Ristic, 1986, pp. 95-96). Lederman and Ristic (1986) also note that is ironic "that the battleground for challenges under section 15 to discriminatory legislation will be over the provisions of the [federal and provincial human rights] Codes which

themselves were enacted to prohibit perceived human rights violations but which in light of section 15 have fallen short of the equality rights contained therein" (p. 91).

The argument put forth by Lederman and Ristic (1986) can be illustrated with reference to *Re Blainey and Ontario Hockey Association* (1986). In this case, a girl had been refused permission to play hockey as a member of a boys' team. The respondent association had relied on an exception in the Ontario *Human Rights Code* to the general prohibition against sex-based discrimination contained in the *Code*. The Court of Appeal held that without the exception, the respondent's action would have been illegal by virtue of the prohibition and that the provisions of the derogative section were contrary to the equality provisions of the *Charter*.

Blainey demonstrates the impact of the *Charter* on legislative action, especially when the legislature attempts to limit the equality guarantees set forth in *Human Rights Codes*. First, the text of the statute in question is subject to scrutiny to determine if it constitutes discrimination in the meaning of section 15 of the *Charter*. If it is held that the section is discriminatory, it is then up to the government (or other respondent in the case) to demonstrate that the provision is a reasonable limit in the meaning of section 1. As alluded to above, the language of provincial *Human Rights Codes* are especially vulnerable to attack in this regard, to the extent to which they set establish limits to the equality rights provided for in the *Code*. When the *Code* contains provisions which speak of "reasonable accommodation", "*bona fide* requirements" and "undue hardship", as well as when they delegate to human rights commissions the discretion to set such standards or approve affirmative action programs, the *Code* must be able to stand up to *Charter* scrutiny (*Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, 1990; *Ontario Human Rights Commission v. Borough of Etobicoke*, 1982; *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.*, 1985). If they cannot, the provisions will be struck down, possibly creating a void which can only be corrected by remedial legislation.⁴

Various commentators in the education field have long expressed the belief that the *Charter* would have significant impact on the rights of students, as well as on the overall

management of schools (J.C. Anderson, 1986; Cruickshank, 1986; MacKay, 1986a, 1986b, 1991; Magsino, 1988-89, 1992; Manley-Casimir & Sussel, 1986a, 1986b, 1987; McConnell & Pyra, 1989-90; Nicholls & Weuster, 1989; Schmeiser & Wood, 1984-85; Sussel & Manley-Casimir, 1986). Manley-Casimir and Sussel (1986a), comparing the impact of the U.S. Constitution on public education in the United States concluded that "the Charter carries within its clauses the seeds of equally dramatic and far-reaching changes for educational policy and practice in Canada", that Canada "could be on the verge of a judicial revolution in education governance similar in scope to what has occurred in the United States since the Brown decision" (pp. 3, 4). Expectations on behalf of students with disabilities were equally high, as stated by Lepofsky and Bickenbach (1985, p. 376):

In the final analysis, the claim of discrimination with respect educational opportunities may be one of the most important claims of inequality ever to be advanced under the *Charter*. Experience of handicapped persons has shown that where the educational opportunities of handicapped children are unequal or inadequate, the adverse ramifications will affect these handicapped individuals for the rest of their lives. To the extent that equality of educational opportunity is for the first time enforced in Canada, the *Charter* will have had the lasting positive effect desired by its drafters.

Although there is no litigated decision under the *Charter* regarding the educational rights of students with disabilities, three *Charter* cases have been settled out of court.⁵ Porter and Richler (1990) conclude that inasmuch as "two different school boards in two provinces [*Elwood & Robichaud*] capitulated completely to parent demand at the eleventh hour seems to indicate their expectation that, faced with the *Charter*, they would lose in the courtroom" (p. 69). However, until an such a case is fully litigated on the basis of the *Charter*, the true meaning of these out-of-court settlements remains conjectural.

B.2 Nova Scotia Human Rights Code and Public Schools

As stated in Vol. 1, section 4.1, it is the conclusion of this study that the equality rights provisions of the Nova Scotia *Human Rights Code* do not apply to public schooling. The purpose of this note is to provide the reader with the details of the analysis which led to this conclusion. The complete citation of the relevant sections of the *Code* is included in app. L; the key provisions are as follows:

5. (1) No person shall in respect of

- (a) the provision of or access to services or facilities; ...
discriminate against an individual or class of individuals on account of
- (h) age; ...
- (o) physical disability or mental disability; ...
- (v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).

6. Subsection (1) of Section 5 does not apply

- (a) in respect of the provision of or access to services or facilities, to the conferring of a benefit on or the providing of a protection to youth or senior citizens; ...
- (i) to preclude a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are disadvantaged because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5.

As discussed in Vol. 1, section 4.1, the language of section 5(1)(a) would be construed as to include education; however, section 6(1)(a) effectively removes public schooling from the application of the equality rights protection provided for in section 5(1)(a). Both sections are part of a recent comprehensive amendment of the *Code* (S.N.S. 1991, c. 12) and would appear to be the government's response, in part, to two cases which declared the previous exemptions to age discrimination to be unconstitutional (*Jones v. Technical University of Nova Scotia*, 1990; *Sniders v. Nova Scotia (A.G.)*, 1988).⁶ However, as drafted, the new section appears to exacerbate rather than mitigate the problems of the previous wording.

There are two ways to approach the interpretation of section 6(1)(a). First, one can assume that the provision is designed to augment rights for youth and seniors and that the section is meant to foreclose a "reverse discrimination" argument, whereby persons other than youth or seniors could claim that they were being discriminated against on the basis of age when they were denied benefits provided exclusively to the latter. An analysis of the section suggests that its language is not likely to bear this interpretation if subjected to judicial scrutiny, regardless of the intentions of the Legislature.

This section does not use the kind of language which one would associate with the protection of a benefit which would otherwise be prohibited by the equality rights section.

Compare the wording of section 6(1)(a) to a provision of the Ontario *Human Rights Code*:

A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment (s. 15).

In the Ontario *Code*, the provision clearly aims at shielding age-related benefits from a charge of discrimination. It is similar to the protection of affirmative action programs in the *Charter* (s. 15(2); cited above on p. 47).

The Nova Scotia Legislature appears to concur with such an approach for this kind of purpose, as evidenced by section 6(1)(i) of the *Code* cited above. The characteristics referred to in this subsection include, among others, age and disability (s. 5(1)(h)(o)). Since this subsection clearly protects affirmative action programs, there must be another purpose for the inclusion of subsection 6(1)(a).

One possibility is the argument that subsection 6(1)(i) refers only to "*disadvantaged* individuals or classes of individuals". Accordingly, one could argue that *all* youth and seniors are not disadvantaged per se and hence the need for a separate subsection.⁷ This is a reasonable argument but does not explain why subsection 6(1)(a) was not drafted in a like manner, i.e. "to preclude a law, program or activity that has as its object the amelioration of conditions of youth or senior citizens". Given the proximity of the two expressions in a single amending *Act*, it seems reasonable to apply the maxim that "a different expression implies a different concept" (P.-A. Coté, 1991, p. 279). Furthermore, if section 6(1)(a) were meant to shield the provision of benefits and protection to youth and seniors from a charge of age-based discrimination, the exclusion would logically be confined to this one ground (s. 5(1)(h)), whereas the actual reference (s. 5(1)(a)) excludes all grounds, including race, sex and disability, to name but three. Consequently, a second approach is required for the interpretation of section 6(1)(a).

The second approach assumes that the provision is intended to exclude the application of equality rights to youth and seniors. It is suggested that the wording of section 6(1)(a) will more reasonably bear this interpretation - one which could well be advanced by a school board, wishing to block an action against it based on section 5(1) (Equality Rights). As alluded to above, rather than stating that section 5(1) "does not preclude",

it states that it "does not apply", which begs the question, does not apply to what, to whom, in what circumstances?

First, the section states that the derogation applies in respect of "the provision of or access to services or facilities" (referring to s. 5(1)(a)), which means that it does not apply to other enumerated activities, such as accommodation and employment, provided for in clauses 5(1)(b) to 5(1)(g). Second, section 6(1)(a) does not provide for a general exception for youth or senior citizens; rather, it stipulates that the derogation applies only to "the conferring of a benefit on or the providing of a protection to youth or senior citizens". Contrast this wording to the exception provided "in respect of employment, to (i) a domestic employed and living in a single family home, ..." (s. 6(1)(c)). The latter is a general derogation with respect to the employment of domestics, while the derogation for youth and senior citizens is more narrowly worded. Consequently, any aspects of services or facilities which do not constitute a benefit or protection for youth or senior citizens would still come under the ambit of section 5(1)(a). Understanding the scope of the derogation therefore requires a definition of the four key terms used: "benefit", "protection", "youth" and "senior citizens", none of which is defined in the *Code*.

Black (1990) defines a benefit as an "advantage; profit; fruit; privilege; gain; interest.... Benefits are something to [the] advantage of, or profit to, [a] recipient.... Financial assistance received in time of sickness, disability, unemployment, etc. either from insurance or public programs such as social security" (p. 158); Dukelow and Nuse (1991) include the following in their definition of benefit - "a drug or other good or service that is supplied to an eligible person" (p. 92). Sanagan (1979), describing words and phrases judicially considered in Canada, provides the following entry:

A testatrix empowers her trustee to apply the share of any infant child for "his advancement or benefit". Benefit here means maintenance, education and such other necessities as the child might require prior to the date of payment of the legacy (p. 223).

In the context of public services, "protection" can be understood as the preservation of the safety and security of the individual, including the protective custody of a person "who because of mental illness or drug addiction may harm himself or others" (Black, 1990, p. 1223). Dukelow and Nuse (1991) refer to Nova Scotia child welfare legislation

to define protective services as including "services to unmarried mothers, adoption services, children's protective services, and other such services as are designated by the regulations to be protective services" (p. 838).

In Nova Scotia, a "youth" may be considered as anyone under 19 years (*Age of Majority Act*, s. 2), except where specific legislative provisions stipulate otherwise (see, for example the *Child and Family Services Act*). The Nova Scotia *Education Act* provides for the right to education up to 21 years of age "notwithstanding the *Age of Majority Act*" (s. 3(2)). A senior citizen is often considered to be someone over 65 years of age but, as with the definition of youth, the age limit will vary with specific legislative provisions.* It is possible that the courts would approach the definition of "youth" with reference to statutory and common law, as was the case in defining the scope of the term "child" in *Ogg-Moss v. R.* (1984). However, it is also possible that section 6(1) would be declared null and void because of this lack of precision in the wording:

It is a principle of fundamental justice in Canada, and of due process in the United States, that a statute is "void for vagueness" if its prohibitions are not clearly defined (Hogg, 1992, p. 35/14).

Moreover, the vagueness of the text offends the requirements of section 1 of the *Charter* (see section B.1).

It should also be noted that the above terms are used conjunctively - i.e. benefits or protection, on the one hand, and youth or senior citizens, on the other. Accordingly, it is argued that the derogation would not apply to benefits or protection offered to all citizens but only to those which target youth or senior citizens. Thus, for example, equality rights would apply to a senior citizen seeking access to a restaurant serving the public but they would not apply to the provision of "golden age" passes at a public movie theatre - a benefit designed for seniors. The problem with the legislation, as drafted, is that the use of the expression "does not apply", as opposed to "does not preclude ..." does not simply permit the offering of benefits to seniors or youth, it removes the benefit as an enumerated activity to which equality rights apply. In other words, once one is offering such a benefit, one may do so in a discriminatory fashion (see discussion of

* Given the purpose of this study, no investigation of such statutes was undertaken.

Roberts v. Ontario (Ministry of Health), 1989 in section 4.1).

On the basis of these general notions of "benefit" and "protection", it is argued that education certainly qualifies as the former and may, in special circumstances, qualify as the latter. The fact that some "advantages" provided by schooling may be a right, while others are a privilege, does not detract from the characterization of public education as a benefit. It is also argued that "youth" comprise all or almost all of the recipients of such benefits or protection, thereby satisfying the conjunctive requirement of the derogation. Therefore, section 6(1)(a) serves to remove the benefits and protection provided by public education to youth from the application of the equality rights provided for in section 5(1). The school board remains bound by the *Code* as an employer and in other circumstances not involving benefits or protection for youth. It is argued that while some ancillary activities of the school board *qua* educator may still be covered by section 5(1), the pith and substance of its role is not so covered.

It can be argued that, given the quasi-constitutional status of *Human Rights Codes*, their interpretation, like that of the *Charter*, should be a *generous*, rather than a *legalistic*, one (see discussion in section B.1 above). However, this approach does not mean that the text can be stretched to support an interpretation that the language cannot bear (*University of British Columbia v. Berg*, 1991). Stretching the meaning of the provision thus would require interpreting it to mean what the provision *should* say, rather than what it *does* say. In the case in point, the provision states that section 5(1) shall not apply to the provision of benefits and protection to youth and senior citizens in respect of the provision of or access to services and facilities. The notions of "benefit", "protection", "youth" and "senior citizens" are open to interpretation and may be void on grounds of vagueness alone; however, it is argued that it is unreasonable not to construe education as a benefit and that regardless of the precise interpretation of "youth", for the most part this age group constitutes the clientele of public schools. Consequently, it is concluded that public education in Nova Scotia is shielded from the prohibition against discrimination provided for in the *Code*.

As alluded to in Vol. 1, section 4.1, it is further contended that if the provision in

question were subjected to judicial scrutiny, it would be declared unconstitutional (see also discussion in section B.1 above). By excluding youth and seniors, section 6(1)(a) of the Nova Scotia *Code* denies them their *Charter* rights to equality and one could reasonably expect the same results in court as occurred in *Blainey* (see discussion in section B.1). In addition to the problem of vagueness, it is difficult to imagine how the provision could be saved by a section 1 defense, since it constitutes a general exclusion, as opposed to a specific derogation for a particular policy such as mandatory retirement.⁸ It is therefore submitted that a court would likely find section 6(1)(a) to be unconstitutional, requiring the government to redraft the clause, if indeed its intention were to shield special benefits and protection for youth and seniors from a charge of "reverse discrimination".

B.3 Ontario Identification, Placement and Review Process

As discussed in Vol. 1, section 4.3, Ontario provides for a complex set of procedures to govern the identification and placement of "exceptional pupils", as well as for the review and appeal of such decisions. The purpose of this note is to complement the information presented in Vol. 1, chapter 4 on this process (for additional commentary on this process, see Brown, 1991; Crux, 1989; Gilbert, Martin & Sheehan, 1991; Ontario Education, Special Education Branch 1985a, 1985b; A. Wilson, 1983). Unless the context indicates otherwise, all references in this note to the "Act" refer to the Ontario *Education Act* and all references to the "Regulation" refer to the Ontario *Special Education Identification Placement and Review Committees and Appeals Regulation*. The relevant sections from the *Act* and the complete text of the *Regulation* are included in app. M.

As indicated in Vol. 1, section 4.2, the expression "exceptional pupils" refers to those students considered to require placement in a special education program by the school board. However, the term does not include all students with disabilities, according to traditional classification schemes (see discussion in Vol. 1, surrounding table 2.1, chap. 2). According to the *Act*, some students with disabilities can be classified as "hard to serve pupils" who are deemed to be unable to profit from either the regular or special education programs offered by a school board. Provision is made for parents to appeal such a designation to an outside tribunal. If the parent agrees, or if the external tribunal

confirms the board decision, then the pupil is not entitled to a placement in the school board. Rather, he or she is entitled to a placement outside the board in an appropriate facility. The remainder of this note will deal only with exceptional pupils.

The IPRC process consist of three major parts. Part I is concerned with the identification and placement of exceptional pupils; Part II provides for an internal appeal process, if the parent is dissatisfied with the results of this internal process; Part III provides for an external appeal process, if the parent remains dissatisfied with the results of the internal appeal process. The elements of the process are delineated in the *Act* and the *Regulation* and include various delays, notices, language rights and other procedural details omitted in this note. A simplified version of the process, which illustrates the case of parents who avail themselves of all possible means of recourse, is shown in figure B.1.

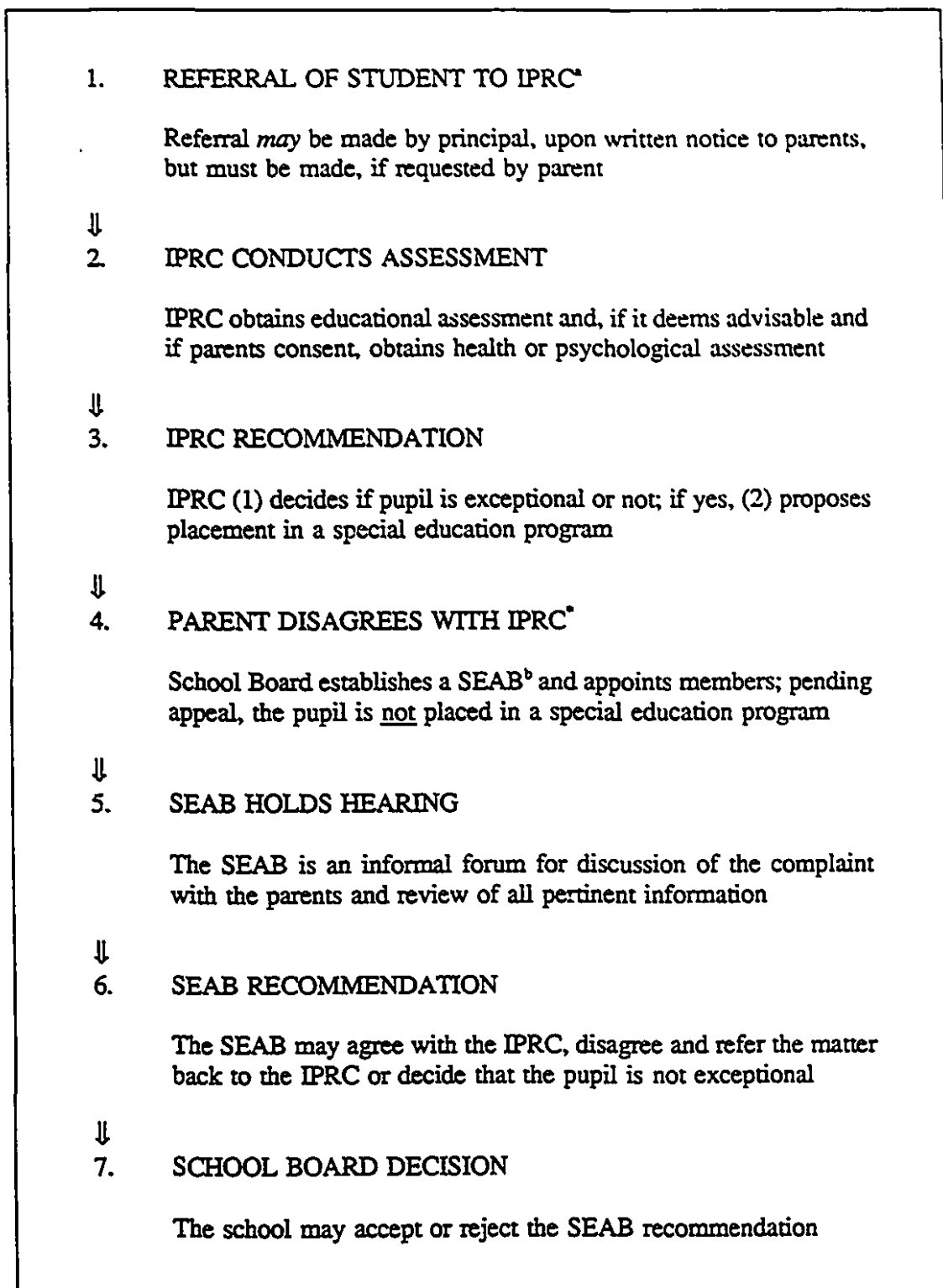


FIGURE B.1

Ontario IPRC and Appeal Process

↓

8. PARENT DISAGREES WITH SCHOOL BOARD*

Parent applies to SET^c for leave to appeal school board decision

↓

9. LEAVE TO APPEAL DECISION

SET may grant leave to appeal or not; if leave to appeal is granted, it may, with the consent of the parties, hear the appeal; failing such consent, it refers the matter to a RSET^d for adjudication

↓

10. SET/REST DECISION

SET/RSET holds a formal (quasi-judicial) hearing; SET/RSET decides to grant the appeal or not; it makes final and binding decision and may make other orders it considers appropriate

↓

11. PARENT CONTESTS SET/RSET DECISION*

If there are alleged grounds, such as excess of jurisdiction or manifest error in law, parent applies to Divisional Court for judicial review

↓

12. DIVISIONAL COURT RULING

Divisional Court may affirm or quash the SET/RSET decision and make any other order it considers appropriate

* IPRC - Identification and Placement Review Committee

^b SEAB - Special Education Appeal Board

^c SET - Special Education Tribunal

^d RSET - Regional Special Education Tribunal

* *Note.* If parent agrees with decision, IPRC process stops; however, if pupil is placed in a special education program, either the principal or parent (after 3 months) may request review and the matter is referred to IPRC; in case of disagreement, appeal process begins anew.

FIGURE B.1 - continued

Endnotes - Appendix B

1. In this case, a regulation of the Law Society of British Columbia included citizenship as a requirement for admission to the Bar. The plaintiff contended that the regulation violated his equality rights under the *Charter*. For a more comprehensive discussion of this important case, see Black & Smith, 1989; D.W. Elliott, 1989; Gold, 1989; Sheppard, 1989.

2. The Court was unanimous in finding that the regulations of the respondent Law Society offended s. 15 (see note 1). The partial dissent of McIntyre and Lamer, JJ. asserted that the regulations could be saved under s. 1, while the majority reached a contrary finding on this point. The majority opinion, delivered by Wilson, J., as well as the concurring opinion of La Forest, J., specifically endorsed McIntyre J.'s analysis of discrimination. Therefore, his opinion can be said to reflect the unanimous view of the Supreme Court.

3. In *Québec (A.G.) v. Quebec Protestant School Boards* (1984), the Supreme Court affirmed the decision of the Québec Court of Appeal, which had declared that certain provisions of the Québec *Charter of the French Language* had the effect of completely denying the minority language education rights provided for in s. 23 of the *Charter*. Citing with approval the Court of Appeal's statement that "in order to be justified within the meaning of s. 1 of the *Charter*, a limit or denial must assume the merits of a guaranteed right, and not challenge its very basis" (p. 74), the Supreme Court concluded that "these reasons, with which we agree in substance, are fatal to appellant's position, and in our position are conclusive" (p. 78). The Court went on to state that s. 1 limits "cannot be equated with the exceptions such as those authorized by s. 33(1) and (2) of the *Charter*, ... nor can those limits be tantamount to amendments to the Constitution of Canada" (p. 86). However, Hogg (1992, s. 35.6) concludes that the subsequent ruling of the Supreme Court in *Ford v. Québec* (1988) signifies that the Court will only use the distinction between *limits* and *denial* in exceptional cases.

4. The finding that a provision of a *Code* (or any other statute) falls short of *Charter* standards raises another problem which is beyond the scope of this study to discuss, namely the appropriate and permissible remedy in such a case. In contrast to the situation described below in section B.2, the law in question may not contain a provision that is severable from the whole (Juriansz, 1988). Striking down the whole simply makes the provision inoperative for everyone, including the complainant (see analogy with *Palmer v. Thompson*, 1971). Depending on the nature of and the wording of the impugned provisions, it may be possible to order the application of the provision, as if the excluded ground were included. However, given that courts are not mandated to re-write legislation (*R. v. Varga*, 1985), the court may be obliged to refer the matter back to the government, as the Supreme Court of Canada did in *Mahe v. Alberta* (1990). Generally, see Bogart, 1986-87; Gibson, 1989.

5. All three of these cases concerned a regular class placement for a student with a disability (*Elwood v. Halifax County Bedford District School Board*, 1987; *Hysert v. Carleton Board of Education*, 1991; *Robichaud v. Commission scolaire no. 39*, 1989). The board's pre-trial submission in *Elwood* is indicative of the importance of these types of cases (in Krinke, 1989):

If through this litigation it is determined that the parents of a mentally handicapped child have the right to have their child educated in the classroom of their choice, it would then be necessary for the School Board to develop new system of education for handicapped children (p. 272; see also MacKay, 1987b).

The *Hysert* case is unique because the settlement came about through a change in position on the part of the Ontario Education. McCallum (1991) states that this case "is thought to be the first time in the country when an attorney general clearly came out in favour of the disadvantaged person in a *Charter* challenge" (p. 67). However, the current Ontario Education discussion paper (1992) appears to be a retreat from the position advocated by the former Minister of Education in the letter annexed to the settlement minutes (W.J. Smith, 1992a). The *Robichaud* case also involved the interpretation of statutory rights and is discussed in Vol. 1, section 4.3.3.

6. Prior the amendment *Act*, age was not a listed ground in the *Code* respecting "accommodations, services and facilities customarily provided to members of the public" (former s. 3(a)). Discrimination on the basis of age was confined to employment and related issues and was limited to persons from 40 to 65 years (former s. 14(2)(a)). Both *Sniders* and *Jones* complained of mandatory retirement as discrimination. Although the latter involved a post-secondary educational institution, it concerned the institution *qua* employer, not educator.

7. This is the argument offered by the Nova Scotia Human Rights Commission (E. Russell, personal communication, December 15, 1992) and the Office of the Attorney-General (R. Duplak, personal communication, December 17, 1992). Specifically, it is argued that subsection 6(1)(a) permits the allocation of benefits and protection to youth and seniors, such as subsidized housing and reduced bus fares.

8. As discussed above, the amendment of the *Code* was originally intended, in part, to respond to the unconstitutionality of a general limitation of age in respect of mandatory retirement (*Jones*, 1990; *Sniders*, 1988), a policy which the Supreme Court of Canada has subsequently stated may, in certain circumstances, be a reasonable limit to age-based discrimination (see, for example, *McKinney v. University of Guelph*, 1990).

APPENDIX C

DATA ANALYSIS TABLES

This appendix includes all data analysis tables, all of which contain references to various statutes, regulations and other documents from each jurisdiction. In order to simplify the treatment of the data and avoid the repetition of long names, these data have been coded, beginning with a generic code for each jurisdiction, as shown in table C.1. Extracts from these data sources are included in the appendices indicated for each of these jurisdictions.

TABLE C.1
Key to Jurisdiction Codes

Code	Jurisdiction	Raw Data
AL	Alberta	Appendix F
BC	British Columbia	Appendix G
MA	Manitoba	Appendix H
NB	New Brunswick	Appendix I
NE	Newfoundland	Appendix J
NT	Northwest Territories	Appendix K
NS	Nova Scotia	Appendix L
ON	Ontario	Appendix M
PI	Prince Edward Island	Appendix N
QC	Québec	Appendix O
SA	Saskatchewan	Appendix P
YU	Yukon	Appendix Q

The correspondence of raw and converted scores is shown in table C.2. The codes for individual data sources are enumerated in table C.3; only those documents which are referred to in the data analysis tables which follow (tables C.4 and C.5.) have been coded; a complete listing of all primary source materials for each jurisdiction is included in the Reference List.

TABLE C.2
Correspondence of Raw and Converted Scores

Jur	Non-Discrim		Access		Id/Placement	
	Raw	Con	Raw	Con	Raw	Con
AL	13	59	17	40	10	26
BC	12	55	25	58	4	11
MA	15	68	22	51	3	8
NB	9	41	27	63	4	11
NE	15	68	16	37	4	11
NT	4	18	16	37	1	3
NS	0	0	20	47	3	8
ON	17	77	20	47	19	50
PI	10	45	20	47	1	3
QC	16	73	25	58	3	8
SA	15	68	21	49	9	24
YU	14	64	23	53	23	61
Max	22	100	43	100	38	100
Me	12	53	21	49	7	18
Std	5	22	3	8	7	18

TABLE C.2 - continued

Jur	Services		Parents		Total	
	Raw	Con	Raw	Con	Raw	Con
AL	0	0	4	44	44	34
BC	3	19	5	56	49	38
MA	1	6	1	11	42	33
NB	1	6	1	11	42	33
NE	0	0	0	0	35	27
NT	2	13	0	0	23	18
NS	3	19	0	0	26	20
ON	8	50	4	44	68	53
PI	1	6	0	0	32	25
QC	9	56	7	78	60	47
SA	7	44	3	33	55	43
YU	10	63	5	55	75	59
Max	16	100	9	100	128	100
Mean	4	23	3	28	46	36
Std	4	22	2	26	16	12

TABLE C.3
Key to Reference Codes

Code	Reference
AL	Alberta
AL-1	<i>Individual's Rights Protection Act</i>
AL-1.1	<i>Commission Procedure Regulation</i>
AL-2	<i>School Act</i>
AL-2.1	<i>Home Education Program Regulation</i>
AL-2.2	<i>Student Record Regulation</i>
AL-3	<i>Uniform Building Standards Act</i>
AL-3.1	<i>Alberta Building Code, 1990</i>
AL-4	<i>Department of Education Act</i>
AL-4.1	<i>Alberta School for the Deaf Regulation</i>
AL-5	<i>Interpretation Act</i>
BC	British Columbia
BC-1	<i>Human Rights Act</i>
BC-2	<i>School Act</i>
BC-2.1	<i>School Regulation</i>
BC-2.2	<i>Investigation by Superintendent Order</i>
BC-2.3	<i>Special Needs Students Order</i>
BC-2.4	<i>Support Services to Schools Order</i>
BC-2.5	<i>Jericho Hill Provincial Resource Program Order</i>
BC-3	<i>Independent School Act</i>
BC-3.1	<i>Independent School Regulation</i>
BC-4	<i>Municipal Act</i>
BC-4.1	<i>Building Regulations of British Columbia</i>
BC-5	<i>Interpretation Act</i>

TABLE C.3 - continued

Code	Reference
MA	Manitoba
MA-1	<i>Human Rights Act</i>
MA-2	<i>Public Schools Act</i>
MA-2.1	<i>Languages of Instruction and Study Regulation</i>
MA-3	<i>Education Administration Act</i>
MA-3.1	<i>Education Administration Regulation</i>
MA-4	<i>Buildings and Mobile Homes Act</i>
MA-4.1	<i>Manitoba Building Code</i>
MA-5	<i>Age of Majority Act</i>
MA-6	<i>Interpretation Act</i>
MA-7	<i>Blind Persons' and Deaf Persons' Maintenance and Education Act</i>
NB	New Brunswick
NB-1	<i>Human Rights Act</i>
NB-2	<i>Schools Act</i>
NB-2.1	<i>School Administration Regulation</i>
NB-2.2	<i>Pupil Conveyance and Boarding Regulation</i>
NB-3	<i>Auxiliary Classes Act</i>
NB-4	<i>Department of Education Act</i>
NB-5	<i>Interpretation Act</i>
NE	Newfoundland
NE-1	<i>Human Rights Act</i>
NE-2	<i>Schools Act</i>
NE-3	<i>Buildings Accessibility Act</i>
NE-3.1	<i>Buildings Accessibility Regulations, 1982</i>
NE-4	<i>Department of Education Act</i>
NE-5	<i>School Attendance Act</i>
NE-6	<i>Interpretation Act</i>
NE-7	<i>Child Welfare Act</i>

TABLE C.3 - continued

Code	Reference
NT	Northwest Territories
NT-1	<i>Fair Practices Act</i>
NT-2	<i>Education Act</i>
NT-2.1	<i>Education Regulations</i>
NT-3	<i>Fire Prevention Act</i>
NT-3.1	<i>Fire Prevention Regulations</i>
NT-4	<i>Interpretation Act</i>
NS	Nova Scotia
NS-1	<i>Human Rights Code</i>
NS-2	<i>Education Act</i>
NS-2.1	<i>General Regulations</i>
NS-3	<i>Handicapped Person's Education Act</i>
NS-3.1	<i>Atlantic Provinces Special Education Authority [APSEA] Regulation</i>
NS-3.2	<i>APSEA Agreement</i>
NS-4	<i>Building Code Act</i>
NS-4.1	<i>Provincial Building Code Regulations</i>
NS-5	<i>Building Access Act</i>
NS-6	<i>Interpretation Act</i>
NS-7	<i>Child and Family Services Act</i>
ON	Ontario
ON-1	<i>Human Rights Code</i>
ON-2	<i>Education Act</i>
ON-2.1	<i>Operation of Schools - General</i>
ON-2.2	<i>Special Education Identification Placement and Review Committees [IPRC] and Appeals</i>
ON-2.3	<i>Special Education Programs and Services</i>
ON-2.4	<i>Supervised Alternative Learning for Excused Pupils</i>
ON-2.5	<i>Categories of Exceptionality</i> <i>Note. Included in Ontario Ministry of Education (1984, pp. 14-18).</i>
ON-2.6	<i>Ontario Student Records Guideline OSR, 1989</i>
ON-3	<i>Municipal Freedom of Information and Protection of Privacy Act</i>

TABLE C.3 - continued

Code	Reference
ON	Ontario (cont'd)
ON-4	<i>Building Code Act</i>
ON-4.1	<i>Building Code</i>
ON-5	<i>Interpretation Act</i>
PI	Prince Edward Island
PI-1	<i>Human Rights Act</i>
PI-2	<i>School Act</i>
PI-2.1	<i>School Act Regulations</i>
PI-3	<i>Provincial Building Code Act</i>
PI-4	<i>Access To Public Buildings Act</i>
PI-5	<i>Interpretation Act</i>
QC	Québec
QC-1	<i>Charter of Human Rights and Freedoms</i>
QC-1.1	<i>Regulation Respecting Affirmative Action Programs</i>
QC-2	<i>Education Act</i>
QC-2.1	<i>Basic School Regulation for Preschool and Elementary School Education</i>
QC-2.2	<i>Basic School Regulation for Secondary School Education</i>
QC-2.3	<i>General education in the youth sector: 1992-93</i>
QC-3	<i>Charter of the French Language</i>
QC-3.1	<i>Exemption for Children with Serious Learning Disabilities Regulation</i>
QC-4	<i>Public Buildings Safety Act</i>
QC-4.1	<i>Application of a Building Code - 1985</i>
QC-5	<i>Act to Secure the Handicapped in the Exercise of their Rights</i>
QC-6	<i>Civil Code</i>
QC-7	<i>Interpretation Act</i>
QC-8	<i>Act Respecting the Conseil supérieur de l'éducation</i>
QC-9	<i>Act Respecting the ministère de l'Éducation</i>
QC-10	<i>Act Respecting Access to Documents Held by Public Bodies</i>
QC-11	<i>Youth Protection Act</i>

TABLE C.3 - continued

Code	Reference
SA	Saskatchewan
SA-1	<i>Saskatchewan Human Rights Code</i>
SA-1.1	<i>Saskatchewan Human Rights Code Regulations</i>
SA-2	<i>Education Act</i>
SA-2.1	<i>Education Regulations, 1986</i>
SA-3	<i>Uniform Building and Accessibility Standards Act</i>
SA-3.1	<i>Uniform Building and Accessibility Standards Regulations</i>
SA-4	<i>Interpretation Act</i>
YU	Yukon
YU-1	<i>Human Rights Act</i>
YU-2	<i>Education Act</i>
YU-3	<i>Buildings Standards Act</i>
YU-4	<i>Interpretation Act</i>

The analysis of the raw data is reported in the following two tables. The data contained therein are the same; the only difference is that table C.4 is sorted first by jurisdiction and table C.5 is sorted first by EEO themes; each table is then sorted by the items (1-60) on the data analysis instrument. The following is a key to the headings used in each table.

JUR	Jurisdiction (province/territory; see table C.1 above)
THM	EEO Theme (1=non-discrimination; 2=access; 3=identification & placement; 4=service delivery; 5=parental participation)
QST	Item (1-60) from the data analysis instrument (see table A.2, app. A above)
RES	Answered reached by researcher (for response categories see table A.2, app. A above)
REFERENCE	Pin-point reference to legislative action used to determine answer (see app. F to Q)

TABLE C.4
Data Analysis Report by Jurisdiction

JUR	THM	QST	RES	REFERENCE
AL	1	01	3	AL-1, ss. 3, 5, 38(e1)(i). N.B. Disability is not a listed ground in Alberta Bill of Rights respecting non-discrimination and the fundamental rights and freedoms stipulated therein.
AL	1	02	1	AL-1, s. 3.
AL	1	03	1	AL-1, s. 11.1; see also s. 13 re possible exceptions by regulation.
AL	1	04	1	AL-1, s. 1.
AL	1	05	1	AL-1, s. 12; see also AL-6, s. 14.
AL	1	06	0	
AL	1	07	0	
AL	1	08	0	AL-1, ss. 19, 20(4); AL-1.1, s. 8.
AL	1	09	1	AL-1, s. 27.
AL	1	10	0	AL-1, s. 27.
AL	1	11	1	AL-1, ss. 31, 31.1.
AL	1	12	4	AL-1, s. 33(1)(4)(5).
AL	2	13	2	AL-2, ss. 3, 24, 30, 32; if excluded by Special Needs Tribunal (s. 30) the latter establishes a service plan, which may not have an educational component). N.B. All responses re AL-2 subject to limitations clause (s. 2).
AL	2	14	2	AL-2, s. 3.
AL	2	15	4	AL-2, s. 3.
AL	2	16	0	
AL	2	17	0	
AL	2	18	0	
AL	2	19	0	
AL	2	20	2	AL-2, s. 8; exception refers to pupils excluded by Special Education Tribunal (see note to Q#13).
AL	2	21	3	AL-2, s. 8(1).
AL	2	22	2	AL-2, s. 8(1).
AL	2	23	0	AL-2, s. 19 (expulsion subject to review by Minister, s. 19(8)).
AL	2	24	0	AL-2, s. 8(3)(d).
AL	2	25	0	AL-2, s. 3(1) - right to schooling subject to other provisions of Act (viz s. 19).
AL	2	26	0	AL-2, s. 34 (right to school transport subject to any fees the board may decide to levy, s. 34(3)).
AL	2	27	2	AL-3.2, s. 3.7; N.B. AL-3 repealed by Safety Codes Act (n.y.p.); see also AL-1, s. 5.
AL	3	28	2	AL-2, s. 23; AL-2.1, ss. 3-5.
AL	3	29	0	AL-2, s. 8(2).
AL	3	30	0	AL-2, s. 29(1); see note to Q#35.
AL	3	31	0	
AL	3	32	0	
AL	3	33	0	
AL	3	34	0	
AL	3	35	0	Although disabled entitled to placement in special education program, which can be appealed (see Q#43), there is no specific right to appeal identification as disabled as such. N.B. Special Needs Tribunal (AL-2, s. 30) can only rule on "educability" of student, i.e. access to public school program.
AL	3	36	1	Q#43 = [3].
AL	3	37	1	Q#43 = [3].

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
AL	3	38	1	Q#43 = [3].
AL	3	39	1	Q#43 = [3].
AL	3	40	1	Q#43=[3]; see also: AL-2, ss. 28, 31, 46-47; AL-4, s. 6(d); AL-4.1, ss. 2-4.
AL	3	41	0	AL-2, s. 29(3).
AL	3	42	0	AL-2, s. 28(1)(b).
AL	3	43	3	AL-2, ss. 103-105; appeal to Minister refers to placement in a special program but special program (ss. 1(v), 29) not defined and could refer to both regular and special settings; see also note to Q#35 re special education tribunal.
AL	3	44	0	
AL	4	45	0	AL-2, s. 28.
AL	4	46	0	AL-2, s. 5.
AL	4	47	0	AL-2, s. 44(2)(i).
AL	4	48	0	
AL	4	49	0	Entitlement to a special education program is dependent on the board deciding that student needs such a program (AL-2, s. 29).
AL	4	50	0	
AL	4	51	0	
AL	4	52	0	AL-2, s. 29.
AL	4	53	0	Appeal to Minister re special education program (s. 104) limited to placement in program, not service delivery; see also note to Q#35 re Special Needs Tribunal.
AL	5	54	0	
AL	5	55	1	AL-2, s. 17.
AL	5	56	0	
AL	5	57	0	AL-2, s. 13(e).
AL	5	58	1	AL-2, s. 18; AL-2.2, s. 3(2).
AL	5	59	1	AL-2, s. 18; AL-2.2, s. 3(1).
AL	5	60	1	AL-2, s. 103. N.B. Appeal to Minister (ss. 104-105) limited to specified subjects.
BC	1	01	2	BC-1, ss. 1 ("discrimination"), 3. N.B. Disability not a listed ground in Civil Rights Protection Act respecting non-discrimination and promotion of hatred or superiority/inferiority of persons or groups of persons.
BC	1	02	1	BC-1, s. 3.
BC	1	03	1	BC-1, s. 3.
BC	1	04	2	BC-1, s. 22(2).
BC	1	05	1	BC-5, s. 14.
BC	1	06	1	Right to voluntary affirmative action programs limited to not-for-profit organizations working on behalf of an "identifiable group" (BC-1, s. 19(1)) and to employment equity (BC-1, s. 19.1(1)).
BC	1	07	1	BC-1, s. 17(2)(c)(ii).
BC	1	08	1	BC-1, ss. 11, 13.
BC	1	09	1	BC-1, s. 14.
BC	1	10	0	BC-1, s. 14.
BC	1	11	1	BC-1, s. 17.
BC	1	12	0	
BC	2	13	3	BC-2, ss. 1 ("educational program", "school age"), 2.
BC	2	14	3	BC-2, ss. 1 ("educational program", "school age"), 2.
BC	2	15	5	BC-2, ss. 1 ("educational program", "school age"), 2.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
BC	2	16	0	
BC	2	17	0	
BC	2	18	0	
BC	2	19	0	
BC	2	20	3	BC-2, s. 3.
BC	2	21	3	BC-2, s. 3 (age stated is 5 years but deferment provisions delays obligation until 6 years).
BC	2	22	2	BC-2, s. 3.
BC	2	23	2	BC-2, ss. 103(2)(c)(ii), (d), (3), 109(4)(5); section refers to "suspension" but does not define the duration of same; it is therefore assumed that year-end suspension possible but not expulsion.
BC	2	24	1	BC-2, ss. 3, 103 (in case of suspension, board must continue to provide educational program).
BC	2	25	1	BC-2, ss. 2, 103 (in case of suspension, board must continue to provide an educational program). N.B. an exception is provided for students over 16 (BC-2, s. 103(3)).
BC	2	26	0	BC-2, ss. 101, 103(2)(c)(iv)(B).
BC	2	27	2	BC-4.1, s. 3.7 (does not apply to City of Vancouver). N.B. Current version of BC-4.1 equivalent to NBC, 1985 but new version equivalent to NBC, 1990 is forthcoming.
BC	3	28	2	BC-2, ss. 1 ("educational program"), 12-13; BC-2.1, s. 3; BC-2.2, s. 2; see also BC-3, s. 9; BC-3.1, s. 6.
BC	3	29	0	BC-2, s. 94(4).
BC	3	30	0	Right to assessment only applies to students receiving home instruction (BC-2.1, s. 3); needs assessment for hearing impaired and medical assessment of serious physical disabilities are mandatory (BC-2, s. 106; BC-2.4).
BC	3	31	0	
BC	3	32	0	
BC	3	33	0	
BC	3	34	0	
BC	3	35	0	
BC	3	36	0	BC-2, s. 94(4); BC-2.1, s. 5(7)(b).
BC	3	37	0	
BC	3	38	2	BC-2.3, s. 1(2).
BC	3	39	0	
BC	3	40	0	BC-2, ss. 94(2), 104(1)(a).; BC-2.5.
BC	3	41	0	BC-2.3, s. 1(1).
BC	3	42	0	BC-2.3, s. 1(1).
BC	3	43	0	
BC	3	44	0	
BC	4	45	2	BC-2, ss. 1 ("educational program"), 94, 100(1)(a).
BC	4	46	0	BC-2, s. 5.
BC	4	47	1	BC-2, s. 100(1)(b).
BC	4	48	0	
BC	4	49	0	However, boards are required to provide speech and language services (BC-2, s. 106; BC-2.4).
BC	4	50	0	
BC	4	51	0	
BC	4	52	0	
BC	4	53	0	
BC	5	54	0	BC-2, ss. 8, 85(2)(b).

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
BC	5	55	1	BC-2, ss. 7(1)(c), 8.
BC	5	56	0	
BC	5	57	1	BC-2, ss. 4, 7(2).
BC	5	58	1	BC-2, ss. 97, 184.
BC	5	59	1	BC-2, s. 9.
BC	5	60	1	BC-2, s. 11.
MA	1	01	3	MA-1, ss. 1 ("dog guide"), 9, 10.
MA	1	02	2	MA-1, ss. 1 ("local authority", "person"), 13.
MA	1	03	1	MA-1, ss. 12-13.
MA	1	04	1	MA-1, s. 58.
MA	1	05	1	MA-1, s. 57; see also MA-6, s.14.
MA	1	06	1	MA-1, s. 11.
MA	1	07	1	MA-1, s. 43(2)(e).
MA	1	08	1	MA-1, ss. 23, 26, 29.
MA	1	09	1	MA-1, s. 29.
MA	1	10	0	MA-1, s. 29.
MA	1	11	1	MA-1, ss. 43, 47.
MA	1	12	2	MA-1, ss. 49-50.
MA	2	13	3	MA-2, ss. 75, 259.
MA	2	14	2	MA-2, s. 259.
MA	2	15	7	MA-2, s. 259; MA-5, s. 1.
MA	2	16	0	
MA	2	17	0	
MA	2	18	0	
MA	2	19	0	
MA	2	20	3	MA-2, ss. 258, 262.
MA	2	21	2	MA-2, s. 258.
MA	2	22	2	MA-2, s. 258. N.B. Compulsory attendance may be waived for student of 15 years (MA-2, s. 262(e)).
MA	2	23	0	MA-2, s. 48(4).
MA	2	24	0	MA-2, s. 262(c).
MA	2	25	0	MA-2, s. 259 (right to education subject to other provisions of Act).
MA	2	26	2	MA-2, s. 43.
MA	2	27	1	MA-4.1.
MA	3	28	1	MA-2, s. 262(b).
MA	3	29	0	MA-3.1, s. 42.
MA	3	30	2	MA-2, s. 41(1)(q).
MA	3	31	0	
MA	3	32	0	
MA	3	33	0	
MA	3	34	0	
MA	3	35	0	
MA	3	36	0	
MA	3	37	0	
MA	3	38	0	
MA	3	39	0	
MA	3	40	0	MA-2, ss. 41(5), 48(1)(p)(q); MA-3.1, s. 42. However, if program not available locally, board obliged to provide outside placement (MA-2, s. 41(5)); MA-7, ss. 3-4.
MA	3	41	0	

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
MA	3	42	0	
MA	3	43	0	N.B. An appeal process for placement, including third-party adjudication is included in a Ministry policy document (Manitoba Education, 1989); although the language of this document is directive, the document is not legally binding (see discussion in section A.2, app. A).
MA	3	44	0	
MA	4	45	0	MA-2, ss. 41(1)(a), 41(4).
MA	4	46	0	MA-2, s. 79; MA-2.1, s. 4.
MA	4	47	1	MA-2, ss. 41(1)(n), 48(1)(j) - textbooks are free; other materials may be.
MA	4	48	0	
MA	4	49	0	
MA	4	50	0	
MA	4	51	0	
MA	4	52	0	
MA	4	53	0	
MA	5	54	0	
MA	5	55	0	
MA	5	56	0	
MA	5	57	0	
MA	5	58	0	School boards not subject to Freedom of Information Act.
MA	5	59	1	MA-2, s. 41(1)(s).
MA	5	60	0	
NB	1	01	3	NB-1, ss. 2 ("mental disability", "physical disability"), 5, 19.
NB	1	02	1	NB-1, s. 5.
NB	1	03	1	NB-1, s. 5.
NB	1	04	0	
NB	1	05	1	NB-1, s. 9; see also, NB-5, s. 32.
NB	1	06	0	NB-1, s. 13.
NB	1	07	1	NB-1, s. 13.
NB	1	08	0	NB-1, s. 18.
NB	1	09	1	NB-1, s. 20(1).
NB	1	10	0	NB-1, s. 20(1).
NB	1	11	1	NB-1, s. 20(6.2).
NB	1	12	0	NB-1, s. 21(1).
NB	2	13	3	NB-2, s. 52(1).
NB	2	14	3	NB-2, s. 52(1).
NB	2	15	6	NB-2, s. 52(1).
NB	2	16	1	NB-2, s. 52(2); NB-3, ss. 3-4.
NB	2	17	3	NB-2, s. 52(2).
NB	2	18	1	NB-2, s. 52(2); NB-3, ss. 3-4.
NB	2	19	3	NB-2, s. 52(2).
NB	2	20	3	NB-2, s. 57 (however, see possible certificate of exemption from Minister, s. 57(3)(e)).
NB	2	21	2	NB-2, s. 57(1).
NB	2	22	2	NB-2, s. 57(1).
NB	2	23	0	NB-2, ss. 64-65 ("suspension" can equal expulsion); see also NB-2.1, ss. 53.1-53.21.
NB	2	24	0	NB-2, s. 57(3)(c).
NB	2	25	0	NB-2, ss. 52(1)(b), 64(4); right to attend linked to district in which student resides.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NB	2	26	0	NB-2, s. 63;
				NB-2.2, s. 3; the language of the regulation is permissive, despite the apparent obligation in the Act.
NB	2	27	0	N.B. No legislative action has been identified governing barrier-free access.
NB	3	28	1	NB-2, s. 57(3)(a).
NB	3	29	0	NB-2, s. 53(3).
NB	3	30	0	
NB	3	31	0	
NB	3	32	0	
NB	3	33	0	
NB	3	34	0	
NB	3	35	0	
NB	3	36	0	
NB	3	37	0	
NB	3	38	2	NB-2, s. 53(4).
NB	3	39	0	
NB	3	40	0	NB-2, s. 8(1); NB-4, s. 8.
NB	3	41	0	
NB	3	42	0	
NB	3	43	1	NB-2, s. 55; NB-2.1, ss. 53.1-53.21.
NB	3	44	0	
NB	4	45	0	A "special education program" is required for every "exceptional pupil" (NB-2, s. 1); however, the identification of an exceptional pupil is a board prerogative (NB-2, s. 52(3)).
NB	4	46	0	NB-2, s. 15.
NB	4	47	1	NB-2.1, s. 28; see also s. 25(2).
NB	4	48	0	
NB	4	49	0	
NB	4	50	0	
NB	4	51	0	
NB	4	52	0	
NB	4	53	0	
NB	5	54	0	N.B. The Minister may provide for such participation for minority language parents (NB-2, s. 3(2)).
NB	5	55	0	
NB	5	56	0	
NB	5	57	0	
NB	5	58	0	NB-2, s. 66; see also NB-2.1, ss. 53.1-53.21 (it is assumed that Right to Information Act does not apply to school boards).
NB	5	59	1	NB-2, s. 66.
NB	5	60	0	N.B. Although no general right to appeal exists, provision is made for appeal on specific issues (NB-2.1, ss. 53.1-53.21).
NE	1	01	3	NE-1, ss. 2(g)(h)(i), 6.
NE	1	02	1	NE-1, ss. 4, 6.
NE	1	03	1	NE-1, s. 6.
NE	1	04	2	NE-1, s. 5.
NE	1	05	1	NE-1, s. 3; see also, NE-6, s. 12.
NE	1	06	0	NE-1, s. 19.
NE	1	07	1	NE-1, s. 19.
NE	1	08	1	NE-1, ss. 20(2), 21.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NE	1	09	1	NE-1, s. 21.
NE	1	10	0	N.B. Individual may appeal refusal of HRC (NE-1, s. 21(4)).
NE	1	11	1	NE-1, s. 28.
NE	1	12	3	NE-1, s. 30; leave to appeal only required for appeal on questions of fact.
NE	2	13	2	NE-2, ss. 11(i), 12(e), 59-61; see also NE-5, ss. 3-8. N.B. Exemption for severely disabled arises in exclusion of "mentally deficient" (NE-2, s. 12(e)).
NE	2	14	3	NE-2, ss. 59-61.
NE	2	15	2	N.B. The upper age limit for school entitlement is not stipulated in the Act; this response is inferred from the upper age limit set for compulsory school attendance (see note to Q#22).
NE	2	16	0	
NE	2	17	0	
NE	2	18	0	
NE	2	19	0	
NE	2	20	2	NE-5, ss. 3-8, 12(e); see also, NE-7, s. 2(a) (b)(vii). N.B. See note to Q#13.
NE	2	21	3	NE-5, s. 3.
NE	2	22	3	NE-5, s. 3.
NE	2	23	0	NE-2, ss. 11(i)(ii), 77-78; right of expulsion subject to approval by the Ministry.
NE	2	24	0	NE-5, s. 8(b).
NE	2	25	0	Response inferred from Q#24 - i.e. right to education linked to duty to attend school (see note to Q#15).
NE	2	26	0	
NE	2	27	1	NE-3, ss. 2(l)(m), 3(a); NE-3.1, ss. 3-4. N.B. NE-3.1 contains references to both NBC, 1980 and NBC, 1985.
NE	3	28	1	NE-5, s. 8(d).
NE	3	29	0	NE-2, s. 18(e).
NE	3	30	0	
NE	3	31	0	
NE	3	32	0	
NE	3	33	0	
NE	3	34	0	
NE	3	35	0	
NE	3	36	0	NE-2, ss. 11(b), 12(s); NE-4, s. 8.
NE	3	37	0	
NE	3	38	0	
NE	3	39	3	NE-2, s. 11(b).
NE	3	40	0	NE-2, s. 11(b); outside placement subject to board discretion.
NE	3	41	0	
NE	3	42	0	See school board authority to make outside placements (NE-2, ss. 11(b), 12(s)).
NE	3	43	0	
NE	3	44	0	
NE	4	45	0	NE-2, s. 11(a).
NE	4	46	0	
NE	4	47	0	
NE	4	48	0	
NE	4	49	0	
NE	4	50	0	
NE	4	51	0	

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NE	4	52	0	
NE	4	53	0	
NE	5	54	0	
NE	5	55	0	
NE	5	56	0	
NE	5	57	0	
NE	5	58	0	It is assumed that Freedom of Information Act does not apply to school boards.
NE	5	59	0	
NE	5	60	0	
NT	1	01	2	NT-1, s. 4(1).
NT	1	02	1	NT-1, s. 4(1).
NT	1	03	0	
NT	1	04	0	
NT	1	05	0	NT-4, s. 8.
NT	1	06	0	
NT	1	07	1	NT-1, s. 9.
NT	1	08	0	NT-1, s. 7(1); the appointment of an investigative officer is discretionary.
NT	1	09	0	The Minister may, however, make a binding order (NT-1, s. 7(5)).
NT	1	10	0	
NT	1	11	0	However, Minister has broad authority to make order (NT-1, s. 7(5)).
NT	1	12	0	However, Minister's order may be appealed (NT-1, s. 8).
NT	2	13	3	NT-2, ss. 52(1), 131. N.B. Boards of education and divisional boards required to provide instruction to students (NT-2, ss. 34(p), 65(u)) and secondary boards required to admit all eligible students (NT-2, s. 82(2)(d); however, "students" not defined.
NT	2	14	2	NT-2, ss. 35(g), 67(f), 104, 131.
NT	2	15	1	NT-2, ss. 52(1), 131.
NT	2	16	0	
NT	2	17	0	
NT	2	18	0	
NT	2	19	0	
NT	2	20	1	NT-2, s. 131; see, in particular, s. 131(3)(f)(g).
NT	2	21	3	NT-2, s. 131(1).
NT	2	22	2	NT-2, s. 131(1).
NT	2	23	2	NT-2, s. 143 ("expulsion" in Act equivalent to suspension; limited to end of current semester).
NT	2	24	0	NT-2, s. 131(3)(e).
NT	2	25	0	See note to Q#13.
NT	2	26	0	NT-2, s. 145; NT-2.1, s. 44.
NT	2	27	2	NT-3.1, ss. 3(1)(a), 4(1).
NT	3	28	1	NT-2, s. 131(3)(a).
NT	3	29	0	NT-2, s. 66(2).
NT	3	30	0	
NT	3	31	0	
NT	3	32	0	
NT	3	33	0	
NT	3	34	0	
NT	3	35	0	
NT	3	36	0	
NT	3	37	0	
NT	3	38	0	NT-2, ss. 107-108.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NT	3	39	0	NT-2, ss. 35(d), 107-108.
NT	3	40	0	NT-2, ss. 107-109.
NT	3	41	0	NT-2, ss. 107-108.
NT	3	42	0	NT-2, ss. 7, 107-109; however, consent required if placement outside Territories.
NT	3	43	0	
NT	3	44	0	
NT	4	45	2	NT-2, ss. 34(p), 65(u), 82(2)(n).
NT	4	46	0	NT-2, ss. 89-90.
NT	4	47	0	NT-2, ss. 34(r), 65(n), 82(1)(h).
NT	4	48	0	
NT	4	49	0	NT-2, ss. 67(c), 107.
NT	4	50	0	
NT	4	51	0	
NT	4	52	0	
NT	4	53	0	
NT	5	54	0	
NT	5	55	0	
NT	5	56	0	
NT	5	57	0	
NT	5	58	0	
NT	5	59	0	
NT	5	60	0	
NS	1	01	0	See note to Q#2; NS-1, ss. 2, 3(l), 4, 5(1).
NS	1	02	0	The non-applicability of equality rights to youth is deemed to exclude application to public schooling (NS-1, s. 6(a)); see discussion in section B.2, app. B.
NS	1	03	0	See note to Q#2; NS-1, ss. 6(e)(f), 9.
NS	1	04	0	See note to Q#2; NS-1, s. 10.
NS	1	05	0	See note to Q#2; NS-1, s. 21; see also NS-6, s. 14.
NS	1	06	0	See note to Q#2; NS-1, s. 25.
NS	1	07	0	See note to Q#2; NS-1, s. 25.
NS	1	08	0	See note to Q#2; NS-1, s. 29.
NS	1	09	0	See note to Q#2; NS-1, s. 32A.
NS	1	10	0	See note to Q#2; NS-1, s. 32A.
NS	1	11	0	See note to Q#2; NS-1, s. 34.
NS	1	12	0	See note to Q#2; NS-1, s. 36.
NS	2	13	1	NS-2, ss. 3, 33(2); students must be "qualified" to be enrolled (NS-2.1, s. 6) and students with disabilities must be "capable of benefiting" (NS-2.1, s. 6(e)).
NS	2	14	3	NS-2, s. 3; NS-2.1, ss. 4, 6(e).

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NS	2	15	6	NS-2, s. 3; NS-2.1, s. 6(e).
NS	2	16	0	
NS	2	17	0	
NS	2	18	0	
NS	2	19	0	
NS	2	20	1	NS-2, s. 59; NS-2.1, ss. 62-63; in particular, see s. 63(a), (d); see also, NS-7, s. 22(2)(h).
NS	2	21	3	NS-2.1, s. 62.
NS	2	22	2	NS-2.1, s. 62.
NS	2	23	2	NS-2, s. 39(3)(c).
NS	2	24	0	NS-2.1, s. 63(g).
NS	2	25	0	Right to education subject to other provisions of Act (viz (NS-2, s. 39).
NS	2	26	0	NS-2, s. 33; NS-2.1, ss. 12-13 ("right" subject to board discretion).
NS	2	27	2	NS-4.1, s. 1.1; see also NS-5, s. 2(a)(c)(d).
NS	3	28	1	NS-2.1, s. 63(f).
NS	3	29	0	
NS	3	30	2	NS-3, s. 12(2). N.B. This right is limited to those students covered by this Act (see NS-3, s. 3(e); NS-3.1, s. 1(f); NS-3.2, s. 1(d)).
NS	3	31	0	
NS	3	32	0	
NS	3	33	0	
NS	3	34	0	
NS	3	35	0	
NS	3	36	0	
NS	3	37	0	
NS	3	38	0	
NS	3	39	0	
NS	3	40	0	NS-3, s. 12; see note to Q#30.
NS	3	41	0	
NS	3	42	0	
NS	3	43	0	N.B. An appeal process for placement, including third-party adjudication is included in a Ministry policy document (P & R Release No. A.2, 1988-89); although the language of this document is directive, the document is not legally binding (see discussion in section A.2, app. A).
NS	3	44	0	
NS	4	45	0	NS-2, s. 33(2)(4).
NS	4	46	0	NS-2, s. 2(ea)(eb).
NS	4	47	1	NS-2.1, s. 8.
NS	4	48	0	
NS	4	49	2	NS-2.1, s. 6(e); see note to Q#13.
NS	4	50	0	
NS	4	51	0	
NS	4	52	0	
NS	4	53	0	
NS	5	54	0	
NS	5	55	0	
NS	5	56	0	
NS	5	57	0	
NS	5	58	0	It is assumed that the Freedom of Information Act does not apply to school boards.
NS	5	59	0	

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
NS	5	60	0	
ON	1	01	3	ON-1, ss. 1, 10(1) ("because of handicap", "equal").
ON	1	02	1	ON-1, s. 1; see also exemptions re public education (s. 19).
ON	1	03	2	ON-1, ss. 9, 11, 12, 17, 18.
ON	1	04	1	ON-1, s. 47.
ON	1	05	1	ON-1, s. 47; see also, ON-5, s. 11.
ON	1	06	1	ON-1, s. 14.
ON	1	07	1	ON-1, s. 14.
ON	1	08	1	ON-1, ss. 33-34.
ON	1	09	1	ON-1, s. 36.
ON	1	10	0	ON-1, s. 36.
ON	1	11	1	ON-1, s. 41(1).
ON	1	12	4	ON-1, s. 42.
ON	2	13	2	ON-2, ss. 1(1) "exceptional pupil", "trainable retarded pupil", 1(2), 32(1), 33, 35, 40, 69-76; see also ON-2.5. N.B. The exception for severe disabled refers to exclusion of "hard to serve" pupils (ON-2, s. 35). N.B. The provisions of the Act dealing with "trainable retarded pupils" will be eliminated if current draft legislation (Bill 37, 1992) is adopted.
ON	2	14	2	ON-2, ss. 33, 171(1)(15). N.B. If the school board operates a kindergarten or a junior kindergarten, the age of school entitlement is correspondingly lowered.
ON	2	15	7	ON-2, ss. 32-33. N.B. the upper age limit is for elementary school; the limitation for secondary school is expressed as 7 years beyond elementary (ON-2, s. 40(5)).
ON	2	16	0	N.B. Provision of early education for hearing impaired is permissive (ON-2.1, s. 33).
ON	2	17	0	
ON	2	18	0	
ON	2	19	0	
ON	2	20	2	ON-2, ss. 11(8), 21; in particular, see s. 21(3); exception refers to "hard to serve pupils" (see also note to Q#13); see also, ON-2.4.
ON	2	21	3	ON-2, s. 21(1). N.B. If pupil's birthday is after September 1, duty to attend school delayed by one year.
ON	2	22	2	ON-2, s. 21(1). N.B. If pupil's birthday is after September 1, duty to attend school extended by one year.
ON	2	23	0	ON-2, ss. 21(3), 23(3).
ON	2	24	0	ON-2, s. 21(2)(f).
ON	2	25	0	ON-2, ss. 32-33; right to schooling linked to residency in district.
ON	2	26	0	ON-2, s. 190.
ON	2	27	2	ON-4.1, s. 3(7).
ON	3	28	1	ON-2, s. 21(2)(a).
ON	3	29	1	ON-2, ss. 39 (more accessible school in adjoining district), 41 (secondary school programs) - right in both sections subject to availability of space; see also s. 171(1)(7) re board prerogatives concerning attendance areas.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
ON	3	30	2	ON-2, s. 8(3); ON-2.2, s. 2; right to educational assessment provided by means of referral to Identification, Placement and Review Committee [IPRC]; decision to conduct health or psychological assessment the prerogative of IPRC.
ON	3	31	0	
ON	3	32	0	
ON	3	33	1	ON-2.2, ss. 8-10.
ON	3	34	2	ON-2.1, s. 12(3)(m); ON-2.2, s. 2(3)(a). N.B. Identification of pupil as "exceptional" subject to third-party decision but consent for assessment always required.
ON	3	35	2	ON-2, ss. 8(3), 37; ON-2.2, ss. 4, 5, 7. N.B. Appeal to outside tribunal (SET) can only arise following internal appeal.
ON	3	36	1	Q#43 = [2].
ON	3	37	1	Q#43 = [2].
ON	3	38	1	Q#43 = [2].
ON	3	39	1	Q#43 = [2].
ON	3	40	1	Q#43 = [2]; see also, ON-2, ss. 11(1)(28), 13, 69-76, 181-185.
ON	3	41	1	ON-2, s. 37; ON-2.2.
ON	3	42	1	ON-2, s. 37; ON-2.2.
ON	3	43	2	ON-2, s. 37; ON-2.2. N.B. Appeal to outside tribunal (SET) can only arise following internal appeal.
ON	3	44	1	ON-2.2, s. 12.
ON	4	45	3	ON-2, ss. 1, "special education program", "special education services", 11, 170(7).
ON	4	46	0	ON-2, s. 289(2).
ON	4	47	1	ON-2, ss. 170(13), 171(1)(13); ON-2.1, s. 7(4).
ON	4	48	1	Q#53 = [2].
ON	4	49	2	ON-2, ss. 1(1) ("special education program", "special education services"), 11, 170(7), 171(1)(25); see also, ON-2.3.
ON	4	50	1	ON-2.1, s. 35.
ON	4	51	0	
ON	4	52	0	ON-2, s. 37; ON-2.2. N.B. Right to consent re special education services not provided; however, pupil must have been identified as exceptional, as these services are defined as those provided to such pupils (ON-2, s. 1(1)).
ON	4	53	0	Although special services, like programs, are closely associated with placement, which can be appealed (see Q#43), there is no specific right to appeal service delivery as such.
ON	5	54	0	ON-2, s. 201, 205.
ON	5	55	0	
ON	5	56	1	ON-2, s. 206.
ON	5	57	1	ON-2.2.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
ON	5	58	1	ON-2, ss. 8(1)(27), 265(d), 266; ON-2.6, s. 4;
ON	5	59	1	ON-3, ss. 2(1) ("institution"), 4. ON-2, ss. 8(1)(27), 265(d), 266; ON-2.6, s. 4;
ON	5	60	0	ON-3, ss. 2(1) ("institution"), 32.
PI	1	01	3	PI-1, ss. 1(1)(d)(i), 15.
PI	1	02	1	PI-1, s. 2.
PI	1	03	1	PI-1, s. 14(1)(d) (2).
PI	1	04	2	PI-1, s. 1(2).
PI	1	05	1	PI-1, s. 34; see also, PI-5, s. 14.
PI	1	06	0	PI-1, s. 20.
PI	1	07	1	PI-1, s. 20.
PI	1	08	1	PI-1, s. 22.
PI	1	09	0	N.B. Board of inquiry provided for but it may only make recommendations to HRC, which may make recommendations to Minister who may make binding order (PI-1, ss 25-28).
PI	1	10	0	
PI	1	11	0	
PI	1	12	0	
PI	2	13	3	PI-2, s. 44; PI-2.1, s. 5(27). N.B. The right to education in the district in which student resides abrogated if Minister provides services to students (PI-2.1, s. 5(28)(d)).
PI	2	14	2	PI-2, s. 44.
PI	2	15	6	PI-2, s. 44.
PI	2	16	0	
PI	2	17	0	
PI	2	18	0	
PI	2	19	0	
PI	2	20	3	PI-2, ss. 1(b), 46.
PI	2	21	2	PI-2, s. 1(b).
PI	2	22	2	PI-2, s. 1(b).
PI	2	23	0	PI-2, s. 32.
PI	2	24	0	PI-2, s. 46(3)(c).
PI	2	25	0	Right to schooling linked to residency in district (PI-2, s. 44).
PI	2	26	1	PI-2, s. 33; PI-2.1, s. 5(30)(a).
PI	2	27	1	PI-4, s. 3; see also PI-3, ss. 1(h), 2.
PI	3	28	1	PI-2, s. 46(3)(a).
PI	3	29	0	PI-2, ss 30, 46(2).
PI	3	30	0	
PI	3	31	0	
PI	3	32	0	
PI	3	33	0	
PI	3	34	0	
PI	3	35	0	
PI	3	36	0	
PI	3	37	0	
PI	3	38	0	
PI	3	39	0	

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
PI	3	40	0	PI-2.1, s. 5(28)(d).
PI	3	41	0	
PI	3	42	0	
PI	3	43	0	
PI	3	44	0	
PI	4	45	0	PI-2, s. 47. PI-2.1, s. 5(30)(b).
PI	4	46	0	
PI	4	47	1	
PI	4	48	0	
PI	4	49	0	
PI	4	50	0	
PI	4	51	0	
PI	4	52	0	
PI	4	53	0	
PI	5	54	0	
PI	5	55	0	
PI	5	56	0	
PI	5	57	0	
PI	5	58	0	
PI	5	59	0	
PI	5	60	0	
QC	1	01	3	QC-1, s. 10; 10.1 see also prohibition against exploitation of disabled (s. 48).
QC	1	02	3	QC-1, s. 40-42; see also ss. 12, 13, 20.
QC	1	03	0	N.B. limits provided for in s. 9.1 do not apply to equality rights.
QC	1	04	1	QC-1, ss. 52-53.
QC	1	05	1	QC-1, s. 54; see also, QC-7, s. 42.
QC	1	06	0	QC-1, ss. 86-91; QC-1.1, ss. 1, 12-16.
QC	1	07	1	QC-1, ss. 86-91; QC-1.1, ss. 1, 12-16.
QC	1	08	1	QC-1, ss. 71(1), 77.
QC	1	09	1	QC-1, ss. 79, 80, 84.
QC	1	10	1	QC-1, ss. 79, 80, 84.
QC	1	11	1	QC-1, ss. 111-112, 126.
QC	1	12	3	QC-1, ss. 132-133.
QC	2	13	3	QC-2, ss. 1, 3, 726-727; QC-2.3, Ap. 1; QC-5, s. 1(g).
QC	2	14	3	QC-2, s. 1; QC-2.1, ss. 32, 41. N.B. As of 1993-94, the board may grant admission to a child whose birthday is after the "cutoff" date for registration (QC-2, ss. 241.1, 457.1).
QC	2	15	4	QC-2, s. 1. N.B. Upper age limit may be extended by one year (QC-2.2, s. 79; QC-3, s. 6.3.4).
QC	2	16	1	QC-2.1, s. 33, schedule I.
QC	2	17	2	QC-2.1, s. 33.
QC	2	18	1	QC-2, s. 1; QC-5, s. 1(g).
QC	2	19	3	QC-2, s. 1.
QC	2	20	1	QC-2, ss. 14-15; see also, QC-11, ss. 38, 38.1.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
QC	2	21	3	QC-2, s. 14.
QC	2	22	3	QC-2, s. 14.
QC	2	23	0	QC-2, s. 242.
QC	2	24	0	QC-2, s. 15(3).
QC	2	25	0	QC-2, ss. 1, 204; right to education linked to district in which student resides.
QC	2	26	0	QC-2, ss. 291-292 (if board decides to provide transport, then it is free).
QC	2	27	1	QC-4.1, ss. 1, 7.
QC	3	28	1	QC-2, s. 15(4).
QC	3	29	2	QC-2, s. 4 - right subject to enrolment criteria & transportation (ss. 239-240, & ss. 36-37, 236); see also QC-8, preamble; QC-9, preamble.
QC	3	30	0	N.B. School boards re required to adopt a by-law governing special education services (s. 235), including the evaluation of special needs students, but this section does not provide a right to the matters which must be treated in the by-law.
QC	3	31	0	
QC	3	32	0	
QC	3	33	0	
QC	3	34	0	Since assessment included as functions of school board (see QC-2.1, s. 5, QC-2.2, s. 4), consent requirements of QC-6 (ss. 19, 19.1) deemed not to apply.
QC	3	35	0	
QC	3	36	0	QC-2, ss. 233, 235.
QC	3	37	0	
QC	3	38	0	QC-2, s. 235(2); see note to Q#30.
QC	3	39	0	QC-2, s. 235(3); see note to Q#30.
QC	3	40	0	QC-2, ss. 213-214. N.B. private schools are state supported but there is no right to obtain access to such schools (Act Respecting Private Education); see also QC-1, s. 42.
QC	3	41	0	
QC	3	42	0	QC-2, ss. 213-214.
QC	3	43	0	
QC	3	44	0	
QC	4	45	3	QC-2, s. 47; see also s. 235(4).
QC	4	46	1	QC-3, ss. 72, 81; QC-3.1, ss. 1, 2.
QC	4	47	1	QC-2, s. 7.
QC	4	48	2	QC-2, ss. 222, 223, 234; QC-2.1, s. 55, schedule I & II; QC-2.2, s. 77, schedule [not numbered]; see also QC-2.3, ss. 2(3), 3(3), 6.
QC	4	49	2	QC-2, s. 224; see also s. 450; QC-2.1, ss. 1-5, 16-17.; QC-2.2, ss. 1-4, 15-16.
QC	4	50	0	
QC	4	51	0	
QC	4	52	0	
QC	4	53	0	
QC	5	54	1	QC-2, s. 189.
QC	5	55	1	QC-2, ss. 55, 83.
QC	5	56	1	QC-2, ss. 185, 187.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
QC	5	57	1	QC-2, s. 47 (parent involvement only for initial development of IEP); QC-2.1, ss. 39(3), 51(3); QC-2.2, s. 43(3).
QC	5	58	1	QC-10, ss. 1, 3, 53-54.
QC	5	59	1	QC-10, ss. 1, 3, 83.
QC	5	60	1	QC-2, ss. 9-12.
SA	1	01	3	SA-1, ss 2(d.1)(i.1), 12, 13, 48.
SA	1	02	3	SA-1, ss 12-13; SA-1.2, ss. 37, 39.
SA	1	03	2	SA-1, ss 12-13, 31(9.1); SA-1.1, s. 1(d).
SA	1	04	1	SA-1, s. 44.
SA	1	05	1	SA-1, s. 43; see also, SA-4, s. 7.
SA	1	06	0	SA-1, s. 47.
SA	1	07	1	SA-1, s. 47.
SA	1	08	0	SA-1, ss. 27(4), 28.
SA	1	09	1	SA-1, s. 29.
SA	1	10	0	SA-1, s. 29.
SA	1	11	1	SA-1, s. 31.
SA	1	12	2	SA-1, s. 32.
SA	2	13	3	SA-2, ss. 91(f), 143-145, 169; SA-2.1, ss. 48-49.
SA	2	14	2	SA-2, ss. 91(f), 144.
SA	2	15	7	SA-2, s. 144.
SA	2	16	0	Early childhood education for severely disabled at board discretion (SA-2.1, s. 50(2)).
SA	2	17	0	
SA	2	18	0	
SA	2	19	0	
SA	2	20	1	SA-2, ss. 2(g), 155-156; in particular, see s. 156(f) re board discretion concerning "unproductive" schooling.
SA	2	21	2	SA-2, s. 2(g).
SA	2	22	2	SA-2, s. 2(g).
SA	2	23	0	SA-2, ss. 91(n), 153-154; in particular, see s. 154(1).
SA	2	24	0	SA-2, s. 156(d).
SA	2	25	0	SA-2, ss 143-144; right to schooling subject to other provisions of the Act (viz s. 156).
SA	2	26	2	SA-2, ss. 91(k), 192; decision to provide transport generally rests with the board; however, high-cost disabled outside attendance area have right to transport (SA-2.1, s. 52(6)(7)).
SA	2	27	2	SA-3.1, s. 3.
SA	3	28	1	SA-2, s. 156(a).
SA	3	29	0	SA-2, s. 91(g).
SA	3	30	1	Q#35 = [3]; decision to proceed in individual case discretionary (SA-2, s. 178(1)(b)); however, board has explicit responsibility for conducting assessment and placement of disabled (SA-2.1, s. 50).
SA	3	31	0	
SA	3	32	0	
SA	3	33	0	
SA	3	34	0	SA-2.1, s. 50(3); however, consultation is provided for "high-cost disabled".
SA	3	35	3	SA-2.1, s. 51.

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
SA	3	36	2	SA-2, s. 184;
SA	3	37	2	SA-2.1, s. 52(1); "appropriate" refers to education not placement. SA-2, s. 184; in particular, see s. 184(2)(b) re denial of placement because of incapacity of pupil or disruption to class;
SA	3	38	0	SA-2.1, s. 52(1)(a). SA-2, s. 184;
SA	3	39	0	SA-2.1, s. 52. SA-2, s. 184;
SA	3	40	0	SA-2.1, s. 52. SA-2, s. 184;
SA	3	41	0	SA-2.1, ss. 52, 94-95. SA-2, s. 184(5);
SA	3	42	0	SA-2.1, s. 50(1)(3). SA-2, ss. 92(b)(c)(v), 184(5);
SA	3	43	0	SA-2.1, s. 50(1)(3). SA-2.1, s. 51.
SA	3	44	0	
SA	4	45	2	SA-2, s. 143(1); SA-2.1, s. 52(1).
SA	4	46	0	
SA	4	47	1	SA-2, ss. 91(z), 92(d); SA-2.1, s. 37(1)(c).
SA	4	48	2	SA2, ss. 144(1), 169(2), 227(b); SA-2.1, s. 52(1).
SA	4	49	2	SA-2, ss. 188-190; SA-2.1, s. 52(1).
SA	4	50	0	
SA	4	51	0	SA-2.1, s. 52(1)(c).
SA	4	52	0	
SA	4	53	0	
SA	5	54	1	SA-2.1, s. 39.
SA	5	55	0	SA-2.1, s. 43.
SA	5	56	0	
SA	5	57	0	SA-2, s. 227(g).
SA	5	58	1	SA-2, s. 146 (Freedom of Information and Protection of Privacy Act not applicable to school boards).
SA	5	59	1	SA-2, s. 146.
SA	5	60	0	
YU	1	01	3	YU-1, ss. 1, 2, 6, 34 ("physical disability", "mental disability").
YU	1	02	1	YU-1, s. 8; see also YU-2, ss. 4(e), 28.
YU	1	03	2	YU-1, ss. 7, 9-11; in particular, see s. 7(2).
YU	1	04	1	YU-1, s. 36.
YU	1	05	1	YU-1, s. 35; see also, YU-4, s. 13.
YU	1	06	1	YU-1, s. 12.
YU	1	07	0	
YU	1	08	1	YU-1, s. 19.
YU	1	09	1	YU-1, s. 20.
YU	1	10	0	YU-1, s. 20.
YU	1	11	1	YU-1, ss. 23-24.1.
YU	1	12	2	YU-1, s. 26.
YU	2	13	3	YU-2, ss. 1 ("school age"), 10-12, 32-33; see also s. 37. N.B. All responses concerning YU-2 subject to "reasonable limits" clause (YU-2, s. 2(1)).

TABLE C.4 - continued

JUR	THM	QST	RES	REFERENCE
YU	2	14	2	YU-2, s. 10.
YU	2	15	6	YU-2, ss. 10, 13.
YU	2	16	0	
YU	2	17	0	
YU	2	18	0	
YU	2	19	0	
YU	2	20	3	YU-2, ss. 22-23.
YU	2	21	2	YU-2, s. 22.
YU	2	22	2	YU-2, s. 22.
YU	2	23	2	YU-2, ss. 40-41 (limited to end of current semester).
YU	2	24	0	YU-2, s. 22(d).
YU	2	25	0	Right to schooling provided "in accordance with the provisions of this Act" (YU-2, s. 10) - viz ss. 40-41.
YU	2	26	1	YU-2, s. 47.
YU	2	27	2	YU-3, ss. 1-2.
YU	3	28	2	YU-2, ss. 19, 31.
YU	3	29	1	YU-2, ss. 1 "attendance area", "education area", 11, 58-65; however required parental consent to IEP (YU-2, s. 1 ("individualized education plan")) and right to appeal implementation of IEP in a school where the student would not normally attend (YU-2, s. 17(e)) limits board prerogative re school choice.
YU	3	30	2	YU-2, s. 16(3).
YU	3	31	0	
YU	3	32	1	YU-2, s. 16(2)(d).
YU	3	33	0	
YU	3	34	2	YU-2, s. 16(2)(c).
YU	3	35	3	YU-2, ss. 16(2)(g), 17, 157-165; in particular, see s. 17(1)(a)(c).
YU	3	36	2	YU-2, s. 15(2).
YU	3	37	2	YU-2, s. 15(2).
YU	3	38	1	Q#43 = [3].
YU	3	39	1	Q#43 = [3].
YU	3	40	1	Q#43 = [3]; YU-2, ss. 11, 14.
YU	3	41	1	YU-2, ss. 17, 157-65; in particular, see s. 17(1)(d).
YU	3	42	1	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(e); generally, however, outside placement is board prerogative (YU-2, ss. 11, 14), as is choice of school (see note to Q#29).
YU	3	43	3	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(d)(e).
YU	3	44	0	YU-2, s. 17(2).
YU	4	45	3	YU-2, ss. 1 ("individualized education plan"), 15, 16, 34.
YU	4	46	0	YU-2, s. 56.
YU	4	47	0	
YU	4	48	1	Q#53 = [3].
YU	4	49	2	YU-2, ss. 1 ("individualized education plan"), 15, 34.
YU	4	50	0	
YU	4	51	0	
YU	4	52	1	YU-2, s. 1 ("individualized education plan"), 16(2)(g), 17, 157-165; in particular, see s. 17(1)(b).
YU	4	53	3	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(b).
YU	5	54	0	
YU	5	55	1	YU-2, s. 116(1)(p).
YU	5	56	0	
YU	5	57	1	YU-2, ss. 16, 18, 168(c), 169(r).
YU	5	58	1	YU-2, s. 20(3) (Access to Information Act not applicable to school boards).
YU	5	59	1	YU-2, s. 20(2).
YU	5	60	1	YU-2, s. 156.

TABLE C.5
Data Analysis Report by Theme

THM	QST	JUR	RES	REFERENCE
1	01	AL	3	AL-1, ss. 3, 5, 38(e1)(i). N.B. Disability is not a listed ground in Alberta Bill of Rights respecting non-discrimination and the fundamental rights and freedoms stipulated therein.
1	01	MA	3	MA-1, ss. 1 ("dog guide"), 9, 10.
1	01	NB	3	NB-1, ss. 2 ("mental disability", "physical disability"), 5, 19.
1	01	NE	3	NE-1, ss. 2(g)(h)(1), 6.
1	01	ON	3	ON-1, ss. 1, 10(1) ("because of handicap", "equal").
1	01	PI	3	PI-1, ss. 1(1)(d)(1), 13.
1	01	QC	3	QC-1, s. 10; 10.1 see also prohibition against exploitation of disabled (s. 48).
1	01	SA	3	SA-1, ss. 2(d.1)(i.1), 12, 13, 48.
1	01	YU	3	YU-1, ss. 1, 2, 6, 34 ("physical disability", "mental disability").
1	01	BC	2	BC-1, ss. 1 ("discrimination"), 3. N.B. Disability not a listed ground in Civil Rights Protection Act respecting non-discrimination and promotion of hatred or superiority/inferiority of persons or groups of persons.
1	01	NT	2	NT-1, s. 4(1).
1	01	NS	0	See note to Q#2; NS-1, ss. 2, 3(1), 4, 5(1).
1	02	QC	3	QC-1, s. 40-42; see also ss. 12, 13, 20.
1	02	SA	3	SA-1, ss. 12-13; SA-1.2, ss. 37, 39.
1	02	MA	2	MA-1, ss. 1 ("local authority", "person"), 13.
1	02	AL	1	AL-1, s. 3.
1	02	BC	1	BC-1, s. 3.
1	02	NB	1	NB-1, s. 5.
1	02	NE	1	NE-1, ss. 4, 6.
1	02	NT	1	NT-1, s. 4(1).
1	02	ON	1	ON-1, s. 1; see also exemptions re public education (s. 19).
1	02	PI	1	PI-1, s. 2.
1	02	YU	1	YU-1, s. 8; see also YU-2, ss. 4(e), 28.
1	02	NS	0	The non-applicability of equality rights to youth is deemed to exclude application to public schooling (NS-1, s. 6(a)); see discussion in section B.2, app. B.
1	03	ON	2	ON-1, ss. 9, 11, 12, 17, 18.
1	03	SA	2	SA-1, ss. 12-13, 31(9.1); SA-1.1, s. 1(d).
1	03	YU	2	YU-1, ss. 7, 9-11; in particular, see s. 7(2).
1	03	AL	1	AL-1, s. 11.1; see also s. 13 re possible exceptions by regulation.
1	03	BC	1	BC-1, s. 3.
1	03	MA	1	MA-1, ss. 12-13.
1	03	NB	1	NB-1, s. 5.
1	03	NE	1	NE-1, s. 6.
1	03	PI	1	PI-1, s. 14(1)(d) (2).
1	03	NT	0	
1	03	NS	0	See note to Q#2; NS-1, ss. 6(e)(f), 9.
1	03	QC	0	N.B. limits provided for in s. 9.1 do not apply to equality rights.
1	04	BC	2	BC-1, s. 22(2).
1	04	NE	2	NE-1, s. 5.
1	04	PI	2	PI-1, s. 1(2).
1	04	AL	1	AL-1, s. 1.
1	04	MA	1	MA-1, s. 58.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
1	04	ON	1	ON-1, s. 47.
1	04	QC	1	QC-1, ss. 52-53.
1	04	SA	1	SA-1, s. 44.
1	04	YU	1	YU-1, s. 36.
1	04	NB	0	
1	04	NT	0	
1	04	NS	0	See note to Q#2; NS-1, s. 10.
1	05	AL	1	AL-1, s. 12; see also AL-6, s. 14.
1	05	BC	1	BC-5, s. 14.
1	05	MA	1	MA-1, s. 57; see also MA-6, s. 14.
1	05	NB	1	NB-1, s. 9; see also, NB-5, s. 32.
1	05	NE	1	NE-1, s. 3; see also, NE-6, s. 12.
1	05	ON	1	ON-1, s. 47; see also, ON-5, s. 11.
1	05	PI	1	PI-1, s. 34; see also, PI-5, s. 14.
1	05	QC	1	QC-1, s. 54; see also, QC-7, s. 42.
1	05	SA	1	SA-1, s. 43; see also, SA-4, s. 7.
1	05	YU	1	YU-1, s. 35; see also, YU-4, s. 13.
1	05	NT	0	NT-4, s. 8.
1	05	NS	0	See note to Q#2; NS-1, s. 21; see also NS-6, s. 14.
1	06	BC	1	Right to voluntary affirmative action programs limited to not-for-profit organizations working on behalf of an "identifiable group" (BC-1, s. 19(1)) and to employment equity (BC-1, s. 19.1(1)).
1	06	MA	1	MA-1, s. 11.
1	06	ON	1	ON-1, s. 14.
1	06	YU	1	YU-1, s. 12.
1	06	AL	0	
1	06	NB	0	NB-1, s. 13.
1	06	NE	0	NE-1, s. 19.
1	06	NT	0	
1	06	NS	0	See note to Q#2; NS-1, s. 25.
1	06	PI	0	PI-1, s. 20.
1	06	QC	0	QC-1, ss. 86-91; QC-1.1, ss. 1, 12-16.
1	06	SA	0	SA-1, s. 47.
1	07	BC	1	BC-1, s. 17(2)(c)(ii).
1	07	MA	1	MA-1, s. 43(2)(e).
1	07	NB	1	NB-1, s. 13.
1	07	NE	1	NE-1, s. 19.
1	07	NT	1	NT-1, s. 9.
1	07	ON	1	ON-1, s. 14.
1	07	PI	1	PI-1, s. 20.
1	07	QC	1	QC-1, ss. 86-91; QC-1.1, ss. 1, 12-16.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
1	07	SA	1	SA-1, s. 47.
1	07	AL	0	
1	07	NS	0	See note to Q#2; NS-1, s. 25.
1	07	YU	0	
1	08	BC	1	BC-1, ss. 11, 13.
1	08	MA	1	MA-1, ss 23, 26, 29.
1	08	NE	1	NE-1, ss. 20(2), 21.
1	08	ON	1	ON-1, ss. 33-34.
1	08	PI	1	PI-1, s. 22.
1	08	QC	1	QC-1, ss. 71(1), 77.
1	08	YU	1	YU-1, s. 19.
1	08	AL	0	AL-1, ss. 19, 20(4); AL-1.1, s. 8.
1	08	NB	0	NB-1, s. 18.
1	08	NT	0	NT-1, s. 7(1); the appointment of an investigative officer is discretionary.
1	08	NS	0	See note to Q#2; NS-1, s. 29.
1	08	SA	0	SA-1, ss. 27(4), 28.
1	09	AL	1	AL-1, s. 27.
1	09	BC	1	BC-1, s. 14.
1	09	MA	1	MA-1, s. 29.
1	09	NB	1	NB-1, s. 20(1).
1	09	NE	1	NE-1, s. 21.
1	09	ON	1	ON-1, s. 36.
1	09	QC	1	QC-1, ss. 79, 80, 84
1	09	SA	1	SA-1, s. 29.
1	09	YU	1	YU-1, s. 20.
1	09	NT	0	The Minister may, however, make a binding order (NT-1, s. 7(5)).
1	09	NS	0	See note to Q#2; NS-1, s. 32A.
1	09	PI	0	N.B. Board of inquiry provided for but it may only make recommendations to HRC, which may make recommendations to Minister who may make binding order (PI-1, ss 25-28).
1	10	QC	1	QC-1, ss. 79, 80, 84.
1	10	AL	0	AL-1, s. 27.
1	10	BC	0	BC-1, s. 14.
1	10	MA	0	MA-1, s. 29.
1	10	NB	0	NB-1, s. 20(1).
1	10	NE	0	N.B. Individual may appeal refusal of HRC (NE-1, s. 21(4)).
1	10	NT	0	
1	10	NS	0	See note to Q#2; NS-1, s. 32A.
1	10	ON	0	ON-1, s. 36.
1	10	PI	0	
1	10	SA	0	SA-1, s. 29.
1	10	YU	0	YU-1, s. 20.
1	11	AL	1	AL-1, ss. 31, 31.1.
1	11	BC	1	BC-1, s. 17.
1	11	MA	1	MA-1, ss. 43, 47.
1	11	NB	1	NB-1, s. 20(6.2).
1	11	NE	1	NE-1, s. 28.
1	11	ON	1	ON-1, s. 41(1).
1	11	QC	1	QC-1, ss. 111-112, 126.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
1	11	SA	1	SA-1, s. 31.
1	11	YU	1	YU-1, ss. 23-24.1.
1	11	NT	0	However, Minister has broad authority to make order (NT-1, s. 7(5)).
1	11	NS	0	See note to Q#2; NS-1, s. 34.
1	11	PI	0	
1	12	AL	4	AL-1, s. 33(1)(4)(5).
1	12	ON	4	ON-1, s. 42.
1	12	NE	3	NE-1, s. 30; leave to appeal only required for appeal on questions of fact.
1	12	QC	3	QC-1, ss. 132-133.
1	12	MA	2	MA-1, ss. 49-50.
1	12	SA	2	SA-1, s. 32.
1	12	YU	2	YU-1, s. 26.
1	12	BC	0	
1	12	NB	0	NB-1, s. 21(1).
1	12	NT	0	However, Minister's order may be appealed (NT-1, s. 8).
1	12	NS	0	See note to Q#2; NS-1, s. 36.
1	12	PI	0	
2	13	BC	3	BC-2, ss. 1 ("educational program", "school age"), 2.
2	13	MA	3	MA-2, ss. 75, 259.
2	13	NB	3	NB-2, s. 52(1).
2	13	NT	3	NT-2, ss. 52(1), 131. N.B. Boards of education and divisional boards required to provide instruction to students (NT-2, ss. 34(p), 65(u)) and secondary boards required to admit all eligible students (NT-2, s. 82(2)(d)); however, "students" not defined.
2	13	PI	3	PI-2, s. 44; PI-2.1, s. 5(27). N.B. The right to education in the district in which student resides abrogated if Minister provides services to students (PI-2.1, s. 5(28)(d)).
2	13	QC	3	QC-2, ss. 1, 3, 726-727; QC-2.3, Ap. 1; QC-5, s. 1(g).
2	13	SA	3	SA-2, ss. 91(1), 143-145, 169; SA-2.1, ss. 48-49.
2	13	YU	3	YU-2, ss. 1 ("school age"), 10-12, 32-33; see also s. 37. N.B. All responses concerning YU-2 subject to "reasonable limits" clause (YU-2, s. 2(1)).
2	13	AL	2	AL-2, ss. 3, 24, 30, 32; if excluded by Special Needs Tribunal (s. 30) the latter establishes a service plan, which may not have an educational component). N.B. All responses re AL-2 subject to limitations clause (s. 2).
2	13	NE	2	NE-2, ss. 11(i), 12(e), 59-61; see also NE-5, ss. 3-8. N.B. Exemption for severely disabled arises in exclusion of "mentally deficient" (NE-2, s. 12(e)).

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
2	13	ON	2	ON-2, ss. 1(1) "exceptional pupil", "trainable retarded pupil", 1(2), 32(1), 33, 35, 40, 69-76; see also ON-2.5. N.B. The exception for severe disabled refers to exclusion of "hard to serve" pupils (ON-2, s. 35). N.B. The provisions of the Act dealing with "trainable retarded pupils" will be eliminated if current draft legislation (Bill 37, 1992) is adopted.
2	13	NS	1	NS-2, ss. 3, 33(2); students must be "qualified" to be enrolled (NS-2.1, s. 6) and students with disabilities must be "capable of benefiting" (NS-2.1, s. 6(e)).
2	14	BC	3	BC-2, ss. 1 ("educational program", "school age"), 2.
2	14	NB	3	NB-2, s. 52(1).
2	14	NE	3	NE-2, ss. 59-61.
2	14	NS	3	NS-2, s. 3; NS-2.1, ss. 4, 6(e).
2	14	QC	3	QC-2, s. 1; QC-2.1, ss. 32, 41. N.B. As of 1993-94, the board may grant admission to a child whose birthday is after the "cutoff" date for registration (QC-2, ss. 241.1, 457.1).
2	14	AL	2	AL-2, s. 3.
2	14	MA	2	MA-2, s. 259.
2	14	NT	2	NT-2, ss. 35(g), 67(f), 104, 131.
2	14	ON	2	ON-2, ss. 33, 171(1)(15). N.B. If the school board operates a kindergarten or a junior kindergarten, the age of school entitlement is correspondingly lowered.
2	14	PI	2	PI-2, s. 44.
2	14	SA	2	SA-2, ss. 91(f), 144.
2	14	YU	2	YU-2, s. 10.
2	15	MA	7	MA-2, s. 259; MA-5, s. 1.
2	15	ON	7	ON-2, ss. 32-33. N.B. the upper age limit is for elementary school; the limitation for secondary school is expressed as 7 years beyond elementary (ON-2, s. 40(5)).
2	15	SA	7	SA-2, s. 144.
2	15	NB	6	NB-2, s. 52(1).
2	15	NS	6	NS-2, s. 3; NS-2.1, s. 6(e).
2	15	PI	6	PI-2, s. 44.
2	15	YU	6	YU-2, ss. 10, 13.
2	15	BC	5	BC-2, ss. 1 ("educational program", "school age"), 2.
2	15	AL	4	AL-2, s. 3.
2	15	QC	4	QC-2, s. 1. N.B. Upper age limit may be extended by one year (QC-2.2, s. 79; QC-3, s. 6.3.4).
2	15	NE	2	N.B. The upper age limit for school entitlement is not stipulated in the Act; this response is inferred from the upper age limit set for compulsory school attendance (see note to Q#22).
2	15	NT	1	NT-2, ss. 52(1), 131.
2	16	NB	1	NB-2, s. 52(2); NB-3, ss. 3-4.
2	16	QC	1	QC-2.1, s. 33, schedule I.
2	16	AL	0	
2	16	BC	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
2	16	MA	0	
2	16	NE	0	
2	16	NT	0	
2	16	NS	0	
2	16	ON	0	N.B. Provision of early education for hearing impaired is permissive (ON-2.1, s. 33).
2	16	PI	0	
2	16	SA	0	Early childhood education for severely disabled at board discretion (SA-2.1, s. 50(2)).
2	16	YU	0	
2	17	NB	3	NB-2, s. 52(2).
2	17	QC	2	QC-2.1, s. 33.
2	17	AL	0	
2	17	BC	0	
2	17	MA	0	
2	17	NE	0	
2	17	NT	0	
2	17	NS	0	
2	17	ON	0	
2	17	PI	0	
2	17	SA	0	
2	17	YU	0	
2	18	NB	1	NB-2, s. 52(2);
2	18	QC	1	NB-3, ss. 3-4.
				QC-2, s. 1;
				QC-5, s. 1(g).
2	18	AL	0	
2	18	BC	0	
2	18	MA	0	
2	18	NE	0	
2	18	NT	0	
2	18	NS	0	
2	18	ON	0	
2	18	PI	0	
2	18	SA	0	
2	18	YU	0	
2	19	NB	3	NB-2, s. 52(2).
2	19	QC	3	QC-2, s. 1.
2	19	AL	0	
2	19	BC	0	
2	19	MA	0	
2	19	NE	0	
2	19	NT	0	
2	19	NS	0	
2	19	ON	0	
2	19	PI	0	
2	19	SA	0	
2	19	YU	0	
2	20	BC	3	BC-2, s. 3.
2	20	MA	3	MA-2, ss. 258, 262.
2	20	NB	3	NB-2, s. 57 (however, see possible certificate of exemption from Minister, s. 57(3)(e)).
2	20	PI	3	PI-2, ss. 1(b), 46.
2	20	YU	3	YU-2, ss. 22-23.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
2	20	AL	2	AL-2, s. 8; exception refers to pupils excluded by Special Education Tribunal (see note to Q#13).
2	20	NE	2	NE-5, ss. 3-8, 12(e); see also, NE-7, s. 2(a) (b)(vii). N.B. See note to Q#13.
2	20	ON	2	ON-2, ss. 11(8), 21; in particular, see s. 21(3); exception refers to "hard to serve pupils" (see also note to Q#13); see also, ON-2.4.
2	20	NT	1	NT-2, s. 131; see, in particular, s. 131(3)(f)(g).
2	20	NS	1	NS-2, s. 59; NS-2.1, ss. 62-63; in particular, see s. 63(a), (d); see also, NS-7, s. 22(2)(h).
2	20	QC	1	QC-2, ss. 14-15; see also, QC-11, ss. 38, 38.1.
2	20	SA	1	SA-2, ss. 2(g), 155-156; in particular, see s. 156(f) re board discretion concerning "unproductive" schooling.
2	21	AL	3	AL-2, s. 8(1).
2	21	BC	3	BC-2, s. 3 (age stated is 5 years but deferment provisions delays obligation until 6 years).
2	21	NE	3	NE-5, s. 3.
2	21	NT	3	NT-2, s. 131(1).
2	21	NS	3	NS-2.1, s. 62.
2	21	ON	3	ON-2, s. 21(1). N.B. If pupil's birthday is after September 1, duty to attend school delayed by one year.
2	21	QC	3	QC-2, s. 14.
2	21	MA	2	MA-2, s. 258.
2	21	NB	2	NB-2, s. 57(1).
2	21	PI	2	PI-2, s. 1(b).
2	21	SA	2	SA-2, s. 2(g).
2	21	YU	2	YU-2, s. 22.
2	22	NE	3	NE-5, s. 3.
2	22	QC	3	QC-2, s. 14.
2	22	AL	2	AL-2, s. 8(1).
2	22	BC	2	BC-2, s. 3.
2	22	MA	2	MA-2, s. 258. N.B. Compulsory attendance may be waived for student of 15 years (MA-2, s. 262(e)).
2	22	NB	2	NB-2, s. 57(1).
2	22	NT	2	NT-2, s. 131(1).
2	22	NS	2	NS-2.1, s. 62.
2	22	ON	2	ON-2, s. 21(1). N.B. If pupil's birthday is after September 1, duty to attend school extended by one year.
2	22	PI	2	PI-2, s. 1(b).
2	22	SA	2	SA-2, s. 2(g).
2	22	YU	2	YU-2, s. 22.
2	23	BC	2	BC-2, ss. 103(2)(c)(ii), (d), (3), 109(4)(5); section refers to "suspension" but does not define the duration of same; it is therefore assumed that year-end suspension possible but not expulsion.
2	23	NT	2	NT-2, s. 143 ("expulsion" in Act equivalent to suspension; limited to end of current semester).
2	23	NS	2	NS-2, s. 39(3)(c).
2	23	YU	2	YU-2, ss. 40-41 (limited to end of current semester).
2	23	AL	0	AL-2, s. 19 (expulsion subject to review by Minister, s. 19(8)).
2	23	MA	0	MA-2, s. 48(4).

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
2	23	NB	0	NB-2, ss. 64-65 ("suspension" can equal expulsion); see also NB-2.1, ss. 53.1-53.21.
2	23	NE	0	NE-2, ss. 11(i)(ii), 77-78; right of expulsion subject to approval by the Ministry.
2	23	ON	0	ON-2, ss. 21(3), 23(3).
2	23	PI	0	PI-2, s. 32.
2	23	QC	0	QC-2, s. 242.
2	23	SA	0	SA-2, ss. 91(n), 153-154; in particular, see s. 154(1).
2	24	BC	1	BC-2, ss. 3, 103 (in case of suspension, board must continue to provide educational program).
2	24	AL	0	AL-2, s. 8(3)(d).
2	24	MA	0	MA-2, s. 262(c).
2	24	NB	0	NB-2, s. 57(3)(c).
2	24	NE	0	NE-5, s. 8(b).
2	24	NT	0	NT-2, s. 131(3)(c).
2	24	NS	0	NS-2.1, s. 63(g).
2	24	ON	0	ON-2, s. 21(2)(f).
2	24	PI	0	PI-2, s. 46(3)(c).
2	24	QC	0	QC-2, s. 15(3).
2	24	SA	0	SA-2, s. 156(d).
2	24	YU	0	YU-2, s. 22(d).
2	25	BC	1	BC-2, ss. 2, 103 (in case of suspension, board must continue to provide an educational program). N.B. an exception is provided for students over 16 (BC-2, s. 103(3)).
2	25	AL	0	AL-2, s. 3(1) - right to schooling subject to other provisions of Act (viz s. 19).
2	25	MA	0	MA-2, s. 259 (right to education subject to other provisions of Act).
2	25	NB	0	NB-2, ss. 52(1)(b), 64(4); right to attend linked to district in which student resides.
2	25	NE	0	Response inferred from Q#24 - i.e. right to education linked to duty to attend school (see note to Q#15).
2	25	NT	0	See note to Q#13.
2	25	NS	0	Right to education subject to other provisions of Act (viz (NS-2, s. 39)).
2	25	ON	0	ON-2, ss. 32-33; right to schooling linked to residency in district.
2	25	PI	0	Right to schooling linked to residency in district (PI-2, s. 44).
2	25	QC	0	QC-2, ss. 1, 204; right to education linked to district in which student resides.
2	25	SA	0	SA-2, ss. 143-144; right to schooling subject to other provisions of the Act (viz s. 156).
2	25	YU	0	Right to schooling provided "in accordance with the provisions of this Act" (YU-2, s. 10) - viz ss. 40-41.
2	26	MA	2	MA-2, s. 43.
2	26	SA	2	SA-2, ss. 91(k), 192; decision to provide transport generally rests with the board; however, high-cost disabled outside attendance area have right to transport (SA-2.1, s. 52(6)(7)).
2	26	PI	1	PI-2, s. 33; PI-2.1, s. 5(30)(a).
2	26	YU	1	YU-2, s. 47.
2	26	AL	0	AL-2, s. 34 (right to school transport subject to any fees the board may decide to levy, s. 34(3)).
2	26	BC	0	BC-2, ss. 101, 103(2)(c)(iv)(B).
2	26	NB	0	NB-2, s. 63; NB-2.2, s. 3; the language of the regulation is permissive, despite the apparent obligation in the Act.
2	26	NE	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
2	26	NT	0	NT-2, s. 145;
2	26	NS	0	NT-2.1, s. 44.
2	26	ON	0	NS-2, s. 33;
2	26	QC	0	NS-2.1, ss. 12-13 ("right" subject to board discretion).
				ON-2, s. 190.
				QC-2, ss. 291-292 (if board decides to provide transport, then it is free).
2	27	AL	2	AL-3.2, s. 3.7;
				N.B. AL-3 repealed by Safety Codes Act (n.y.p.);
				see also AL-1, s. 5.
2	27	BC	2	BC-4.1, s. 3.7 (does not apply to City of Vancouver).
				N.B. Current version of BC-4.1 equivalent to NBC, 1985 but new version equivalent to NBC, 1990 is forthcoming.
2	27	NT	2	NT-3.1, ss. 3(1)(a), 4(1).
2	27	NS	2	NS-4.1, s. 1.1;
				see also NS-5, s. 2(a)(c)(d).
2	27	ON	2	ON-4.1, s. 3(7).
2	27	SA	2	SA-3.1, s. 3.
2	27	YU	2	YU-3, ss. 1-2.
2	27	MA	1	MA-4.1.
2	27	NE	1	NE-3, ss. 2(1)(m), 3(a);
				NE-3.1, ss. 3-4.
				N.B. NE-3.1 contains references to both NBC, 1980 and NBC, 1985.
2	27	PI	1	PI-4, s. 3;
				see also PI-3, ss. 1(h), 2.
2	27	QC	1	QC-4.1, ss. 1, 7.
2	27	NB	0	N.B. No legislative action has been identified governing barrier-free access.
3	28	AL	2	AL-2, s. 23;
				AL-2.1, ss. 3-5.
3	28	BC	2	BC-2, ss. 1 ("educational program"), 12-13;
				BC-2.1, s. 3;
				BC-2.2, s. 2;
				see also BC-3, s. 9;
				BC-3.1, s. 6.
3	28	YU	2	YU-2, ss. 19, 31.
3	28	MA	1	MA-2, s. 262(b).
3	28	NB	1	NB-2, s. 57(3)(a).
3	28	NE	1	NE-5, s. 8(d).
3	28	NT	1	NT-2, s. 131(3)(a).
3	28	NS	1	NS-2.1, s. 63(f).
3	28	ON	1	ON-2, s. 21(2)(a).
3	28	PI	1	PI-2, s. 46(3)(a).
3	28	QC	1	QC-2, s. 15(4).
3	28	SA	1	SA-2, s. 156(a).
3	29	QC	2	QC-2, s. 4 - right subject to enrolment criteria & transportation (ss. 239-240, & ss. 36-37, 236);
				see also QC-8, preamble; QC-9, preamble.
3	29	ON	1	ON-2, ss. 39 (more accessible school in adjoining district), 41 (secondary school programs) - right in both sections subject to availability of space; see also s. 171(1)(7) re board prerogatives concerning attendance areas.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
3	29	YU	1	YU-2, ss. 1 "attendance area", "education area", 11, 58-65; however required parental consent to IEP (YU-2, s. 1 ("individualized education plan") and right to appeal implementation of IEP in a school where the student would not normally attend (YU-2, s. 17(e)) limits board prerogative re school choice.
3	29	AL	0	AL-2, s. 8(2).
3	29	BC	0	BC-2, s. 94(4).
3	29	MA	0	MA-3.1, s. 42.
3	29	NB	0	NB-2, s. 53(3).
3	29	NE	0	NE-2, s. 18(e).
3	29	NT	0	NT-2, s. 66(2).
3	29	NS	0	
3	29	PI	0	PI-2, ss 30, 46(2).
3	29	SA	0	SA-2, s. 91(g).
3	30	MA	2	MA-2, s. 41(1)(q).
3	30	NS	2	NS-3, s. 12(2). N.B. This right is limited to those students covered by this Act (see NS-3, s. 3(e); NS-3.1, s. 1(f); NS-3.2, s. 1(d)).
3	30	ON	2	ON-2, s. 8(3); ON-2.2, s. 2; right to educational assessment provided by means of referral to Identification, Placement and Review Committee [IPRC]; decision to conduct health or psychological assessment the prerogative of IPRC.
3	30	YU	2	YU-2, s. 16(3).
3	30	SA	1	Q#35 = [3]; decision to proceed in individual case discretionary (SA-2, s. 178(1)(b)); however, board has explicit responsibility for conducting assessment and placement of disabled (SA-2.1, s. 50).
3	30	AL	0	AL-2, s. 29(1); see note to Q#35.
3	30	BC	0	Right to assessment only applies to students receiving home instruction (BC-2.1, s. 3); needs assessment for hearing impaired and medical assessment of serious physical disabilities are mandatory (BC-2, s. 100; BC-2.4).
3	30	NB	0	
3	30	NE	0	
3	30	NT	0	
3	30	PI	0	
3	30	QC	0	N.B. School boards re required to adopt a by-law governing special education services (s. 235), including the evaluation of special needs students, but this section does not provide a right to the matters which must be treated in the by-law.
3	31	AL	0	
3	31	BC	0	
3	31	MA	0	
3	31	NB	0	
3	31	NE	0	
3	31	NT	0	
3	31	NS	0	
3	31	ON	0	
3	31	PI	0	
3	31	QC	0	
3	31	SA	0	
3	31	YU	0	
3	32	YU	1	YU-2, s. 16(2)(d).
3	32	AL	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
3	32	BC	0	
3	32	MA	0	
3	32	NB	0	
3	32	NE	0	
3	32	NT	0	
3	32	NS	0	
3	32	ON	0	
3	32	PI	0	
3	32	QC	0	
3	32	SA	0	
3	33	ON	1	ON-2.2, ss. 8-10.
3	33	AL	0	
3	33	BC	0	
3	33	MA	0	
3	33	NB	0	
3	33	NE	0	
3	33	NT	0	
3	33	NS	0	
3	33	PI	0	
3	33	QC	0	
3	33	SA	0	
3	33	YU	0	
3	34	ON	2	ON-2.1, s. 12(3)(m); ON-2.2, s. 2(3)(a). N.B. Identification of pupil as "exceptional" subject to third-party decision but consent for assessment always required.
3	34	YU	2	YU-2, s. 16(2)(c).
3	34	AL	0	
3	34	BC	0	
3	34	MA	0	
3	34	NB	0	
3	34	NE	0	
3	34	NT	0	
3	34	NS	0	
3	34	PI	0	
3	34	QC	0	Since assessment included as functions of school board (see QC-2.1, s. 5, QC-2.2, s. 4), consent requirements of QC-6 (ss. 19, 19.1) deemed not to apply.
3	34	SA	0	SA-2.1, s. 50(3); however, consultation is provided for "high-cost disabled".
3	35	SA	3	SA-2.1, s. 51.
3	35	YU	3	YU-2, ss. 16(2)(g), 17, 157-165; in particular, see s. 17(1)(a)(c).
3	35	ON	2	ON-2, ss. 8(3), 37; ON-2.2, ss. 4, 5, 7. N.B. Appeal to outside tribunal (SET) can only arise following internal appeal.
3	35	AL	0	Although disabled entitled to placement in special education program, which can be appealed (see Q#43), there is no specific right to appeal identification as disabled as such. N.B. Special Needs Tribunal (AL-2, s. 30) can only rule on "educability" of student, i.e. access to public school program.
3	35	BC	0	
3	35	MA	0	
3	35	NB	0	
3	35	NE	0	
3	35	NT	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
3	35	NS	0	
3	35	PI	0	
3	35	QC	0	
3	36	SA	2	SA-2, s. 184; SA-2.1, s. 52(1); "appropriate" refers to education not placement.
3	36	YU	2	YU-2, s. 15(2).
3	36	AL	1	Q#43 = [3].
3	36	ON	1	Q#43 = [2].
3	36	BC	0	BC-2, s. 94(4); BC-2.1, s. 5(7)(b).
3	36	MA	0	
3	36	NB	0	
3	36	NE	0	NE-2, ss. 11(b), 12(s); NE-4, s. 8.
3	36	NT	0	
3	36	NS	0	
3	36	PI	0	
3	36	QC	0	QC-2, ss. 233, 235.
3	37	SA	2	SA-2, s. 184; in particular, see s. 184(2)(b) re denial of placement because of incapacity of pupil or disruption to class; SA-2.1, s. 52(1)(a).
3	37	YU	2	YU-2, s. 15(2).
3	37	AL	1	Q#43 = [3].
3	37	ON	1	Q#43 = [2].
3	37	BC	0	
3	37	MA	0	
3	37	NB	0	
3	37	NE	0	
3	37	NT	0	
3	37	NS	0	
3	37	PI	0	
3	37	QC	0	
3	38	BC	2	BC-2.3, s. 1(2).
3	38	NB	2	NB-2, s. 53(4).
3	38	AL	1	Q#43 = [3].
3	38	ON	1	Q#43 = [2].
3	38	YU	1	Q#43 = [3].
3	38	MA	0	
3	38	NE	0	
3	38	NT	0	NT-2, ss. 107-108.
3	38	NS	0	
3	38	PI	0	
3	38	QC	0	QC-2, s. 235(2); see note to Q#30.
3	38	SA	0	SA-2, s. 184; SA-2.1, s. 52.
3	39	NE	3	NE-2, s. 11(b).
3	39	AL	1	Q#43 = [3].
3	39	ON	1	Q#43 = [2].
3	39	YU	1	Q#43 = [3].
3	39	BC	0	
3	39	MA	0	
3	39	NB	0	
3	39	NT	0	NT-2, ss. 35(d), 107-108.
3	39	NS	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
3	39	PI	0	
3	39	QC	0	QC-2, s. 235(3); see note to Q#30.
3	39	SA	0	SA-2, s. 184; SA-2.1, s. 52.
3	40	AL	1	Q#43=[3]; see also: AL-2, ss. 28, 31, 46-47; AL-4, s. 6(d); AL-4.1, ss. 2-4.
3	40	ON	1	Q#43 = [2]; see also, ON-2, ss. 11(1)(28), 13, 69-76, 181-185.
3	40	YU	1	Q#43 = [3]; YU-2, ss. 11, 14.
3	40	BC	0	BC-2, ss. 94(2), 104(1)(a).; BC-2.5.
3	40	MA	0	MA-2, ss. 41(5), 48(1)(p)(q); MA-3.1, s. 42. However, if program not available locally, board obliged to provide outside placement (MA-2, s. 41(5)); MA-7, ss. 3-4.
3	40	NB	0	NB-2, s. 8(1); NB-4, s. 8.
3	40	NE	0	NE-2, s. 11(b); outside placement subject to board discretion.
3	40	NT	0	NT-2, ss. 107-109.
3	40	NS	0	NS-3, s. 12; see note to Q#30.
3	40	PI	0	PI-2.1, s. 5(28)(d).
3	40	QC	0	QC-2, ss. 213-214. N.B. private schools are state supported but there is no right to obtain access to such schools (Act Respecting Private Education); see also QC-1, s. 42.
3	40	SA	0	SA-2, s. 184; SA-2.1, ss. 52, 94-95.
3	41	ON	1	ON-2, s. 37; ON-2.2.
3	41	YU	1	YU-2, ss. 17, 157-65; in particular, see s. 17(1)(d).
3	41	AL	0	AL-2, s. 29(3).
3	41	BC	0	BC-2.3, s. 1(1).
3	41	MA	0	
3	41	NB	0	
3	41	NE	0	
3	41	NT	0	NT-2, ss. 107-108.
3	41	NS	0	
3	41	PI	0	
3	41	QC	0	
3	41	SA	0	SA-2, s. 184(5); SA-2.1, s. 50(1)(3).
3	42	ON	1	ON-2, s. 37; ON-2.2.
3	42	YU	1	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(e); generally, however, outside placement is board prerogative (YU-2, ss. 11, 14), as is choice of school (see note to Q#29).
3	42	AL	0	AL-2, s. 28(1)(b).
3	42	BC	0	BC-2.3, s. 1(1).
3	42	MA	0	
3	42	NB	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
3	42	NE	0	See school board authority to make outside placements (NE-2, ss. 11(b), 12(s)).
3	42	NT	0	NT-2, ss. 7, 107-109; however, consent required if placement outside Territories.
3	42	NS	0	
3	42	PI	0	
3	42	QC	0	QC-2, ss. 213-214.
3	42	SA	0	SA-2, ss. 92(b)(c)(v), 184(5); SA-2.1, s. 50(1)(3).
3	43	AL	3	AL-2, ss. 103-105; appeal to Minister refers to placement in a special program but special program (ss. 1(v), 29) not defined and could refer to both regular and special settings; see also note to Q#35 re special education tribunal.
3	43	YU	3	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(d)(e).
3	43	ON	2	ON-2, s. 37; ON-2.2. N.B. Appeal to outside tribunal (SET) can only arise following internal appeal.
3	43	NB	1	NB-2, s. 55; NB-2.1, ss. 53.1-53.21.
3	43	BC	0	
3	43	MA	0	N.B. An appeal process for placement, including third-party adjudication is included in a Ministry policy document (Manitoba Education, 1989); although the language of this document is directive, the document is not legally binding (see discussion in section A.2, app. A).
3	43	NE	0	
3	43	NT	0	
3	43	NS	0	N.B. An appeal process for placement, including third-party adjudication is included in a Ministry policy document (P & R Release No. A.2, 1988-89); although the language of this document is directive, the document is not legally binding (see discussion in section A.2, app. A).
3	43	PI	0	
3	43	QC	0	
3	43	SA	0	SA-2.1, s. 51.
3	44	ON	1	ON-2.2, s. 12.
3	44	AL	0	
3	44	BC	0	
3	44	MA	0	
3	44	NB	0	
3	44	NE	0	
3	44	NT	0	
3	44	NS	0	
3	44	PI	0	
3	44	QC	0	
3	44	SA	0	
3	44	YU	0	YU-2, s. 17(2).
4	45	ON	3	ON-2, ss. 1, "special education program", "special education services", 11, 170(7).
4	45	QC	3	QC-2, s. 47; see also s. 235(4).
4	45	YU	3	YU-2, ss. 1 ("individualized education plan"), 15, 16, 34.
4	45	BC	2	BC-2, ss. 1 ("educational program"), 94, 100(1)(a).
4	45	NT	2	NT-2, ss. 34(p), 65(u), 82(2)(n).
4	45	SA	2	SA-2, s. 143(1); SA-2.1, s. 52(1).

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
4	45	AL	0	AL-2, s. 28.
4	45	MA	0	MA-2, ss. 41(1)(a), 41(4).
4	45	NB	0	A "special education program" is required for every "exceptional pupil" (NB-2, s. 1); however, the identification of an exceptional pupil is a board prerogative (NB-2, s. 52(3)).
4	45	NE	0	NE-2, s. 11(a).
4	45	NS	0	NS-2, s. 33(2)(4).
4	45	PI	0	
4	46	QC	1	QC-3, ss. 72, 81; QC-3.1, ss. 1, 2.
4	46	AL	0	AL-2, s. 5.
4	46	BC	0	BC-2, s. 5.
4	46	MA	0	MA-2, s. 79; MA-2.1, s. 4.
4	46	NB	0	NB-2, s. 15.
4	46	NE	0	
4	46	NT	0	NT-2, ss. 89-90.
4	46	NS	0	NS-2, s. 2(ea)(eb).
4	46	ON	0	ON-2, s. 289(2).
4	46	PI	0	PI-2, s. 47.
4	46	SA	0	
4	46	YU	0	YU-2, s. 56.
4	47	BC	1	BC-2, s. 100(1)(b).
4	47	MA	1	MA-2, ss. 41(1)(n), 48(1)(j) - textbooks are free; other materials may be.
4	47	NB	1	NB-2.1, s. 28; see also s. 25(2).
4	47	NS	1	NS-2.1, s. 8.
4	47	ON	1	ON-2, ss. 170(13), 171(1)(13); ON-2.1, s. 7(4).
4	47	PI	1	PI-2.1, s. 5(30)(b).
4	47	QC	1	QC-2, s. 7.
4	47	SA	1	SA-2, ss. 91(z), 92(d); SA-2.1, s. 37(1)(c).
4	47	AL	0	AL-2, s. 44(2)(i).
4	47	NE	0	
4	47	NT	0	NT-2, ss. 34(r), 65(n), 82(1)(h).
4	47	YU	0	
4	48	QC	2	QC-2, ss. 222, 223, 234; QC-2.1, s. 55, schedule I & II; QC-2.2, s. 77, schedule [not numbered]; see also QC-2.3, ss. 2(3), 3(3), 6.
4	48	SA	2	SA2, ss. 144(1), 169(2), 227(b); SA-2.1, s. 52(1).
4	48	ON	1	Q#53 = [2].
4	48	YU	1	Q#53 = [3].
4	48	AL	0	
4	48	BC	0	
4	48	MA	0	
4	48	NB	0	
4	48	NE	0	
4	48	NT	0	
4	48	NS	0	
4	48	PI	0	
4	49	NS	2	NS-2.1, s. 6(e); see note to Q#13.

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
4	49	ON	2	ON-2, ss. 1(1) ("special education program", "special education services"), 11, 170(7), 171(1)(25); see also, ON-2.3.
4	49	QC	2	QC-2, s. 224; see also s. 450; QC-2.1, ss. 1-5, 16-17.; QC-2.2, ss. 1-4, 15-16.
4	49	SA	2	SA-2, ss. 188-190; SA-2.1, s. 52(1).
4	49	YU	2	YU-2, ss. 1 ("individualized education plan"), 15, 34.
4	49	AL	0	Entitlement to a special education program is dependent on the board deciding that student needs such a program (AL-2, s. 29).
4	49	BC	0	However, boards are required to provide speech and language services (BC-2, s. 106; BC-2.4).
4	49	MA	0	
4	49	NB	0	
4	49	NE	0	
4	49	NT	0	NT-2, ss. 67(c), 107.
4	49	PI	0	
4	50	ON	1	ON-2.1, s. 35.
4	50	AL	0	
4	50	BC	0	
4	50	MA	0	
4	50	NB	0	
4	50	NE	0	
4	50	NT	0	
4	50	NS	0	
4	50	PI	0	
4	50	QC	0	
4	50	SA	0	
4	50	YU	0	
4	51	AL	0	
4	51	BC	0	
4	51	MA	0	
4	51	NB	0	
4	51	NE	0	
4	51	NT	0	
4	51	NS	0	
4	51	ON	0	
4	51	PI	0	
4	51	QC	0	
4	51	SA	0	SA-2.1, s. 52(1)(c).
4	51	YU	0	
4	52	YU	1	YU-2, s. 1 ("individualized education plan"), 16(2)(g), 17, 157-165; in particular, see s. 17(1)(b).
4	52	AL	0	AL-2, s. 29.
4	52	BC	0	
4	52	MA	0	
4	52	NB	0	
4	52	NE	0	
4	52	NT	0	
4	52	NS	0	
4	52	ON	0	ON-2, s. 37; ON-2.2. N.B. Right to consent re special education services not provided; however, pupil must have been identified as exceptional, as these services are defined as those provided to such pupils (ON-2, s. 1(1)).

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
4	52	PI	0	
4	52	QC	0	
4	52	SA	0	
4	53	YU	3	YU-2, ss. 17, 157-165; in particular, see s. 17(1)(b).
4	53	AL	0	Appeal to Minister re special education program (s. 104) limited to placement in program, not service delivery; see also note to Q#35 re Special Needs Tribunal.
4	53	BC	0	
4	53	MA	0	
4	53	NB	0	
4	53	NE	0	
4	53	NT	0	
4	53	NS	0	
4	53	ON	0	Although special services, like programs, are closely associated with placement, which can be appealed (see Q#43), there is no specific right to appeal service delivery as such.
4	53	PI	0	
4	53	QC	0	
4	53	SA	0	
5	54	QC	1	QC-2, s. 189.
5	54	SA	1	SA-2.1, s. 39.
5	54	AL	0	
5	54	BC	0	BC-2, ss. 8, 85(2)(b).
5	54	MA	0	
5	54	NB	0	N.B. The Minister may provide for such participation for minority language parents (NB-2, s. 3(2)).
5	54	NE	0	
5	54	NT	0	
5	54	NS	0	
5	54	ON	0	ON-2, s. 201, 205.
5	54	PI	0	
5	54	YU	0	
5	55	AL	1	AL-2, s. 17.
5	55	BC	1	BC-2, ss. 7(1)(c), 8.
5	55	QC	1	QC-2, ss. 55, 83.
5	55	YU	1	YU-2, s. 116(1)(p).
5	55	MA	0	
5	55	NB	0	
5	55	NE	0	
5	55	NT	0	
5	55	NS	0	
5	55	ON	0	
5	55	PI	0	
5	55	SA	0	SA-2.1, s. 43.
5	56	ON	1	ON-2, s. 206.
5	56	QC	1	QC-2, ss. 185, 187.
5	56	AL	0	
5	56	BC	0	
5	56	MA	0	
5	56	NB	0	
5	56	NE	0	
5	56	NT	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
5	56	NS	0	
5	56	PI	0	
5	56	SA	0	
5	56	YU	0	
5	57	BC	1	BC-2, ss. 4, 7(2).
5	57	ON	1	ON-2.2.
5	57	QC	1	QC-2, s. 47 (parent involvement only for initial development of IEP); QC-2.1, ss. 39(3), 51(3); QC-2.2, s. 43(3).
5	57	YU	1	YU-2, ss. 16, 18, 168(c), 169(r).
5	57	AL	0	AL-2, s. 13(e).
5	57	MA	0	
5	57	NB	0	
5	57	NE	0	
5	57	NT	0	
5	57	NS	0	
5	57	PI	0	
5	57	SA	0	SA-2, s. 227(g).
5	58	AL	1	AL-2, s. 18; AL-2.2, s. 3(2).
5	58	BC	1	BC-2, ss. 97, 184.
5	58	ON	1	ON-2, ss. 8(1)(27), 265(d), 266; ON-2.6, s. 4; ON-3, ss. 2(1) ("institution"), 4.
5	58	QC	1	QC-10, ss. 1, 3, 53-54.
5	58	SA	1	SA-2, s. 146 (Freedom of Information and Protection of Privacy Act not applicable to school boards).
5	58	YU	1	YU-2, s. 20(3) (Access to Information Act not applicable to school boards).
5	58	MA	0	School boards not subject to Freedom of Information Act.
5	58	NB	0	NB-2, s. 66; see also NB-2.1, ss. 53.1-53.21 (it is assumed that Right to Information Act does not apply to school boards).
5	58	NE	0	It is assumed that Freedom-of Information Act does not apply to school boards.
5	58	NT	0	
5	58	NS	0	It is assumed that the Freedom of Information Act does not apply to school boards.
5	58	PI	0	
5	59	AL	1	AL-2, s. 18; AL-2.2, s. 3(1).
5	59	BC	1	BC-2, s. 9.
5	59	MA	1	MA-2, s. 41(1)(s).
5	59	NB	1	NB-2, s. 66.
5	59	ON	1	ON-2, ss. 8(1)(27), 265(d), 266; ON-2.6, s. 4; ON-3, ss. 2(1) ("institution"), 32.
5	59	QC	1	QC-10, ss. 1, 3, 83.
5	59	SA	1	SA-2, s. 146.
5	59	YU	1	YU-2, s. 20(2).
5	59	NE	0	
5	59	NT	0	
5	59	NS	0	
5	59	PI	0	

TABLE C.5 - continued

THM	QST	JUR	RES	REFERENCE
5	60	AL	1	AL-2, s. 103.
5	60	BC	1	N.B. Appeal to Minister (ss. 104-105) limited to specified subjects.
5	60	QC	1	BC-2, s. 11.
5	60	YU	1	QC-2, ss. 9-12.
5	60	MA	0	YU-2, s. 156.
5	60	NB	0	N.B. Although no general right to appeal exists, provision is made for appeal on specific issues (NB-2.1, ss. 53.1-53.21).
5	60	NE	0	
5	60	NT	0	
5	60	NS	0	
5	60	ON	0	
5	60	PI	0	
5	60	SA	0	

APPENDIX D
EXCERPTS FROM INTERNATIONAL INSTRUMENTS

*Universal Declaration
of Human Rights*

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

...

Now, therefore, the General Assembly proclaims

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations

1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

2. (1) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

6. Everyone has the right to recognition everywhere as a person before the law.

7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

29. ...

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

INTERNATIONAL INSTRUMENTS - continued

*International Covenant on
Economic, Social and Cultural Rights*

4. The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

13. (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and among all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or

completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

(3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

(4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

INTERNATIONAL INSTRUMENTS - continued

*Convention on the
Rights of the Child*

3. (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

12. (1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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.

28. (1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively 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.

29. (1) States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

INTERNATIONAL INSTRUMENTS - continued

*Declaration of the
Rights of the Child*

1. The child shall enjoy all the rights set forth in this Declaration. Every child, without exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

2. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall be the paramount consideration.

5. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

7. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

9. ...

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

INTERNATIONAL INSTRUMENTS - continued

***Declaration on the
Rights of Disabled Persons***

...

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,

...

Proclaims this Declaration

1. The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

***Declaration on the Rights of
Mentally Retarded Persons***

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

APPENDIX E

CANADIAN LEGISLATIVE PROVISIONS

Constitution Act, 1867

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:-

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.³⁰

³⁰ Altered for Manitoba by section 22 of the *Manitoba Act, 1870*, 33 Vict., c. 3 (Canada), (confirmed by the *Constitution Act, 1871*), which reads as follows:

22. In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:-

(1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:

(2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege, of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:

(3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section.

CANADIAN LEGISLATIVE ACTION - continued

Constitution Act, 1867 (cont'd)

Altered for Alberta by section 17 of the *Alberta Act*, 4-5 Edw. VII, c. 3, 1905 (Canada), which reads as follows:

17. Section 93 of the *Constitution Act, 1867*, shall apply to the said province, with the substitution for paragraph (1) of the said section 93 of the following paragraph:-

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.

Altered for Saskatchewan by section 17 of the *Saskatchewan Act*, 4-5 Edw. VII, c. 42, 1905 (Canada), which reads as follows:

17. Section 93 of the *Constitution Act, 1867*, shall apply to the said province, with the substitution of paragraph (1) of the said section 93, of the following paragraph:-

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the Northwest Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.

2. In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29, or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.

3. Where the expression "by law" is employed in paragraph (3) of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression "at the Union" is employed in the said paragraph (3), it shall be held to mean the date at which this Act comes into force.

CANADIAN LEGISLATIVE ACTION - continued

Altered for Newfoundland by Term 17 of the Terms of Union of Newfoundland with Canada (confirmed by the *Newfoundland Act*, 12-13 Geo. VI, c. 22 (U.K.)). Term 17 of the Terms of Union of Newfoundland with Canada set out in the Schedule to the *Newfoundland Act*, which was amended by the *Constitution Amendment, 1987 (Newfoundland Act)*, (see S1/88-11) reads as follows:

17. (1) In lieu of section ninety-three of the *Constitution Act, 1867*, the following shall apply in respect of the Province of Newfoundland:

In and for the Province of Newfoundland the Legislature shall have the exclusive authority to make laws in relation to education, but the Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons have by law in Newfoundland at the date of Union, and out of public funds of the Province of Newfoundland, provided for education,

(a) all such schools shall receive their share of such funds in accordance with scales determined on a non-discriminatory basis from time to time by the Legislature for all schools then being conducted under authority of the Legislature; and

(b) all such colleges shall receive their share of any grant from time to time voted for all colleges then being conducted under authority of the Legislature, such grant being distributed on a non-discriminatory basis.

(2) For the purposes of paragraph one of this Term, the Pentecostal Assemblies of Newfoundland have in Newfoundland all the same rights and privileges with respect to denominational schools and denominational colleges as any other class or classes of persons had by law in Newfoundland at the date of Union, and the words "all such schools" in paragraph (a) of paragraph one of this Term and the words "all such colleges" in paragraph (b) of paragraph one of this Term include, respectively, the schools and colleges of the Pentecostal Assemblies of Newfoundland.

CANADIAN LEGISLATIVE ACTION - continued

Constitution Act, 1982

Part I

Canadian Charter of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* 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.

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly;
- (d) freedom of association.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. (1) Every individual is equal before and under the law and has a 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.

(2) Subsection (1) does not preclude any law, program or 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.

23. (1) Citizens of Canada

- (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province

in which they reside, or

- (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

- (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

- (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

CANADIAN LEGISLATIVE ACTION - continued

Constitution Act, 1982 (cont'd)

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any of the rights or freedoms that exist in Canada.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

30. A reference in this Charter to a Province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

31. Nothing in this Charter extends the legislative powers of any body or authority.

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter,

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Part VII

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

59. (1) Paragraph 23(1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

(2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.

CANADIAN LEGISLATIVE ACTION - continued

National Building Code, 1985¹

1.3.2. ...

Barrier-free access means a path of travel designed for use by persons with physical or sensory disabilities, including those using wheelchairs, and incorporating ramps, elevators or other lifting devices where there is a difference in elevation between floor levels along the path of travel.

3.7 Barrier-Free Design

3.7.1.1. [Application]

3.7.1.2. Every *building* referred to in Article 3.7.1.1. shall have at least one entrance intended for general use by the public or the occupants designed in conformance with Article 3.7.3.3., opening to the outdoors at sidewalk level or to a ramp conforming to Article 3.7.3.4. leading to a sidewalk. (See Appendix A.)

3.7.1.3. (1) Except as permitted in Subsection 3.7.3., every *barrier-free access* shall provide an unobstructed width of at least 920 mm for the passage of wheelchairs.

(2) Floor surfaces along a *barrier-free access* shall have no opening that will permit the passage of a sphere larger than 13 mm diam.

(3) Except as provided in Article 3.7.3.5., controls for the operation of *building services* or safety devices, located in a *barrier-free access* and intended to be operated by an occupant, including electrical switches, thermostats and intercom switches, shall be accessible to a person in a wheelchair and shall be mounted at not more than 1.4 m above the floor.

3.7.2.1. (1) A *barrier-free access* shall be provided on the entrance *storey* and on each *storey* served by a passenger elevator or other platform equipped passenger elevating device from the entrance described in Article 3.7.1.2.

(b) into rooms or areas that serve the public

or are designated for use by visitors, including areas in *assembly occupancies* with fixed seats, display areas and merchandising departments,

(c) into rooms or areas for student use in *assembly occupancies*,

(d) into general work areas, including office areas,

(g) into at least 1 passenger type elevator or elevating device conforming to Article 3.7.3.5.,

(h) into washrooms described in Article 3.7.2.3.,

(i) to any facility required by this Section to be designed to accommodate disabled persons,

(See Appendix A.)

(See Article 3.3.1.5. for additional requirements for *floor areas* above the first *storey* with *barrier-free access*.)

(2) The number of spaces designated for wheelchair use in clause 3.7.2.1.(1)(b) shall conform to Table 3.7.2.A. (See Appendix A.)

[Table 3.7.2.A. omitted]

3.7.2.2. (1) A *barrier-free access* shall be provided from the entrance described in Article 3.7.1.2. to

(a) an exterior parking area, where exterior parking is provided (See Appendix A),

3.7.2.3. (1) Except as provided in Sentence (2), washrooms shall be designed to accommodate disabled persons in conformance with the appropriate requirements in Articles 3.7.3.6 to 3.7.3.9.

CANADIAN LEGISLATIVE ACTION - continued

National Building Code, 1985 (cont'd)**3.7.3 Design Standards****3.7.3.1. [Accessibility Signs]**

....

3.7.3.2. [Exterior Walks]

....

3.7.3.3. [Doorways and Doors]

....

3.7.3.4. [Ramps]

....

3.7.3.5. [Elevators]

....

3.7.3.6. [Water Closet Stalls]

....

3.7.3.7. [Water Closets]

....

3.7.3.8. [Lavatories]

....

3.7.3.9. [Special Washrooms]

....

3.7.3.10. [Showers]

....

CANADIAN LEGISLATIVE ACTION - continued

National Building Code, 1990¹

1.1.3.2. ...

Barrier-free means that a *building* and its facilities can be approached, entered, and used by persons with physical or sensory disabilities.

...

3.7 Barrier-Free Design

3.7.1.1. Application ...

3.7.1.2. (1) Except as required in Sentence (2), every *building* referred to in Article 3.7.1.1. shall have at least one entrance intended for general use by the public or the occupants designed in conformance with Article 3.7.3.3. and opening to the outdoors at sidewalk level or to a ramp conforming to Article 3.7.3.4. leading to a sidewalk. (See Appendix A.)

3.7.1.3. (1) Except as permitted in Subsection 3.7.3., every *barrier-free* path of travel shall provide an unobstructed width of not less than 920 mm for the passage of wheelchairs.

(2) Floor surfaces along a *barrier-free* path of travel shall have no opening that will permit the passage of a sphere more than 13 mm diam.

(3) A *barrier-free* path of travel is permitted to include ramps, elevators or other platform elevating devices where there exists a difference in elevation.

3.7.1.4. Where escalators provide access to *storeys* above or below the *first storey*, a *barrier-free* path of travel shall be provided to those *storeys* served by the escalators. (See Appendix A.)

3.7.1.5. Except as provided in Article 3.7.3.5. for elevators, controls for the operation of *building* services or safety devices, located in a *barrier-free* path of travel and intended to be operated by an occupant, including electrical switches, thermostats and intercom switches, shall be accessible to a person in a wheelchair and shall be mounted not more than 1 400 mm above the floor.

3.7.2.1. (1) A *barrier-free* path of travel shall be provided in the entrance *storey* and in each *storey* served by a passenger elevator or other platform equipped passenger elevating device from the entrance described in Article 3.7.1.2.

...

(b) into rooms or areas that serve the public or are designated for use by visitors, including areas in *assembly occupancies* with fixed seats, display areas and merchandising departments,

(c) into rooms or areas for student use in *assembly occupancies*,

(d) into general work areas, including office areas,

(g) into at least one passenger elevator or elevating device conforming to Article 3.7.3.5.,

(h) into washrooms described in Article 3.7.2.3.,

(i) to any facility required by this Section to be designed to accommodate disabled persons,

(See Appendix A.)

(See Article 3.3.1.7. for additional requirements for *floor areas* above or below the *first storey* to which a *barrier-free* path of travel is required.)

(2) The number of spaces designated for wheelchair use in rooms and areas referred to in clause 3.7.2.1.(1)(b) shall conform to Table 3.7.2.A. (See also Article 3.7.3.6. for additional requirements.)

[Table 3.7.2.A. omitted]

3.7.2.2. (1) A *barrier-free* path of travel shall be provided from the entrance described in Article 3.7.1.2. to

CANADIAN LEGISLATIVE ACTION - continued

National Building Code, 1990 (cont'd)

(a) an exterior parking area, where exterior parking is provided (See Appendix A.),

....

3.7.2.3. (1) Except as permitted in Sentence (2), where washrooms are provided in a *storey* to which a *barrier-free* path of travel is required in conformance with Article 3.7.2.1., these washrooms shall be *barrier-free* in conformance with the appropriate requirements in Articles 3.7.3.8 to 3.7.3.11.

....

3.7.3 Design Standards

3.7.3.1. Accessibility Signs

....

3.7.3.2. Exterior Walks

....

3.7.3.3. Doorways and Doors

....

3.7.3.4. Ramps

....

3.7.3.5. Elevators

....

3.7.3.6. Spaces in Seating Area

(1) Spaces designated for wheelchair use referred to in Sentence 3.2.7.1.(2) shall be

(a) clear and level, or level with removable seats,

(c) arranged so that at least 2 designated spaces are side by side,

(d) located adjoining a *barrier-free* path of travel without infringing on egress from any row of seating or any aisle requirements, and

(e) situated, as part of the designated seating plan, to provide a choice of viewing location.

3.7.3.7. Assistive Listening Devices

(1) Except as permitted in Sentence (2), in *buildings of assembly occupancy*, all classrooms, auditoria, meeting rooms and *theatres* with an area of more than 100 m² shall be equipped with an assistive listening system encompassing the entire seating area.

....

3.7.3.8. Water Closet Stalls

....

3.7.3.9. Water Closets

....

3.7.3.10. Lavatories

....

3.7.3.11. Special Washrooms

....

3.7.3.12. Showers

....

3.7.3.13. Counters

....

3.7.3.14. Shelves or Counters for telephones

....

3.7.3.15. Drinking Fountains

....

CANADIAN LEGISLATIVE ACTION - continued

Endnotes - Appendix E

1. The *National Building Code* is not part of any national legislative framework, in the way that the *Charter* or certain federal Acts are; it is included herein because it is a cross-jurisdictional document which is adopted by several provinces as part of their regulatory framework.

APPENDIX F
LEGISLATIVE ACTION: ALBERTA

***Individual's Rights
Protection Act (AL-1)***

1. (1) Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act.

3. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

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

(b) discriminate against any person or class of persons with respect to any accommodation, services or facilities customarily available to the public,

because of race, religious beliefs, colour, gender, physical disability, mental disability, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

5. Notwithstanding section 1, no person who is the owner of, or is responsible for the use, occupancy, construction or alteration of, a building as defined in the *Uniform Building Standards Act* shall, by reason only of the condition of the building, be found to have contravened section 3 or 4 as it relates to denial or discrimination on the basis of physical disability if he establishes that the building complies with the applicable requirements of that Act and the regulations under that Act.

11.1. A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

12. The prohibitions contained in this Act apply to and bind the Crown in right of Alberta

and every agency and servant of the Crown in right of Alberta.

13. (1) The Lieutenant Governor in Council may make regulations

(a) exempting a person, class of persons or group of persons, or the Crown or any agent or servant of the Crown, from the operation of this Act or any of the provisions of it;

(b) [repealed]

(c) respecting the procedure to be followed by the Commission in carrying out its functions under this Act.

(2) The Lieutenant Governor in Council may by regulation delegate to the Commission any of his powers under subsection (1).

(3) A regulation made under subsection (1)(a) may

(a) be specific or general in its application, and

(b) provide that the exemption or authorization that it grants is subject to any terms and conditions that the Lieutenant Governor in Council or the Commission, as the case may be, considers advisable.

19. (1) Any person, except the Commission and a member or employee of the Commission, who has reasonable grounds for believing that a person has contravened this Act may make a complaint with the Commission in the form prescribed by the regulations.

(2) A complaint made pursuant to subsection (1) must be made within 6 months after the alleged contravention of the Act occurs.

ALBERTA LEGISLATIVE ACTION - continued

***Individual's Rights
Protection Act (AL-1) (cont'd)***

20. (1) The Commission shall, as soon as is reasonably possible after a complaint is made under section 19, cause an investigation to be made into, and shall endeavour to effect a settlement of, the complaint.

(4) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of the proceeding.

27. (1) If the Commission is unable to effect a settlement of the matter complained of, it shall report to the Minister and may, in its discretion, direct that a formal inquiry into the matter be held by a board of inquiry.

(2) If the Commission does not make a direction under subsection (1), the Minister may, in his discretion, direct that the inquiry be held.

31. (1) A board of inquiry

(b) may, if it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do any or all of the following:

(i) to cease the contravention complained of;

(ii) to refrain in future from committing the same or any similar contravention;

(iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges he was denied contrary to this Act;

(iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;

(v) to take any other action the board considers proper to place the person dealt with contrary to this Act in the

position he would have been in but for the contravention of this Act.

(2) A board of inquiry may make any order as to costs that it considers appropriate.

31.1 No settlement effected by the Commission or order made by a board of inquiry may compensate a person for wages or income lost or expenses incurred prior to 2 years before the date of the complaint under section 19.

33. (1) A party to a proceeding before a board of inquiry may appeal an order of the board to the court of Queen's Bench

(4) The Court may

(a) confirm, reverse or vary the order of the board and make any order that the board may make under section 31, or

(b) remit the matter back to the board with directions.

(5) Commencement of an appeal under this section does not operate as a stay of proceedings under the order of the board of inquiry unless the Court so orders.

38. ...

(c.1) "mental disability" means

(i) a disorder of thought, mood, perception, orientation or memory that impairs

(A) judgment,
(B) behaviour,
(C) capacity to recognize reality, or
(D) ability to meet the ordinary demands of life,

(ii) a condition of mental retardation or mental impairment, or

(iii) a learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;

ALBERTA LEGISLATIVE ACTION - continued

***Individual's Rights
Protection Act (AL-1) (cont'd)***

(i) "physical disability" means any degree of disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device;

***Commission Procedure
Regulation (AL-1.1)***

8. (1) The Regional Director may, if satisfied that a complaint is without merit, dismiss the complaint at any time.

(2) Where the Regional Director dismisses a complaint, the Regional Director shall cause notice of the dismissal to be served on the parties to the complaint.

(3) A person who is served with a notice of dismissal under subsection (2) may, within 30 days from the date of service of the notice of dismissal, giving reasons why the dismissal should be reviewed.

(4) On receipt of a request for review the Commission shall cause a copy of the request to be served on the other parties to the complaint.

(5) The Commission may request further written submissions from the parties to the complaint.

(6) Where the Commission receives a request for review, it shall, as soon as is reasonably practical, review the decision to dismiss the complaint.

(7) Notwithstanding subsection (6), the Commission may adjourn its review if it considers it appropriate to do so.

(8) On completing its review, the Commission shall notify the parties to the complaint of its decision, together with reasons in writing.

(9) If the Commission is of the opinion that a complaint should not have been dismissed, it shall direct any further action that it considers to be appropriate.

School Act (AL-2)

1. (1) In this Act, ...

(v) "special education program" means an education program referred to in section 29.

2. The exercise of any right or the receipt of any benefit under this Act is subject to those limitations that are reasonable in each circumstance under which the right is being exercised or the benefit is being received.

3. (1) Every individual

(a) who at September 1 in a year is 6 years of age or older and younger than 19 years of age, and

(b) who is

(i) a Canadian citizen,

(ii) lawfully admitted to Canada for permanent residence,

(iii) a child of a Canadian citizen, or

(iv) a child of an individual who is lawfully admitted to Canada for permanent or temporary residence

is entitled to have access in that school year to an education program in accordance with this Act.

(2) A board may permit an individual

(a) who at September 1 in a year is younger than 6 years of age or older than 18 years of age, and

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

- (b) who complies with subsection (1)(b),
- to have access in that year to an education program in accordance with this Act.
4. Every student is entitled to receive school instruction in English.
5. (1) If an individual has rights under Section 23 of the Canadian Charter of Rights and Freedoms to have his children receive school instruction in French, his children are entitled to receive that instruction in accordance with those rights wherever in the Province those rights apply.
- (2) The Lieutenant Governor in Council may make regulations respecting anything that may be required to give effect to subsection (1).
8. (1) An individual who
- (a) is eligible to be enroled in a school,
- (b) at September 1 in a year is six years of age or older, and
- (c) is younger than 16 years of age,
- shall attend school.
- (2) A resident student of a board, unless otherwise permitted under this Act or by the board, shall attend the school that the board directs the student to attend.
- (2.1) A board shall make all reasonable efforts to ensure that a student who is a resident student of the board or who is enroled in a school operated by the board attends school.
- (3) Notwithstanding subsection (1), a student is excused from attending school on a day on which the school is open if
- (a) the student is unable to attend by reason of sickness or other unavoidable cause,
- (b) the day is recognized as a religious holiday by the religious denomination to

which the student belongs,

(c) the principal of the school has suspended the student from school and the suspension is still in effect,

d) the student has been expelled from a school and has not been given permission to enrol in another school, or

(e) the board or, if the student is enroled in a private school or resides in an unorganized territory, the Minister

(i) determines that the parent of the student has shown sufficient cause as to why the student should not be required to attend school, and

(ii) excuses the student from attending school for a prescribed period of time.

(4) Where a student is excused from attendance at school under subsection (3)(e), that student is excused from attendance at school only during the period of time prescribed by the board or the Minister, as the case may be.

13. A teacher while providing instruction or supervision must

(e) regularly evaluate students and periodically report the results of the evaluation to the students, the student's parents and the board;

17. (1) Parents of students attending a school may establish a school council for that school.

(2) The majority of members of the school council of a school must be parents of students attending that school.

(3) A school council may

(a) advise the principal of the school and the board respecting any matter relating to the school, and

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

(b) perform any duty or function delegated to it by the board under section 45 in accordance with the delegation.

(4) The parents of students attending a school may dissolve the school council of that school in accordance with rules made under this section respecting the dissolution of the school council.

(5) The board shall make rules respecting the establishment of a school council, the election of members and the dissolution of the school council.

(6) A school council may, subject to any rules made under this section, make by-laws governing its meetings and the business and conduct of its affairs.

18. (1) A board shall establish and maintain pursuant to the regulations a student record for each student enrolled in its schools.

(2) Subject to subsection (3),

(a) if a student is younger than 16 years of age, his parent,

(b) if a student is 16 years of age or older, the student, his parent or both of them, or

(c) if an individual has access to the student under an order made under the *Divorce Act* (Canada), that individual

may review the student record maintained in respect of that student.

(3) Where a student record contains

(a) a test, a test result or an evaluation of a student that is given by a person who has a recognised expertise or training in respect of that test or evaluation, or

(b) information relating to a test, test result or evaluation referred to in clause (a),

the individuals referred to in subsection (2) are

entitled, subject to subsection (4),

(c) to review that test, test result, evaluation or information, and

(d) to receive from a person who is competent to explain and interpret it an explanation and interpretation of the test, test result, evaluation or information.

(4) An individual referred to in subsection (2) is entitled to review the test, test result, evaluation or information referred to in subsection (3) only at a time when a person who is competent to explain and interpret the test, test result, evaluation or information is available to provide him with an explanation and interpretation of that test, test result, evaluation or information.

(5) A board, as soon as practicable after it receives a request from an individual referred to subsection (2) for an opportunity to review a record to which subsection (3) applies, shall ensure that a person who is competent to explain and interpret the test, test result, evaluation or information is available to provide an explanation and interpretation of that test, test result, evaluation or information.

(6) A person who contributes information to a student record is exempt from any liability with respect to the provision of that information if that person, in providing that information,

(a) acted in good faith,

(b) acted within the scope of his duties and responsibilities, and

(c) did not act in a negligent manner.

(7) If, on examining a student record, a person is of the opinion that the student record contains inaccurate or incomplete information, that person may request the board to rectify the matter.

(8) The Minister may make regulations respecting student records.

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

19. (1) In this section, "suspend" has the meaning given to it in the rules made by the applicable board.

(2) A teacher may suspend a student from one class period,

(2.1) A principal may suspend a student from

- (a) one or more class periods,
- (b) one or more courses or school programs,
- (c) school, or
- (d) riding on a school bus.

(2.2) A principal may reinstate a student suspended by him or a teacher.

(3) When a principal suspends a student, the principal shall

- (a) forthwith inform the student's parent of the suspension, and
- (b) report in writing to the student's parent all the circumstances respecting the suspension.

(4) If a student is not to be reinstated within 5 school days from the date of his suspension, the principal shall

- (a) forthwith inform the board of the suspension, and
- (b) report in writing to the board all the circumstances of the suspension together with the principals recommendations.

(5) On receiving a report from a principal pursuant to subsection (4), the board shall, within 10 school days from the first day of the suspension, reinstate or expel the student.

(6) Prior to a board's making a decision under subsection (5), the parent of the suspended student and the suspended student may make representations to the board with respect to the

suspension.

(7) A board may re-enroll a student who has been expelled.

(8) If a student is expelled, the board shall notify, in writing, the parent and, in the case of a student who is 16 years of age or older, the student of their right to request that the Minister review the matter.

23. (1) A parent of a student may provide, at home or elsewhere, a home education program for the student if the program

- (a) meets the requirements of the regulations, and
- (b) is under the supervision of the board.

(2) If a parent resides in unorganized territory, the Minister shall act as a board under this section.

(3) The Minister may make regulations respecting home education.

24. (1) A board or, with the approval of the Minister, a person may provide an early childhood services program to

- (a) a child who, as of September 1, is younger than 6 years of age, if the parent of the child agrees, or
- (b) a student, if the parent of the student and the board of which the student is a resident are of the opinion that the program will benefit the student.

(2) A person or board that provides early childhood services may charge the parent of a child referred to in subsection (1)(a) who is attending the program fees in respect of the program.

(3) The Minister may make regulations respecting early childhood services programs.

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

28. (1) A board shall provide to each of its resident students an education program consistent with the requirements of this Act and the regulations and, for the purposes of providing the education program to the student, the board shall

(a) enroll the student in a school operated by the board, or

(b) direct the student to attend

(i) a school operated by another board or the Government,

(ii) a school operated by a school board in or a Government of another jurisdiction,

(iii) a private school accredited under section 22, or

(iv) a school or institution approved by the Minister

and pay the fees of and costs consequent to the student's attending that school or institution.

(2) Where

(a) a board is willing to provide an education program to a resident student as required under subsection (1), and

(b) the parent of that student wishes to send the student to a school other than a school

(i) operated by the board, or

(ii) that the board directed the student to attend under subsection (1)(b),

the board may, subject to subsection (7), provide all, part or none of the funds necessary for placing the student in a school chosen by the parent.

(3) Where a board directs a student under subsection (1)(b)(i) or (ii) to attend a school that is not operated by the board, the board shall

ensure that the board or the school board in another jurisdiction that operates the school that the student is directed to attend is able to accept the student.

(4) Where

(a) a board directs a student under subsection (1)(b)(i) to attend a school, and

(b) the board that operates the school that the student is directed to attend has sufficient facilities and resources to accept that student,

the board that operates the school that the student is directed to attend shall accept that student in its school.

(5) If a student is a resident student of the Government, the Minister must make arrangements for that student to receive an education program.

(6) The Minister may enter into an agreement with a board or any other person operating a school to provide education programs or services to resident students of the Government.

(7) [Repealed]

29. (1) A board may determine that a student is, by virtue of the student's behavioral, communicational, intellectual, learning or physical characteristics, or a combination of those characteristics, a student in need of a special education program.

(2) A student who is determined by a board to be in need of a special education program is entitled to have access to a special education program provided in accordance with section 28.

(3) Before a board places a student in a special education program it shall

(a) consult with the parent of that student, and

(b) where appropriate, consult with the student.

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

30. (1) A board may determine that a student has special needs that cannot be met in an education program that can be provided by the board under section 28.

(2) If a board makes a determination under subsection (1) in respect of a student, the board shall refer the matter to a Special Needs Tribunal, which shall confirm the board's determination or determine that the board is able to provide the student with an education program that is appropriate to the needs of the student.

(3) If a Special Needs Tribunal confirms the determination of a board under subsection (1), it shall develop or approve a special needs plan that is consistent with the needs of the student and, in accordance with that plan, shall

(a) determine the relationship between the student, the board and any other person or government that may provide the services required under the special needs plan, and

(b) apportion the cost of providing the services required under the special needs plan between the board and the Government.

(4) If a Special Needs Tribunal determines that a board is able to provide the student with an education program that is appropriate to the needs of the student, the board shall provide the student with that education program.

(5) A board and the parent of a student in respect of whom a determination has been made under subsection (1) shall comply with decisions and determinations made by a Special Needs Tribunal under this section.

(6) A decision made by a Special Needs Tribunal under subsection (3) or this subsection shall be reviewed by the same or any other Special Needs Tribunal at least every 3 years after the decision is made until the student is no longer entitled to have access to an education program under this Act.

(7) The Minister may establish 1 or more Special Needs Tribunals for the purposes of this

section.

(8) For the purposes of carrying out its powers under this section, a Special Needs Tribunal and each of its members have the powers of a commissioner under the *Public Enquiries Act*.

(9) A parent or a board may request in writing that the Minister review a decision made by a Special Needs Tribunal under this section.

31. (1) A parent of a student may apply to a board of which the student is not a resident student for permission for the student to attend a school operated by the board.

(2) A board shall enroll a student whose parent applies under subsection (1) if

(a) the board has sufficient facilities and resources to accept the student in a school operated by the board, and

(b) it is agreed that

(i) the board of which the student is a resident student,

(ii) the student's parent,

(iii) the student, or

(iv) the Minister, in the case of a resident student of the government,

will pay the fees authorized under this Act.

(3) Where

(a) an application is made under subsection (1) for the admission of a student to a school operated by a board of a district or division adjacent to the district or division of the board of which the student is a resident student, and

(b) the school was, prior to a change in boundary made under section 197 or 210, operated by the board of which the student was a resident student prior to the boundary change,

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

the Minister may direct that the board of which the student is a resident student pay to the board to which the application is made all or some of the fees authorized by this Act with respect to that student in accordance with any terms or conditions that the Minister may prescribe.

32. (1) A board shall not charge any tuition fees in respect of the attendance of its resident students at a school operated by the board.

34. (1) A board shall provide for the transportation of a resident student of that board to and from the site of the school that the board has directed the student to attend if the parent of the student resides at a distance greater than 4.8 kilometres from the site of that school.

(2) The board shall be deemed to have complied with subsection (1) when transportation is provided on a route that is not more than 2.4 kilometres from the residence of the student's parent.

(3) A board may charge the parent of a student receiving transportation provided by the board any fee determined by the board whether or not the transportation is provided under subsection (1).

(4) In computing distances for the purposes of this section,

(a) the official survey made under any Act of Canada or the Legislature relating to surveys shall be accepted as final and conclusive and all sections shall be deemed to be 1.6 kilometres square and no more.

(b) the width of road allowances shall be excluded from the computation, and

(c) the distance of a residence from a school or from a bus route shall be the shortest distance measured along a travelled road or public right of way between the boundary of the school site or the bus route as the case may be, and the nearest boundary of the quarter section or lot on which the student's

parents resides.

39. A board shall provide the students attending its schools with those health services that the board considers necessary.

44. (1) A board must

(a) establish policies respecting the provision of educational services and programs;

(2) A board may

(a) subject to section 25, develop, acquire or offer courses or programs;

(a.1) subject to section 25, develop or acquire instructional materials for use in programs or in schools;

(i) charge fees with respect to instructional supplies or materials;

(3) A board may make rules

(a) respecting the suspension and expulsion of students;

46. (1) A board may, without the approval of the Minister,

(a) enter into an agreement with

(i) a person, or

(ii) a joint committee established under section 47,

respecting the provision of educational, managerial or other services with respect to the operation of a school;

(b) with respect to its resident students, enter into an agreement with another board or person to provide education programs;

(c) enter into an agreement with a municipality concerning the promotion and development of recreation and community services.

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

(2) A board may, with the prior approval of the Minister,

(a) enter into an agreement with

(i) the Government of Alberta or any agent of the Government of Alberta,

(ii) the Government of Canada or any agent of the Government of Canada, or

(iii) the government of any other jurisdiction or any agent of a government of any other jurisdiction,

respecting the provision of educational services;

(b) enter into any agreement with the Government of Canada or any agency of the Government of Canada with respect to the education of

(i) Indian children, or

(ii) the children of members of the Canadian Forces or of other persons employed by the Government of Canada,

in a school operated by a board;

(c) enter into an agreement with a council of a band as defined in the *Indian Act* (Canada) with respect to the education of Indian children;

(d) enter into an agreement with an organization representing the residents of an unorganized territory for the provision of educational services by the board.

(3) If an agreement under subsection (2)(b), (c) or (d) provides for the appointment of 1 or more individuals resident in the unorganized territory to the board, those individuals are deemed on their appointment to be members of the board and to have all the rights and obligations of trustees as set out in the agreement.

(4) A board shall, on request of an institution that has a program of teacher education authorized by the Minister, enter into an agreement with the institution permitting those individuals enrolled in the program of teacher education and their instructors to attend a classroom of a school operated by the board while the school is in session for the purpose of observing or student teaching.

47. (1) If an agreement is entered into pursuant to section 46(1)(a)(ii) or 184, the board may appoint 1 or more of its trustees to be members of a joint committee with persons appointed by another board and, if appropriate, by a person or municipality.

(2) A board, person or municipality may provide the committee established pursuant to subsection (1) with any money the board, person or municipality considers proper and the committee may expend any money received for the control, management, upkeep and operation of the undertaking.

(3) A committee established pursuant to subsection (1) shall in each year furnish to the board, person or municipality

(a) an audited statement of its receipts and payments for the preceding year, and

(b) any information regarding its management and operation that is considered necessary by the board, person or municipality.

(4) Notwithstanding anything in this Act, a board may, for the purposes of this Act and the regulations, appoint another board to act on its behalf or on behalf of a joint committee established pursuant to this section.

103. (1) The failure of a person to make a decision is deemed to be a decision that may be appealed under this division.

(2) Where a decision of an employee of a board significantly affects the education of a student,

ALBERTA LEGISLATIVE ACTION - continued

School Act (AL-2) (cont'd)

(a) the parent of the student, and

(b) in the case of a student who is 16 years of age or older, the student,

or either of them may within a reasonable time from the date that the parent or student was informed of the decision appeal that decision to the board.

(2.1) For the purposes of this Act, a decision of an employee authorized by a board under section 45(1) to make a decision is deemed to be a decision of the board.

(2.2) A person who may review a student record under section 18 may appeal to a board a decision of an employee of the board respecting access to or the accuracy or completeness of the student record within a reasonable time from the date that the parent or student was informed of the decision.

(3) For the purposes of hearing appeals under this section a board shall establish an appeal procedure by resolution.

(4) A board may establish 1 or more committees for the purpose of carrying out the board's responsibilities under this section.

(5) A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section.

(6) A board shall make a decision under this section forthwith after receiving an appeal and shall report that decision to the person making the appeal forthwith.

104. (1) If a board makes a decision on an appeal to it or otherwise with respect to

(a) the placement of a student in a special education program,

(b) a matter referred to in section 5,

(c) a home education program,

(d) the expulsion of a student, or

(e) the amount and payment of fees or costs,

the parent of a student affected by the decision or the student if he is 16 years of age or older may request in writing that the Minister review the decision of the board.

(2) Where a dispute arises

(a) as to the amount of fees that are payable by a board to another board under Part 3, or

(b) as to which board is responsible for a student,

a board or other person that is a party to the dispute may request in writing that the Minister review the matter.

(3) A person who may review a student record under section 18 may request in writing that the Minister review a decision of the board, whether made on an appeal to it or otherwise, respecting access to or the accuracy or completeness of the student record.

105. (1) The Minister may review a matter as requested in accordance with this Act in any manner he considers appropriate in the circumstances.

(2) Where

(a) the Minister reviews a matter as requested under section 104, and

(b) the parties to the dispute are unable to settle the matter,

the Minister may, subject to this Act and the regulations, make whatever decision with respect to the matter in dispute that appears to him to be appropriate in the circumstances, and that decision is final.

ALBERTA LEGISLATIVE ACTION - continued

Home Education Program Regulation (AL-2.1)

3. (1) A home education program offered by the parent must

(a) be prescribed or approved by the Minister under section 25(1)(a) or (b) of the Act, or

(b) comply with any orders made under section 25(1)(d) of the Act.

(2) Subject to subsection (3), a resident board, on receipt of a notification under section 2, shall determine whether the proposed home education program meets the requirements of subsection (1)(a) and, if it does not, whether it meets the requirements of subsection (1)(b).

(3) If a willing non-resident board receives a notification under section 2, it shall notify the resident board and make the determination described in subsection (2).

4. If a resident board or a willing non-resident board determines that the notification requirements of section 2 have been met and that a home education program meets the requirements of section 3(1), it shall

(a) supervise the student,

(b) provide for and maintain records of the assessment of the student's achievement,

(c) notify the parent if there are any deficiencies in the program including the eligibility to write grade 12 diploma examinations or the granting of credits, and

(d) in the case of a willing non-resident board, notify the resident board of the agreement to supervise the home education program.

5. A resident board or a willing non-resident board that is supervising a home education program shall

(a) assess or provide for the assessment of

the student's achievement on a regular basis and communicate those results forthwith to the parent,

(b) inform the parent if, in the opinion of the board, reasonable achievement for that student is not being shown, and

(c) make recommendations to the parent to assist the student in increasing his level of achievement.

Student Records Regulation (AL-2.2)

3. (1) A board shall ensure that the parent and student are informed of their entitlement under section 18 of the *School Act* to review a student record.

(2) A board shall ensure that the contents of a student record are not disclosed except

(a) in accordance with sections 18 and 26 of the *School Act*,

(b) to an employee or agent of the board if the information is necessary and relevant to a matter being dealt with by the employee or agent,

(c) with the written permission of

(i) the parent if the student is less than 16 years of age, or

(ii) the student or the parent if the student is 16 years of age or older,

(d) with the written permission of the Minister,

(e) in accordance with section 4, or

(f) in accordance with any other regulation under the *School Act*.

ALBERTA LEGISLATIVE ACTION - continued

***Alberta Building Code,
1990 (AL-3.1)***

Note. Excerpts not included; provisions equivalent to *NBC, 1990* (see app. E).

Interpretation Act (AL-5)

14. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner, unless the enactment expressly states that it binds Her Majesty.

***Department of Education
Act (AL-4)***

6. The Minister may make regulations

...

(d) for the establishment, operation, administration and management of schools, institutes or facilities for the education and training of persons with special educational needs and prescribing fees or a schedule of fees to be charged for any matter connected with the school or institute.

***Alberta School for the Deaf
Regulation (AL-4.1)***

4. (1) The Principal may permit hearing-impaired individuals to attend the School

(a) who are at September 1 in a year 6 years of age or older and younger than 19 years of age, and

(b) who, in the opinion of the Principal, are suitable to be students at the School.

(2) The Director may permit a hearing-impaired individual to attend the School who is at September 1 in a year younger than 6 years of age or older than 19 years of age if, in the opinion of the Director, the School can offer the individual a program that provides appropriate opportunities for education or development of skills for employment.

(3) Permission for a hearing-impaired individual to attend the School is conditional on the fulfilment of all admission requirements.

APPENDIX G

LEGISLATIVE ACTION: BRITISH COLUMBIA

Human Rights Act (BC-1)

1. In this Act ...

"discrimination" includes the conduct described in section 3(1)(a), 4(a) or (b), 5(1)(a), 6, 8(1)(a) or (2) or 9(a) or (b).

3. (1) No person, without a bona fide and reasonable justification, shall

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

(b) discriminate against a person or class of persons with respect to 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 or sexual orientation 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 if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

11. (4) Subject to section 13, the chairman of the council shall investigate a complaint and endeavour to assist the parties to the complaint to achieve a settlement.

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

14. (1) Upon completion of an investigation, the chairman shall

(a) refer the complaint to the council for a determination as to whether the proceeding should be discontinued,

(b) [repealed]

(c) submit a report to the minister, or

(d) designate one member of the council to receive, as specified by the member, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council

(i) where he considers the complaint is not justified, shall dismiss the complaint, or

(ii) where he considers the complaint is justified, shall make an order described in section 17(2)(a) and may make an order described in section 17(2)(b), (c) or (d).

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

Human Rights Act (BC-1) (cont'd)

(3) On receipt of a report under subsection (1)(c), the minister shall

(a) refer the complaint to a board of inquiry, or

(b) order that the proceedings be discontinued.

17. (2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention,

(b) may make a declaratory order that conduct of the type complained of, or similar conduct, is discrimination contrary to this Act,

(c) may order the person who contravened this Act to do one or both of the following:

(i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;

(ii) adopt and implement an employment equity program or other special program if the evidence at the hearing has disclosed that the person engaged in a pattern or practice that contravenes this Act, and

(d) if the person discriminated against is a party to the proceedings, may order the person who contravened this Act to do one or more of the following:

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, the person was denied contrary to this Act;

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost,

or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the board of inquiry considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

(3) A board of inquiry may make any order as to costs it considers appropriate.

....

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

19.1 (1) It is not discrimination or a contravention of this Act to plan, advertise, adopt or implement an employment equity program, that

(a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability or sex, and

(b) achieves or is reasonably likely to achieve that objective.

(2) The council may

(a) make general recommendations concerning desirable objectives for, and

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

Human Rights Act (BC-1) (cont'd)

(b) on application give advice and assistance with respect to the adoption or carrying out of

employment equity programs or other special programs or activities that have as their objective the amelioration of conditions of disadvantaged individuals or groups.

22. (2) Where there is conflict between a provision of this Act and a provision of another enactment, this Act prevails.

School Act (BC-2)

1. (1) In this Act ...

"Educational program" means an organized set of learning activities that, in the opinion of

(a) the board, in the case of learning activities provided by the board,

(b) the minister, in the case of learning activities in a Provincial school, or

(c) the parent, in the case of learning activities provided to a child registered under section 13,

is designed to enable learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy society and a prosperous and sustainable economy;

"School age" means the age between the date on which a person is permitted under section 3(1) to enrol in an educational program provided by a board and the end of the school year in which the person attains the age of 19 years.

2. A person

(a) who is of school age, and

(b) who is resident in a school district

is entitled to enrol in an educational program provided by the board of that school district.

3. (1) Subject to subsections (2) and (3), a person who is resident in British Columbia shall

(a) enrol in an educational program provided by a board on the first school day of September of a school year if, on or before December 31 of that school year, the person will have attained the age of 5 years, and

(b) participate in an educational program provided by a board until he or she attains the age of 16 years.

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

School Act (BC-2) (cont'd)

(2) A parent of a child referred to in subsection (1)(a) may defer the enrolment of his or her child until the first school day of September of the next school year.

(3) This section does not apply if the person

(a) is attending an independent school, a Provincial school or an educational institution operated by the Crown in right of Canada or by a band as defined in the *Indian Act* (Canada), or

(b) is registered under section 13.

4. A student is entitled to consult with a teacher or administrative officer with regard to that student's educational program.

5. (1) Every student is entitled to receive an educational program that is provided in the English language.

(2) Students whose parents have the right under section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in a language other than English are entitled to receive that instruction.

(3) Subject to the approval of the minister, a board may permit an educational program to be provided in a language other than as provided under subsections (1) and (2).

(4) The Lieutenant Governor in Council may make regulations

(a) respecting the provisions of educational programs in languages other than English,

(b) to give effect to section 23 of the *Canadian Charter of Rights and Freedoms*, and

(c) determining the manner in which a power, duty or function of a board may be performed or exercised under this Act with respect to students referred to in subsection (2).

and may make different regulations for different circumstances.

7. (1) A parent of a student of school age attending a school is entitled

(a) to be informed, in accordance with the orders of the minister, of the student's attendance, behaviour and progress in school,

(b) on request, to annual reports respecting general effectiveness of educational programs in the school district, and

(c) to belong to a parents' advisory council established under section 8.

(2) A parent of a student of school age attending a school may and at the request of a teacher shall consult with the teacher or administrative officer with respect to the student's educational program.

8. (1) Parents of students of school age attending a school or a Provincial school may apply to the board or to the minister, as the case may be, to establish a parents' advisory council for that school.

(2) On receipt of an application under subsection (1), the board or minister shall establish a parents' advisory council for the school or the Provincial school, as the case may be.

(3) There shall be only one parents' advisory council for each school or Provincial school.

(4) A parents' advisory council through its elected officers may advise the board and the principal and staff of the school or the Provincial school respecting any matter relating to the school or the Provincial school.

(5) A parents' advisory council, in consultation with the principal, shall make bylaws governing its meetings and the business and conduct of its affairs, including bylaws governing the dissolution of the council.

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

School Act (BC-2) (cont'd)

9. A student and the parents of a student of school age are entitled to examine all student records kept by a board pertaining to that student while accompanied by the principal or a person designated by the principal to interpret the records.

11. (1) In subsections (2) and (4) "decision" includes the failure of an employee to make a decision.

(2) Where a decision of an employee of a board significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.

(3) For the purpose of hearing appeals under this section, a board shall, by bylaw, establish an appeal procedure.

(4) A board may refuse to hear an appeal under this section, unless the appellant discusses the decision under appeal with one or more persons as directed by the board.

(5) A board may establish one or more committees for the purpose of investigating appeals under this section.

(6) A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section and the decision of the board is final.

(7) A board shall make a decision under this section as soon as practicable after receiving an appeal and shall promptly report that decision to the person making the appeal.

12. A parent of a child who is required to enrol in an educational program provided by a board under section 3 may educate the child at home or elsewhere in accordance with this Division and shall provide that child with an educational program.

13. (1) A parent of a child who is required under section 12 to provide the child with an

educational program shall register the child on or before September 30 in each year with

(a) a school of the parent's choice that is operating in the school district in which the parent resides,

(b) a regional correspondence school providing services to the school district in which the parent resides or with the minister if no regional correspondence school provides services to that district, or

(c) an independent school operating in British Columbia.

(2) If a parent wishes to register his or her child with a school in accordance with subsection (1), the board having jurisdiction over the school shall ensure that the administrative officer responsible for that school registers the child.

(3) A school that registers a child under this section shall provide the child with access to educational services in accordance with the regulations.

(4) A person who contravenes subsection (1) commits an offence.

85. (2) A board may ...

(b) establish a district advisory council comprised of persons representing parents' advisory councils and other organizations in the community, and

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 enrol 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,

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

School Act (BC-2) (cont'd)

(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 subsection (3).

(5) Unless the board of the school district in which a person of school ages 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.

97. (1) Subject to the orders of the minister, a board shall

(a) establish written procedures regarding the storage, retrieval and appropriate use of student records, and

(b) ensure the confidentiality of the information contained in the student records and ensure privacy for students and their families.

(2) Notwithstanding subsection (1), a board shall, where required by the orders of the minister, permit a person providing health services, social services or other support services access to information in student records required to carry out that service.

(3) Subject to the orders of the minister, a board shall establish and maintain a record for each student and for each child registered with the board's schools under section 13.

100. (1) A board shall provide free of charge to every student of school age resident in its school district and enrolled in an educational program in a school,

(a) instruction in an educational program sufficient to meet the general requirements for graduation set out in the orders of the minister, and

(a.1) instruction in an educational program after the student has met the general requirements for graduation, and

(b) educational resource materials necessary to participate in the educational program.

....

(3) Subject to subsection (1) and to the orders of the minister, a board may charge fees for goods and services provided by the board.

101. A board may

(a) assist in paying the cost of transportation, board or lodging of a student, or

(b) subject to the approval of the minister, assist in paying the cost of transportation, board, lodging or tuition fees of a person attending an educational institution outside of British Columbia.

103. (1) For the purposes of carrying out its powers, functions and duties under this Act and the regulations, a board has the power and capacity of a natural person of full capacity.

(2) Without restricting the generality of subsection (1) a board may, subject to this Act and the regulations, do all or any of the following:

(a) determine local policy for the effective and efficient operation of schools in the school district;

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

School Act (BC-2) (cont'd)

- (b) subject to the orders of the minister, approve educational resource materials and other supplies and services for use by students;
- (c) make rules ...
- (ii) respecting suspension of students and the provision of educational programs for suspended students,
- ...
- (iv) respecting the establishment, operation, administration and management of
- (A) schools operated by the board and educational programs provided by the board, and
- (B) transportation equipment used for the purposes of the board,
- ...
- (d) suspend students in accordance with the rules under paragraph (c)(ii), so long as the board continues to make available to those students an educational program;
- ...
- (h) subject to the orders of the minister, evaluate and recognize educational activities of an educational program undertaken by a student outside of the school;
- (i) develop and offer local programs for use in schools in the school district;
- (j) subject to the orders of the minister, cause an educational assessment to be made of students or groups of students;
- ...
- (3) Notwithstanding any other provision of this Act, a board may refuse to offer an educational program to a student 16 years of age or older where that student
- (a) has refused to comply with the code of conduct, other rules and policies referred to in section 6, or
- (b) has failed to apply himself or herself to his or her studies.
104. (1) A board may, subject to this Act, the regulations and the orders of the minister,
- (a) enter into an agreement to purchase managerial or other services with respect to the operation of schools in the district or to purchase educational services that will be under the general supervision of an employee of the board who is a member of the college [of teachers], ...
106. (1) A board shall provide health services, social services and other support services for schools in accordance with any orders made by the minister.
-
109.
- (4) If a teacher or administrative officer suspects a student is suffering from a communicable disease or other physical, mental or emotional condition that would endanger the health or welfare of the other students, the teacher or the administrative officer, as the case may be, shall report the matter to the school medical officer, to the school principal and to the superintendent of schools for the district and may exclude the student from school until a certificate is obtained for the student from the school medical officer or a private medical practitioner permitting the student to return to school.
- (5) If a student is removed or excluded from school under subsection (3) or (4), the board shall continue to make available an educational program for that student.
184. (1) Except for the purposes of the administration of this Act or the *Independent School Act* or conducting the business of the Ministry of Education, no person who is or has been
- (a) an employee of the Ministry of Education, or

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

School Act (BC-2) (cont'd)

(b) engaged by the Ministry of Education in the administration of this Act or the *Independent School Act*

shall knowingly disclose any information contained in a student record that identifies a student.

(2) Notwithstanding subsection (1), a person referred to in that section may disclose information in a student record that identifies a student if

(a) the disclosure is required by or under an enactment of British Columbia or Canada,

(b) the disclosure is to counsel in respect of a proceeding or is given in evidence in a proceeding, or

(c) the student or the parent of the student consents in writing to the disclosure.

(3) An employee of the Ministry of Education who has access to students records shall swear an oath in the prescribed form.

(4) An employee who contravenes subsection (1) commits an offence.

School Regulation (BC-2.1)

3. (1) A school that registers a child under section 13(1) (a) or (b) of the Act shall offer

(a) evaluation and assessment services sufficient to enable the parents of the child to determine the educational progress achieved by the child in relation to students of similar age and ability, and

(b) the loan of educational resource materials that are authorized and recommended by the minister,

(i) which, in the board's opinion, are sufficient to enable the child to pursue his or her educational program, and

(ii) which will be offered to the child on a similar basis to the offer of such educational resource materials to students.

(2) With the permission of a board, a child registered under section 13(1) (a) or (b) of the Act may attend educational programs offered by the board subject to any terms and conditions established by the board, including the payment of any fee.

5. (7) The principal of a school is responsible for administering and supervising the school including

(a) the implementation of educational programs,

(b) the placing and programming of students in the school,

(d) the program of teaching and learning activities,

(e) the program of student evaluation and assessment and reporting to parents,

(8) Principals shall ensure that parents or guardians are regularly provided with reports in respect of the student's school progress in intellectual development, human and social development and career development and the student's attendance and punctuality.

(9) Reports under subsection (8) shall be made at least 5 times during the school year as follows:

(a) 3 written reports, one of which shall be at the end of the school year

(i) on a form ordered by the minister, or

(ii) on a form approved by the board containing information, and when required, using reporting symbols ordered or approved by the minister, and

(b) at least 2 informal reports.

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

***Investigation by Superintendent
Order (BC-2.2)***

2. (1) Where a superintendent of schools receives a report that a child who is being educated in accordance with section 12 of the *School Act* is not receiving an educational program, the superintendent shall investigate the report and shall discuss the report with a parent of the child.

(3) Where, after investigation, the superintendent of schools believes that a child is not receiving an educational program and that the child is in need of protection, the superintendent shall report that belief to the Superintendent of Family and Child Service.

(4) The superintendent of schools shall provide the Superintendent of Family and Child Service with advice on educational matters pertaining to the child under investigation.

***Special Needs Students
Order (BC-2.3)***

1. (1) A board shall ensure that an administrative officer offers to consult with a parent of a handicapped student regarding the placement of that student in an educational program.

(2) Unless the educational needs of a handicapped student indicate that the student's educational program should be provided otherwise, a board shall provide that student with an educational program in classrooms where that student is integrated with other students who do not have handicaps.

***Support Services to Schools
Order (BC-2.4)***

2. (1) Each board is responsible for referring any of its students who are hearing impaired to the Ministry of Health for a needs assessment to determine if the student requires auditory training equipment for classroom use.

(2) On request of a board, the minister shall loan to the board auditory training equipment for each student who has been assessed under subsection (1) as needing the equipment.

3. A board of a school district shall provide speech and language therapy services for students of school age who attend a school in the district and whose education is adversely affected by oral communication difficulties.

4. A board shall refer for medical assessment and subsequent referral for occupational or physiotherapy consultation any students who have ongoing physical conditions or disabilities serious enough to cause interference with the attainment of the goals of education.

***Jericho Hill Provincial Resource
Program Order (BC-2.5)***

1. There is hereby established a Provincial Resource Program for the education of deaf children of school age called the Jericho Hill School for the Deaf Provincial Resource Program.

***Independent School Act
(BC-3)***

9. (1) An independent school, for which an authority holds a subsisting certificate of group classification, may register a child who is being educated at home.

(2) An independent school that registers a child under this section shall provide the child with access to educational services in accordance with the regulations.

BRITISH COLUMBIA LEGISLATIVE ACTION - continued

***Independent School Act
Regulation (BC-3.1)***

6. (1) An independent school that registers a child under section 9 of the Act

(a) shall offer, free of charge, the evaluation and assessment services normally offered to students by the independent school in which the child is registered, and

(b) may loan

(i) authorized and recommended educational resource materials provided by the Ministry of Education that, in the school's opinion, are sufficient to enable the child to pursue his or her educational program, or

(ii) learning materials used by the students of the independent school that, in the school's opinion, are sufficient to enable the child to pursue his or her educational program.

***Building Regulations of
British Columbia (BC-4.1)***

Note. Excerpts not included; equivalent to *NBC, 1985*; forthcoming amendments equivalent to *NBC, 1990* (see app. E).

***Interpretation Act
(BC-5)***

14. (1) Unless it specifically provides otherwise, an enactment is binding on Her Majesty.

APPENDIX H

LEGISLATIVE ACTION: MANITOBA

Human Rights Act (MA-1)

1. In this Code ...

"dog guide" means a dog that serves as a guide or leader for a visually impaired person and has been trained for that purpose.

"local authority" includes ...

(c) the board of trustees of a school division or school district established under the Public Schools Act;

....

"person", in addition to the extended meaning given it by the Interpretation Act, includes ...

(b) for greater certainty, a local authority;

9. (1) In this Code, "discrimination" means

(a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or

(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or

(c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or

(d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

(2) The applicable characteristics for the purposes of clauses (1)(b) to (d) are

(a) ancestry, including colour and perceived

race;

(b) nationality or ethnic origin;

(c) ethnic background or origin;

(d) religion or creed, or religious belief, religious association, or religious activity;

(e) age;

(f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;

(g) gender-determined characteristics or circumstances other than those included in clause (f);

(h) sexual orientation;

(i) marital or family status;

(j) source of income;

(k) political belief, political association or political activity;

(l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

(3) In this Code, "discrimination" includes any act or omission that results in discrimination within the meaning of subsection (1), regardless of the form that the act or omission takes and regardless of whether the person responsible for the act or omission intended to discriminate.

(4) For the purpose of dealing with any case of alleged discrimination under this Code, no characteristic referred to in subsection (2) shall be interpreted to extend to any conduct prohibited by the Criminal Code of Canada.

MANITOBA LEGISLATIVE ACTION - continued

Human Rights Act (MA-1) (cont'd)

(5) Nothing in this Code shall be interpreted as condoning or condemning any beliefs, values, or lifestyles based upon any characteristic referred in subsection (2).

10. For the purposes of this Code, where an officer, employee, director or agent of a person contravenes this Code while acting in the course of employment or the scope of actual or apparent authority, the person is also responsible for the contravention unless the person

(a) did not consent to the contravention and took all reasonable steps to prevent it; and

(b) subsequently took all reasonable steps to mitigate or avoid the effect of the contravention.

11. Notwithstanding any other provision of this Code, it is not discrimination, a contravention of this Code, or an offence under this Code

(a) to make reasonable accommodation for the special needs of an individual or group, if those special needs are based upon any characteristic referred to in subsection 9(2); or

(b) to plan, advertise, adopt or implement an affirmative action program or other special program that

(i) has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection 9(2), and

(ii) achieves or is reasonably likely to achieve that object.

12. For the purpose of interpreting and applying sections 13 to 18, the right to discriminate where bona fide and reasonable cause exists for the discrimination, or where the discrimination is based upon bona fide and reasonable requirements or qualifications, does

not extend to the failure to make reasonable accommodation within the meaning of clause 9(1)(d).

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.

....

19. (1) No person who is responsible for an activity or undertaking to which this Code applies shall

(a) harass any person who is participating in the activity or undertaking; or

(b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

(2) In this section "harassment" means

(a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or

23 (1) Subject to subsection (2), every complaint shall be filed within six months of the alleged contravention of the Code or, where a continuing contravention is alleged, within six months of the last alleged instance of the contravention.

(2) The executive director may extend the time for filing any complaint except a complaint filed under subsection 22(3) [complaint filed by the Commission], but the executive shall not extend the time if he or she is satisfied that the extension would cause undue prejudice to the respondent.

....

MANITOBA LEGISLATIVE ACTION - continued

Human Rights Act (MA-1) (cont'd)

26. As soon as is reasonably possible after a complaint has been filed, the executive director shall cause the complaint to be investigated to the extent the Commission regards as sufficient for fairly and properly disposing of it in accordance with section 29.

29. (1) The Commission shall dismiss a complaint if it is satisfied that

(a) the complaint is frivolous or vexatious; or

(b) the acts or omissions described in the complaint do not contravene the Code; or

(c) the evidence in support of this complaint is insufficient to substantiate the alleged contravention of the Code....

(3) Where a complaint is not disposed of in accordance with subsection (1) or (2) and the Commission is satisfied that additional proceedings in respect of the complaint would further the objectives of this Code or assist the Commission in discharging its responsibilities under this Code, the Commission shall

(a) request the minister to designate a member of the adjudication panel to adjudicate the complaint; or

(b) recommend that the minister commence a prosecution for an alleged contravention of the Code.

(4) Where a complaint is not disposed of in accordance with subsection (1) or (2) and the Commission does not proceed under clause 3(a) or (b), the Commission shall terminate its proceedings in respect of the complaint.

43. ...

(2) Where, under subsection (1), the adjudicator decides that a party to the adjudication has contravened this Code, the adjudicator may order the party to do one or more of the following:

(a) do or refrain from doing anything in order to secure compliance with this Code,

to rectify any circumstance caused by the contravention, or to make just amends for the contravention;

(b) compensate any party adversely affected by the contravention for any financial losses sustained, expenses incurred or benefits lost by reason of the contravention, or for such portion of those losses, expenses or benefits as the adjudicator considers just and appropriate;

(c) pay any party adversely affected by the contravention damages in such amount as the adjudicator considers just and appropriate for injury to dignity, feelings or self-respect;

(d) pay any party adversely affected by the contravention a penalty or exemplary damages in such amount, subject to subsection (3), as the adjudicator considers just and appropriate as punishment for any malice or recklessness involved in the contravention;

(e) adopt and implement an affirmative action program or other special program of the type referred to in clause 11(b), if the evidence at the hearing has disclosed that the party engaged in a pattern or practice of contravening this Code.

(3) The amount of a penalty or exemplary damages ordered by an adjudicator under clause 2(d) shall not exceed the maximum fine to which the contravening party would have been liable under subsection 51(1) as a result of a prosecution for the contravention.

(4) Where the adjudicator decides that this Code has been contravened by reason of impeding access of a physically disabled person to, or failing to provide proper amenities for a physically disabled person in, a building or facility, the adjudicator may make recommendations for remedying the contravention, but where the party contravening the Code establishes that the cost or business inconvenience that would result from providing appropriate access or amenities would constitute an undue hardship, the adjudicator shall not make an order under clause (2)(a) or (e) in respect of the contravention....

MANITOBA LEGISLATIVE ACTION - continued

Human Rights Act (MA-1) (cont'd)

47. (1) Where an order to adopt and implement an affirmative action program or other special program has been made under clause 43(2)(e), the adjudicator has jurisdiction to supervise or order variation of the program until, in the opinion of the adjudicator, there has been full compliance with the order.

...

49. Subject to section 50, every decision and order made by an adjudicator is final and binding on the parties to the adjudication.

50. (1) Any party to an adjudication may apply to the court for a review of any decision or order made by the adjudicator with respect to the adjudication, solely on the ground that

(a) the adjudicator committed an error of jurisdiction with respect to the adjudication; or

(b) there was a breach of the principle of natural justice or the principle of fairness in the course of the adjudication; or

(c) there is an error of law on the face of the record of the proceedings in respect of which the decision or order under review was made.

57. This Code is binding on Her Majesty in right of Manitoba.

58. Unless expressly provided otherwise herein or in another Act of the Legislature, the substantive rights and obligations in this Code are paramount over the substantive right and obligations in every other Act of the Legislature, whether enacted before or after this Code.

Public Schools Act (MA-2)

41. (1) Every school board shall

(a) provide adequate school accommodation for the resident persons who have the right to attend school as provided in section 259;

...

(n) arrange to purchase textbooks for free distribution to pupils;

...

(q) screen every pupil who has not previously been screened entering the school system in that division or district, for physical, mental, emotional or learning disability.

...

(s) subject to the order of a court to the contrary upon request, make available to the parent or guardian of any pupil attending a school within the jurisdiction of the school board, or to a pupil who has reached the age of majority and, where the pupil gives written consent, to the parent or guardian of the pupil, such information as may be contained in any file or record kept at the office of the school or school board respecting the pupil,

(i) in the case of a file or record kept at the office of the school, during normal school hours, and

(ii) in the case of a file or record kept at the office of the school board, during normal office hours,

or at such other time as may be agreed between the school board and the parent or guardian or between the school board and both the parent or guardian and the pupil, as the case may be and every principal shall offer to designate an employee to assist a parent or guardian who is given access to information to interpret it;

....

(4) Every school board shall provide or make provision for education in grades I to XII inclusive for all resident persons who have the right to attend school.

MANITOBA LEGISLATIVE ACTION - continued

Public Schools Act (MA-2) (cont'd)

(5) Subject to any regulations made under The Education Administration Act every school board shall make provision for a pupil to attend a school in another school division or school district for a program not provided by the pupil's home school division or school district and the pupil's home school division or school district is responsible for paying the residual costs of the education.

...

43. (1) Subject to the provisions of this Act and the regulations, in all cases where transportation of pupils is required, it shall be provided for those pupils who would have more than 1.6 kilometres to walk in order to reach school, and, further, provision for transportation from home to school shall be made regardless of distance for those pupils who are unable to walk to school because of physical or other handicaps.

48. (1) Subject to the regulations, a school board may ...

(j) purchase books and other instructional materials to be given to the pupils or to be loaned to them with or without charge as the school board may decide.

...

(p) notwithstanding any other provision of this Act, enter into an agreement with the government, or any minister of the government on behalf of the government, or any agency of the government or any other school board or any person

(i) respecting the attendance and education of children from within its school division or school district at a school operated by the other party, or

(ii) respecting the attendance and education at schools operated by it of children, the education of whom is the responsibility of or under the supervision of the other party, or

(iii) respecting the provision, exchange or sharing of educational services, or

(iv) respecting the payment, sharing or collection of fees and charges agreed upon by the parties, or

(v) respecting the construction of a regional vocational school within or without its territorial jurisdiction, and respecting the programs to be offered therein, or

(vi) respecting any one or more of the things mentioned to in sub-clauses (i) to (v);

(q) notwithstanding any other provision of this Act, but subject to the approval of the minister, enter into an agreement with the Government of Canada or a minister thereof on behalf of the Government of Canada or an agency of the Government of Canada or an Indian Band or its representative to whom authority over the education of children of the Indian Band has been granted under an Act of Parliament,

(i) respecting the attendance and education of children from within its school division or school district at a school operated by the other party, or

(ii) respecting the attendance and education at schools operated by it of children, the education of whom is the responsibility of or under the supervision of the other party, or

(iii) respecting the provision, exchange or sharing of educational services, or

(iv) respecting the payment, sharing or collection of fees and charges agreed upon by the parties, or

(v) respecting any one or more of the things mentioned in sub-clause (i) to (iv);

....

MANITOBA LEGISLATIVE ACTION - continued

Public Schools Act (MA-2) (cont'd)

(4) Subject to the regulations and notwithstanding any other provision of this Act, a school board may suspend or expel from a school any pupil who, upon investigation by the school board, is found to be guilty of conduct injurious to the welfare of the school.

75. Except as otherwise provided in this Act no school board shall charge tuition fees.

79. (1) Subject as otherwise provided in this section, English and French are the languages of instruction in public schools.

(2) When authorized by the school board, a language other than English or French may be used in any school in the school division or school district

(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.

258. (1) In this part

"child" means an individual of compulsory school age;

"compulsory school age" means, subject to subsection (2), over the age of seven years and under the age of 16 years;

(2) Any child who has attained the age of seven years at the beginning of the fall term or will attain the age of seven years within 12 weeks after that time or within 12 weeks after any date fixed by a school board for admission to enrollment shall be deemed to be of compulsory school age at the opening of the fall term or the date fixed by the school board for admission to enrollment.

259. Subject to the provisions of this Act any person who has attained the age of six years at the beginning of the fall term or will attain the age of six years within 12 weeks after that time or within 12 weeks after any date fixed by the school board for admission to enrollment, has the right to attend school to an age three years beyond the age of majority.

262. No person is liable to any of the penalties set out in this Act for failing or refusing to send his child to school as required under section 260 where

(a) the child is in regular attendance at a private school, as defined in The Education Administration Act; or

(b) the field representative certifies that in his opinion the child is currently receiving a standard of education at home or elsewhere equivalent to that provided in a public school; or

(c) the child is unable to attend school by reason of sickness or other unavoidable cause or is excluded from attendance under subsection 261(2); or

(d) the child is absent from school on any day regarded as a holy day by the church or religious denomination with which the child is affiliated; or

(e) the child has attained the full age of 15 years and has obtained a certificate excusing his attendance at school signed by

(i) his parent or guardian or other person having legal charge or control of him,

MANITOBA LEGISLATIVE ACTION - continued

Public Schools Act (MA-2) (cont'd)

- (ii) the school attendance officer, and
- (iii) the superintendent of schools for the school division or school district in which the child resides or, if there is no such officer, the field representative.

Languages of Instruction and Study Regulation (MA-2.1)

4. If a school board is in receipt of a petition requesting the use of French or English as the language of instruction under subsection 79(3) of the Act, and is unable to group together for instruction the minimum number of pupils required under that subsection, or is unable to make satisfactory arrangements with the school board of another division or district for the provision of joint classes as permitted under subsection 79(7) of the Act, the school board shall inform the minister accordingly.

Education Administration Regulation (MA-3.1)

42. (1) The school board in any school division or school district that has more than one school building may

- (a) designate the school building or buildings which any designated pupil or the pupils resident within any designated area shall attend; and
- (b) subject to section 262 of The Public Schools Act designate a public school outside the division or district to be attended by any designated pupil or pupils resident in an area.

Manitoba Building Code (MA-4.1)

Note. Excerpts not included; Act provisions equivalent to NBC, 1985 (see app. E).

Age of Majority Act (MA-5)

1. Every person attains the age of majority, and ceases to be a minor, on attaining the age of 18 years.

Interpretation Act (MA-6)

14. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Blind Persons' and Deaf Persons' Maintenance and Education Act (MA-7)

3. The Government of Manitoba may expend such moneys of the province as it deems expedient for the maintenance and education of blind persons and deaf persons who reside in the province and have a right to attend public school under the Public Schools Act.

4. Subject to the approval of the minister, blind persons and deaf persons who reside in the province and have a right to attend public school under the Public Schools Act may be sent to, and maintained in, institutions outside Manitoba.

APPENDIX I

LEGISLATIVE ACTION: NEW BRUNSWICK

Human Rights Act (NB-1)

2. In this Act ...

"mental disability" means

- (a) any condition of mental retardation or impairment,
- (b) any learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken language, or
- (c) any mental disorder;

...

"physical disability" means any degree of disability, infirmity, malformation or disfigurement of a physical nature that is caused by bodily injury, illness or birth defect and, without limiting the generality of the foregoing, includes any disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance.

5. (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or class of persons any accommodation, services or facilities available to the public, or
- (b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public,

because of race, colour, religion, national origin,

ancestry, place of origin, age, physical disability, mental disability, marital status or sex.

(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability, mental disability or marital status shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a *bona fide* qualification as determined by the Commission.

9. This Act binds the Crown in right of the Province.

13. (1) On the application of any person, or on its own initiative, the Commission may approve a programme to be undertaken by any persons designed to promote the welfare of any class of persons.

(2) At any time before or after approving a programme, the Commission may

- (a) make inquiries concerning the programme,
- (b) vary the programme,
- (c) impose conditions on the programme, or
- (d) withdraw approval of the programme,

as the Commission thinks fit.

(3) Anything done in accordance with a programme approved pursuant to this section is not a violation of the provisions of this Act.

18. (1) The Commission itself or through any person designated so to do shall inquire into any complaint made pursuant to section 17 and shall endeavour to effect a settlement of the matter complained of.

NEW BRUNSWICK LEGISLATIVE ACTION - continued

Human Rights Act (NB-1) (cont'd)

(2) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of the proceedings.

20. (1) If the Commission is unable to effect a settlement of the matter complained of, the Minister may, on the recommendation of the Commission, appoint a Board of Inquiry composed of one or more persons to hold an inquiry to investigate the matter and shall forthwith communicate the names of the members of the Board to the parties referred to in paragraphs (4.1)(a), (b) and (c) and thereupon it shall be presumed conclusively that the Board was appointed in accordance with this Act.

(6.2) Where, at the conclusion of an inquiry, the Board finds, on a balance of probabilities, that a violation of this Act has occurred, it may order any party found to have violated the Act

(a) to do, or refrain from doing, any act or acts so as to effect compliance with the Act,

(b) to rectify any harm caused by the violation,

(c) to restore any party adversely affected by the violation to the position he would have been in but for the violation,

(d) to reinstate any party who has been removed from a position of employment in violation of the Act,

(e) to compensate any party adversely affected by the violation for any consequent expenditure, financial loss or deprivation of benefit, in such amount as the Board considers just and appropriate, and

(f) to compensate any party adversely affected by the violation for any consequent emotional suffering, including that resulting from injury to dignity, feelings or self-respect, in such amount as the Board

considers just and appropriate.

21. (1) All orders and decisions of a Board of Inquiry are final and shall be made in writing, together with a written statement of the reasons therefor, and copies of all such orders, decisions and statements shall be provided to the parties and to the Minister.

Schools Act (NB-2)

1. In this Act ...

"exceptional pupil" means a person who is determined under subsection 52(3) to be an exceptional pupil;

"handicapped person" means a person who

(a) is handicapped visually or aurally,

(b) has a related or associated handicap, or

(c) is handicapped as determined by an agreement referred to in paragraph 8(1)(b);

"special education program" means an education program for an exceptional pupil that is based on the results of continuous assessment and evaluation and which includes a plan containing specific objectives and recommendations for education services that meet the needs of the pupil.

3. ...

(2) ...

the Minister, with the approval of the Lieutenant-Governor in Council, may establish an advisory committee representative of that [official language] minority to advise the school board of the school district with respect to the education of the pupils forming a part of that minority of persons.

8. (1) The Minister, with the approval of the Lieutenant-Governor in Council, may enter into agreements ...

NEW BRUNSWICK LEGISLATIVE ACTION - continued

Schools Act (NB-2) (cont'd)

(b) with any province for the joint establishment and operation of special education authorities, resource centres, programs and services for the education of handicapped persons, and may confirm, ratify, alter an amend and agreement provided for under the *Education of Aurally or Visually Handicapped Persons Act*, and

(c) with any person to carry out the intent and purposes of an agreement referred to in paragraph (b) and may establish such inter-governmental or other committees as the Minister considers necessary for the effective administration of such an agreement.

15. (1) School districts, schools and classes shall be organized on the basis of one or the other of the official languages of New Brunswick and the language of instruction in schools and classes of a school district shall be the official language on the basis of which the school district is organized.

(2) Notwithstanding subsection (1) and subject to subsection (3), a school board for a school district organized on the basis of one official language may provide for persons who speak the other official language classes or schools in which the language of instruction is that other official language.

52. (1) Subject to subsection (2), the Minister shall provide free school privileges for every person from five to twenty years of age inclusive who

(a) has not graduated from high school, and

(b) is a resident of the school district in which the person is to attend school.

(2) The Minister shall provide free school privileges to persons from three to twenty-one years of age inclusive who are exceptional pupils receiving special education programs and services that would have been provided under the authority of the *Auxiliary Classes Act*.

(3) Where qualified persons employed by or acting as agents of a school board determine that the behavioral, communicational, intellectual, physical, perceptual or multiple exceptionalities of a person are such that a special education program is considered by them to be necessary for the person, that person shall be an exceptional pupil for the purposes of this Act.

(4) A school board shall ensure that parents are consulted during the process of the determination referred to in subsection (3).

(5) Where an exceptional pupil is not able to receive a special education program or service in a school under subsection (2), the Minister may provide the program or service in the pupil's home or in an institution approved by the Minister.

(6) The Minister may alter the requirements of paragraphs (1)(a) and (b) for any person.

53. ...

(3) Each school board shall determine the placement of pupils in the various classes, programs, services and schools according to the needs of the pupils and the facilities of the school district.

(4) A school board shall place exceptional pupils such that they receive special education programs and services in circumstances where exceptional pupils can participate with pupils who are not exceptional pupils within regular classroom settings to the extent that is considered practicable by the school board having due regard for the educational needs of all pupils.

(5) The Minister may issue guidelines to school boards for the placement of exceptional pupils in accordance with subsection (4).

55. (1) In accordance with the regulations

(a) the parent of the pupil, if the pupil has not attained the age of nineteen years or is not living independently of the parent of the pupil, or

NEW BRUNSWICK LEGISLATIVE ACTION - continued

Schools Act (NB-2) (cont'd)

(b) the pupil, if the pupil has attained the age of nineteen years or is living independently of the parent of the pupil,

may appeal a decision made in accordance with section 53 or 54 in respect of the placement or promotion of the pupil.

57. (1) In this section and in sections 58 to 62

"child" means any person from seven to fifteen years of age inclusive.

(2) Subject to section 52 and except as provided in this section, every child shall attend school in the school selected by the school board in the school district.

(3) Where

(a) in the opinion of the Minister, a child is under efficient instruction elsewhere,

(b) a child is unable to attend school by reason of the child's sickness or other unavoidable cause,

(c) a child is officially excluded from attendance under sections 53 [lack of immunization], 64 or 65 [suspension],

(d) a child has completed the course prescribed for grade twelve, or

(e) the Minister certifies in writing to the school board that a child should be exempt from school attendance,

the child shall not be required to attend school.

62. A child whose parent neglects or refuses to ensure that the child attends school regularly may, in accordance with the *Family Services Act*, be placed in the protective care of the Minister of Health and Community Services as a child whose security or development is in danger.

63. Each school board

(a) shall make arrangements for the conveyance of pupils in the school district, and

(b) may make arrangements for pupils to be boarded,

in accordance with the regulations.

64. (1) A school board may suspend any pupil for cause.

(2) Where a pupil is suspended under this section or section 65

(a) the parent of the pupil, if the pupil has not attained the age of nineteen years or is not living independently of the parent of the pupil, or

(b) the pupil, if the pupil has attained the age of nineteen years or is living independently of the parent of the pupil,

may, in accordance with the regulations, appeal the suspension.

(3) For the purpose of subsection (2), the school board of the school district in which a pupil attends school shall, at the written request of the pupil, the parent of the pupil or the school concerned, determine whether or not the pupil is living independently of the parent of the pupil.

(4) Where a pupil is suspended under this section and not reinstated on an appeal of the suspension under subsection (2), unless the school board concerned receives from the pupil assurance of the pupil's reform, the pupil shall not return to school in that school district.

65. A principal may suspend any pupil for cause and shall report the matter immediately to the school board for the school district in which the principal is employed.

66. (1) Subject to subsection (3),

(a) the parent of the pupil, if the pupil has not attained the age of nineteen years or is not living independently of the parent of the pupil, or

NEW BRUNSWICK LEGISLATIVE ACTION - continued

Schools Act (NB-2) (cont'd)

(b) the pupil, if the pupil has attained the age of nineteen years or is living independently of the parent of the pupil,

is entitled to access to student records maintained by a school board in respect of the pupil.

(2) If a person is given access to a record in accordance with subsection (1) the school board shall, if the school believes it is necessary, explain or interpret the information disclosed on the record.

(3) If a school board believes that access to a record maintained by the school board in respect of a pupil would be detrimental to the well-being or future development of or the educational opportunities for the pupil, the school board may

(a) deny access to the record, and

(b) if the school board believes it is appropriate, describe or interpret such of the content of the record the knowledge of which, in the opinion of the school board, would not be detrimental to the well-being or future development of or the educational opportunities for the pupil.

(4) If a school board having denied a person access to a record in accordance with paragraph (3)(a) believes it is not appropriate to describe or interpret any of the contents of the record in accordance with paragraph (3)(b), the school board shall make known to that person, at the time of such denial, the existence and general nature of the record.

(5) A person who has been denied access to any record in accordance with paragraph (3)(a) may, in accordance with the regulations, appeal the denial.

(6) The parent of a pupil who has been denied access to any record in accordance with paragraph (3)(a) is, notwithstanding such denial, entitled to make inquiries to the school board and to be given general verbal information by the school board in relation to the educational

progress of the pupil.

(7) For the purpose of subsection (1), the school board of the school district in which a pupil attends school shall, at the written request of the pupil, the parent of the pupil or the school concerned, determine whether or not the pupil is living independently of the parent of the pupil.

School Administration Regulation (NB-2.1)

25. (2) Where the parents or guardians of a pupil fail, after notice, to provide the pupil with the prescribed textbooks and school materials needed by that pupil in class, the school board shall provide them for the pupil.

28. A teacher

(a) shall distribute new and used free textbooks without discrimination, and

(b) shall not entertain any complaints concerning the distribution of used books.

53.1 For the purpose of section 66 of the Act and section 53.2

"student records" means any record maintained by a school board in respect of a pupil.

53.11 (1) Each school board shall establish a district appeals committee, consisting of one, three or five persons, appointed by the school board, to hear appeals under section 53.2.

(2) A school board shall ensure that if a person referred to in subsection 53.2(3) is a member of the district appeals committee that the person's appointment to the district appeals committee is revoked and another person is appointed in his or her place.

(3) Where the district appeals committee consists of three or five persons, a decision of the majority is a decision of the district appeals committee.

NEW BRUNSWICK LEGISLATIVE ACTION - continued

***School Administration
Regulation (NB-2.1) (cont'd)***

53.2 (1) A person who is entitled to appeal

(a) a decision made in accordance with section 53 or 54 of the Act in respect of the placement or promotion of a pupil,

(b) the suspension of a pupil under section 65 of the Act, or

(c) the denial of access to student records under section 66 of the Act

shall make the appeal to the district appeals committee within thirty days after the decision, suspension or denial.

(2) The district appeals committee shall hold a hearing to consider the appeal.

(3) The person making the appeal and the person who made the decision in respect of placement or promotion, suspended the pupil or denied access to student records have the right to attend the hearing and may be accompanied by counsel, submit evidence and examine witnesses.

(4) At the hearing, each party to the appeal shall ensure that all relevant information respecting the decision in respect of placement or promotion, suspension of the pupil or denial of access to student records and the basis for the appeal is provided to the district appeals committee and to each other.

(5) The district appeals committee may uphold, vary or revoke the decision in respect of placement or promotion, suspension of the pupil or denial of access to student records and the decision of the district appeals committee, with reasons, shall be in writing and shall be forwarded to the parties of the appeal within fifteen days of the hearing.

(6) If either party to the appeal is not satisfied with the decision of the district appeals committee, that party may, within ten days after receiving the decision, appeal the decision to the school board.

(7) Subsections (2) to (5) apply with the necessary modifications to an appeal to the school board.

53.21 (1) A person who appeals the suspension of a pupil under subsection 64(1) of the Act shall make the appeal to the school board within thirty days after the suspension.

(2) Subsections 53.2(2) to (5) apply with the necessary modifications to an appeal under subsection 64(2) of the Act.

***Pupil Conveyance and Boarding
Regulation (NB-2.2)***

3. (1) A school board may provide for the conveyance of all pupils living at least two and four-tenths kilometres from the school that they attend.

(2) The Minister may, for any reason the Minister considers sufficient and after consultation with the school board, authorize the conveyance of pupils for a distance shorter than that mentioned in subsection (1).

(3) Where a pupil is handicapped and requires specialized transportation the Minister may, after consultation with the school board, authorize the conveyance of the pupil by the most practical means possible, regardless of the distance the pupil lives from the school the pupil attends.

NEW BRUNSWICK LEGISLATIVE ACTION - continued

Auxiliary Classes Act (NB-3)

3. Where a school board or other body corporate is willing to carry on work within the scope of this Act, if

(a) the school board or other body corporate expresses a willingness in writing to the Minister, and

(b) The Minister is satisfied that the school board or other body corporate is able to undertake the instruction and training of cerebral palsied or mentally retarded children,

the Lieutenant-Governor in Council may approve the school board or other body corporate as a society for the purposes of this Act.

4. Subject to the regulations, a society

(a) may establish auxiliary classes and conduct in the classes or privately such programs for instruction and training prescribed or approved by the Minister as are best adapted to secure the mental and physical development of children who are from any physical or mental cause unable to take proper advantage of the public school courses provided for under the *Schools Act*,

***Department of Education Act
(NB-4)***

8. (1) Subject to the approval of the Lieutenant-Governor in Council, the minister may enter into agreements with the Government of Canada or a province of Canada or an agency of the Government of Canada or the government of a province providing for

(a) the joint undertaking by the government of the province or an agency of the province with those governments, or agency of those governments, of projects relating to an aspect of the powers, functions or duties of the minister,

Interpretation Act (NB-5)

32. No Act or regulation impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby.

APPENDIX J

LEGISLATIVE ACTION: NEWFOUNDLAND

Human Rights Act (NE-1)

2. In this Act ...

(e) "establishment" means a place of business or the place where an undertaking or part of an undertaking is carried on;

...

(g) "harass" means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

(h) "mental disability" means

(i) a condition of mental retardation or impairment,

(ii) any learning disability, or dysfunction in 1 or more of the processes involved in understanding or using symbols or spoken language, or

(iii) a mental disorder;

(l) "physical disability" means any degree of infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect, and includes a handicap resulting from epilepsy, paralysis, lack of coordination, amputation, blindness, deafness, muteness or reliance upon a dog guide, a wheelchair, cane or crutch or other remedial appliance or device.

3. The prohibitions contained in this Act apply to and bind the Crown and every agency of the Crown.

4. (1) The purpose and intent of this Act is to regulate matters within the competence of the Legislature of the province and nothing in this Act shall be construed to affect or regulate a matter which is not subject to the legislative authority of the Legislature.

(2) This Act shall be construed and

interpreted so as to ensure that the provisions of it shall not prejudicially affect a right or privilege with respect to denominational schools, common or amalgamated schools, or denominational colleges, that a class of persons had by law in the province at the date of union of Newfoundland with Canada, or rights or privileges afterward by law acquired by the Pentecostal Assemblies of Newfoundland.

...

5. This Act shall take precedence over other statutes where other statutes conflict with this Act whether enacted before or after October 1, 1988.

6. (1) A person shall not deny to or discriminate against a person or class of persons with respect to accommodation, services, facilities or goods to which members of the public customarily have access or which are customarily offered to the public because of the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, marital status, physical disability or mental disability of that person or class of persons.

(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of physical disability or mental disability shall be permitted if that limitation, specification, exclusion, denial or preference is based upon a good faith qualification as determined by the commission.

(3) Subsection (1) does not apply

...

(d) to a restriction on membership on the basis of a prohibited ground of discrimination, in a religious, philanthropic, educational, fraternal, sororal or social organization that is primarily engaged in serving the interests of a group of persons identified by that prohibited ground of discrimination; or

NEWFOUNDLAND LEGISLATIVE ACTION - continued

Human Rights Act (NE-1) (cont'd)

20 ...

(e) to other situations where a good faith reason exists for the denial of or discrimination with respect to accommodation, services, facilities or goods.

...

(5) For the purposes of this section "accommodation, services, facilities or goods to which members of the public customarily have access" or which are customarily offered to the public shall include accommodation, services, facilities or goods which are restricted to a certain segment of the public.

12. A person in an establishment shall not harass another person in the establishment because of the race, religion, religious creed, sex, marital status, physical disability, mental disability, political opinion, colour or ethnic, national or social origin of the person.

19. (1) On the application of a person the commission may approve programs designed to prevent, reduce or eliminate disadvantages respecting services, facilities, accommodation or employment that may be or are suffered by a group of individuals where those disadvantages would be, or are based on or related to the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, marital status, physical disability or mental disability of members of that group or the age of that group.

(2) Before or after the commission approves a program, the commission may

- (a) make inquiries concerning the program,
- (b) vary the program,
- (c) impose conditions on the program, or
- (d) withdraw approval of the program

as it thinks appropriate.

(3) Nothing done in accordance with a program approved under this section is a violation of this Act.

(2) A complaint made under subsection (1) shall be made within 6 months after the alleged contravention occurs or, in the case of a continuing contravention, within six months after the last incidence of the alleged contravention.

21. (1) Where a complaint is filed with the executive director, the executive director or a person designated by the executive director shall investigate the complaint and try to settle the matter.

...

(3) Following an investigation, the executive director shall make report to the commission and the commission may determine whether or not to refer the matter to a board of inquiry.

(4) Where the commission declines to refer a complaint to a board of inquiry, the complainant may apply to the Trial Division for an order that the commission refer the complaint to a board of inquiry.

28. (1) A board of inquiry

...

(b) may, where it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do 1 or more of the following:

(i) to stop the contravention complained of,

(ii) to refrain in future from committing the same or a similar contravention,

(iii) to make available to the person discriminated against the rights, opportunities or privileges he or she was denied contrary to this Act,

(iv) to provide compensation to the person discriminated against, including compensation for all or a part of wages or income lost or expenses incurred because of the discriminatory action, and

NEWFOUNDLAND LEGISLATIVE ACTION - continued

Human Rights Act (NE-1) (cont'd)

(v) to take whatever other action the board considers appropriate.

(2) A board of inquiry may make whatever order as to costs that it considers appropriate.

(3) An order of a board of inquiry shall be binding on all parties.

30. (1) A party to a proceeding before a board of inquiry may appeal an order or decision of the board by way of application to the Trial Division.

(2) Where the grounds of the appeal consist wholly or partly of a question of fact or of mixed fact and law, an appeal shall not be made without leave of a judge of the Trial Division.

(7) The court may confirm, reverse or vary the order of the board and may make an order that the board may make under section 28.

(8) Commencement of an appeal under this section does not operate as a stay of proceedings of the order of a board of inquiry unless the court orders otherwise.

Schools Act (NE-2)

11. A school board shall

(a) organize the means of elementary or secondary education, or both, within its district, and provide, furnish and keep in good order and condition schools designed for the teaching of elementary or secondary grades, or both;

(b) organize the means of instructing children who for any physical or mental cause require special classes, either by the establishment of special classes in its schools or by making arrangements with another school board or with an educational body or authority within Canada for the education of those children;

(i) subject to another Act, determine at what age pupils shall be admitted to its schools;

(t) subject to the approval of the minister, make regulations, rules or by-laws

(ii) subject to section 77, providing for the establishment and management of schools within its district, including the suspension and expulsion of students, but, no expulsion of a student coming within the limits of compulsory attendance is effective without the written approval of the Director of School Services in the department;

12. A school board may

(e) cause to be examined by a qualified medical practitioner a pupil suspected by a teacher to be suffering from a communicable disease or other physical or mental condition inimical to the health or welfare of the other pupils or suspected to be so mentally deficient as to be incapable of responding to class instruction by a qualified teacher, and, upon the medical practitioner certifying the existence of the disease, condition or deficiency, exclude that pupil from school until a certificate is obtained for that pupil from a qualified medical practitioner permitting his or her return to the school;

(s) enter into an agreement with another school board for the education of pupils residing within its district and the transportation of pupils to and from school.

18. The duties of a superintendent shall be to

(e) subject to the approval of the school board, determine which school a pupil shall attend;

NEWFOUNDLAND LEGISLATIVE ACTION - continued

Schools Act (NE-2) (cont'd)

59. A school board shall make provision for the admission to school at the beginning of the school year of all children intended to be served by the school board who will have reached the age of 5 years on or before December 31 in that school year.

60. (1) A school board shall establish kindergarten classes in a school to teach and train children who are 5 years on or before December 31 in that school year.

(2) The minister may, in writing, permit admission, to a specified school, of children younger than those coming under section 59 where it is shown to his or her satisfaction that sufficient extra-perceptual children will attend to warrant the permission being given.

61. A school board shall not refuse to a child admission to a school under its control unless the child can be accommodated in

(a) a school appropriate to his or her own religious faith reasonably available to him or her; or

(b) another school more reasonably available to him or her than the school under its control,

and where there is a dispute as to whether a school is reasonably available or more reasonably available under this section, the minister shall, after the investigation that he or she considers adequate, determine the matter, and that determination shall be final.

77. Notwithstanding section 61, where a pupil fails to apply himself or herself to his or her studies or does not comply with the discipline of the school or in respect of whom the principal, for another serious reason, is of opinion that the action should be taken, the principal shall

(a) warn him or her and record the date of the warning and the reason;

(b) inform, by letter, the pupil's parents or guardians that the pupil has been warned;

(c) send a copy of the letter referred to in paragraph (b) to the appropriate superintendent; and

(d) discuss with the pupil's parents or guardians the circumstances giving cause for the warning,

and, where, after a suitable period, the pupil makes no satisfactory effort to reform, the principal shall consult with the appropriate superintendent and, where necessary, their joint recommendation shall be sent to the school board concerned, and where, in the opinion of the school board, expulsion of the pupil is necessary to the proper conduct of the school, the school board may so order, and the order shall be complied with by all persons concerned, but no expulsion of a pupil coming within the limits of compulsory attendance is effective without the written approval of the Director of School Services in the department.

78. (1) Where a pupil has been expelled under section 77, a parent or guardian of the pupil may, within 30 days after the effective date of the expulsion, request in writing directed to the minister that the expulsion be reviewed, and the minister shall appoint a review board of not less than 3 members, including a member selected for the purpose by the governing body of the Federation of School Boards of Newfoundland or its successor, to carry out an investigation into the circumstances of the expulsion, to review the expulsion, and to make a recommendation upholding or reversing the expulsion, and the minister shall make an order implementing the recommendation, and the order shall be promptly complied with by, and is final and binding on, the school board and all other persons concerned.

(2) The expulsion referred to in subsection (1) remains effective pending compliance with the order of the minister referred to in that subsection.

NEWFOUNDLAND LEGISLATIVE ACTION - continued

***Buildings Accessibility
Act (NE-3)*****2. In this Act ...**

(l) "physically disabled persons" means persons who are subject to a physiological defect or deficiency, regardless of cause, nature or extent and whether they are ambulatory or use a wheelchair;

(m) "public building" means a building and includes the parking, walkway or other facilities of that building to which the public and employees employed in the building are admitted but does not include those buildings in a group prescribed by the regulations;

3. The purpose of this Act is to require

(a) in the case of public buildings, the entrances, parking, walkway and other facilities available to and accessible by members of the public for lawful purposes and employees employed in the building, to be available to and accessible by physically disabled persons;

***Buildings Accessibility
Regulations, 1982 (NE-3.1)***

3. (1) The following provisions of the National Building Code of Canada, 1985 as adopted by the Director pursuant to section 24 of the Act shall constitute part of these Regulations:

Section 3.7 Barrier-Free Design

Article 9.9.2.7 Barrier-Free Design

Article 9.9.2.8 Barrier-Free Design

[Note. For text of NBC, 1985, see app. E.]

4. Every

(a) public building, and

shall comply with the requirements for building standards for physically disabled persons contained in the National Building Code of Canada, 1980 and with the building standards for the handicapped, 1980.

***Department of Education
Act (NE-4)***

8. (1) Subject to the approval of the Lieutenant-Governor in Council, the minister may enter into agreements with the Government of Canada or of a province of Canada or an agency of the Government of Canada or the government of a province providing for

(a) the joint undertaking by the government of the province or an agency of the province with those governments, or an agency of those governments, of projects relating to an aspect of the powers, functions or duties of the minister;

NEWFOUNDLAND LEGISLATIVE ACTION - continued

School Attendance Act (NE-5)

3. This Act applies to and in respect of a child who is 6 years of age or over and under the age of 16 years and includes a child who

(a) although he or she has not become 6 years old when school is first opened in the school year in which he or she is enrolled, will nevertheless become 6 years old on or before December 31 in that school year; and

(b) although he or she is 16 years of age, has reached that age after August 31 occurring immediately before the first school day of the school year.

4. A person having the care of a child shall unless excused under this Act cause that child to attend the school at which the child is enrolled.

5. The obligations imposed by this Act upon a person having the care of a child apply to both parents of that child, and in addition, where the child is in the care or legal custody of a person other than the child's parents, apply to that person.

6. (1) A person having the care of a child shall, on or before the date that this Act becomes applicable to that child, present the child for enrolment at a school of that person's selection.

(2) A person who takes up residence in the province and has the care of a child shall present that child for enrolment at a school of that person's selection within 2 weeks after taking up residence in the province.

(3) Where a person having the care of a child enrolled that child for attendance at a school and later proposes to send the child to another school, that person shall notify the principal of the school where the child is enrolled and cancel the enrolment and shall immediately enroll the child at another school.

7. A principal of a school shall keep a register in which he or she shall record the names of children who have been accepted as students for attendance at that school.

8. A child is excused from attendance at school where

(a) the child is unable to attend school because of illness or other unavoidable cause and the teacher is advised of the illness or other cause, but the principal may require that the illness be certified by a qualified medical practitioner;

(b) the child has been expelled or suspended from school under the *Schools Act*;

(c) the child has the written permission of the principal to be absent from school because in the opinion of the principal, the child will be exposed to other experiences of significant educational and social values;

(d) the child is under efficient instruction at home or elsewhere and approval has been given by the supervisor; and

(e) the child is absent for another reason that in the opinion of the principal does not constitute neglect or refusal referred to in section 11.

Interpretation Act (NE-6)

12. No provision in an Act is binding on the Crown or affects the Crown or the Crown's rights or prerogatives unless it is expressly stated in it that the Crown is bound by it.

Child Welfare Act (NE-7)

2. In this Act

(a) "child" means an unmarried boy or girl actually or apparently under the age of 16;

(b) "child in need of protection" means ...

(vii) a child who is the care and custody of a person who fails to provide adequately for the child's education or attendance at school.

....

APPENDIX K
LEGISLATIVE ACTION: NORTHWEST TERRITORIES

Fair Practices Act (NT-1)

4. (1) No person shall, because of the race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family of a person or because of a conviction of a person for which a pardon has been granted, deny to that person the accommodation, services or facilities available in any place to which the public is customarily admitted.

....

7. (1) The Minister may appoint an officer to inquire into any complaint made under subsection (2).

(2) Any person claiming to be aggrieved because of an alleged contravention of this Act may make a complaint in writing to an officer.

(3) An officer shall give full opportunity to all parties to present evidence and make representations and shall endeavour to effect a settlement of the matters complained of.

....

(5) On receipt of the report and recommendation of an officer, the Minister

(a) shall consider the report and recommendation, and

(b) may make any order the Minister sees fit, including an order for reinstatement of an employee with or without compensation for loss of employment, and the order shall be served on the persons affected by the order.

....

8. (1) Any person affected by an order of the Minister may, at any time within 15 days after service of the order, appeal by way of originating notice of motion to a judge of the Supreme Court to vary or set aside the order.

....

(5) The decision of the judge of the Supreme Court is conclusive and not subject to further

appeal.

9. The Commissioner may approve programs designed to promote the welfare of any class of individuals, and any such program shall be deemed not to be a contravention of this Act.

Education Act (NT-2)

7. The Superintendent may assign students to schools in the education district and, where a student has reached an educational level beyond that offered in the education district, the Superintendent may, after consulting the student and his or her parent or guardian and attempting to comply with their wishes, assign that student to a school in the Territories that provides a suitable program.

34. Every Board of Education shall

...

(p) provide instruction appropriate to their learning levels for all students in the education district, and ensure that the education programs are conducted in accordance with the provisions of this Act and the regulations;

...

(r) provide all students with textbooks, exercise books, pens, pencils and all other approved supplies, either free of charge or at a price to be fixed by the Board;

....

35. (1) Every Board of Education may

...

(d) establish special classes of instruction for students who, for any physical or mental cause, are unable to take proper advantage of the regular school courses of study;

...

NORTHWEST TERRITORIES LEGISLATIVE ACTION - continued

Education Act (NT-2) (cont'd)

(g) provide a kindergarten program for children in the education district who are five years of age on or before December 31 of the academic year in which the kindergarten program takes place;

52. (1) Every Board of Education and Separate Board of Education shall admit to its schools without charge every child whose parent or guardian is a resident of that district.

65. Every Divisional Board of Education shall

(c) ensure that the basic instructional program as established by the Minister is provided in each school in the education division in accordance with the grades taught in that school;

(n) provide all students with text books, exercise books, pens, pencils and all other supplies, either free of charge or at a price fixed by the Divisional Board of Education;

(u) provide instruction appropriate to their learning levels for all students in the education division, and ensure that the education programs are conducted in accordance with this Act and the regulations.

66. ...

(2) In consultation with the community education council of the education district in which a student is resident, the Divisional Board of Education shall assign the student to a school in that education district and where

(a) a student has reached an education level beyond that offered in that school,

(b) the school does not offer a suitable program of instruction for the student, or

(c) for any other reason, the educational

needs of the student would be better served at another school,

the Divisional Board of Education may, after consulting with the student and his or her parents or guardians and attempting to comply with their wishes, and after consulting with the community education councils affected, assign the student to a school in another education district within the education division that provides a suitable program of instruction and where that school and any other school in the education district is unsuitable for the reasons stated in paragraphs (a) to (c), the Divisional Board of Education may, after consulting with the student and his or her parents or guardians and attempting to comply with their wishes, and after consulting with the community education council affected, recommend to the Minister that the student be assigned to a school in the Territories, outside of the education division, that provides a suitable program of instruction.

67. Every Divisional Board of Education may

(c) establish programs of instruction for students who, for any reason, are unable to take proper advantage of the regular school courses of study;

(f) subject to the approval of the Minister, provide a kindergarten program for children in the education division, or in any education district in the education division, who are five years of age on or before December 31 of the academic year in which the kindergarten program takes place;

82. (1) A Board of Secondary Education may

(h) provide all students with textbooks and other supplies, either at no charge or at a price fixed by the Board;

(2) A Board of Secondary Education shall

NORTHWEST TERRITORIES LEGISLATIVE ACTION - continued

Education Act (NT-2) (cont'd)

(d) admit all eligible students from the municipality in which the school is located and students that the Minister may assign from outside that municipality;

...

(n) provide, within the resources allocated to the Board, a program of instruction for each student consistent with his or her educational needs and abilities;

....

89. (1) The local education authority or the Divisional Board of Education, as the case may be, shall determine the language of instruction to be used for kindergarten in schools in the education district or education division where a kindergarten program is offered, and for the first two years of the school program following kindergarten.

(2) Where a language other than English is the language of instruction under subsection (1)

(a) English must be taught as a second language; and

(b) instruction must be provided in English for students whose first language is English.

(3) Where English is the language of instruction under subsection (1) but is not the first language of the majority of students, the first language of the majority of students must be taught as a second language.

90. (1) The Minister shall determine, after consultation with the local education authority or the Divisional Board of Education, as the case may be, the language of instruction in schools in the education district or education division for the years following completion of the first two years of the school program.

(2) Where the language determined under subsection (1) is a language other than the first language of the majority of students in a class, the local education authority or the Divisional Board of Education, may arrange for the teaching of that first language.

(3) Students whose language of instruction is changed shall be assisted in making the transition to the second language.

104. (1) The education system of the Territories shall include a kindergarten program.

(2) Subject to the approval of the Minister, a Superintendent may include a kindergarten program in any school in his or her Superintendency.

(3) A child, in order to be eligible to be enrolled in a kindergarten program, must be five years of age on or before December 31 of the academic year in which the kindergarten program takes place.

107. (1) The Minister shall establish programs of special education designed to provide assistance to students who are unable or unlikely to be served to advantage by the regular education program.

(2) No special education program shall be established or operated

(a) for an education district or an education division without the approval of the local education authority or the Divisional Board of Education, as the case may be; or

(b) for a school operated by a Board of Secondary Education, without the approval of the Board of Secondary Education.

108. (1) Where a special education program is operated, a student participating in the program shall remain in the school he or she normally would attend wherever that arrangement is practical.

(2) Where it is not practical or educationally effective to provide a special education program in a regular school, the Minister may organize a program in a special school designed to provide the special program required, and students may attend such a school on authorization by the Minister.

NORTHWEST TERRITORIES LEGISLATIVE ACTION - continued

Education Act (NT-2) (cont'd)

(3) The Minister may authorize the operation of residence facilities for students wishing to attend a special school or special program established under section 107 or this section and may transport those students to such a school without cost to the student.

109. Where it is not practical or educationally effective to provide, in a regular school or a special school within the Territories, a special education program for a student requiring those services, the Minister, acting on the advice of the Superintendent for the school where the student attends school and at the request of the parent or guardian, may arrange for a student to attend, at no cost to the student, a special school or institution outside the territories where the type of special program required is available.

131. (1) In this Part,

"child" means a person who on December 31 of an academic year, is between the ages of six and 15 years inclusive;

"compulsory school attendance" means the attendance of a child at school that is required by this Act;

(2) Unless a child is exempted from attending school under subsection (3), every child shall attend school during the academic year in which a child is resident in an education district or an education division, as the case may be, in which a school is operating.

(3) A child is not required to attend school where

(a) in the opinion of the Superintendent for the education district, the Divisional Board of Education for the education division or the school operated by a Board of Secondary Education, as the case may be, the child is receiving adequate instruction elsewhere;

(b) the child is unable to attend by reason of his or her own sickness or other

unavoidable cause that has been reported to the principal;

(c) the child is attending a private school approved by the Minister;

(d) the principal of the school, after consultation with the parent, has excused the child from attending school for a period that the principal may direct in order to allow the child to participate in traditional native activities on the land or other learning experiences away from the community;

(e) the child has been suspended or expelled from school by the proper authority;

(f) the Superintendent, after consultation with the local authority, has stated in writing that he or she is of the opinion that no suitable program of instruction is offered in the school that the child would normally attend; or

(g) the Divisional Board of Education, subject to subsection 66(2), has stated in writing that, in its opinion, there is no suitable program of instruction offered in the education division for that child.

(4) Unless a child is exempted from attending school under subsection (3), every parent shall cause a child to attend school during the academic year in which the child is resident in an education district or in an education division, as the case may be, in which a school is operating.

132. (1) Subject to sections 52 and 114, no tuition fees shall be charged for the attendance in any Northwest Territories school of a student whose parent or guardian is a resident of the Territories.

NORTHWEST TERRITORIES LEGISLATIVE ACTION - continued

Education Act (NT-2) (cont'd)

143. (1) A principal may suspend a student from school for a period not exceeding five consecutive days of school or may recommend to the Superintendent that a student be expelled from school for a semester or the remainder of a semester or the academic year, for

- (a) wilful or persistent disobedience; or
- (b) conduct that, in the opinion of the principal,
 - (i) endangers the welfare of other students,
 - (ii) interferes with the work of other students,
 - (iii) creates a situation that constitutes a seriously harmful influence on other students.

(2) A principal shall immediately report, in writing, any suspension or recommendation of expulsion to the Superintendent, the local education authority, the parent of the student and, where appropriate, the student.

(3) On receipt of a report of a principal, the Superintendent shall consider the decision of the principal and may

- (a) extend or terminate the suspension, or
- (b) expel the student for a semester or the remainder of a semester or the remainder of the academic year,

and give notice of his or her decision, in writing to the principal, the local education authority, the parent of the student and, where appropriate, the student.

(4) Where a Superintendent expels a student, the local education authority shall, within 15 days after the receipt of the notice of the decision of the Superintendent, consider the decision of the Superintendent and may terminate the expulsion.

(5) Where the local authority does not terminate the expulsion, a parent or, where appropriate, a student may appeal the decision of the Superintendent to expel the student to the Minister in accordance with the regulations and the Minister may confirm, vary or quash the decision of the Superintendent, and the decision of the Minister is final.

145. Every Board of Education, Divisional Board of Education, Board of Secondary Education and, in education districts that are not included in an education division and where there is no Board of Education, the Minister, may make arrangements for the conveyance of students in accordance with the regulations.

Education Regulations (NT-2.1)

44. Where the Minister or his delegate is required to make arrangements for the conveyance of students to and from a school he shall, for the purpose of making such arrangements, take into consideration only the distance to the school, major safety factors, the climate and the age and state of physical and mental health of the student or students to be conveyed.

Fire Prevention Regulations (NT-3.1)

3. (1) The Codes adopted and in force under these regulations are:

- (a) National Building Code of Canada 1990/
Code national du bâtiment du Canada 1990;
....

4. (1) All buildings or structures in the Northwest Territories shall be constructed in accordance with the codes adopted and in force under section 3.

Interpretation Act (NT-4)

8. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights and prerogatives in any manner, except only as mentioned or referred to in the enactment.

APPENDIX L

LEGISLATIVE ACTION: NOVA SCOTIA

Human Rights Code (NS-1)

2. The purpose of this Act is to

- (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
- (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
- (c) recognize that human rights must be protected by the rule of law;
- (d) affirm the principle that every person is free and equal in dignity and rights;
- (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and
- (f) extend the statute law relating to human rights and to provide for its effective administration.

3. In this Act ...

(1) "physical disability or mental disability" means an actual or perceived

- (i) loss or abnormality of psychological, physiological or anatomical structure or function,
- (ii) restriction or lack of ability to perform an activity,
- (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical coordination, deafness, hardness of hearing

or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,

(iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(v) condition of being mentally handicapped or impaired,

(vi) mental disorder, or

(vii) previous dependency on drugs or alcohol;

4. For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

5. (1) No person shall in respect of

- (a) the provision of or access to services or facilities;
- (b) accommodation;
- (c) the purchase or sale of property;
- (d) employment;
- (e) volunteer public service;
- (f) a publication, broadcast or advertisement;
- (g) membership in a professional association, business or trade association, employers' organization or employees' organization,

NOVA SCOTIA LEGISLATIVE ACTION - continued

Human Rights Code (NS-1) (cont'd)

discriminate against an individual or class of individuals on account of

- (h) age;
- (i) race;
- (j) colour;
- (k) religion;
- (l) creed;
- (m) sex;
- (n) sexual orientation;
- (o) physical disability or mental disability;
- (p) an irrational fear of contracting an illness or disease;
- (q) ethnic, national or aboriginal origin;
- (r) family status;
- (s) marital status;
- (t) source of income;
- (u) political belief, affiliation or activity;
- (v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).

(2) No person shall sexually harass an individual.

6. Subsection (1) of Section 5 does not apply

(a) in respect of the provision of or access to services or facilities, to the conferring of a benefit on or the providing of a protection to youth or senior citizens;

(b) in respect of accommodation, where the only premises rented consist of one room in a dwelling house the rest of which is occupied by the landlord or the landlord's family and the landlord does not advertise the room for rental by sign, through any news media or listing with any housing, rental or tenants' agency;

(c) in respect of employment, to

(i) a domestic employed and living in a single family home,

(ii) an exclusively religious or ethnic organization or an agency of such an organization that is not operated for

private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be, with respect to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 if that characteristic is a reasonable occupational qualification, or

(iii) employees engaged by an exclusively religious organization to perform religious duties;

(d) in respect of volunteer public service, to an exclusively religious or ethnic organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be;

(e) where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment or activity;

(f) where a denial, refusal or other form of alleged discrimination is

(i) based upon a *bona fide* qualification, or

(ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society;

(g) to prevent, on account of age, the operation of a *bona fide* retirement or pension plan or the terms or conditions of a *bona fide* group or employee insurance plan;

(h) to preclude a *bona fide* plan, scheme or practice of mandatory retirement; or

(i) to preclude a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are disadvantaged because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5.

NOVA SCOTIA LEGISLATIVE ACTION - continued

Human Rights Code (NS-1) (cont'd)

9. Notwithstanding anything in this Act, the Commission may exempt a program or activity from subsection (1) of Section 5, or part thereof, where, in the opinion of the Commission, there is a *bona fide* reason to do so.

10. (1) Where, in a regulation made pursuant to an enactment, there is a reference to a characteristic referred to in clauses (h) to (v) of subsection (1) of section 5 that appears to restrict the rights or privileges of an individual or class of individuals to whom the reference applies, the reference and all parts of the regulation dependent on the reference are void and of no legal effect.

21. This Act binds her Majesty in right of the Province and every servant and agent of her Majesty.

25. The Commission may approve programs of Government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved program is deemed not to be a violation of the prohibitions of this Act.

29. The Commission shall instruct the Director or some other officer to inquire into and endeavour to effect a settlement of any complaint of an alleged violation of this Act....

32A. (1) The Commission may, at any stage after the filing of a complaint, appoint a board of inquiry to inquire into the complaint.

34. ...

(7) A board of inquiry has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making of any order pursuant to such decision.

(8) A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make

compensation therefore.

36. (1) Any party to a hearing before a board of inquiry may appeal from the decision or order of the board to the Appeal Division of the Supreme Court on a question of law in accordance with the rules of the court.

Education Act (NS-2)

2. In this Act, ...

(ca) "entitled parents" means parents who are citizens of Canada who have the right, pursuant to section 23 of the Canadian Charter of Rights and Freedoms, to have their children receive primary and secondary instruction in the French language in the province;

(eb) "French-language instruction" means a school program in which the language of instruction is French at all grade levels and in which English is taught as a second language, but does not include a French-immersion program;

....

3. (1) All schools established or conducted under this Act are free schools.

(2) Subject to this Act and the regulations and notwithstanding the *Age of Majority Act*, every person over the age of five years and under the age of twenty-one years has the right to attend a school serving the school district or school section in which he resides.

33. ...

(2) A school board shall make provision for the education and instruction of all pupils residing in the area within its jurisdiction in such subjects and services prescribed by the Governor in Council as are included in the school program, and for this purpose shall

(c) provide and pay for the conveyance of pupils to and from school, subject to the regulations;

(d) pay for the boarding of pupils;

NOVA SCOTIA LEGISLATIVE ACTION - continued

Education Act (NS-2) (cont'd)

(c) pay the tuition of pupils educated in schools operated by other boards or authorities established under this Act;

(4) A school board may provide such additional educational services and benefits as the school board may consider desirable.

(8) A school board may enter into and carry out an agreement or agreements with any school board established by or under this Act for the education of some or all of the pupils residing in the area within its jurisdiction.

39. (1) A school board may authorize the principal, or other person in charge of a school, to suspend, for a period of not more than five school days, pupils who are persistently disobedient or who conduct themselves in such a manner as to be likely to affect injuriously the proper conduct of the school or the character of other pupils.

(2) When a pupil is suspended, pursuant to subsection (1), the principal or other person in charge of the school shall forthwith notify in writing the pupil, his teachers, the school board and the pupil's parent or guardian, of the reasons for the suspension.

(3) Upon receipt of the notification referred to in subsection (2), the school board may

(a) confirm the suspension for the period of not more than five school days;

(b) order that the suspension be revoked and that the suspension be expunged from the record of the pupil; or

(c) order the suspension of the pupil for a period of more than five school days and not more than the remaining number of school days in the school year,

and shall forthwith notify the pupil, his teachers, the principal or person in charge of the school and the pupil's parent or guardian of the order

for suspension and the reasons therefor and the right of appeal pursuant to subsection (5).

(4) The duties of the school board set forth in subsection (3) may be performed,

(a) if so directed by the school board, by a committee consisting of the superintendent of schools and two other persons who are members of the school board, one of whom shall act as chairman of the committee;

(b) if so directed by the school board, by the trustees of the school section;

(c) with the approval of the Minister, a committee of persons designated by office, or named, by the school board.

(5) When a pupil or the parent or guardian of a pupil has been notified of the suspension of the pupil pursuant to clause (c) of subsection (3), the pupil or the parent or guardian may, within seven days of receiving such notice, appeal the suspension to the school board.

(6) The school board shall, upon receipt of a notice of appeal,

(a) immediately notify the parent or the guardian of the pupil, and the pupil himself, where he has commenced the appeal, of the time and place of the hearing of the appeal and the right to appear in person with or without counsel; and

(b) within ten days of receipt of the notice of appeal, hold a hearing and confirm, revoke or vary the order to suspend.

(7) Within three school days of the hearing the school board shall notify the pupil, his parent or guardian, his counsel, his teachers and the principal or person in charge of the school of its decision.

59. The legal age limits for pupils and the conditions of satisfactory attendance for schools in the Province shall be the limit prescribed in regulations made by the Governor in Council.

NOVA SCOTIA LEGISLATIVE ACTION - continued

General Regulations (NS-2.1)

4. (1) A child who has attained the age of five years on or before the first day of October in any year shall be deemed to be a person over five years of age for the purpose of Section 2 of the Act during the ensuing school year, and a child who has not attained the age of five years on or before the first day of October in any year shall not be deemed to be a person over five years of age for the purpose of said Section 2 during the ensuing school year or for the purpose of these regulations.

(2) A child over five years of age referred to in subsection (1), enrolling in a public school for the first time, shall be admitted to school provided he presents himself for admission on or before the twentieth day of September.

(3) A school board may on its discretion admit a child less than six but over five years of age as referred to in subsection (1) to a public school for the first time after the twentieth day of September, but no board shall be required to admit a child less than six but over five years of age to a public school for the first time between the twenty-first day of September and the close of the school year.

(4) A child over five years of age who has previously been legally enrolled in a public school shall be admitted to the appropriate grade as determined by the school board.

6. Each school board shall provide for all students resident in the area under the jurisdiction of the school board who are entitled to attend school and who are qualified to pursue the studies in the grades or courses for which they are enrolled:

(a) in Grades Primary to 3 inclusive, instruction in the courses prescribed by the Minister in:

(i) English language arts, health, science, mathematics, social studies, physical education, music, and art;

(ii) in Acadian schools, French language arts, health, science, social studies,

mathematics, physical education, music, art, and English starting at Grade 3;

(b) in Grades 4 to 6 inclusive, instruction in the courses prescribed by the Minister in English language arts, health, science, mathematics, social studies, physical education, music, art, and French;

(c) in Grades 7 to 9 inclusive, instruction in the courses prescribed by the Minister in English, French, health, science, mathematics, social studies, and physical education;

(d) in Grades 10 to 12 inclusive, instruction in the courses prescribed by the Minister in English, French, science, social studies, and mathematics;

(e) special education programs and services to be prescribed by the Minister for physically and mentally handicapped students between the ages of five and twenty-one who are capable of benefiting from such programs and services.

7. Each school board may provide for students resident in the area under the jurisdiction of the school board who are entitled to attend school and who are qualified to pursue the studies in the grades or courses for which they are enrolled, the following types of instruction and service:

(a) instruction in Grades 7 to 12 inclusive in industrial arts, home economics, music, and art;

(b) instruction in Grades 10 to 12 inclusive in business education and physical education;

(c) alternate programs prescribed by the Minister;

(d) guidance services;

(e) school library services;

(f) other courses and programs approved by the Minister.

NOVA SCOTIA LEGISLATIVE ACTION - continued

General Regulations (NS-2.1) (cont'd)

8. Each school board shall provide teaching aids, materials and supplies, and repair and maintain equipment required to conduct the prescribed school program in classrooms, school libraries, laboratories, music rooms, audio-visual rooms, gymnasiums and auditoriums, and other areas in which the program or portions of the program are conducted.

12. When a school board does not provide instruction prescribed in section 6 in a school serving the student, the board shall provide such instruction or services by

(a) transporting the student to a school either within or outside of the school district; or

(b) paying the cost of boarding the student; or

(c) entering into an agreement with another school board; or

(d) providing public school correspondence courses with the approval of the Minister; or

(e) combining services set out in clauses (a), (b), (c) and (d).

13. (1) A school board pursuant to Section 33(2)(c) of the Act shall make provision for the transportation of students either by providing the service itself, or making arrangements with some other person for such service, if:

(a) one or more students reside more than 3.6 kilometres from the school to which they are to be transported; or

(b) one or more students, because of a physical or mental condition, cannot walk to school irrespective of the distance; and

(c) the school board determines that the transportation of the students is necessary.

62. Every child in the Province of Nova Scotia who has attained the age of six years and has not attained the age of sixteen years shall on every day in which school is in session attend

school in a school serving the section in which he resides.

63. A child shall not be required to attend school and the parent is not liable to a penalty under the Act, if

(a) the physical condition of the child is such as to render his attendance at, or instruction in, school inexpedient or impractical; or

(b) the child is under ten years of age and lives more than 3.6 kilometres from the school serving the section in which he resides, and transportation has not been provided in accordance with any of the provisions of the Education Act or the regulations; or

(c) there is not sufficient accommodation in the school that the child is required to attend;

and in any of such cases the child is receiving training and instruction equivalent to that which he would be receiving if he were in regular attendance in a school of the section in which he resides; or

(d) the mental condition of the child is such as to render his attendance at, or instruction in, school inexpedient or impractical; or

(e) the child was temporarily unable to attend school by reason of his illness or for other unavoidable causes and evidence is provided by the parent or a doctor when requested by the teacher or school principal; or

(f) an inspector and/or superintendent of schools certifies that the child is receiving training and instruction in a private school, at home or elsewhere, equivalent to that which he would be receiving if he were in regular attendance in a school serving the section in which he resides, and a teacher certifies that the child has passed a satisfactory examination in a grade of work suitable to the child's age and previous opportunities for receiving an education; or

(g) the child is relieved or excluded from attending school by or under the Act or the Public Health Act.

NOVA SCOTIA LEGISLATIVE ACTION - continued

***Handicapped Persons
Education Act (NS-3)*****3. In this Act ...**

(e) "handicapped person" means a person who is handicapped visually or aurally, or who has a related or associated handicap, or is handicapped as defined by the regulations and is under the age of twenty-one years;

....

12. (1) The parent or guardian of every person considered to be a handicapped person shall notify the superintendent of schools serving the area in which the person resides of the name, address and age of such handicapped person.

(2) The superintendent of schools upon receipt of a notice under subsection (1) shall

(a) immediately arrange for an educational assessment of the handicapped person;

(b) notify the Authority of the name, address and age of such person;

(c) recommend placement of such person in a suitable educational program in the school district in which he resides if it is available and notify the parent or guardian of the handicapped person of such placement; and

(d) if no suitable educational program is available in the school district in which the handicapped person resides, have the circumstances of the handicapped person brought to the attention of the chairman of the school board for the municipal unit in which the handicapped person resides so that a request may be made to the Board for admission to a resource centre or enrolment in a program of the Board or some other suitable educational provision can be made by the Board.

(3) The Board shall notify the parent or guardian of a handicapped person and the superintendent of schools in which he resides of the admission of such handicapped person to its resource centre or the enrolment in its program or the educational provision made and, if

transportation is required to effect the same, the school board for the municipal unit in which the handicapped person resides shall make such arrangements as are necessary to provide for such transportation and pay the cost thereof.

***Atlantic Provinces Special
Education Authority [APSEA]
Regulation (NS-3.1)*****1. In these regulations, ...**

(f) "handicapped person" means a person who is handicapped visually or aurally, or who has a related or associated handicap, or is handicapped as defined by subsequent agreement between the Atlantic Provinces, and is under the age of twenty-one years;

....

APSEA Agreement (NS-3.2)**1. In this Agreement, ...**

(d) "handicapped person" means a person who is handicapped visually or aurally, or who has a related or associated handicap, or is learning disabled or is handicapped as defined by subsequent agreement between the parties hereto, and is under the age of twenty-one years;

....

***Provincial Building Code
Regulations (NS-4.1)***

1.1 The National Building Code of Canada 1990, issued by the Associate Committee on the National Building Code, National Research Council of Canada, NRCC No. 30619, is hereby adopted as the Provincial Building Code.

NOVA SCOTIA LEGISLATIVE ACTION - continued

Building Access Act
(NS-5)

2. In this Act,

(a) "building" means a building to which the public is admitted ...

(c) "NBC" means the *National Building Code of Canada*;

(d) "physically handicapped person" means a person who is subject to a physiological defect or deficiency regardless of its cause, nature or extent, and includes all such persons whether ambulatory or confined to a wheelchair.

[*Note.* provisions governing design standards omitted, as they are superseded by those contained in *NBC, 1990* (see app. E), adopted by virtue of NS-4.1.]

Interpretation Act
(NS-6)

14. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Child and Family Services Act
(NS-7)

22. ...

(2) A child is in need of protective services where ...

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;

APPENDIX M

LEGISLATIVE ACTION: ONTARIO

Human Rights Code (ON-1)

Part I Freedom from Discrimination [ss. 1-9]

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

10. (1) In Part I and in this Part,

--

"because of handicap" means for the reason that the person has or has had, or is believed to have or to have had,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,

(b) a condition of mental retardation or impairment,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the *Workers' Compensation Act*;

"equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of 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.

(2) The Commission, a board of inquiry 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.

(3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

ONTARIO LEGISLATIVE ACTION - continued

Human Rights Code (ON-1) (cont'd)

12. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

(2) The Commission may,

(a) upon its own initiative;

(b) upon application by a person seeking to implement a special program under the protection of subsection (1); or

(c) upon a complaint in respect of which the protection of subsection (1) is claimed,

inquire into the special program and, in the discretion of the Commission, may by order declare,

(d) that the special program, as defined in the order, does not satisfy the requirements of subsection (1); or

(e) that the special program, as defined in the order, with such modifications, if any, as the Commission considers advisable, satisfies the requirements of subsection (1).

(3) A person aggrieved by the making of an order under subsection (2) may request the Commission to reconsider its order and section 36 [procedural provisions], with necessary modifications, applies.

(4) Subsection (1) does not apply to a special program where an order is made under clause (2)(d) or where an order is made under clause (2)(e) with modifications of the special program that are not implemented.

(5) Subsection (2) does not apply to a special program implemented by the Crown or an agency of the Crown.

17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

(2) The Commission, a board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person 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.

(3) The Commission, a board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*.

(2) This Act does apply to affect the application of the *Education Act* with respect to the duties of teachers.

33. (1) Subject to section 34, the Commission shall investigate a complaint and endeavour to effect a settlement.

ONTARIO LEGISLATIVE ACTION - continued

Human Rights Code (ON-1) (cont'd)

34. (1) Where it appears to the Commission that,

(a) the complaint is one that could or should be more appropriately dealt with under an Act other than this Act;

(b) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

(c) the complaint is not within the jurisdiction of the Commission; or

(d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

the Commission may, in its discretion, decide to not deal with the complaint.

36. (1) Where the Commission fails to effect a settlement of the complaint and it appears to the Commission that the procedure is appropriate and the evidence warrants an inquiry, the Commission may request the Minister to appoint a board of inquiry and refer the subject-matter of the complaint to the board.

(2) Where the Commission decides to not request the Minister to appoint a board of inquiry, it shall advise the complainant and the person complaint against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 37 for having the decision reconsidered.

41. (1) Where the board of inquiry, after a hearing, finds that a right of a complainant under Part I has been infringed and that the infringement is a contravention of section 9 by a party to the proceeding, the board may, by order,

(a) direct the party to do anything that, in the opinion of the board, the party ought to do

to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and

(b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

42. (1) Any party to a proceeding before a board of inquiry may appeal from a decision or order of the board to the Divisional Court in accordance with the rules of the court.

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the board of inquiry or direct the board to make any decision or order that the board is authorized to make under this Act and the court may substitute its opinion for that of the board.

47. (1) This Act binds the Crown and every agency of the Crown.

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2)

1. (1) In this Act and the regulations, except where otherwise provided in the Act or regulations, ...

"exceptional pupil" means a pupil whose behavioral, communicational, intellectual, physical or multiple exceptionalities are such that he or she is considered to need placement in a special education program by a committee, established under subparagraph iii of paragraph 5 of subsection 11(1), of the board,

(a) of which the pupil is a resident pupil,

(b) that admits or enrolls the pupil other than pursuant to an agreement with another board for the provision of education, or

(c) to which the cost of education in respect of the pupil is payable by the Minister;

"special education program" means, in respect of an exceptional pupil, an educational program that is based on and modified by the results of continuous assessment and evaluation and that includes a plan containing specific objectives and an outline of educational services that meets the needs of the exceptional pupil;

"special education services" means facilities and resources, including support personnel and equipment, necessary for developing and implementing a special education program;

"trainable retarded child" or "trainable retarded pupil" means an exceptional pupil whose intellectual functioning is below the level at which he or she could profit from a special education program for educable retarded pupils;

(2) Where by or under this Act any authority or right is vested in, or any obligation is imposed upon, or any reimbursement may be made to, a parent or guardian of a pupil, such authority, right, obligation or reimbursement shall, where the pupil is an adult, be vested in or imposed upon or made to the pupil, as the case may be.

8. (1) The Minister may ...

(27) issue guidelines respecting pupil records and require boards to comply with the guidelines;

(3) The Minister shall ensure that all exceptional children in Ontario have available to them, in accordance with this Act and the regulations, appropriate special education programs and special education services without payment of fees by parents or guardians resident in Ontario, and shall provide for the parents or guardians to appeal the appropriateness of the special education placement, and for these purposes the Minister shall,

(a) require school boards to implement procedures for early and on going identification of the learning abilities and needs of pupils, and shall prescribe standards in accordance with which such procedures be implemented; and

(b) in respect of special education programs and services, define exceptionalities of pupils, and prescribe classes, groups or categories of exceptional pupils, and require boards to employ such definitions or use such prescriptions as established under this clause.

(4) An act of the Minister under this section is not a regulation within the meaning of the *Regulations Act*.

11. (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations in respect of schools or classes established under this Act, or any predecessor of this Act, and with respect to all other schools supported in whole or in part by public money,

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

...

(5) governing the provision, establishment, organization and administration of,

i special education programs,

ii special education services, and

iii committees to identify exceptional pupils and to make and review placements of exceptional pupils,

(6) governing procedures with respect to parents or guardians for appeals in respect of identification and placement of exceptional pupils in special education programs;

...

(28) governing the operation of schools for trainable retarded children;

(8) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations prescribing the conditions under which, and establishing the procedures by which, a child who is otherwise required to attend school under Part II and who has attained the age of fourteen years may be excused from attendance at school or required to attend school only part-time.

13. (1) The Ontario School for the Deaf for the education and instruction of the deaf and partially deaf is continued under the name Ontario School for the Deaf in English and École provinciale pour sourds in French.

(2) The Ontario School for the Blind for the education and instruction of the blind and partially blind is continued under the name Ontario School for the Blind in English and École provinciale pour aveugles in French.

(3) Both schools are under the administration of the Minister.

(4) Subject to the approval of the Lieutenant Governor in Council, the Minister may establish, maintain and operate one or more additional

schools for the deaf or schools for the blind.

(4.1) A demonstration school may provide, in a residential or non-residential setting, special education programs and special education services for exceptional pupils with learning disabilities or with hearing or visual impairments.

(5) Subject to the approval of the Lieutenant Governor in Council, the Minister may,

(a) establish, maintain and operate one or more demonstration schools; or

(b) enter into an agreement with a university to provide for the establishment, maintenance and operation by the university, under such terms and conditions as the Minister and the university may agree upon, of a demonstration school,

for exceptional pupils whose learning disabilities are such that a residential setting is required.

(7) Subject to the approval of the Lieutenant Governor in Council, the Minister may, in addition to his or her powers under section 11, make regulations with respect to schools continued or established under this section.

(a) prescribing the terms and conditions upon which pupils may,

(i) be admitted to, and remain in, a school,

(ii) reside in homes approved by a superintendent, and

(iii) be discharged from a school;

...

(c) prescribing the fees, if any, that shall be paid in respect of pupils or any class or classes thereof;

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

21. (1) Unless excused under this section,

(a) every child who attains the age of six years on or before the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in that year until the child attains the age of sixteen years; and

(b) every child who attains the age of six years after the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in the next succeeding year until the last day in June in the year in which the child attains the age of sixteen years.

(2) A child is excused from attendance at school if,

(a) the child is receiving satisfactory instruction at home or elsewhere;

(b) the child is unable to attend school by reason of sickness or other unavoidable cause;

(c) transportation is not provided by a board for the child and there is no school that the child has a right to attend situated,

(i) within 1.6 kilometres from the child's residence measured by the nearest road if the child has not attained the age of seven years on or before the first school day in September in the year in question, or

(ii) within 3.2 kilometres from the child's residence measured by the nearest road if the child has attained the age of seven years but not the age of ten years on or before the first school day in September in the year in question, or

(iii) within 4.8 kilometres from the child's residence measured by the nearest road if the child has attained the

age of ten years on or before the first school day in September in the year in question;

(d) the child has obtained a secondary school graduation diploma or has completed a course that gives him equivalent standing;

(e) the child is absent from school for the purpose of receiving instruction in music and the period of absence does not exceed one-half day in any week;

(f) the child is suspended, expelled or excluded from attendance at school under any Act or under the regulations;

(g) the child is absent on a day regarded as a holy day by the church or religious denomination to which the child belongs; or

(h) the child is absent or excused as authorized under this Act and the regulations.

(3) The fact that a child is blind, deaf or mentally handicapped is not of itself an unavoidable cause under clause (2)(b).

(4) Where a child under compulsory school age has been enroled as a pupil in an elementary school, this section applies during the period for which the child is enroled as if the child were of compulsory school age.

23.

(3) A board may expel a pupil from its schools on the ground that the pupil's conduct is so refractory that the pupil's presence is injurious to other pupils where,

(a) the principal and the appropriate supervisory officer so recommend;

(b) the pupil and the pupil's parent or guardian have been notified in writing of,

(i) the recommendation of the principal and the supervisory officer, and

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(ii) the right of the pupil where the pupil is an adult and otherwise of the pupil's parent or guardian to make representations at a hearing to be conducted by the board;

(c) the teacher or teachers of the pupil have been notified; and

(d) such hearing has been conducted.

(4) The parties to a hearing under this section shall be the parent or guardian of the pupil or the pupil, where the pupil is an adult, the principal of the school that the pupil attends and, in the case of an expulsion, the appropriate supervisory officer.

(5) The board may at its discretion readmit to school a pupil who has been expelled.

32. (1) A person has the right, without payment of a fee, to attend a school in a school section, separate school zone or secondary school district, as the case may be, in which the person is qualified to be a resident pupil.

33. (1) Subject to sections 35, 38 and 45, a person who attains the age of six years in any year is, after the 1st day of September in such year, qualified to be a resident pupil in respect of a school section until the last school day in June in the year in which the person attains the age of twenty-one years, if,

(a) the person resides in the school section in which the person's parent or guardian who is not a separate school supporter resides; or

(b) the person or the person's parent or guardian is assessed for public school purposes in the school section,

(i) as an owner, or

(ii) for business assessment, or

(iii) as an owner and for business assessment,

for an amount that, when adjusted by the latest assessment equalization factor

applicable thereto that is provided by the Minister, is not less than the quotient obtained by dividing the total equalized assessment, for the year next preceding, of property rateable for public school purposes in that school section, by the average daily enrolment of pupils resident in that school section in such year.

34. (1) Where a board operates a kindergarten in a school, a child who is otherwise qualified and resides within the attendance area of that school may become a resident pupil at an age one year lower than that referred to in section 33.

(2) Where a board operates a junior kindergarten in a school, a child who is otherwise qualified and resides within the attendance area of that school may become a resident pupil at an age two years lower than that referred to in section 33.

....

35. (1) In this section,

"board" includes The Metropolitan Toronto School Board;

"hard to serve pupil" means a pupil who, under this section, is determined to be unable to profit by instruction offered by a board due to a mental handicap or a mental and one or more additional handicaps;

"school" includes a school or class for trainable retarded pupils.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(2) Where a principal considers that an exceptional pupil who attends the principal's school is, because of a mental handicap or a mental and one or more additional handicaps, unable to profit by instruction offered by the board, or where the parent or guardian of a pupil considers that the pupil is, because of a mental or a mental and one or more additional handicaps, unable to profit by instruction offered by the board, the principal shall refer the matter to the appropriate supervisory officer who shall refer the matter to the board, and the board shall appoint a committee of three persons consisting of a supervisory officer, a principal and a legally qualified medical practitioner who has expertise in respect of the mental or other handicap of the pupil, none of who is a person to whom the matter has been previously referred. (3) The committee referred to in subsection (2) shall,

(a) in accordance with subsection (4), inquire into the alleged inability of the pupil to profit by instruction offered by the board;

(b) inquire into the handicap or handicaps of the pupil; and

(c) determine whether the pupil can profit by instruction offered by the board or determine that the pupil is a hard to serve pupil,

and the committee shall make a written report of its findings and of its determination to the board and to the parent or guardian of the pupil.

(4) The committee shall, for the purposes of its inquiry, study all existing reports in respect of the pupil, hear the teachers, the parent or guardian of the pupil, where reasonably possible the pupil, and any other person who may be able to contribute information bearing upon the matter and may, with the consent of the parent or guardian of the pupil, and of the pupil where the pupil is an adult and capable of giving such consent, obtain and consider in respect of the pupil, the report of an assessment conducted by a person considered by the committee to be competent for the purpose.

(5) Any costs incurred in respect of an

assessment or examination under this section, or in respect of the obtaining of other evidence required by the committee under subsection (3) or under subsection (6) shall be paid by the board referred to in subsection (2).

(6) Where the parent or guardian of a person in respect of whom a determination has been made under clause (3)(c), or the person, where the person is an adult,

(a) believes that by reason of improvement in the condition of the person or other cause the person has become able to profit from instruction; and

(b) furnishes to a supervisory officer of the board in whose jurisdiction the person resides, evidence or information to establish such belief,

the board shall appoint a committee constituted in accordance with subsection (2) that shall review the determination in respect of the person last made under this section and confirm or alter such determination and for such purpose the committee has the powers and duties of a committee under subsection (3), which subsection applies with necessary modifications to such a review.

(7) Where a committee under subsection (3) or (6) determines that a pupil is a hard to serve pupil, the committee shall so notify the board and the board shall consider the recommendation and determine that the pupil is a hard to serve pupil or that the pupil is considered to need placement in a special education, as the case may be, and shall notify the parent or guardian of the pupil in writing of its determination.

(8) Where the board determines that the pupil is considered to need placement in a special education program, the board shall refer the matter to the appropriate committee established under subparagraph iii of paragraph 5 of subsection 11(1) that shall determine, designate or design an appropriate special education program for the exceptional pupil.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(9) Where the board determines that the pupil is a hard to serve pupil and the parent or guardian of the pupil agrees with the said determination, the board shall assist the parent or guardian to locate a placement suited to the needs of the pupil and reimburse the parent or guardian for any expenses incurred by the parent or guardian in locating such placement.

(10) Where,

(a) the board determines that a pupil is a hard to serve pupil and the parent or guardian of the pupil disagrees with such determination and believes that the pupil is able to profit by instruction; or

(b) the board locates a placement under subsection (9) and the parent or guardian of the pupil disagrees with the placement,

the parent or guardian of the pupil may, within fifteen days of the receipt of the notice under subsection (7) or any time prior to the implementation of the placement under subsection (9), notify the board in writing of the disagreement and the board shall forthwith refer the matter to the secretary of a Special Education Tribunal established under subsection 36(1), by forwarding all the documentation outlining the special education programs and special education services that have been provided to the pupil and all existing reports and relevant material in respect of the pupil.

(11) The board shall reimburse the parent or guardian for any expense he or she incurs in connection with the referral to and subsequent hearing by the Tribunal referred to in subsection (10), provided that such expenses are approved by the Tribunal.

(12) The Special Education Tribunal shall consider the referral and, after a hearing and review of the report of the committee referred to in subsection (3) and the determination of the board, shall find that,

(a) the pupil is a hard to serve pupil;

(b) the pupil is considered to need placement in a special education program; or

(c) the proposed placement under subsection (9) is or is not suited to the needs of the pupil.

and so notify in writing the parent or guardian of the pupil, the board and the Minister.

(13) Where the Tribunal finds that the pupil is considered to need placement in a special education program, the board shall provide a special education program and special education services for the pupil and the board shall, within sixty days of receipt of the notice under subsection (12), inform the Minister of the special education services that have been provided for the pupil.

(14) Where, under subsection (12), the Tribunal finds that the pupil is a hard to serve pupil or that the placement under subsection (9) is not suited to the needs of the pupil, the board shall assist the parent or guardian to locate a placement or a new placement, as the case may be, suited to the needs of the pupil and reimburse the parent or guardian for any expenses incurred by the parent or guardian in locating such placement.

(15) Where, pursuant to an application by the board or by the pupil or on the pupil's behalf for judicial review under the *Judicial Review Procedure Act*, the finding of the Special Education Tribunal is set aside, the determination of the board under subsection (7) shall be referred to the Special Education Tribunal for a new hearing conducted by members of the Tribunal other than those who first heard the matter if the board or the parent or guardian of the pupil, as the case may be, makes application therefor to the secretary of the Special Education Tribunal by registered mail with fifteen days after the date of the order of the court setting aside the finding of the Special Education Tribunal and the provisions of subsections (11), (12), (13) and (14) apply with necessary modifications in respect of a hearing by the Special Education Tribunal under this subsection.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(16) A placement of a hard to serve pupil under subsection (9) or (14) shall be made in Ontario, except where no placement suited to the needs of the pupil is available in Ontario, a placement may be made outside Ontario.

(17) Where a hard to serve pupil is placed under subsection (9) or (14), Ontario shall pay the cost, if any, of such placement.

36. (1) For the purposes of section 35, the Lieutenant Governor in Council shall establish one or more Special Education Tribunals, provincial or regional, and appoint a secretary of such tribunals.

(2) The Lieutenant Governor in Council may, by order,

(a) establish the procedures that shall apply; and

(b) authorize Special Education Tribunals to fix and assess costs,

with respect to matters dealt with by Special Education Tribunals.

37. (1) Where a parent or guardian of a pupil has exhausted all rights of appeal under the regulations in respect of the identification or placement of the pupil as an exceptional pupil and is dissatisfied with the decision in respect of the identification or placement, the parent or guardian may apply to the secretary of a Special Education Tribunal for a hearing for leave to appeal to a regional tribunal established by the Minister under subsection (2) in respect of the identification or placement.

(2) Where leave to appeal is granted under subsection (1), a regional tribunal shall be established by the Minister to hear the appeal of the parent or guardian.

(3) Despite subsection (1), a Special Education Tribunal may with the consent of the parties before it in lieu of granting leave to appeal to a regional tribunal hear and dispose of the appeal of the parent or guardian.

(4) The Lieutenant Governor in Council may make regulations governing the provision, establishment, organization and administration of a regional tribunal and regulating and controlling the practice and procedure before such tribunal including the costs of persons before such tribunal.

(5) The decision of a Special Education Tribunal or of a regional tribunal under this section is final and binding upon the parties to any such decision.

(6) The tribunal hearing the appeal may,

(a) dismiss the appeal;

(b) grant the appeal and make such order as it considers necessary with respect to the identification or placement of the pupil.

39. Where a resident pupil of a school section or separate school zone resides,

(a) more than 3.2 kilometres by the shortest distance by road from the school that the pupil is required to attend;

(b) more than 0.8 kilometres by the shortest distance by road from any point from which transportation is provided to the school that the pupil is required to attend; and

(c) nearer by the shortest distance by road to another public school in another school section in the case of a public school pupil, or to another separate school in another separate school zone in the case of a separate school pupil, than to the school that the pupil is required to attend,

the pupil shall be admitted to the nearer public school or the nearer separate school, as the case may be, referred to in clause (c), where the appropriate supervisory officer for the school section or separate school zone, as the case may be, in which such school is situate, certifies that there is sufficient accommodation for the pupil in such school, and where the pupil is admitted to such school, the board of the school section or separate school zone of which the pupil is a resident pupil shall pay in respect of the pupil a fee calculated in accordance with the regulations.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

40. (1) A person is qualified to be a resident pupil in respect of a secondary school district if, ...

(3) Subsections (1) and (2) do not apply to a trainable retarded child in respect of a school division.

(4) Despite any general or special Act, a person who resides in a secondary school district and who, except as to residence, is qualified to be a resident pupil in another secondary school district shall be admitted, without the payment of a fee, to a secondary school operated by the board of the secondary school district in which the person resides if,

(a) the person has attained the age of eighteen years and has been promoted or transferred to a secondary school; and

(b) the appropriate supervisory officer certifies that there is adequate accommodation in the secondary school.

(5) Despite section 32, where a pupil,

(a) has completed elementary school; and

(b) has attended one or more secondary schools for a total of seven or more years,

the board of the secondary school that the pupils attends may charge a fee calculated in accordance with the regulations.

41. (1) Subject to subsections (2) and (3), a person who is qualified to be a resident pupil of a secondary school district has the right to attend any secondary school,

(a) that is more accessible to the person than any secondary school in the secondary school district of which the person is qualified to be a resident pupil;

(b) to take, for the purpose of obtaining the secondary school honour graduation diploma, a subject or subjects not available

(c) to take a program of study that includes the subject of French for French-speaking pupils; or

(d) to take a program in a French-language school or class

(2) Subsection (1) applies to a person who is qualified to be a resident pupil of a secondary school district only if the appropriate supervisory officer certifies that there is adequate accommodation for the person in the school.

(3) Clauses (1) (b), (c) and (d) do not apply to a person who is qualified to be a resident pupil of a secondary school district if the board of the secondary school district has entered into an agreement with another secondary school board under section 186 and the programs and subjects referred to in such clauses are offered in the schools covered by the agreement.

49.

(5) A board may admit to a school that it operates a person whose admission with or without the payment of a fee is not otherwise provided for in this Act but who, except as to residence, is qualified to attend such school, and may, at its discretion, require the payment by or on behalf of the person of a fee calculated in accordance with the regulations.

69. (1) In sections 69 to 76, ...

"committee" means an advisory committee on schools for trainable retarded pupils;

"local association" means a parents' group that is affiliated with the Ontario Association for Community Living and that operates within the area of jurisdiction of the board.

....

70. (1) Subject to subsection (2) and to the regulations, every board shall provide adequate accommodation for the trainable retarded pupils,

(a) who are exceptional pupils of the board; and

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(b) in respect of whom a placement in a school or class for trainable retarded pupils has been made by a committee established under paragraph 5 of subsection 11(1),

and shall establish and maintain a school or class for such trainable retarded pupils in which special education programs and services shall be provided in accordance with the regulations and in the English language or, where the pupil is enrolled in a school or class established under Part XII, the French language, as the case may be.

(2) A board may, in lieu of establishing and maintaining a school or class for the trainable retarded pupils for whom it is required to provide accommodation under subsection (1), enter into an agreement with another board to provide for the instruction of such trainable retarded pupils in a school or class for trainable retarded pupils under the jurisdiction of the other board and for the payment of fees in respect of such trainable retarded pupils.

(3) Where an agreement has been entered into under subsection (2), a committee established under paragraph 5 of subsection 11(1) by the board that provides the instruction shall be responsible for the placement and the review of the placement of trainable retarded pupils who are qualified to be resident pupils of the other board that is party to such agreement.

71. (1) A trainable retarded pupil has the right to attend a school or class for trainable retarded pupils established by the board of which the pupil is a resident pupil or provided under an agreement made under subsection 70(2) or to which the pupil is admitted under subsection (2) until the last school day in June in the year in which the pupil attains the age of twenty-one years.

(2) A board may admit to a school for trainable retarded pupils that it operates a trainable retarded pupil who does not have the right to attend such school under subsection (1) where the committee of the board established under paragraph 5 of subsection 11(1)

recommends the placement of such trainable retarded pupil in the trainable retarded school or class operated by the board, and fees in accordance the regulations are paid to the board on behalf of such trainable retarded pupil.

72. (1) A divisional board and The Metropolitan Toronto School Board shall, subject to subsection (2), establish an advisory committee on schools for trainable retarded pupils.

(2) Where a divisional board establishes a committee under subsection 206(2), it may,

(a) discontinue the committee established under subsection (1); or

(b) continue the committee established under subsection (1) and appoint one of the members appointed under clause 4(b) to the committee established under subsection 206(2).

(3) A board other than a board referred to in subsection (1) may establish an advisory committee on schools for trainable retarded pupils, in which case subsections (4) to (8) and sections 73 and 74 apply with necessary modifications to such advisory committee.

(4) The committee shall consist of six members, of which,

(a) three shall be appointed by the divisional board from among its members; and

(b) three shall be appointed by the local association, or where there is more than one local association, three shall be appointed at a joint meeting of the associations concerned or, where there is no local association, three who are not members of the board shall be appointed by the board.

73. ... [operating procedures].

74. (1) The committee may make recommendations to the divisional board relating to matters affecting the establishment and development of programs, services and facilities in respect of trainable retarded children.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(2) Before making a decision on a recommendation of the committee, the divisional board shall provide an opportunity for the committee to be heard before the board and before any committee thereof to which the recommendation is referred.

75. ... [fees for non-resident pupils].

76. ... [boarding of pupils where daily transportation impracticable].

170. Every board shall, ...

(6) provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the board;

(7) provide or enter into an agreement with another board to provide in accordance with the regulations special education programs and special education services for its exceptional pupils in the English language or, where the pupil is enrolled in a school or class established under Part XII, the French language, as the case may be;

(13) provide, without charge, for the use of the pupils attending the school or schools operated by the board, the textbooks that are required by the regulations to be purchased by the board.

171. (1) A board may, ...

(6) appoint one or more,

i psychiatrists who are on the register of specialists in psychiatry of the Royal College of Physicians and Surgeons of Canada or of the College of Physicians and Surgeons of Ontario,

ii psychologists who are legally qualified medical practitioners or hold a certificate of registration under the *Psychologists Registration Act*;

(7) determine the number and kind of

schools to be established and maintained and the attendance area for each school, and close schools in accordance with policies established by the board from guidelines issued by the Minister;

(8) provide instruction in courses of study that are prescribed or approved by the Minister, developed from curriculum guidelines issued by the Minister or approved by the board where the Minister permits the board to approve courses of study.

...

(13) provide school supplies, other than the textbooks that it is required to provide under paragraph 13 of section 170, for the use of pupils;

...

(15) establish kindergartens and junior kindergartens;

...

(25) provide for surgical treatment of children attending the school who suffer from minor physical defects, where in the opinion of the teacher and, where a school nurse and medical officer are employed, of the nurse and medical officer, the defect interferes with the proper education of the child, and include in the estimates for the current year the funds necessary for cases where the parents are not able to pay, provided that no such treatment shall be undertaken without the consent of the parents or guardian of the child;

...

(29) appoint one or more teachers qualified in guidance according to the regulations to collect and distribute information regarding available occupations and employment, and to offer such counsel to the pupils as will enable them to plan intelligently for their educational and vocational advancement;

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

181. (1) A board may, subject to subsection (2), enter into an agreement with another board to provide, for the other board for such periods and under such conditions as are specified in the agreement,

- (a) accommodation and equipment for administrative purposes;
- (b) accommodation and equipment for instructional purposes;
- (c) the services of teachers or other personnel; or
- (d) the transportation of pupils,

that the board by this Act is authorized to provide for its own pupils.

(2) ... [capital costs].

(4) An agreement under this section may, despite the regulations, provide for the calculation and payment of fees in respect of pupils covered by the agreement.

182. ... [transfer of French instructional unit].

183. ... [agreement re joint use of facilities].

184. (1) A public school board may enter into an agreement with another public school board under which one public school board shall furnish education for pupils of the other upon payment by such other public school board on behalf of such pupils of fees calculated in accordance with the regulations.

(2) A separate school board may enter into an agreement with another separate school board under which one separate school board shall furnish education for pupils of the other upon payment by such other separate school board on behalf of such pupils of fees calculated in accordance with the regulations.

185. A public school board and a separate

school board may enter into an agreement in respect of the provision of education in a public or separate school under the jurisdiction of either board for pupils of the other board in a course or courses that are not available in a school under the jurisdiction of the board requiring the provision of education or that are considered by such board to be not readily accessible to the pupils in respect of whom the agreement is made where,

- (a) the appropriate supervisory officer of the board providing the education certifies that accommodation is available in such schools for such pupils; and
- (b) the board requiring the provision of education pays for each such pupil a fee calculated in accordance with the regulations.

190. (1) A board may provide for,

- (a) a resident pupil of the board who is enrolled in a school that the board operates or in a school operated by another board to which the board pays fees in respect of such pupil;
- (b) a pupil in respect of whom the Minister pays the cost of education under the regulations; and
- (c) a child over two years of age who may, under the regulations, be admitted to a program for hearing-handicapped children,

transportation to and from the school that the pupil attends.

201. A board of education, a county or district combined separate school board or The Metropolitan Separate School Board may establish a school board advisory committee.

205. (1) The [advisory] committee may make reports and recommendations to the board in respect of any educational matter pertaining to the schools under the jurisdiction of the board.

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

(3) The board shall consider any report or recommendation submitted to it by the committee and shall not refuse its approval without having given the committee, or its representatives, an opportunity to be heard by the board.

206.

(2) Every board shall, subject to subsection (6), establish a special education advisory committee that shall consist of,

(a) one representative from each of the local associations, not to exceed twelve, in the area of jurisdiction of the board, as nominated by the local association and appointed by the board;

(b) where the board provides a French-language instructional unit as defined in clause 288, one or more members who are French-speaking appointed by the board as representative of the French-speaking ratepayers or supporters of the board;

(c) where the board provides English-language schools or classes under sections 289 and 301, one or more members who are English-speaking appointed by the board as representative of the English-speaking ratepayers or supporters of the board;

(d) three members appointed by the board from among its members,

and, in addition to the members referred to in clauses (a), (b), (c) and (d), the board may appoint one or more additional members who are not representative of either a local association or the French-speaking community and are not members of the board or of a committee of the board.

....

(8) A committee established under subsection (2) may make recommendations to the board in respect of any matter affecting the establishment and development of special education programs and services in respect of exceptional pupils of the board.

....

265. It is the duty of a principal of a school, in addition to the principal's duties as a teacher,

...

(d) in accordance with this Act, the regulations and the guidelines issued by the Minister, to collect information for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of the record;

....

266. ...

(2) A [pupil] record is privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,

(a) subject to subsections (2.1), (3) and (5), is not available to any other person; and

(b) except for the purposes of subsection (5), is not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record,

without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil.

(2.1) ... [information to medical officer].

(3) A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil.

(4) Where, in the opinion of a pupil who is an adult, or of the parent or guardian of a pupil who is a minor, information recorded upon the record of the pupil is,

(a) inaccurately recorded; or

(b) not conducive to the improvement of instruction of the pupil,

ONTARIO LEGISLATIVE ACTION - continued

Education Act (ON-2) (cont'd)

board.

....

such pupil, parent or guardian, as the case may be, may, in writing, request the principal to correct the alleged inaccuracy in, or to remove the impugned information from, such record.

(5) Where the principal refuses to comply with a request under subsection (4), the pupil, parent or guardian who made the request may, in writing, require the principal to refer the request to the appropriate supervisory officer who shall either require the principal to comply with the request or submit the record and the request to a person designated by the Minister, and such person shall hold a hearing at which the principal and the person who made the request are the parties to the proceeding, and the person so designated shall, after the hearing, decide the matter, and his or her decision is final and binding on the parties to the proceeding.

....

(7) Nothing in this section prevents the compilation and delivery of such information as may be required by the Minister or by the board.

....

(10) Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of his or her duties or employment, and no such person shall communicate any such knowledge to any other person except,

(a) as may be required in the performance of his or her duties;

(b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or

(c) with the written consent of the pupil where the pupil is an adult.

....

289. (1) Every French-speaking person who is qualified under this Act to be a resident pupil of a board has the right to receive elementary school instruction in a French-language instructional unit operated or provided by the

ONTARIO LEGISLATIVE ACTION - continued

*Operation of Schools -
General (ON-2.1)*

7.

(4) Every board shall provide without charge for the use of each pupil enrolled in a day school operated by the board such textbooks selected under subsections (1) and (2) as relate to the courses in which the pupil is enrolled.

11.

(3) In addition to the duties under the Act and those assigned by the board, the principal of a school shall, except where the principal has arranged otherwise under subsection 26(3),

(d) upon request, make outlines of courses of study available for examination to a resident pupil of the board and to the parent of the pupil, where the pupil is a minor;

(m) where it is proposed to administer a test of intelligence or personality to a pupil, [the principal shall] inform the pupil and the parent of the pupil of the test and obtain the prior written permission for the test from the pupil or from the parent of the pupil, where the pupil is a minor;

30.. A hearing-handicapped child who has attained the age of two years may be admitted to a special education program for the hearing-handicapped.

31. The maximum enrolment in a special education class shall depend upon the extent of the exceptionalities of the pupils in the class and the special education services that are available to the teacher, but in no case shall the enrolment in a self-contained class exceed,

(a) in a class for pupils who are emotionally disturbed or socially maladjusted, for pupils who have severe learning disabilities, or for pupils who are younger than compulsory school age and have impaired hearing, eight pupils;

(b) in a class for pupils who are blind, for pupils who are deaf, for pupils who are trainable retarded, or for pupils with speech and language disorders, ten pupils;

(c) in a class for pupils who are hard of hearing, for pupils with limited vision, or for pupils with orthopaedic or other physical handicaps, twelve pupils;

(d) in a class for pupils who are educable retarded children, twelve pupils in the primary division and sixteen pupils in the junior and intermediate divisions;

(e) in an elementary school class for pupils who are gifted, twenty five pupils;

(f) in a class for aphasic or autistic pupils, or for pupils with multiple handicaps for who no one handicap is dominant, six pupils; and

(g) on or after the 1st day of September, 1982, in a class for exceptional pupils consisting of pupils with different exceptionalities, sixteen pupils.

ONTARIO LEGISLATIVE ACTION - continued

***Special Education Identification
Placement and Review Committees
and Appeals***
[IPRC Regulation] (ON-2.2)

1. In this Regulation,

"Appeal Board" means a Special Education Appeal Board established by a board under section 4;

"committee" means a Special Education Identification, Placement and Review Committee established under this Regulation and includes a Special Education Program Placement and Review Committee heretofore established under the regulations that meet the requirements of this Regulation for a Special Education Identification, Placement and Review Committee;

"parent" includes a guardian of a pupil.

2. (1) Where a board has established or establishes special education programs or provides special education services for its exceptional pupils it shall establish in accordance with section 3 one or more Special Education Identification, Placement and Review Committees and shall determine the jurisdiction that each such committee shall have.

(2) A principal,

(a) may upon written notification to a parent of a pupil; or

(b) shall at the written request of a parent of a pupil,

refer the pupil to the committee or, having regard to the jurisdiction of the committees where more than one committee has been established, refer the pupil to the committee that the principal considers to be the most appropriate in respect of the pupil.

(3) Where a committee is engaged in identifying a pupil as an exceptional pupil or in determining the recommended placement of such a pupil, the committee shall obtain and consider an educational assessment of the pupil and,

(a) where the committee determines that a health assessment or a psychological assessment or both of the pupil are required to enable the committee to make a correct identification or determination in respect of the pupil and with the written permission of the parent, obtain and consider a health assessment of the pupil by a legally qualified medical practitioner and obtain and consider a psychological assessment of the pupil;

(b) where, in the opinion of the committee, it is practicable to so do, the committee shall, with the consent of the parent of the pupil, interview the pupil;

(c) unless the parent waives or refuses to participate in an interview, the committee shall interview a parent of the pupil;

(d) the committee shall cause to be sent to a parent of the pupil and to the principal who has made the referral, as soon as possible after the making of its determination, a written statement of,

(i) the identification it has made of the needs of the pupil,

(ii) where, in the opinion of the committee the pupil is an exceptional pupil, the recommendation made in respect of the placement of the pupil, and

(iii) the date the committee proposes to notify the board of its determination.

(4) A parent of a pupil may, prior to the date set out in a statement under subclause (3)(d)(iii) in respect of the pupil, upon written notice to the principal, request in writing a meeting with the committee to discuss the statement and the committee shall arrange to meet with the parent and the principal for such purpose.

(5) Each committee shall notify the director of education of the board, or the secretary of the board where the board does not have a director of education,

ONTARIO LEGISLATIVE ACTION - continued

IPRC Regulation (ON-2.2) (cont'd)

(a) on or after the date set by the committee as set out in the statement; or

(b) after the discussion of the statement held under subsection (4),

of the determination made by the committee as set out in the statement and the change, if any, made in the determination as a consequence of such discussion and shall send a copy of such notice to the parent and the principal.

(6) A board may establish procedures in addition to the requirements set out in subsection (3) that shall be followed by a committee.

(7) Each board that has established one or more committees shall prepare a guide for the use and information of parents that,

(a) describes the circumstances in which and the procedures under which a pupil may be referred to a committee;

(b) outlines the procedures referred to in subsection (3) and any additional procedures required by the board under subsection (6) that are required to be followed by a committee in identifying a pupil as an exceptional pupil and determining the recommended placement of the pupil;

(c) explains the function of and the right to appeal determinations of a committee to the Appeal Board; and

(d) sets out the provisions of section 6 of this regulation,

and shall ensure that copies thereof are available at each school within the jurisdiction of the board and at the head office of the board and shall provide copies for the appropriate Regional Director of Education of the Ministry.

(8) Where a school or board provides classes under Part XII of the Act [French language instruction], the board shall ensure that the guide referred in subsection (7) is available in the English or French language as the case may be.

3. (1) A committee shall consist of such number of members, not fewer than three, as the board that establishes the committee may determine, all of whom, subject to subsection (2), shall be appointed by the board and one of whom shall be a supervisory officer or a principal employed by the board, except that where the board does not employ a supervisory officer and employs only one principal, one of such members shall be a person approved by the appropriate Regional Director of Education.

(2) A supervisory officer referred to in subsection (1) may designate a person to act in his or her place as a member of the committee without the approval of the board.

(3) A member or trustee of the board is not eligible to be appointed as a member of a committee.

(4) Where an identification, placement or review of a placement under consideration by a committee is in respect of a secondary school pupil admitted to secondary school from a separate school, or in respect of a trainable retarded pupil of a divisional board whose parent is a separate school supporter, the board that operates the secondary school, or the divisional board, as the case may be, shall advise the separate school board of the identification, placement or review under consideration and when requested to so do by the separate school board shall appoint as an additional member of the committee for the purpose only of such consideration,

(a) a supervisory officer or a principal of the separate school board from among the supervisory officers and principals designated for such purpose by the separate school board; or

(b) a provincial supervisory officer or other person designated by the Regional Director of Education for the region in which the head office of the secondary school or divisional board, as the case may be, is situate where the separate school board has appointed only one principal and does not employ a supervisory officer.

ONTARIO LEGISLATIVE ACTION - continued

IPRC Regulation (ON-2.2) (cont'd)

(5) Where a board provides a school or a class under Part XII of the Act and is required to establish one or more committees under section 2 of this Regulation, it shall establish one or more additional committees,

(a) comprised of members who are French-speaking where French is the language of instruction in such school or class; or

(b) comprised of members who are English-speaking where English is the language of instruction in such school or class,

and where a pupil who is enrolled in such school or class is referred to a committee and a parent of the pupil so requests, the committee whose members are French-speaking or English-speaking, as the case may be, shall consider the identification, the placement and any review of the placement of the pupil.

4. (1) A parent of a pupil who disagrees with,

(a) the identification of the pupil as an exceptional pupil;

(b) the decision that the pupil is not an exceptional pupil;

(c) the placement of the pupil as an exceptional pupil,

as determined by a committee, may give to the secretary of the board within fifteen days of the discussion referred to in subsection 2(4), or in subsection 10(3), as the case may be, a written notice of appeal of the determination of the committee and the board shall within thirty days of the receipt of the notice of appeal by the secretary establish and, subject to subsections 7 (1) to (5), appoint the members of an Appeal Board.

(2) Where the parent of a pupil gives notice of appeal under subsection (1), the notice shall indicate whether the disagreement with the decision of the committee is in respect of the matter referred to in clause (1) (a), (b) or (c), or

in respect of both of the matters referred in clauses 1 (a) and (c), as the case may be, and shall include a statement that sets out the parent's disagreement with the decision.

5. An Appeal Board shall not reject or refuse to deal with an appeal by reason of any actual or alleged deficiency in the statement referred to in subsection 4(2) or in the failure of the parent, in the opinion of the Appeal Board, to accurately indicate in the notice of appeal the subject of the disagreement, and where, during the meeting referred to in subsection 7(7), the true nature of the disagreement and the reasons therefor are ascertained, the notice of appeal shall be deemed to be amended accordingly and shall be so reported to the secretary of the board under subsection 7(10).

6. (1) An exceptional pupil shall not be placed in a special education program without the written consent of a parent of the pupil.

(2) Where a parent of an exceptional pupil,

(a) refuses or fails to consent to the placement recommended by a committee and to give notice of appeal under section 4; and

(b) has not instituted proceedings in respect of the determinations of the committee within thirty days of the date of the written statement prepared by the committee,

the board may direct the appropriate principal to place the exceptional pupil as recommended by the committee and to notify a parent of the pupil of the action that has been taken.

7. (1) A Special Education Appeal Board shall consist of three members none of whom shall have had any prior involvement with the matter under appeal.

ONTARIO LEGISLATIVE ACTION - continued

IPRC Regulation (ON-2.2) (cont'd)

(2) Where a pupil in respect of whom an appeal is brought under section 4 is enrolled in a school or class established under Part XII of the Act, a parent of the pupil may request that the appeal be conducted before an Appeal Board comprised of members who are French-speaking or English-speaking, as the case may be, and the board shall ensure that the request is complied with by appointing where necessary, a chair and members of the Appeal Board who are French-speaking or English-speaking as required, and this subsection applies even though that the parent may not have requested that the identification, the placement or the review of the placement of the pupil have been conducted by members of a committee who were French-speaking or English-speaking, as the case may be.

(3) The chair of the Appeal Board, who shall be designated as such by the board, shall not be, or have been,

(a) a member or a trustee of the board; or

(b) an employee or former employee of the board.

(4) One member of the Appeal Board shall hold qualifications as a supervisory officer.

(5) Where an appeal is brought in respect of a pupil, one member of the Appeal Board shall be,

(a) a member of a local association as defined in subsection 206(1) of the Act that is designated by a parent of the pupil;

(b) a representative of the local association referred to in clause (a) who is resident in the area of jurisdiction of the board and nominated by the local association; or

(c) where no local association referred in clause (a) has been established in the area of jurisdiction of the board, a member of the local community nominated by the parent of the pupil.

(6) Each board shall provide each Appeal Board with secretarial and administrative services required by the Appeal Board.

(7) A chair of an Appeal Board shall forthwith arrange with a parent of the pupil where an appeal is brought in respect of a pupil, for a meeting with the Appeal Board at a convenient time and place for a discussion of the disagreement of the parent with the determination of the committee and the relevant issues under appeal.

(8) Any person who in the opinion of an Appeal Board may be able to contribute information with respect to the matters before the Appeal Board shall be invited to attend the discussion and the discussion shall be conducted in an informal manner.

(9) Where in the opinion of an Appeal Board all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board, the Appeal Board shall adjourn the discussion and within three days thereafter may,

(a) agree with the committee and dismiss the appeal;

(b) disagree with the committee and refer the matter back to the committee stating the reasons for the disagreement; or

(c) where the Appeal Board is satisfied that a pupil in respect of whom an appeal is brought is not in need of a special education program or special education services, set aside the determination of the committee that the pupil is an exceptional pupil.

(10) An Appeal Board shall report its decision in writing to a parent of a pupil in respect of whom an appeal is brought, the committee and the secretary of the board, with reasons therefor where demanded.

ONTARIO LEGISLATIVE ACTION - continued

IPRC Regulation (ON-2.2) (cont'd)

(11) The board within thirty days after receiving the report referred to in subsection (10) shall accept or reject such decision and the secretary of the board shall notify in writing a parent of the pupil and the committee of the decision of the board and in such notice shall inform the parent of the provisions of section 37 of the Act [leave to appeal to Special Education tribunal].

(12) Each board shall, in accordance with its own policies, pay the travelling and living expenses and other costs of the members of the Appeal Board incurred while engaged on their duties as members of the Appeal Board.

8. (1) Where an exceptional pupil is placed by a committee,

(a) a committee shall review the placement of the pupil at least once every twelve months or pursuant to an application made under clause (b), whichever occurs first;

(b) a parent of the pupil or the principal of the school at which the special education program is provided may, at any time after the placement has been in effect for three months, apply in writing to the chief executive officer of the board, or to the secretary of the board where the board has no chief executive officer, for a review by a committee of the placement of the pupil; and

(c) the placement of the pupil shall not be changed by a committee without,

(i) prior notification in writing of the proposed change in placement to a parent of the pupil,

(ii) a discussion in the proposed change in placement between the committee and a parent of the pupil, and

(iii) the consent in writing of a parent of the pupil.

(2) Subsection 6(2) applies with necessary modifications to the refusal or failure of a parent to consent to a recommended change in

placement under clause (1)(c).

9. A board that provides an exceptional pupil with a special education program or services shall cause a parent or guardian of the pupil to be advised in writing of the reviews, notices and discussions referred to in section 8 that are to be provided in accordance with this Regulation and the provision of subsection 8(2).

10. (1) Where a committee is engaged in the review of a placement of an exceptional pupil it shall,

(a) obtain and consider an educational assessment of the exceptional pupil; and

(b) consider on the basis of written reports, and other evidence including the evidence of a parent of the exceptional pupil whether the placement of the pupil appears to meet the needs of the pupil.

(2) Where the committee is satisfied with the suitability of the placement of an exceptional pupil it shall in writing confirm the placement and so report to a parent of the exceptional pupil and to the principal of the school where the exceptional pupil attends.

(3) If a parent of an exceptional pupil who is the subject of a review so requests in writing, the committee shall within fifteen days of the receipt of the request by the board meet with the parent to discuss the report.

11. A parent of an exceptional pupil who disagrees with a placement or the refusal to change a placement recommended by a committee as a result of a review referred to in clause 8(1)(a) may appeal to an Appeal Board in accordance with section 4.

12. (1) A notice of appeal under section 4 acts as a stay of proceedings of a committee in relation to the placement of a pupil.

(2) For the purposes of this Regulation, where a statement, report or notice is sent by mail, it shall be sent by first class mail and it shall be deemed to have been received by the person to whom it was sent on the fifth day next following the date on which it was mailed.

ONTARIO LEGISLATIVE ACTION - continued

IPRC Regulation (ON-2.2) (cont'd)

(3) Where a parent of an exceptional pupil refuses in writing to discuss the statement or report of a committee with the committee and wishes to appeal to the Appeal Board, the discussion shall for the purposes of section 4 be deemed to have been held on the day such written refusal is received by the committee.

Special Education Programs and Services (ON-2.3)

2. (1) In this Regulation, "special education plan" means,

(b) in respect of a school that commences in September in the year 1986 or any year thereafter, a plan in effect during the school year 1985-86 that is reviewed from year to year in accordance with subsection (3).

(2) Every board shall maintain the special education plan in respect of the board and ensure that the special education plan is amended from time to time to meet the current needs of the exceptional pupils of the board.

(3) Every board shall ensure that the special education plan of the board is renewed annually by the board and that the review is completed prior to the 15th day of May in each year.

(4) In any year where the special education plan is amended by the board, the amendment shall be submitted to the Minister for review on or before the 15th day of May that year.

(5) The Minister may at any time require a board to amend its special education plan in a manner that the Minister considers necessary so as to ensure that the board provides special education programs and special education services that meet the current needs of the exceptional pupils of the board.

4. (1) Every board shall ensure that the special education plan of the board provides for the enrolment and placement of each trainable retarded child who is,

(a) in attendance at a day nursery licensed under the *Day Nurseries Act* that has a program for developmentally handicapped children; and

(b) qualified to be a resident pupil of the board.

5. (1) Every board shall ensure that the special education plan of the board provides for the enrolment and placement of each person under the age of twenty-one years who is qualified to be a resident pupil of the board and who resides or is lodged within the area of jurisdiction of the board in a centre, facility, home, hospital or institution, other than a private school, that is approved, designated, established, licensed or registered under any Act, and in which no education program is provided by the Ministry or the Ministry of Correctional Services.

(2) Where the centre, facility, home, hospital or institution referred to in subsection (1) is situate within the area of jurisdiction of the board, the board shall make provision in its special education plan for the enrolment and placement of each person under the age of twenty-one years who,

(a) is a resident in such centre, facility, home, hospital or institution; and

(b) would be qualified to be a resident pupil of the board if the person's parent or guardian was also resident within the area of jurisdiction of the board.

6. Every board shall ensure that the special education plan of the board is maintained and reviewed in accordance with this Regulation and implemented by the board in accordance with the terms of the plan as to the dates by which and the extent to which special education programs and special education services shall be established or provided for its exceptional pupils.

ONTARIO LEGISLATIVE ACTION - continued

***Supervised Alternative Learning
for Excused Pupils (ON-2.4)*****1. In this Regulation ...**

"committee" means a Supervised Alternate Learning Program for Excused Pupils Committee established under section 2;

"program" means a supervised alternate learning program in respect of a pupil that is approved by a committee and that may include one or more of,

(a) full-time or part-time employment at an approved work station for such term or period of time as is fixed or determined under the program,

(b) completion of a life-skills course, and

(c) such continuing studies or another activity directed towards the pupil's needs and interests as may be acceptable to the committee,

pursuant to which a pupil is excused from attendance at school either full-time or part-time and by which regular contact with the pupil is maintained by a teacher or other staff member who is employed at or associated with the school where the pupil is enrolled, or such other school as may be designated by the committee, to ensure that the pupil continues to conform to the program;

3. (1) A parent of a child may apply in writing to the principal of the school where the child is enrolled or has a right to attend to have the child participate in a program and the parent shall state in the application why he or she considers that the child should participate in a program.

(4) The committee shall, after interviewing the child, his or her parent, and where the committee considers it appropriate, any other person,

(a) reject the application, in which case the child shall attend school as required by subsection 21(1) of the Act; or

(b) approve the application, in which case the committee shall prescribe a program directed towards the child's needs and interest,

and the secretary of the committee shall notify in writing the principal, the school attendance counsellor, the child and the parent of the decision of the committee.

***Categories of Exceptionality*
*(ON-2.5)***

For the purposes of subsection 8(2) of the Education Act, R.S.O. 1980, Chapter 129 [now R.S.O., 1990, c. E-2, s. 8(3)], the exceptionalities of pupils are those set out below by exceptionality groupings, specific exceptionality identification, and specific exceptionality definition.

Exceptionality Groupings**I. Behaviour****1. Emotional Disturbance and/or Social Maladjustment****Definition:**

A learning disorder characterized by specific behaviour problems over such period of time, and to such a marked degree, and of such a nature, as to adversely affect educational performance, and that may be accompanied by one or more of the following:

- a) an inability to build or to maintain interpersonal relationships
- b) excessive fears or anxieties
- c) a tendency to compulsive reaction

ONTARIO LEGISLATIVE ACTION - continued

Categories of Exceptionality
(ON-2.5) (cont'd)

- d) an inability to learn that cannot be traced to intellectual, sensory, or other health factors, or any combination thereof.

II. Communication

1. Autism

Definition:

A severe learning disorder that is characterized by:

- a) disturbances in
 - . rate of educational development;
 - . ability to relate to the environment;
 - . motility;
 - . perception, speech, and language;
- b) lack of the representational-symbolic behaviour that precedes language.

2. Hearing Impairment

Definition:

An impairment characterized by deficits in language and speech development because of a diminished or non-existent auditory response to sound (i.e. hard of hearing, deaf).

3. Language Impairment

Definition:

A learning disorder characterized by an impairment in comprehension and/or use of verbal communication or the written or other symbol system of communication, which may be associated with neurological, psychological, physical, or sensory factors, and which may:

- a) involve one or more of the form, content, and function of language in communication;

- b) include one or more of the following:
 - . language delay;
 - . dysfluency;
 - . voice and articulation development, which may or may not be organically or functionally based.

4. Speech Impairment

Definition:

A disorder in language formulation that may be associated with neurological, psychological, physical, or sensory factors; that involves perceptual motor aspects of transmitting oral messages; and that may be characterized by impairment in articulation, rhythm, and stress.

5. Learning Disability

Definition:

A learning disorder evident in both academic and social situations that involves one or more of the processes necessary for the proper use of spoken language or the symbols of communication, and that is characterized by a condition that:

- a) is not primarily the result of:
 - . impairment of vision;
 - . impairment of hearing;
 - . physical handicap;
 - . mental retardation;
 - . primary emotional disturbance;
 - . cultural difference;
- b) results in a significant discrepancy between academic achievement and assessed intellectual ability, with deficits in one or more of the following:
 - . receptive language (listening, reading);
 - . language processing (thinking, conceptualizing, integrating);
 - . expressive language (talking, spelling, writing);
 - . mathematical computations;

ONTARIO LEGISLATIVE ACTION - continued

Categories of Exceptionality
(ON-2.5) (cont'd)

- c) may be associated with one or more conditions diagnosed as:
- . a perceptual handicap;
 - . a brain injury;
 - . minimal brain dysfunction;
 - . dyslexia;
 - . developmental aphasia.

III. Intellectual

1. Giftedness

Definition:

An unusually advanced degree of general intellectual ability that requires differentiated learning experiences of a depth and breadth beyond those normally provided in the regular school program to satisfy the level of educational potential indicated.

2. Educable Retardation

Definition:

A learning disorder characterized by:

- a) an ability to profit educationally within a regular class with the aid of considerable curriculum modification and supportive services;
- b) an inability to profit educationally within a regular class because of slow intellectual development;
- c) a potential for academic learning, independent social adjustment, and economic self-support.

3. Trainable Retardation

Definition:

A severe learning disorder characterized by:

- a) an inability to profit from a special education program for the educable retarded because of slow intellectual

development;

- b) an ability to profit from a special education program that is designed to accommodate slow intellectual development;
- c) a limited potential for academic learning, independent social adjustment, and economic self-support.

IV. Physical

1. Orthopaedic and/or Physical Handicap

Definition:

A condition of such severe physical limitation or deficiency as to require special assistance in learning situations to provide the opportunity for educational achievement equivalent to that of pupils without exceptionalities who are of the same age or developmental level.

2. Visual Impairment

Definition:

A condition of partial or total impairment of sight or vision that even with correction affects educational performance adversely (i.e. limited vision, blind).

V. Multiple

1. Multihandicap

Definition:

A combination of learning or other disorders, impairments, or physical handicaps, that is of such nature as to require, for educational achievement, the services of one or more teachers holding qualifications in special education and the provision of support services appropriate for such disorders, impairments, or handicaps.

ONTARIO LEGISLATIVE ACTION - continued

***Ontario Student Records (OSR)
Guideline, 1989 (ON-2.6)***

4. Access to the OSR

Access to the OSR means the right of those authorized by the Education Act to examine the contents of the OSR. Under the Freedom of Information and Privacy Act, 1987, students and parents or guardians who are authorized to have access to the contents of the OSR also have the right to receive a copy of the contents of the OSR. The provisions of this section apply during both the period of use and the period of retention and storage.

4.1 Every student has a right of access to his or her OSR.

4.2 A parent or guardian of a student who is not an adult has a right of access to the student's OSR. Under both the Children's Law Reform Act and the Divorce Act, 1985, the legal right of a non-custodial parent to have access to a child includes the right to make inquiries and be given information concerning a child's health, education, and welfare.

4.3 Only supervisory officers and the principal and teachers of the school shall have access to the OSR, for the purpose of improving the instruction of the student, without the written consent of the adult student or of the parent(s) or guardian(s) of a student who is not an adult.

4.4 No individual (including board officials) other than those identified previously in subsection 4.3 shall have access to the OSR without the written consent of the adult student or of the parent(s) or guardian(s) of a student who is not an adult. The OSR shall not be produced in the course of any legal proceedings, except as provided for below.

***Municipal Freedom of Information
and Protection of
Privacy Act (ON-3)***

2. (1) ...

"institution" means

...
(b) a school board, ...
....

4. (1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under section 6 to 15, the head shall disclose as much of the record as can be reasonably severed without disclosing the information that falls under one of the exemptions.

32. An institution shall not disclose personal information in its custody or under its control except,

(a) in accordance with Part I;

(b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

(d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

....

Building Code (ON-4.1)

Note. Excerpts not included; provisions equivalent to NBC, 1990 (see app. E).

ONTARIO LEGISLATIVE ACTION - continued

Interpretation Act (ON-5)

11. No Act affects the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty is bound thereby.

APPENDIX N
LEGISLATIVE ACTION: PRINCE EDWARD ISLAND

Human Rights Act (PI-1)

1. (1) In this Act ...

(d) "discrimination" means discrimination in relation to race, religion, creed, colour, sex, marital status, ethnic or national origin, age, physical or mental handicap or political belief of any individual or class of individuals;

(l) "physical or mental handicap" means a previous or existing disability, infirmity, malformation or disfigurement, whether of a physical or mental nature, that is caused by injury, birth defect or illness, and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guidedog, wheelchair or other remedial device;

(2) This Act shall be deemed to prevail over all other laws of this province and such laws shall be read as being subject to this Act.

2. (1) No person shall discriminate

(a) against any individual or class of individuals with respect to enjoyment of accommodation, services and facilities to which members of the public have access; or

(b) with respect to the manner in which accommodations, services and facilities, to which members of the public have access, are provided to any individual or class of individuals.

(2) Subsection (1) does not prevent the denial or refusal of accommodation, services or facilities to a person on the basis of age if the accommodation, services or facilities are not available to that person by virtue of any enactment in force in the province.

13. No person shall discriminate against an individual or the class of individuals in any manner prescribed by this Act because of race, religion, creed, colour, sex, marital status, ethnic or national origin, age, physical or mental handicap or political belief of any person with whom the individual or class of individuals associates.

14. (1) Sections 2 to 13 do not apply

...

(d) to a refusal, limitation, specification, or preference based on a genuine qualification;

(2) The onus of proving that a qualification is a genuine qualification is on the employer or other person asserting that the qualification is a genuine qualification.

20. The Commission may approve programs of government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved program shall be deemed not to be a violation of the prohibitions of this Act.

22. The Commission shall inquire into and endeavour to effect a settlement of any complaint of a violation of this Act where the person aggrieved makes a complaint in writing on a form prescribed by the Commission; a complaint shall not be filed except within twelve months of the occurrence of the alleged violation of this Act.

25. (1) If the Commission is unable to effect a settlement of the matters complained of, it shall make a report to the Minister and the Minister may appoint one or more persons to be a board of inquiry to investigate and seek settlement of the complaint.

PRINCE EDWARD ISLAND LEGISLATIVE ACTION - continued

Human Rights Act (PI-1) (cont'd)

26. ...

(4) Where the matter referred to the board of inquiry is not settled between the parties and the board finds a complain is supported by a reasonable preponderance of the evidence, the board shall report its recommendation to the Commission on the course that ought to be taken with respect to the complaint.

(5) Where the board of inquiry finds that a complaint is frivolous or vexatious, the board may dismiss the complaint.

27. ...

(3) The Commission shall recommend to the Minister any action necessary to give effect to the recommendations of the board.

28. (1) The Minister may issues whatever order he considers necessary to carry the recommendations of the Commission into effect.

34. This Act binds the Crown in right of Prince Edward Island and every servant and agent of the Crown.

School Act (PI-2)

1. In this Act ...

(b) "compulsory school age" in relation to a child, means over the age of seven years and under the age of sixteen years.;

30. (1) Each regional school board shall admit pupils to schools in its district in accordance with the regulations.

(2) Each regional school board shall determine the placement of pupils in the various classes and schools according to the needs of the pupils and the facilities of the unit.

(3) For the purposes of subsection (2) the Minister may require a regional school board to

prepare as zoning plan for the unit and submit it to the Minister for approval, and where a zoning plan is approved by the Minister, the board shall determine the placement of pupils in schools pursuant to that zoning plan.

32. A regional school board may suspend or expel a pupil for cause.

33. Each regional school board shall make arrangements for the conveyance of pupils in the unit in accordance with the regulations.

44. (1) The Minister shall provide free school privileges as defined by the regulations, including free educational instruction and necessary transportation, for every child from six to twenty years of age inclusive who

(a) has not graduated from high school; and

(b) is a resident of that regional administrative unit in which he is to attend school.

(2) The Minister, after consultation with a regional school board in which a child is resident, may provide free school privileges for a child with special need or in special circumstances or a child entitled to receive French language instruction at a location other than a school in the regional administrative unit in which the child is resident.

46. (1) in this section "child" means any person of compulsory school age.

(2) Except as provided in this section, every child shall attend school in the school selected by the regional school board in that regional administrative unit provided for in section 44 or subsection 44(2).

(3) Where

(a) in the opinion of the Minister, a child is under efficient instruction elsewhere;

(b) a child is unable to attend school by reason of his own sickness or other unavoidable cause which has been reported to the principal;

PRINCE EDWARD ISLAND LEGISLATIVE ACTION - continued

School Act (PI-2) (cont'd)

(c) the child is officially excluded from attendance under sections 32 and 43;

(d) the child has completed the course prescribed for grade twelve; or

(e) the Minister certifies in writing to the regional school board that the child should be exempt from school attendance,

the child shall not be required to attend school.

(4) The parent of a child who is required to attend school under this section shall cause the child to attend school as required by this section.

(5) The parent of the child who neglects or refuses to cause the child to attend school as required by this section is guilty of an offence.

(6) Where it appears to the principal of any school that a child is habitually absent from school without lawful excuse, the principal shall report the matter to the superintendent for that regional administrative unit.

47. (1) In this Part

(a) "Charter" means the Canadian Charter of Rights and Freedoms set out in the *Constitution Act, 1982*;

(b) "French language instruction" means a school program in which the language of instruction is French, but does not include the French Immersion program;

(c) "where numbers warrant" has the meaning prescribed by the regulations.

(2) Where numbers warrant, French language instruction shall be provided in accordance with the regulations to children of citizens of Canada who have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province.

(3) Where numbers warrant, French language instruction provided pursuant to subsection (2)

shall be provided in French language educational facilities in accordance with the regulations.

(4) Citizens of Canada who

(a) are residents of the province; and

(b) have the right under section 23 of the Charter to have their children receive primary and secondary school instruction in French in the province,

have the right to participate in French language instruction program development and delivery.

*School Act Regulations
(PI-2.1)*

5.

(27) Each Regional School Board shall admit to schools only those pupils who have or will have attained their sixth birthday on or before January 31 of the school year in which they are seeking admission.

(28) All students who are resident or intend to be resident of the province qualify for free school privileges, except

(d) students for whom the Minister has provided special services such as deaf, blind and cerebral palsy.

(30) Free school privileges means the privileges of attendance and education in a public school of a regional administrative unit and includes

(a) free educational instruction and necessary transportation;

(b) the supply of textbooks authorized by the Minister for all children enrolled in grades 1 to 12 inclusive; and

(c) all those services relating to the provision of instruction as outlined through the Foundation Program.

PRINCE EDWARD ISLAND LEGISLATIVE ACTION - continued

***Provincial Building
Code Act (PI-3)*****1. In this Act ...**

(h) "National Building Code of Canada" means the National Building Code issued by the Associate Committee on the National Building Code of the National Research Council of Canada;

....

2. (1) The Lieutenant Governor in Council may make such regulations as he considers desirable to regulate and control the use of buildings, to regulate and control the use of materials, equipment and appliances in the construction of buildings, and set standards of construction in the erection of buildings within the Province of Prince Edward Island

....

(4) The production of a printed volume or paper purporting to contain the National Building Code of Canada or any amendment, revision or abridgement thereof and as specified in the regulations is evidence of that Code, amendment, revision or abridgement.

***Access to Public Buildings
Act (PI-4)***

3. (1) Every public building shall have at least one entrance opening to the outdoors at sidewalk level or to a ramp leading to a sidewalk, which entrance is designed in conformance with the National Building Code Supplement No. 5 "Building Standards for the Handicapped 1977" for use by physically disabled persons.

(2) Every public building shall provide access for physically disabled persons from the entrance described in subsection (1) to

(a) public spaces on the entrance floor;

(b) where elevators are provided, at least one elevator; and

(c) where parking facilities are provided as part of the building project, the parking area.

(3) In every public building where washrooms are provided for the use of the public, at least one washroom shall be provided that is designed for and accessible to physically handicapped persons in conformance with the National Building Code Supplement No. 5 "Building Standards for the Handicapped 1977".

(4) In a public building every door which is a principal exit from a floor area or part of a floor area containing an occupant load of more than forty persons shall be equipped with approved hardware that will release and allow the door to swing open when a force not exceeding twenty pounds is applied to the hardware in the direction of exit travel.

(5) Every person who is the owner, constructor, lessor or operator of a public building that does not comply with this Act is guilty of an offence.

Interpretation Act (PI-5)

14. (1) Unless an Act otherwise specifically provides, every Act and every regulation made thereunder, is binding on her Majesty.

(2) This section applies only to Acts enacted after this Act comes into force [31 December 1988].

APPENDIX O
LEGISLATIVE ACTION: QUÉBEC

***Charter of Human Rights
and Freedoms (QC-1)***

9.1. In exercising his fundamental freedoms and rights [ss. 1-9], a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

10.1 No one may harass a person on the basis of any ground mentioned in section 10.

12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

13. No one may in a juridical act stipulate a clause involving discrimination.

Such a clause is deemed without effect.

20. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

40. Every person has a right, to the extent

and according to the standards provided for by law, to free public education.

41. Parents or the persons acting in their stead have a right to require that, in the public educational establishments, their children receive a religious or moral education in conformity with their convictions, within the framework of the curricula provided for by law.

42. Parents or the persons acting in their stead have a right to choose private educational establishments for their children, provided such establishments comply with the standards prescribed or approved by virtue of the law.

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.

52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

53. If any doubt arises in the interpretation of a provision of the act, it shall be resolved in keeping with the intent of the Charter.

54. The Charter binds the Crown.

55. The Charter affects those matters which come under the legislative authority of Quebec.

QUÉBEC LEGISLATIVE ACTION - continued

*Charter of Human Rights
and Freedoms (QC-1) (cont'd)*

71.

The responsibilities of the commission include, without being limited to, the following:

(1) to make a non-adversary investigation, on its own initiative or following receipt of a complaint, into any situation which appears to the commission to be either a case of discrimination within the meaning of sections 10-19, including a case contemplated by section 86, or a violation of the right of aged or handicapped persons against exploitation enunciated in the first paragraph of section 48;

77.

The commission may refuse or cease to act in favour of the victim where:

(1) the complaint is based on acts or omissions the last of which occurred more than two years before the filing of the complaint;

(2) the victim or the complainant does not have a sufficient interest;

(3) the complaint is frivolous, vexatious or made in bad faith;

(4) the victim or the complainant has, on the basis of the same facts, personally pursued a remedy other than those provided for in sections 49 and 80.

78. The commission shall seek, in respect of every situation reported in the complaint or revealed in the course of the investigation, any evidence allowing it to decide whether it is expedient to foster the negotiation of a settlement between the parties, to propose the submission of the dispute to arbitration or to refer any unsettled issue to a tribunal.

79.

If no settlement is possible, the commission shall again propose arbitration to the parties; it may also propose to the parties, taking into account the public interest and the interest of the victim, any measure of redress, such as the admission of the violation of a right, the cessation of the act complained of, the performance of any act or the payment of compensation or exemplary damages, within such time as it fixes.

80. Where the parties will not agree to negotiation of a settlement or to arbitration of the dispute or where the proposal of the commission has not been implemented to its satisfaction within the allotted time, the commission may apply to a tribunal to obtain, where consistent with the public interest, any appropriate measure against the person at fault or to demand, in favour of the victim, any measure of redress it considers appropriate at that time.

84. Where, following the filing of a complaint, the commission exercises its discretionary power not to submit an application to a tribunal to pursue, for a person's benefit, a remedy provided for in sections 80 to 82, it shall notify the complainant of its decision, stating the reasons on which it is based.

Within 90 days after he receives such notification, the complainant may, at his own expense, submit an application to the Human Rights Tribunal to pursue such remedy and, in that case, he is, for the pursuit of the remedy, substituted by operation of law for the commission with the same effects as if the remedy had been pursued by the commission.

86. The object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or of health services and other services generally available to the public.

An affirmative action program is deemed non-discriminatory if it is established in conformity with the Charter.

QUÉBEC LEGISLATIVE ACTION - continued

*Charter of Human Rights
and Freedoms (QC-1) (cont'd)*

87. [Paragraph not in force] Every affirmative action program must be approved by the Commission, unless it is imposed by order of a tribunal.

The commission shall, on request, lend assistance for the devising of an affirmative action program.

88. If, after investigation, the commission confirms the existence of a situation involving discrimination referred to in section 86, it may propose the implementation of an affirmative action program within such time as it may fix.

Where its proposal has not been followed, the commission may apply to a tribunal and, on proof of the existence of a situation contemplated in section 86, obtain, within the time fixed by the tribunal, an order to devise and implement a program. The program thus devised is filed with the tribunal which may, in accordance with the Charter, make the modifications it considers appropriate.

89. The commission shall supervise the administration of the affirmative action programs. It may make investigations and require reports.

90. Where the commission becomes aware that an affirmative action program has not been implemented within the allotted time or is not being complied with, it may, in the case of a program it has approved, withdraw its approval or, if it proposed implementation of a program, it may apply to a tribunal in accordance with the second paragraph of section 88.

91. A program contemplated in section 88 may be modified, postponed or cancelled if new facts warrant it.

If the commission and the person required or having consented to implement the affirmative action program agree on its modification, postponement or cancellation, the agreement shall be evidenced in writing.

Failing agreement, either party may request

the tribunal to which the commission has applied pursuant to the second paragraph of section 88 to decide whether the new facts warrant the modification, postponement or cancellation of the program.

All modifications must conform to the Charter.

111. The [Human Rights] Tribunal is competent to hear and dispose of any application submitted under section 80, 81 or 82, in particular in matters of employment or housing or in connection with goods and services generally available to the public, and any application submitted under section 88, 90 or 91 in respect of an affirmative action program.

112. The Tribunal and its divisions and judges are, in the performance of their functions, vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except the power to impose imprisonment.

126. The Tribunal may, in a final decision, condemn one of the parties who appeared in the proceedings to the payment of the costs and disbursements or apportion them among them as it determines.

132. Any final decision of the Tribunal may be appealed from to the Court of Appeal with leave from one of the judges thereof.

133. Subject to section 85 [right of the victim to intervene], the rules relating to appeals set out in the Code of Civil Procedure, adapted as required, apply to any appeal under this Chapter.

QUÉBEC LEGISLATIVE ACTION - continued

**Regulation respecting
Affirmative Action
Programs (QC-1.1)**

1. This Regulation applies to any person devising, implementing or carrying out an affirmative action program upon a recommendation by the Commission or under a court order.

The object of an affirmative action program is to remedy the situation of any group subject to discrimination as prohibited by section 10 of the Charter, particularly women, members of cultural communities, the handicapped and Native peoples.

**Division III
Equality in Educational Services
Available to the Public**

12. Division II [Equality in Employment] applies *mutatis mutandis* and subject to the provisions of this Division to affirmative action programs in an institution providing educational services.

13. The objectives of a program in an institution providing educational services shall be established on the basis of an analysis of the school population, availability and the educational system in the institution.

14. An analysis of the school population will indicate the situation of target group students in relation to the institution's other students in terms of:

- (1) the number of students;
- (2) their programs and conditions of study;
- (3) their previous schooling.

15. An analysis of availability will indicate what percentage target group members represent among all persons who, within and outside the educational system, have the training required to enter the institution's study programs or are fit to acquire such training within a reasonable time.

16. An analysis of the educational system in the institution will allow identification of those practices from among the rules, directives, policies, decisions, contracts, agreements and the like, as well as the way they are applied, which though apparently neutral have a discriminatory effect in the services provided by the institution.

The analysis will bear on the following matters in particular:

- (1) procedures and requirements for accepting and rejecting applications for admission;
- (2) the grouping of students;
- (3) areas of study;
- (4) studying conditions;
- (5) academic organization;
- (6) graduation, failure and dropout rates.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2)

1. Every person is entitled to the educational services of preschool developmental and cognitive learning services and elementary and secondary instructional services provided for by this Act and by the basic school regulation made by the Government under section 447, from the first day of the school calendar in the school year in which he attains the age of admission to the last day of the school calendar in the school year in which he attains 18 years of age, or 21 years of age in the case of a handicapped person within the meaning of the Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1).

Every person is also entitled to other educational services, student services and special educational services provided for by this Act and by the basic school regulation, within the scope of the programs offered by the school board.

The age of admission to preschool education is five years on or before the date prescribed by the basic school regulation; the age of admission to elementary school education is six years on or before the same date.

3. The educational services contemplated in section 1 and offered pursuant to this Act shall be provided free to residents of Quebec.

4. Every student or, if he is not of full age, his parents, shall have a right to choose, every year, among the schools of the school board to which he belongs, the school best suited to their preferences or having the educational project best suited to their personal values.

The exercise of the right is subject to the student enrolment criteria established by the school board.

The exercise of the right does not entail the right to require transportation services where the transportation services required for the student concerned exceed the limits established by the school board.

7. Students other than those enrolled in adult

education have a right to the free use of textbooks and other instructional material required for the teaching of programs of studies.

The right of free use does not extend to documents in which students write, draw or cut out.

Instructional material does not include pencils, paper or other objects of a like nature.

9. A student or parents of a student affected by a decision of the council of commissioners, the executive committee, or of an officer or employee of the school board may request the council of commissioners to reconsider such decision.

10. The request of the student or his parents shall be made in writing and shall briefly set forth the grounds on which it is made. It shall be transmitted to the secretary general of the school board.

The secretary general shall assist every student or parent of a student requiring assistance in the formulation of his request.

11. The council of commissioners shall dispose of the request without delay.

It may submit the request for examination by a person whom it designates or a committee which it establishes; such person or committee shall make a report of his or its findings and accompanying the report, if it seems appropriate to do so, with recommendations.

During the examination of the request, the interested parties shall have the opportunity to present their points of view.

12. The council of commissioners may, if it considers that the request is founded, overturn, entirely or in part, the decision contemplated by the request and make the decision which, in its opinion, ought to have been made in the first instance.

The person who made the request and the author of the contested decision shall be notified of the council's new decision and informed of the grounds on which it was made.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

14. Every child resident in Quebec shall attend school from the first day of the school calendar in the school year following that in which he attains six years of age until the last day of the school calendar in the school year in which he attains 16 years of age or at the end of which he obtains a diploma awarded by the Minister, whichever occurs first.

15. The following students are exempt from compulsory school attendance:

(1) a student excused by the school board by reason of illness or for the purpose of receiving medical treatment or care required by his state of health;

(2) a student excused by the school board, at the request of his parents and after consultation with the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities established under section 185, by reason of a physical or mental handicap which prevents him from attending school;

(3) a student expelled from school by the school board pursuant to section 242;

(4) a student who receives home schooling and benefits from an educational experience which, according to an evaluation made by or for the school board, are equivalent to what is provided at school.

A child is excused from attending public school if he attends a private educational institution governed by the Act respecting private education (1992, chapter 68) or an institution whose instructional program is the subject of an international agreement within the meaning of the Act respecting the Ministère des Affaires internationales (R.S.Q., chapter M-21.1) which provides all or part of the educational services provided for by this Act.

In addition, the school board may exempt one of its students, at the request of his parents, from compulsory school attendance for one or

more periods totalling not more than six weeks in any school year, to allow him to carry out urgent work.

36. The school is an educational institution whose object is to provide education to students other than those enrolled in adult education.

A further object of the school is to contribute to the social and cultural development of the community.

The school shall carry out its mission in accordance with the educational project and other provisions applicable to the school.

37. The educational project of the school shall be defined, implemented and periodically evaluated in collaboration with the students, the parents, the teachers and other school staff and the school board.

The educational project shall contain the specific aims and objectives of the school as determined by the orientation committee, and the measures adopted by the principal to ensure the implementation and evaluation of the project.

The aims, objectives and measures so determined shall ensure the carrying out, enrichment and adaptation of the provisions governing the school, according to the needs of the students and the priorities of the school.

47. The principal, with the assistance of the parents of a handicapped student or of a student with a social maladjustment or a learning disability, of the staff providing services to the student, and of the student himself, unless he is unable to give such assistance, shall establish an individualized education plan adapted to the needs of the student. The plan shall comply with the norms prescribed by by-law of the school board.

The principal shall see to the implementation and periodical evaluation of the plan.

55. An orientation committee is hereby established in each school, composed of the following persons:

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

(1) parents of students attending the school, who are not members of the school staff, appointed by the school committee;

(2) two or more of the teachers at the school elected by their peers;

(3) a person, other than a teacher, who provides student services or special educational services to the students of the school, elected by his peers;

(4) a member of the support staff assigned to the school, elected by his peers;

(5) in the case of a school providing education to students at the second cycle of secondary level, two students in that cycle elected by students enrolled at the secondary level;

(6) where the orientation committee so decides, one representative of the community, elected by the committee.

83. A school committee composed of not fewer than 5 nor more than 25 parents of students enrolled in the school, elected by their peers, shall be established in each school.

185. Every school board shall establish an advisory committee on services for handicapped students and students with social maladjustments or learning disabilities.

The committee shall be composed of

(1) parents of the students concerned, designated by the parents' committee;

(2) representatives of the teachers, of the members of the non-teaching professional staff and of the members of the support staff, designated by the associations which represent them in their dealings with the school board and elected from among the persons who provide services to the students concerned;

(3) representatives of bodies which provide

services to handicapped students or to students with social maladjustments or learning disabilities, designated by the council of commissioners after consulting with those bodies;

(4) a school principal designated by the director general.

The director general or his representative shall take part in the sittings of the committee but he is not entitled to vote.

187. The functions of the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities are:

(1) to advise the school board on norms for the organization of educational services to handicapped students and students with social maladjustments or learning disabilities;

(2) to advise the school board on the allocation of financial resources to the services intended for those students.

The committee may also advise the school board on the implementation of an individualized education plan for a handicapped student or a student with social maladjustments or learning disabilities.

189. A parents' committee shall be established in each school board, composed of the following persons:

(1) one representative of each school committee;

(2) in the case of a confessional or dissentient school board described in section 146, the commissioner representing the parents of the minority of students contemplated in that section for each of the elementary and secondary levels of instruction, where such is the case.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

204. For the purposes of this division [functions and powers of a school board] relating to the educational services referred to in section 1, the persons who reside in the territory of a school board or who are committed or placed under custody therein pursuant to the Youth Protection Act (R.S.Q., chapter P-34.1), the Act respecting health services and social services and amending various legislation (1991, chapter 42) or the Young Offenders Act (R.S.C. 1985, chapter Y-1) come under the jurisdiction of the school board.

213. A school board may enter into an agreement, for the provision of developmental and cognitive learning services or instructional services, with another school board or an educational institution, governed by the Act respecting private education, or school body in Canada which provides educational services equivalent to those contemplated by this Act.

A school board may enter into an agreement with another school board, or any body or person, for the provision of certain educational services to handicapped students or to students with social maladjustments or learning disabilities, for the provision of certain adult education services or for school purposes other than the provision of developmental and cognitive learning services or instructional services.

Before entering into such an agreement, the school board shall consult every student of full age and the parents of every student likely to be concerned by such an agreement.

214. A school board may, according to law, enter into an agreement with a foreign government or one of its departments, an international organization, or an agency of such government or organization.

In addition, with the authorization of the Government and subject to the conditions determined thereby, a school board may enter into an agreement with a department or agency of

the Gouvernement du Québec, of the Government of Canada or of the government of any other province of Canada.

However, it cannot enter into an agreement concerning the provision of educational services to which students who come under the jurisdiction of the school board are entitled under the basic school regulation except where the Minister judges that the services offered are equivalent to those provided for by such regulation.

222. Every school board shall see to the implementation of the basic school regulation established by the Government in accordance with the terms and conditions prescribed by the Minister under section 459 and of the programs of studies established by the Minister under section 461.

It shall enrich or adapt the objectives and optional contents of the programs of studies according to the needs of the students who receive such services.

A school may, however, after consultation with the parents and subject to the rules governing certification of studies prescribed in the basic school regulation and to the by-laws of the Catholic committee or Protestant committee, exempt from a subject prescribed in the basic school regulation, a student who needs support in the programs relating to the language of instruction, a second language or mathematics; the student cannot be exempted, however, from any of these programs.

In addition, a school board may, with the authorization of the Minister and on the conditions he determines, replace a program of studies established by the Minister by a local program of studies where a student is or a category of students are unable to take advantage of the programs of studies established by the Minister. Every local program of studies must be submitted to the Minister for approval.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

223. A school board may, in addition to the programs of studies established by the Minister, develop and offer local programs of studies in elective subjects whether or not established by the Minister, to meet any special needs of the students. It may grant to such programs, with the authorization of the Minister, a number of credits greater than that provided for in the basic school regulation.

...

In addition, a school board may, subject to the provisions of the basic school regulation and unless the Minister decides otherwise, develop and offer a program of studies in a subject it determines leading to an occupation or a profession and for which it may deliver an attestation of qualification.

224. Every school board shall establish a program for each student service and special educational service contemplated in the basic school regulation except in matters coming under the jurisdiction of a minister other than the Minister of Education.

It may enter into an agreement with any person or body with regard to the contents of the programs in those matters which do not come under the jurisdiction of the Minister of Education and on the mode of administration of the programs.

The programs must be in conformity with the basic school regulation.

233. Every school board shall establish, by by-law, rules governing the placement of students and their promotion from one grade to a higher one or from elementary school to secondary school, subject to the rules prescribed in the basic school regulation.

The rules governing promotion from elementary school to secondary school shall be established following consultation with the regional school board, where applicable.

234. Every school board shall, subject to section 222 [implementation of Basic School Regulations], adapt the educational services

provided to handicapped students and students with social maladjustments or learning disabilities according to their needs.

235. Every school board shall adopt, by by-law, after consultation with the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities, standards for the organization of educational services for such student [sic] with a view to facilitating their learning and social integration.

Matters prescribed in the by-law shall include:

(1) procedures for evaluating handicapped students and students with social maladjustments or learning disabilities;

(2) methods for integrating these students into regular classes or groups and into regular school activities as well as the support services required for their integration and, if need be, the weighting required to determine the maximum number of students per class or group;

(3) terms and conditions for grouping those students in specialized schools, classes or groups;

(4) methods for preparing and evaluating the individualized education plans intended for such students.

236. Every school board shall determine the educational services to be provided by each of its schools.

239. Every school board shall establish, each year, criteria for the enrollment of students in the schools, taking into account the capacity of each school and the educational services provided.

The criteria shall be adopted and put into force at least 15 days before the beginning of the registration of students; a copy thereof shall be transmitted within the same time to every orientation committee and to the parents' committee.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

Subject to its enrollment criteria, every school board shall take into account the choice of the students' parents or of the student, if of full age, upon registration.

240. A school board may assign an immovable for the purposes of a specific project it determines.

In order to facilitate the grouping of students whose parents are in favour of the project, the school board may establish the choice of the project as one of the enrollment criteria.

241.1 [In force beginning with 1993-94 school year] For humanitarian reasons or to avoid a serious prejudice to a child who has not attained the age of admission, the school board may, following a request giving reasons therefor made by the parents, in cases determined by regulation of the Minister,

(1) admit the child to preschool education for the school year in which he attains 5 years of age, or admit him to elementary school education for the school year in which he attains 6 years of age;

(2) admit to elementary school education a child admitted to preschool education who has attained 5 years of age.

In the event of refusal by the school board, the Minister may, at the request of the parents and if he considers it expedient on the grounds mentioned in the first paragraph, order the school board to admit the child, in the cases and subject to the conditions prescribed in the first paragraph.

242. A school board may, at the request of the principal and for just and sufficient cause, and after giving the student and his parents an opportunity to be heard, enrol him in another school or expel him from its schools; in the latter case, it shall inform the director of youth protection.

291. A school may, with the authorization of the Minister of Transport, provide transportation for all or part of its students.

....

292. Student transportation provided by a school board before the beginning of classes and after the end of classes each day is free of charge. Where the transportation is provided under a contract with a public transit authority or with the holder of a bus transport permit, within the meaning of government regulation, the school board may claim from a student that portion of the cost of the transportation pass which corresponds to service in addition to services before the beginning of classes and after the end of classes each day.

A school board that provides transportation at noon to allow students to have their meal at home may claim the cost thereof from the students who elect to use that service.

Whether or not a school board provides transportation at noon to allow students to have their meal at home, it is required to ensure, on such financial conditions as it may determine, supervision of the students who stay at school.

450. The Government may, by regulation, provide for the organization of services other than educational services to handicapped students and students with social maladjustments or learning disabilities.

457.1 The Minister may determine by regulation:

(1) the cases in which a school board may exercise the powers provided for in section 241.1 in respect of the admission of a child who has not attained the age of admission;

(2) the information which must be included in a request made under sections 241.1 to 241.3 as well as the documents which must be attached to a request;

(3) the evaluations, consultations, opinions or recommendations required for the purposes of sections 241.1 to 241.3.

QUÉBEC LEGISLATIVE ACTION - continued

Education Act (QC-2) (cont'd)

726. The provisions of this Act which grant rights and privileges to a religious affiliation shall apply despite sections 3 and 10 of the Charter of human rights and freedoms (R.S.Q., chapter C-12).

727. The provisions of this Act which grant rights and privileges to a religious affiliation shall operate notwithstanding the provisions of paragraph a of section 2 of the Constitution Act, 1982 (Schedule B to the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom), and section 15 of that Act.

Basic School Regulation for Preschool and Elementary School Education [Elementary Regulation] (QC-2.1)

1. Educational services include developmental and cognitive learning services, instructional services, student services and special services.

The purpose of those services is to promote the students' overall development and integration into society.

2. Developmental and cognitive learning services are designed to enable students in preschool education to integrate gradually into society beyond their family and immediate neighbourhood.

3. Instructional services at the elementary level are designed to provide students with the basic learning necessary for their overall development and integration into society.

4. Student services are designed to promote the students' continuous progress at school:

(1) by providing support for developmental and cognitive learning services, for instructional services and for special services;

(2) by contributing to the development of the students' autonomy, sense of responsibility,

feeling of belonging to a group and to the school, initiative and creativity;

(3) by helping them to overcome any difficulties that they may experience;

(4) by ensuring their emotional and physical well-being.

5. Student services include:

(6) guidance services;

(7) psychological services;

(8) psychoeducational and special education services;

(9) speech therapy services;

(10) health services and social services in the school.

16. Special services are designed to help students benefit fully from the other educational services:

(1) by promoting the acquisition of the knowledge and skills necessary for integration into educational activities;

(2) by providing support for learning in the language of instruction, in the second language and in Mathematics;

(3) by adapting instruction or the organizational framework for instructional services.

17. Special services include:

(1) assistance services for integration into school and society and for the learning of French for students whose mother tongue is not French;

(2) instructional services in the home or in a hospital;

(3) remedial teaching services.

QUÉBEC LEGISLATIVE ACTION - continued

Elementary Regulation
(QC-2.1) (cont'd)

**Organizational Framework for
Preschool Educational Services**

32. Students who reach the age of five before 1 October of the current school year and for whom their parents have submitted an application for admission and for enrollment shall be admitted to preschool education.

They may be admitted only to preschool education if they do not reach the age of six before 1 October of the school year.

33. Handicapped students and students living in economically disadvantaged areas, as defined in Schedule I, who reach the age of four before 1 October of the current school year may be admitted to developmental cognitive learning services, to student services and to special services.

The Minister shall establish a list of the school boards authorized to admit these students and shall determine the conditions for their admission.

39. The school board must ensure that the parents receive, at least five times per school year, a written evaluation report on their child's progress and attendance. At least four of those reports shall be school reports.

Not less than once a month, information shall be provided:

- (1) to the parents of students whose performance indicates that they will not be prepared to go on to the first year of elementary school at the beginning of the following school year;
- (2) to the parents of students whose behaviour does not comply with the school's rules of conduct;
- (3) to the parents of students for whom a special education program [IEP] providing for that information was prepared.

That information is intended to foster collaboration between the parents and the school in correcting learning difficulties and behavioral problems, as soon as they appear, in the implementation of the special education program [IEP].

The evaluation reports prepared by the teacher shall provide an assessment of the student's development with respect to the objectives of the developmental and cognitive learning program.

**Organizational Framework for
Elementary Educational Services**

41. A student who reaches the age of six before 1 October of the current school year must be admitted to elementary school.

47. The student's parents must receive, at the beginning of the school year, the rules and regulations of the school and the calendar of its activities, a summary of the student's programs of studies, a list of his textbooks and the name of all his teachers.

51. The school board must ensure that the parents of each student receive, at least five times a year, a written evaluation report on the student's academic performance, behaviour and attendance. At least four of those reports shall be school reports.

Not less than once a month, information shall be provided:

- (1) to the parents of students whose performance puts them in danger of failing the current school year;
- (2) to the parents of students whose behaviour does not comply with the school's rules of conduct;
- (3) to the parents of students for whom a special education program [IEP] providing for that information was prepared.

QUÉBEC LEGISLATIVE ACTION - continued

Elementary Regulation (QC-2.1) (cont'd)

That information is intended to foster collaboration between the parents and the school in correcting learning difficulties and behavioral problems, as soon as they appear, in the implementation of the special education program [IEP].

Miscellaneous

55. A school board may, to the extent and under the conditions determined by the Minister, exempt from the application of section 34 [prescribed hours for preschool educational activities] handicapped students four years of age and students four years of age living in economically disadvantaged areas, defined in Schedule I, who are admitted to developmental and cognitive learning services.

A school board may likewise exempt from the application of section 44 [compulsory elementary subject grid] students with profound mental handicaps, students with severe developmental disorders, as defined in Schedule II, and students receiving special services described in paragraph 1 or 2 of section 18 [welcoming classes for immigrants & francization classes].

56. The Minister may authorize, upon a request giving reasons therefor, that an exception be made to a provision of these Basic school regulations (régime pédagogique) for humanitarian reasons or to avoid a serious prejudice to a student.

He may also authorize that an exception be made to a provision of these Basic school regulations (régime pédagogique) in order to promote the carrying out of a special pedagogical project applicable to a group of students in the subjects provided for herein.

Schedule I

(1) Handicapped students are students who show disabilities due to one or more physical or mental deficiencies that cannot be compensated

for with appropriate equipment or devices and that are liable to interfere with their schooling.

....

Schedule II

(1) Students with profound mental handicaps are students whose cognitive functions, evaluated by means of standardized examinations administered by qualified personnel, show a level of general functioning that is clearly below average, as well as deficiencies in adaptive behaviour appearing from the beginning of the growth period.

Such mental handicaps have the following characteristics:

(1) major limitations in the area of cognitive development, rendering the use of the regular programs of studies practically impossible and requiring individual programs;

(2) perceptual motor and communication skills that are clearly limited, requiring individually adapted methods of evaluation and stimulation;

(3) very low functional abilities in the area of personal and social autonomy, resulting in a constant need for support, guidance and supervision in daily activities.

(2) Students with severe developmental disorders are students whose disorders prevent them from carrying out normal activities for their age and milieu without continuous support and whose overall functioning, evaluated by a multidisciplinary team consisting of specialized personnel using systematic observation techniques and standardized examinations, leads to one of the following diagnoses:

(1) alalia or congenital aphasia: congenital cerebral dysfunction in the auditory circuit, resulting in major limitations, particularly in the areas of discrimination of sounds (related to the length of the sounds rather than to their intensity or tone), temporal orientation and language and speech development;

QUÉBEC LEGISLATIVE ACTION - continued

Elementary Regulation**(QC-2.1) (cont'd)**

(2) autism: a set of dysfunctions appearing at an early age and characterized in particular by difficulties in assimilating auditory and visual information and in symbolization, resulting in major deficiencies in overall development on the cognitive and sensori-motor levels and in the areas of socialization, functional autonomy, language and communication;

(3) psychopathological disorders: psychic deficiencies characterized by distortions in several areas of development, particularly in the area of cognitive development.

***Basic School Regulation for
Secondary School Education
[Secondary Regulation] (QC-2.2)***

1. Educational services include instructional services, student services and special services.

The purpose of those services is to promote the students' overall development and integration into society.

2. Instructional services are designed to continue the students' overall development and to facilitate their personal and social orientation. They are also designed:

(1) in general education, to develop the students' abilities in disciplines that will prepare them for postsecondary studies;

(2) in vocational education, to develop the students' abilities so as to prepare them for a vocational activity.

3. Student services are designed to promote the student's continuous progress at school:

(1) by providing support for instructional services and for special services;

(2) by contributing to the development of the students' autonomy, sense of responsibility,

feeling of belonging to the school, initiative and creativity;

(3) by helping them to overcome any difficulties that they may experience;

(4) by ensuring their emotional and physical well-being.

4. Student services include:

(6) academic and career guidance services;

(7) psychological services;

(8) psychoeducational and special education services;

(9) speech therapy services;

(10) health services and social services in the school.

15. Special services are designed to help students benefit fully from the other educational services:

(1) by promoting the acquisition of the knowledge and skills necessary for integration into educational activities;

(2) by providing support for learning in the language of instruction, in the second language and in Mathematics;

(3) by adapting instruction or the organizational framework for instructional services.

16. Special services include:

(1) assistance services for integration into school and society and for the learning of French for students whose mother tongue is not French;

(2) instructional services in the home or in a hospital;

(3) remedial teaching services.

QUÉBEC LEGISLATIVE ACTION - continued

Secondary Regulation
(QC-2.2) (cont'd)

43. The school board must ensure that the parents of each student or the student himself, if he is of full age, receive, at least five times per school year, a written evaluation report on the student's academic performance, behaviour and attendance. At least four of those reports shall be school reports.

Not less than once a month, information shall be provided:

- (1) to the parents of students whose performance puts them in danger of failing the current school year;
- (2) to the parents of students whose behaviour does not comply with the school's rules of conduct;
- (3) to the parents of students for whom a special education program [IEP] providing for that information was prepared.

The second paragraph does not apply to students of full age.

That information is intended to foster collaboration between the parents and the school in correcting learning difficulties and behavioral problems as soon as they appear in the implementation of the special education program [IEP].

77. A school board may, to the extent and under the conditions determined by the Minister, exempt from the application of section 35 [subject-time allocation]:

- (1) students with profound mental handicaps, as defined in section 1 of the Schedule;
- (2) students with moderate to severe mental handicaps, as defined in section 2 of the Schedule;
- (3) students with severe developmental disorders, as defined in section 3 of the Schedule;

(4) students described in section 4 of the Schedule;

(5) students receiving special services described in paragraph 1 or 2 of section 17.

78. The Minister may authorize, upon a request giving reasons therefor, that an exception be made to a provision of these Basic school regulations (régime pédagogique) for humanitarian reasons or to avoid a serious prejudice to a student.

He may also authorize that an exemption be made to a provision of these Basic school regulations (régime pédagogique) in order to promote the carrying out of a special pedagogical project applicable to a group of students in the subjects provided for herein.

79. A person may be admitted to the educational services of a school board if:

(1) he is older than the maximum age provided for in the first paragraph of section 1 of the Act, and

(2) on 30 September of the preceding school year he was enrolled either:

(a) in the same school board; or

(b) in another school board; or

(c) in a private educational institution within the meaning of the Act respecting private education (R.S.Q. c. E-9) offering instruction at the elementary or secondary levels; or

(d) in an institution located outside Québec and offering instruction at the elementary and secondary levels;

(3) or, on 20 September of the preceding school year he was enrolled;

(a) in a college within the meaning of the General and Vocational Colleges Act (R.S.Q., c. C-29); or

QUÉBEC LEGISLATIVE ACTION - continued

Secondary Regulation (QC-2.2) (cont'd)

(b) in a private educational institution within the meaning of the Act respecting private education (R.S.Q. c. E-9) offering instruction at the college level.

The Minister may determine the eligibility requirements.

Schedule

(1) Students with profound mental handicaps are students whose cognitive functions, evaluated by means of standardized examinations administered by qualified personnel, show a level of general functioning that is clearly below average, as well as deficiencies in adaptive behaviour appearing from the beginning of the growth period.

Such mental handicaps have the following characteristics:

(1) major limitations in the area of cognitive development, rendering the use of the regular programs of studies practically impossible and requiring individual programs;

(2) perceptual-motor and communication skills that are clearly limited, requiring individually adapted methods of evaluation and stimulation;

(3) very low functional abilities in the area of personal and social autonomy, resulting in a constant need for support, guidance and supervision in daily activities.

(2) Students with moderate to severe mental handicaps are students whose cognitive functions, evaluated by means of standardized examinations administered by qualified personnel, show a level of general functioning that is clearly below average, as well as deficiencies in adaptive behaviour appearing from the beginning of the growth period.

Such mental handicaps have the following

characteristics:

(1) limitations in the area of cognitive development restricting the ability to learn with respect to certain objectives of the ordinary programs of studies and requiring the assistance of adaptive pedagogy or special programs;

(2) limited functional abilities in the area of personal and social autonomy, resulting in a need for assistance in new activities and for help in achieving basic autonomy;

(3) more or less pronounced difficulties in sensori-motor and communication development, making specific intervention necessary in those areas.

(3) Students with severe developmental disorders are students whose disorders prevent them from carrying out normal activities for their age and milieu without continuous support and whose overall functioning, evaluated by a multidisciplinary team consisting of specialized personnel using systematic observation techniques and standardized examinations, leads to one of the following diagnoses:

(1) alalia or congenital aphasia: congenital cerebral dysfunction in the auditory circuit, resulting in major limitations, particularly in the areas of discrimination of sounds (related to the length of the sounds rather than to their intensity or tone), temporal orientation and language and speech development;

(2) autism: a set of dysfunctions appearing at an early age and characterized in particular by difficulties in assimilating auditory and visual information and in symbolization, resulting in major deficiencies in overall development on the cognitive and sensorimotor levels and in the areas of socialization, functional autonomy, language and communication;

(3) psychopathological disorders: psychic deficiencies characterized by distortions in several areas of development, particularly in the area of cognitive development.

QUÉBEC LEGISLATIVE ACTION - continued

Secondary Regulation (QC-2.2) (cont'd)

(4) A student who may follow an individualized path for learning with a view to life-skills and work-skills education is a student who presents the following characteristics:

(1) he is at least 16 years of age on 30 September of the school year in which he begins that path;

(2) he has fallen so far behind in his schooling as to be prevented from integrating into a regular path leading to the Secondary School Diploma or the Secondary School Vocational Diploma.

Such a student is evaluated to be two or more years behind in the language of instruction and in Mathematics. The evaluation is based on a comparison with the majority of the students of the same age in the school board.

General Education in the Youth Sector: 1992-93 (QC-2.3)

[explanatory notes omitted]

2.3 Special Education Programs Established by the Minister

[*Note.* This section contains no regulatory provisions, only explanatory notes.]

3.3 Individualized Paths for Learning

IPL's may be offered in Cycle I as well as Cycle II of secondary school.

3.3.1 Cycle I of Secondary School

The organization of temporary or continuous IPL's is mandatory in Cycle I of secondary school.

3.3.2 Cycle II of Secondary School

The organization of individualized paths for learning in work skills and life skills education is mandatory in Cycle II of secondary school.

6. Miscellaneous Provisions

6.1 Preschool Education

6.1.1 Four-year-old Students with Handicaps and Four-year-old Students Living in Economically Disadvantaged Areas

Any four-year old student with a handicap and any four-year old student living in an economically disadvantaged region may be exempted from the provisions of sections 29 and 34 of the basic school regulations by the school board, on the following conditions:

(1) In the organization of home kindergartens and parent co-operative kindergartens, the school board must ensure that:

. a minimum of 72 half-days, at a rate of two (2) half-days per week, are devoted to educational services;

QUÉBEC LEGISLATIVE ACTION - continued

**General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)**

. a minimum of four (4) hours and forty two (42) minutes per week are spent on preschool developmental and cognitive learning activities.

(2) In the organizing of kindergarten classes with effective parenting sessions, the school board must ensure that:

. a minimum of 144 half-days, at a rate of four (4) half-days per week, are devoted to educational services;

. a minimum of nine (9) hours and twenty-five (25) minutes per week are spent on preschool developmental and cognitive learning activities, and two (2) hours and twenty (20) minutes are used for the effective parenting session.

6.2 Elementary Education

6.2.1 Students with Moderate to Severe Mental Handicaps

For students with moderate to severe mental handicaps, the school board shall implement the subject-time allocation prescribed in the *Basic school regulation for preschool and elementary school education*. The subject-time allocation may nevertheless be implemented gradually, as the schools become equipped with the pedagogical resources enabling the programs established by the Minister to be specially adapted to the students.

6.2.2 Students with Profound Mental Handicaps and Students with Severe Developmental Disorders

Students with profound mental handicaps and students with severe developmental disorders are exempted from the provisions of section 44 of the basic school regulations.

To help these students acquire greater autonomy in the various environments in which they live, the school board offers them programs designed to help them acquire practical skills and

appropriate attitudes in the following areas:

- . cognitive skills
- . communication skills
- . motor skills
- . social skills
- . emotional development
- . life skills

This exemption does not apply to students with congenital aphasia, who are governed by the subject-time allocation.

6.3 Secondary Education

6.3.1 Students with Moderate to Severe Mental Handicaps

Students with moderate to severe mental handicaps are exempted from the provisions of section 35 respecting the subject-time allocation.

The school board shall implement the subject-time allocation at the elementary level until the ministère de l'Éducation specifies its orientation in that respect.

6.3.2 Students with Profound Mental Handicaps and Students with Severe Developmental Disorders

Students with profound mental handicaps and students with severe developmental disorders are exempted from the provisions of section 35 respecting the subject-time allocation.

To help these students acquire greater autonomy in the various environments in which they live, the school board offers them programs designed to help them acquire practical skills and appropriate attitudes in the following areas:

- . cognitive skills
- . communication skills
- . motor skills
- . social skills
- . emotional development
- . life skills

This exemption does not apply to students with congenital aphasia, who are governed by the subject-time allocation.

QUÉBEC LEGISLATIVE ACTION - continued

***General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)***

6.3.3 Students in Individualized Paths for Learning (IPLs) in Work Skills and Life Skills Education

6.3.3.1 Organization of IPLs in Work Skills and Life Skills Education

Students who are 16 years or older on 30 September of the school year in which they begin this path may be admitted to individualized paths for learning in work skills and life skills education.

6.3.3.2 Organization of Teaching

The school board organizes its IPLs in work skills and life skills education according to the following model:

[Model: Two Year Path omitted]

6.3.3.3 Recognition of Learning

[Note. This section contains no regulatory provisions, only explanatory notes.]

6.3.4 Admission of Students or a Category of Students Who Are Older than the Maximum Age Provided For in Section 1 of the *Education Act*

Any person referred to in section 79 of the *Basic school regulation for secondary school education* may, as of the first day in the school calendar year following the year in which he or she attains the age of 18 years or 21 years in the case of a persons with a handicap as defined in the *Act to secure the handicapped in the exercise of their rights* (R.S.Q. 1979, c. E-20.1), be eligible for secondary school educational services for a maximum of one school year, provided that he or she is able, during that period, to satisfy the requirements stipulated in the *Basic school regulation for secondary school education* for obtaining a diploma, certificate or attestation issued by the Minister or an attestation of skills issued by a school board.

Appendix 1

Definitions: Students with Handicaps or Learning or Adjustment Difficulties

Although the specific needs and characteristics of students with difficulties or handicaps call for individualized planning of the services to offer, the fact that all students with the same disability or difficulty share common characteristics has permitted the Ministère to define some major categories of the purposes of planning the general educational services offered by school boards. These categories are also used for financing school boards. The definitions selected by the Ministère are the following:

A. Students with Difficulties

A.1 Students with Learning Difficulties

This category includes students with learning difficulties that are apparently quite different. These students, however, all share the following characteristics:

They do not exhibit permanent and significant mental, sensory or physical handicaps.

They experience difficulties in learning at school or in preschool.

Students who require special education services because of learning difficulties are identified as belonging to one of the following sub-categories:

A.1.1 Mild Learning Difficulties (Minor Academic Delay)

A student is deemed to have mild learning difficulties when the summative evaluation of the language of instruction or mathematics program shows that he or she is significantly behind in terms of what is expected of him or her, given his or her abilities and the frame of reference constituted by the majority of students of the same age in the school board.

An academic delay exceeding one year in either of these subjects may be deemed significant at the elementary level. An academic delay exceeding one year in both subjects may be deemed significant at the secondary level.

QUÉBEC LEGISLATIVE ACTION - continued

***General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)***

A.1.2 Serious Learning Difficulties

A student is deemed to have serious learning difficulties:

when the summative evaluation of the language of instruction or mathematics program shows that he or she is two or more years behind in either of these subjects in terms of what is expected of him or her, given his or her abilities and the frame of reference constituted by the majority of students of the same age in the school board (severe academic delay);

or when the assessment carried out by qualified personnel primarily through long-term observation shows that he or she has specific learning difficulties manifested by a developmental delay (especially in the area of communication skills) that is severe enough to cause him or her to fall behind in school without the help of appropriate support measures.

A.2 Students with Behavioural Difficulties

A student is deemed to have behavioural difficulties when a psychosocial assessment, carried out by qualified personnel in conjunction with other concerned individuals relying on observation and systematic analysis techniques, shows that he or she has an inability to adapt manifested by significant difficulties in interacting with one or more elements that make up his or her social, family or school environment.

These difficulties may involve:

overactive behaviour in relation to environmental stimuli (e.g., unjustified verbal abuse, acts of aggression, intimidation, or destructiveness; a constant refusal to accept needed help and support);

underactive behaviour in relation to environmental stimuli (e.g., excessive fear

shown towards people and new situations, abnormal passivity, dependence, withdrawal).

Difficulty in interacting with the environment is deemed significant, that is, as requiring special education services, if it hinders the development of the child in question or that of others despite the fact that the usual support measures have been provided.

A student with behavioural difficulties often exhibits learning difficulties because he or she has a limited ability to persevere in the task at hand or a low level of concentration.

A.2.1. Students with Severe Behavioural Difficulties Linked to Psychosocial Disturbances

Students are deemed to have serious behavioural difficulties linked to psychosocial disturbances when a general functional assessment carried out by a multidisciplinary team of specialized personnel (including a mental health specialist) relying on systematic observation techniques and standardized tests, leads to the following observation: aggressive or destructive behaviour that is by nature anti-social, that has manifested itself over several years in the student's history and that requires systematic supervision.

The students concerned must be the beneficiaries of the services related to the implementation of the Youth Protection Act or the Young Offenders Act.

As a rule, serious behavioural difficulties linked to psychosocial disturbances are recognized only at the secondary level.

A.3 Students with Mild Mental Handicaps

A student is deemed to have a mild mental handicap when an assessment of his or her cognitive functioning, carried out by means of standardized tests administered by qualified personnel, shows that his or her general cognitive functioning is significantly lower than average,¹ a condition which is accompanied by impaired adaptive behaviour gradually appearing during the developmental period.

QUÉBEC LEGISLATIVE ACTION - continued

***General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)***

Limitations in cognitive development are manifested by a constant need to rely on concrete thinking and by the fact that the student is falling increasingly behind in the learning that requires symbolic and abstract thinking skills.

¹ A developmental quotient of between 50-55 and 70-75 is usually considered to denote a mild mental handicap. The results of standard cognitive functioning tests can be translated into a developmental quotient by means of the following formula:

$$\text{Developmental quotient} = \frac{\text{developmental age}}{\text{chronological age}} \times 100$$

N.B.: The identification of a mild mental handicap should be exceptionally rare in Elementary, Cycle One.

B. Students with Handicaps**B.1 Students with Mental Handicaps**

A student is deemed to have a mental handicap when the assessment of his or her cognitive functioning, carried out by means of standardized tests administered by qualified personnel, shows that his or her general cognitive functioning is much lower than average,¹ a condition which is accompanied by impaired adaptive behaviour appearing during his or her early developmental period.

¹ A developmental quotient of between 20-25 and 50-55 is usually considered to denote a moderate to severe mental handicap; a developmental quotient lower than 20-25 is usually interpreted as a profound mental handicap. The results of standard cognitive functioning tests can be translated into a developmental quotient by means of the following formula:

$$\text{Developmental quotient} = \frac{\text{developmental age}}{\text{chronological age}} \times 100$$

B.1.1 Moderate to Severe Mental Handicaps

A mental handicap is qualified as "moderate to severe" when a functional assessment shows that the student has the following characteristics:

limitations in cognitive development hindering the student's learning ability regarding certain objectives in regular programs and requiring the adaptation of teaching or a specialized program;

functional limitations in the area of personal and social autonomy leading to the need for assistance when dealing with new activities or the need for training in basic self-care skills;

relatively pronounced difficulties in sensory-motor and communication development, possibly leading to the need for special assistance in these areas.

B.1.2 Profound Mental Handicaps

A mental handicap is qualified as "profound" when a functional assessment shows that the student has the following characteristics:

serious limitations in cognitive development, making the use of regular programs virtually impossible and requiring an individualized program;

manifestly limited perceptual-motor and communication skills, leading to the need for individualized evaluation;

very low functional abilities in terms of personal and social autonomy, leading to the need for constant support and supervision to carry out daily activities.

B.2 Students with Physical Handicaps**B.2.1 Motor Impairments**

A student is deemed to have a motor impairment when a neuromotor examination carried out by qualified personnel shows that he or she has one or more nervous, muscular or osteoarticular disorders.

QUÉBEC LEGISLATIVE ACTION - continued

***General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)***

B.2.1.1 Mild Motor Impairments

A student is deemed "handicapped by a mild motor impairment" when a functional assessment shows that, even with technological aids, he or she has one or more of the following characteristics, making it necessary to provide special training and periodic support:

difficulty in learning to communicate;

difficulty in carrying out fine motor activities;

difficulty in accomplishing daily activities (e.g., personal health and hygiene);

limitations in mobility hindering his or her ability to move about in his or her surroundings.

B.2.1.2 Severe Motor Impairments

A student is deemed "handicapped by a severe motor impairment" when a functional assessment shows that, even with technological aids, he or she has one or more of the following characteristics:

serious limitations in communication requiring the use of alternate means of communication;

serious functional limitations requiring special training and regular assistance in performing daily activities;
serious limitations in mobility (motility and locomotion) requiring specific assistance in motor development as well as a companion or highly specialized equipment or devices for getting around in his or her surroundings.

B.2.2 Organic Handicaps

A student is deemed to have an organic handicap when a medical and functional assessment shows that he or she has one or more afflictions affecting his or her vital systems (e.g. respiratory, circulatory, genito-urinary system),

leading to permanent organic disorders and having a serious impact on his or her ability to function in school.

An organic handicap is recognized as having a serious impact on a student's ability to function in school when his or her condition requires that special teaching methods and special care be integrated into the school program.

B.3 Students with Sensory Handicaps

B.3.1 Visual Impairments

A student is deemed visually impaired when a standard eye test carried out by a qualified person determines that each eye has a visual acuity of 6/21 or less, or a visual field of less than 60° in the 90° and 180° meridians, with correction by means of ophthalmic lenses other than special optical devices and supplements of more than +4 dioptries.

This student is deemed visually impaired when a functional examination shows that, even with technological aids, he or she has one or more of the following characteristics:

limitations in communication resulting in:

the need for specialized material (high-quality printed matter, sometimes in the form of large-print text for the functionally sighted; material produced in braille; recordings for the functionally blind);

the need for training and periodic supervision when using special mechanical or electronic devices or specialized instructional material;

the need to learn and use alternate codes to read and write (for the functionally blind);

the need to adapt teaching methods to help the student learn certain concepts;

limitations in performing daily activities leading to the need for special training, the adaptation of teaching and periodic assistance;

QUÉBEC LEGISLATIVE ACTION - continued

***General Education in the Youth
Sector: 1992-93 (QC-2.3) (cont'd)***

limitations in mobility requiring special training, the adaptation of teaching, and periodic assistance in moving about in his or her surroundings.

B.3.2 Hearing Impairments

A student is deemed hearing impaired when a standard audiological test administered by qualified personnel shows that his or her average hearing threshold is greater than 25 decibels (dB) for pure tone stimuli of 500, 1000 and 2000 hertz (Hz) in the better ear.

The test must also take into account auditory discrimination and sound tolerance threshold.

This student is deemed handicapped by a hearing impairment when a functional assessment shows that, even with technological aids, he or she has one or more of the following characteristics:

limitations in learning and verbal communication resulting in:

the need for specialized techniques to learn verbal communication;

the need to learn and use alternate means of communication (e.g. lipreading, sign language);

the need for an interpreter;

limitations in cognitive development (problems in concept formation) and in oral language development resulting in the need for:

special teaching methods;

supplementary instruction to help overcome his or her learning deficits.

B.4 Students with Severe Developmental Disorders

A student is deemed to have a severe

developmental disorder when an assessment of his or her general functioning, administered by a multidisciplinary team of specialized personnel relying on systematic observation techniques and standardized tests, leads to one of the following diagnoses:

congenital aphasia: a congenital brain disorder in the auditory circuit resulting in serious limitations, particularly in the areas of auditory discrimination (linked to the length of sounds rather than to their intensity or tonality), time orientation, and language and speech development;

autism: a set of disorders appearing in early childhood and characterized primarily by a difficulty in assimilating auditory and visual information and in symbolic thinking, leading to major impairments in cognitive and sensory-motor development, in socialization, in functional autonomy, and in language and communication;

psychopathological disorders: emotional disorders causing disturbances in several areas of development, particularly in cognitive development.

The developmental disorders mentioned above are severe enough to hinder normal activities, depending on the student's age and environment, even with the help of constant supervision.

B.5 Students with Multiple Handicaps or Difficulties

This category comprises all students with more than one handicap or difficulty, excluding learning difficulties. In such cases, the administrative classification specifies the two major handicaps or difficulties.

QUÉBEC LEGISLATIVE ACTION - continued

Charter of the French Language (QC-3)

72. Instruction in the kindergarten classes and in the elementary and secondary schools shall be in French, except where this chapter allows otherwise.

This rule obtains in school bodies within the meaning of the Schedule and in private educational institutions accredited for purposes of subsidies under the Act respecting private education (1992, chapter 68) with respect to the educational services covered by an accreditation.

73. In derogation of section 72, the following children, at the request of their father and mother, may receive their instruction in English:

(a) a child whose father or mother received elementary instruction in English in Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec;

(b) a child whose father or mother is, on 26 August 1977, domiciled in Québec and received elementary instruction in English outside Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received outside Québec;

(c) a child who, in his last year of school in Québec before 26 August 1977, was lawfully receiving his instruction in English, in a public kindergarten class or in an elementary or secondary school;

(d) the younger brothers and sisters of a child described in paragraph c.

81. Children having serious learning disabilities must be exempted from the application of this chapter. The brothers and sisters of such children may also be exempted if they are not already attending school in Québec.

The Government, by regulation, may define the classes of children envisaged in the preceding paragraph and determine the procedure to be allowed in view of obtaining such an exemption.

Exemption for Children with Serious Learning Disabilities Regulation (QC-3.1)

1. Children having serious learning disabilities within the meaning of section 81 of the Charter of the French Language (R.S.Q. c. C-11) are those in the following classes:

(1) children having serious learning disabilities demonstrated by being 3 years or more behind in their school work, at the time when an application for exemption is submitted;

(2) children having serious learning disabilities demonstrated by being 1 year or more behind in written communication or in mathematics caused by a specific and persistent trouble notwithstanding specialized corrective treatment;

(3) children having serious learning disabilities including those in basic skills, caused by sensory or physical deficiency that is significant and persistent notwithstanding professional corrective treatment, by mental deficiency, or by serious social and emotional maladjustment.

The expression "specific trouble" means dyslexia, dyscalculia and marked dysorthography.

"Specialist teacher means a teacher holding either of the following qualifications:

(1) a specialist certificate or a certificate of specialization in teaching children with learning disabilities; or

(2) a teaching certificate and at least one year's experience in teaching children with learning disabilities.

"Professional" means a professional within the meaning of the Professional Code (R.S.Q. c. C-26) licenced to treat children's physical or sensory deficiencies.

"Basic skills" means language, perception and psychomotor abilities.

QUÉBEC LEGISLATIVE ACTION - continued

***Exemption for Children with
Serious Learning Disabilities
Regulation (QC-3.1) (cont'd)***

2. Disabilities caused by a change of cultural or linguistic surroundings are not considered to be serious learning disabilities within the meaning of section 81 of the Charter.

***Application of a Building
Code - 1985 (QC-4.1)***

1. In this Regulation, unless the context indicates otherwise,

"Code" means the National Building Code of Canada 1985....

7. For the purposes of this Regulation, the Code is amended as follows:

(1) the following is substituted for the definition of "Barrier-free access", in Subsection 1.3.2:

"Barrier-free access means a path of travel designed for use by persons with an incapacity resulting from a physical or sensory disability, including persons using wheelchairs, and incorporating ramps, elevators or other lifting devices where there is a difference in elevation between floor levels along the path of travel."

***Act to Secure the Handicapped
in the Exercise of
their Rights (QC-5)***

1. ...

(g) "handicapped person", or "the handicapped" in the plural, means a person limited in the performance of normal activities who is suffering, significantly and permanently, from a physical or mental deficiency, or who regularly uses a prosthesis or an orthopedic device or any other means of palliating his

handicap.

69. Every owner of an immoveable subject to the Public Buildings Safety Act (chapter S-3) or to the Act respecting occupational health and safety (chapter S-2.1) and not subject to the Building Code (Order in Council 3326, 29 September 1976) must present to the Minister of Housing and Consumer Protection a development programme for the purpose of providing the accessibility of his immoveable to handicapped persons.

The Minister of Housing and Consumer Protection may by regulation, determine the groups of immoveables that will be contemplated by this section each year and the standards of accessibility to which their owners must conform.

Civil Code (QC-6)

19. The human person is inviolable.

No one may cause harm to the person of another without his consent or without being authorized by law to do so.

19.1 No person may be made to undergo care of any nature, whether for examination, specimen taking, removal of tissue, treatment, or any other act, except with his consent.

Where the person concerned is unable to consent to or refuse care, a person authorized by law or by mandate shall replace him.

Interpretation Act (QC-7)

42. No statute shall affect the rights of the Crown, unless they are specially included.

QUÉBEC LEGISLATIVE ACTION - continued

***Act Respecting the Conseil supérieur
de l'éducation (QC-8)*****Preamble**

Whereas every child is entitled to the advantage of a system of education conducive to the full development of his personality;

Whereas parents have the right to choose the institutions which, according to their convictions, ensure the greatest respect for the rights of their children;

Whereas persons and groups are entitled to establish autonomous educational institutions and, subject to the requirements of the common welfare, to avail themselves of the administrative and financial means necessary for the pursuit of their ends; ...

***Act Respecting the Ministère
de l'Éducation (QC-9)***

Note. Excerpts not included; provisions of Preamble identical to those contained in QC-8.

***Act Respecting Access to Documents
Held by Public Bodies (QC-10)***

1. This Act applies to documents kept by a public body in the exercise of its duties, whether it keeps them itself or through the agency of a third party.

This Act applies whether the documents are recorded in writing or print, on sound tape or film, in computerized form, or otherwise.

3. The Government, the Conseil exécutif, the Conseil du Trésor, the government departments and agencies, municipal and school bodies and the health services and social services establishments are public bodies.

....

53. Nominative information is confidential, except in the following cases:

(1) where its disclosure is authorized by the person concerned by the information; in the case of a minor, the authorization may also be given by the person having parental authority.

(2) where it relates to information obtained in the performance of an adjudicative function by a public body performing quasi-judicial functions; the information remains confidential, however, if the body obtained it while holding a sitting *in camera* or if the information is contemplated by an order not to disclose, publish or distribute.

54. In any document, information concerning a natural person which allows the person to be identified is nominative information.

83. Every person has the right to be informed of the existence of nominative information concerning him in a personal information file.

Every person has the right to obtain any nominative information kept on him.

....

QUÉBEC LEGISLATIVE ACTION - continued

Youth Protection Act (QC-11)

1. In this act, unless the context indicates a different meaning, ...

(d) "body" means any body established under a law of Québec dealing, in particular, with the defence of the rights, the promotion of the interests and the improvement of the living conditions of children and any institution giving instruction at the elementary, secondary or college level; ...

8. A child is entitled to receive adequate health services, social services and educational services, on all scientific, human and social levels, continuously and according to his personal requirements, account being taken of the organization and resources of the establishments or bodies in the education field providing such services.

38. For purposes of this Act, the security or development of a child is considered to be in danger where

(b) his mental or affective development is threatened by the lack of appropriate care or by the isolation in which he is maintained or by serious and continuous emotional rejection by his parents;

(c) his physical health is threatened by the lack of appropriate care;

(h) he has serious behavioural disturbances and his parents fail to take the measures necessary to remedy the situation or the remedial measures taken by them fail....

38.1. The security or development of a child is considered to be in danger where

(b) he is of school age and does not attend school, or is frequently absent without reason;

(c) his parents do not carry out their obligations to provide him with care, maintenance and education or do not exercise stable supervision over him, while he has been entrusted to the care of an establishment or foster family for two years.

APPENDIX P

LEGISLATIVE ACTION: SASKATCHEWAN

Saskatchewan Human Rights Code (SA-1)

2. In this Act: ...

(d.1) "disability" means:

(i) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness, and, without limiting the generality of the foregoing, includes:

- (A) epilepsy;
- (B) any degree of paralysis;
- (C) amputation;
- (D) lack of physical coordination;
- (E) blindness or visual impediment;
- (F) deafness or hearing impediment;
- (G) muteness or speech impediment; or
- (H) physical reliance on a guide dog, wheelchair or other remedial appliance or device; or

(ii) any of:

- (A) a condition of mental retardation or impairment;
- (B) a learning disability or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language; or
- (C) a mental disorder;

(i.1) "mental disorder" means a disorder of thought, perception, feelings or behaviour that impairs a person's:

- (i) judgment;
- (ii) capacity to recognize reality;
- (iii) ability to associate with others; or
- (iv) ability to meet the ordinary demands of life;

12. (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

(a) deny to any person or class or persons the accommodation, services or facilities available to which the public is customarily admitted or which are offered to the public; or

(b) discriminate against any person or class or persons with respect to the accommodation, services or facilities to which the public is customarily admitted or which are offered to the public;

because of the race, creed, religion, colour, sex, marital status, disability, age, nationality, ancestry or place of origin of that person or class or persons or of any other person or class or persons.

(3) Subsection (1) does not apply to prevent the denial or refusal of any accommodation, services or facilities to a person on the basis of age, if the accommodation, services or facilities are not available to that person by virtue of any law or regulation in force in the province.

13. (1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of his or their race, creed, colour, sex, marital status, disability, nationality, ancestry or place of origin.

(2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or disability, where it enrolls persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrolls persons who are disabled.

SASKATCHEWAN LEGISLATIVE ACTION - continued

*Saskatchewan Human Rights
Code (SA-1) (cont'd)*

27.

(4) Where, at any time, including during the course of any inquiry pursuant to this Act, the commission, the commission or any person designated by the commission, is satisfied that a complaint is without merit, the commission or its designate may dismiss the complaint.

28. (1) Where a complaint is filed with, or initiated by, the commission, or any person designated by the commission, shall, subject to subsection 27(4), inquire into the complaint and endeavour to effect a settlement of the matter.

....

29. (1) Where the commission, or a person conducting an inquiry on behalf of the commission, is unable to effect a settlement of the matter complained of, the commission shall report to the minister and, in its discretion, may direct a formal inquiry into the complaint to hear and decide the matter or, in the absence of a direction by the commission, the minister may direct such a formal inquiry.

....

31.

(7) Where, at the conclusion of an inquiry, the board of inquiry finds that the complaint to which the inquiry relates is substantiated on a balance of probabilities, the board may, subject to subsections (9), (9.1) and (10), order any person who has contravened any provision of this Act, or any other Act administered by the commission, to do any act or thing that in the opinion of the board constitutes full compliance with that provision and to rectify any injury caused to any person and to make compensation therefor, including, without restricting the generality of the foregoing, an order:

(a) requiring that person to cease contravening that provision and, in consultation with the commission on the general purposes thereof, to take measures including adoption of a program mentioned in section 47, to prevent the same or similar

contravention occurring in the future;

(b) requiring that person to make available to any person injured by that contravention, on the first reasonable occasion, any rights, opportunities or privileges that, in the opinion of the board of inquiry, are being or were being denied the person so injured and including, but without restricting the generality of this clause, reinstatement in employment;

(c) requiring that person to compensate any person injured by the contravention for any or all of the wages and other benefits of which the person so injured was deprived and any expenses incurred by the person so injured as a result of the contravention;

(d) requiring that person to make any compensation that the board of inquiry may consider proper, to any person injured by that contravention, for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and any expenses incurred by the person so injured as a result of the contravention.

(8) Where a board of inquiry finds that:

(a) a person has wilfully and recklessly contravened or is wilfully and recklessly contravening any provision of this Act or any other Act administered by the commission; or

(b) the person injured by a contravention of any provision of this Act, or any other Act administered by the commission has suffered in respect of feeling or self-respect as a result of the contravention;

the board of inquiry may, in addition to any other order it may make under subsection (7), order the person who has contravened or is contravening that provision to pay any compensation to the person injured by that contravention that the board of inquiry may determine, to a maximum of \$5,000.

SASKATCHEWAN LEGISLATIVE ACTION - continued

*Saskatchewan Human Rights
Code (SA-1) (cont'd)*

(9) Where:

(a) an inquiry is based on a complaint regarding discrimination on the basis of disability; and

(b) the board of inquiry finds that the complaint is substantiated but that the premises, facilities or services of the person found to be engaging or to have engaged in discrimination:

(i) impede physical access to the premises, facilities or services by; or

(ii) lack proper amenities for;

persons suffering from the disability that was the subject of the inquiry;

the board of inquiry shall make an order so indicating and include in the order any recommendations that it considers appropriate.

(9.1) Where the person found to be engaging or to have engaged in discrimination establishes that the cost or business inconvenience that would be occasioned in the provision of those amenities or physical access would constitute, in the opinion of the board, an undue hardship, the board of inquiry shall not make an order pursuant to subsection (7).

32. (1) Any party to a proceeding before a board of inquiry may appeal on a question of law from the decision or order of the board to a judge of the Court of Queen's Bench by serving a notice of motion, in accordance with The Queen's Bench Rules, within 30 days after the decision or order of the board of inquiry

(4) Where an appeal is taken under this section, the judge shall determine any question of law relating to the appeal and may affirm or reverse the decision or order of the board of inquiry or remit the matter back to the board of inquiry for amendment of its decision or order.

(5) The decision of the Court of Queen's Bench may be appealed to the Court of Appeal.

43. This Act binds the Crown.

44. Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless it falls within an exemption provided by this Act or unless it is expressly declared by an Act of the Legislature to operate notwithstanding this Act.

47. (1) On the application of any person or on its own initiative, the commission may approve or order any programme to be undertaken by any person if the program is designed to promote prevent the disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or are related to the race, creed, religion, colour, sex, marital status, disability, age, nationality, ancestry or place of origin of members of that group, by improving opportunities respecting services, facilities, accommodation, employment or education in relation to that group.

(2) At any time before or after approval to a program is given by the commission, or a program is ordered by the commission or a board of inquiry, the commission may:

(a) make inquiries concerning the program;

(b) vary the program;

(c) impose conditions on the program; or

(d) withdraw approval of the program as the commission thinks fit.

(3) Nothing done in accordance with a program approved pursuant to this section is a violation of the provisions of this Act.

SASKATCHEWAN LEGISLATIVE ACTION - continued

***Saskatchewan Human Rights
Code (SA-1) (cont'd)***

48. (1) Where any person or class of persons is entitled to an exemption under any provision of this Act or any other Act administered by the commission or where the commission or the Director of Human Rights considers it necessary and advisable, the commission or the Director of Human Rights may, upon application from the person who is entitled to the exemption or who seeks the exemption, by order made in accordance with any terms, conditions or criteria prescribed in the regulations, exempt that person or class of persons from any or all of the provisions of this Act, other than Part I, or from any or all of the provisions of any other Act administered by the Commission.

(2) Notwithstanding that an exemption order has been made under subsection (1), the commission may, on its own initiative or upon application from any person or class of persons, terminate the exemption order, but the person or class of persons in whose favour the exemption order was made shall receive 30 days' written notice that the exemption order may be terminated and shall be allowed to make representation to the commission.

***Saskatchewan Human Rights
Code Regulations (SA-1.1)***

1. In the Saskatchewan Human Rights Code ...

(d) "undue hardship" means intolerable financial cost or disruption to business having regard to the effect on:

- (i) the financial stability and profitability of the business undertaking;
- (ii) the value of existing amenities, structures and premises as compared to the cost of providing proper amenities or physical access;
- (iii) the essence or purpose of the business undertaking; and

(iv) the employees, customers or clients of the business undertaking, disregarding personal preferences;

but does not include the cost or business inconvenience of providing washroom facilities, living quarters or other facilities for persons with physical disabilities of a kind that must be provided by law for persons of both sexes.

36. Where an application for exemption from the provisions of section 11 or section 12 of the Act with respect to discrimination against physically disabled persons is made to the Commission and where it is established to the satisfaction of the Commission that the cost or business inconvenience that would be occasioned in the provision of amenities or physical access for the physically disabled would constitute, in the opinion of the Commission, undue hardship, the Commission may exempt the applicant from the provisions of the said section 11 of *[sic]* section 12.

37. Where a school, college, university or any institution or place of learning, vocational training or apprenticeship referred to in subsection (1) of section 13 of the Act makes an application for exemption from the provisions of the said section 13 with respect to discrimination on the basis of the physical disability of a particular individual and where it is established to the satisfaction of the Commission that the cost or business inconvenience that would be occasioned in providing amenities and physical access for that physically disabled person would constitute, in the opinion of the Commission an undue hardship and where another school, college, university, or any institution or place of learning, vocational training or apprenticeship providing the same or substantially the same services and quality of education is available and accessible in the vicinity to the physically disabled person, the Commission may grant an exemption to the applicant from the said section 13.

39. No provision of sections 36, 37, or 38 of these regulations shall be construed as limiting the discretion given to the Commission or the Director of Human Rights under subsection (1) of section 48 of the Act.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2)

2. In this Act: ...

(g) "compulsory school age" means having attained the age of seven years but not having attained the age of sixteen years;

....

91. A board of education shall: ...

(f) prescribe, subject to sections 155 to 163, the age and time at which pupils may be admitted to kindergarten and grade 1 in any school in the school division;

(g) determine what school any of the children of the school division shall attend;

(k) subject to the regulations, furnish transportation services to pupils to and from school that may be considered by the board to be necessary to insure access of pupils to, and regularity of attendance in, the schools of the division;

(l) subject to section 169, provide programs of instruction to the pupils resident in the division at the cost of the division and at reasonable convenience to the pupils;

(n) suspend or expel pupils for cause, subject to sections 153 and 154;

(z) subject to the regulations, furnish pupils with textbook services at the cost of the division;

92. A board of education may:

- (b) enter into agreements with:
 - (i) other boards of education;
 - (ii) municipalities;
 - (iii) specialized institutions;
 - (iv) universities;

(v) departments of the Government of Saskatchewan;

(vi) governments of other provinces of Canada or agencies thereof;

(vii) the Government of Canada or an agency thereof;

for any purpose considered necessary and advantageous to the quality and efficiency of educational and related services available to the pupils of the division;

(c) enter into agreements with other boards of education for the purpose of providing and administering jointly any service of mutual benefit and convenience;

(d) furnish educational supplies and food services at a nominal cost to pupils or, where considered advisable, at the cost of the division;

143. (1) Subject to sections 153, 154 and 156, no teacher, trustee, director, superintendent or other school official shall in any way deprive, or attempt to deprive, a pupil of access to, or the advantage of, the educational services approved and provided by the board of education.

(2) Where any of the persons mentioned in subsection (1) violates the provisions of that subsection, he shall be disqualified from holding his office or position.

144. (1) Notwithstanding anything in The *Age of Majority Act*, and except as otherwise provided in this Act, every person between the ages of six and twenty-one years shall have the right to attend school in the division in which he or his parents or guardian are residents, and to receive instruction appropriate to his age and level of educational achievement in courses of instruction approved by the board of education in the school or schools of the division or, subject to the stated policies, requirements and conditions of the board, in schools or institutions outside the division with which arrangements have been made by the board to provide certain services to pupils of the division.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(2) Except as otherwise provided in this Act, the educational services mentioned in subsection (1) are to be provided at the cost of the school division, and no fees for tuition, transportation or any other expenses with respect to attendance at school are to be charged with respect to a pupil who is a resident in the school division or whose parent or guardian is a resident in the school division.

(3) Notwithstanding subsection (2), the board of education may require payment in whole or in part of costs incurred with respect to transportation pertaining to special projects or special equipment or supplies not ordinarily furnished to pupils under the policies of the board.

144.1 (1) Whereas:

(a) pursuant to the amendments made to *The Secondary Education Act* by chapter 18 of the *Statutes of Saskatchewan, 1964*, which provided for the establishment of separate high school districts, parents or guardians who resided in the cities in which both a separate high school district and a public high school district existed had a right to enrol their children in either the public high school system or the separate high school system;

(b) at the elementary school level the religious faith of the parents determined which system, public or separate, their children were entitled to attend; and

(c) it is intended that the choices as they existed at that time be restored and retained;

therefore, notwithstanding any other provision of this Act, any person who is a resident of a city in which a public school division and a separate school division have been established may declare his intention to enrol one or more of his children who are eligible to register in grade 9, 10, 11 or 12 in a school in either the public school division or the separate school division.

(2) A declaration of intention pursuant to

subsection (1) is to be given in writing to the boards of the school divisions affected prior to June 1 in any year to be effective for the next following school year.

(3) Where a declaration of intention is made pursuant to this section, the maker of the declaration is entitled, on behalf of his eligible school children, to access without tuition to a public high school or a separate high school in the school divisions affected.

(4) Where a board of education has a general attendance area policy, the board shall apply that policy equally to pupils attending its high schools as a result of the making of a declaration of intention pursuant to this section.

(5) Notwithstanding subsection 181(3), where a pupil attends a public high school or a separate high school as a result of the making of a declaration of intention pursuant to this section, the pupil shall abide by all policies of the board of education of the school division in which that high school is situated, including any policies relating to religious instruction, religious activities and other programs conducted by the high school.

(6) Where the boards of education of the school divisions affected by a declaration of intention made pursuant to this section consider it expedient, they may:

(a) enter into fee-for-service agreements to make payments for tuition to recover the cost of services provided to pupils in accordance with this section;

(b) mutually agree that no charge will be made to recover the cost of services provided to pupils in accordance with this section; or

(c) where no agreement is made pursuant to clause (a) or (b), charge tuition fees in the amounts prescribed in the regulations, but in no case are such tuition fees to be charged to the pupil or to his parent or guardian.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

145. Except as otherwise provided in this Act, services approved by a board of education, with respect to pupils who are eligible for the special programs mentioned in section 184 or who are otherwise entitled to services of benefit to their general health and well-being, shall be provided without cost to such pupils or their parents or guardians.

146. All records of a school pertaining to a pupil are confidential, but access is to be granted, under any conditions that may be prescribed by the board of education, to:

- (a) a pupil who requests access and whose parent or guardian is in attendance when access is granted;
- (b) a pupil who is 16 or more years of age and who is living independently of a parent or guardian;
- (c) duly authorized officers of the department;
- (d) school officials designated by the board of education;
- (e) a youth worker as defined in the *Young Offenders Act* (Canada), as amended from time to time, who requests access for the purposes of that Act;
- (f) a parent or guardian of a pupil, where the pupil is dependent on the parent or guardian.

153. (1) A principal:

- (a) may suspend a pupil from school for not more than three school days at a time for overt opposition to authority or serious misconduct; and
- (b) where he or she suspends a pupil pursuant to clause (a), shall immediately report the circumstances of the suspension and the action taken to the parent or guardian of that pupil.

(2) A principal may suspend a pupil for a

period not exceeding ten school days where the principal receives information alleging, and is satisfied, that the pupil has:

- (a) persistently displayed overt opposition to authority;
- (b) refused to conform to the rules of the school;
- (c) been irregular in attendance at school;
- (d) habitually neglected his or her duties;
- (e) willfully destroyed school property;
- (f) used profane or improper language; or
- (g) engaged in gross misconduct of a type other than that described in clauses (a) to (f).

(3) Where a principal suspends a student pursuant to subsection (2), the principal shall:

- (a) immediately:
 - (i) report the matter to the director or superintendent or person authorized to act in their absence;
 - (ii) notify the parent or guardian of the pupil of the circumstances of the suspension and the action taken; and
 - (iii) inform the pupil of the reason for his or her suspension; and
- (b) as soon as is practicable:
 - (i) prepare a written report of the circumstances of the suspension and cause it to be given to:
 - (A) the director or superintendent or other person authorized to act in their absence; and
 - (B) the parent or guardian of the pupil; and

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(ii) on the request of either the pupil or his or her parent or guardian, grant a hearing to the pupil and his or her parent or guardian.

(4) The director, superintendent or person authorized to act in their absence shall:

(a) before the expiration of the period of suspension pursuant to subsection (2);

(b) after consultation with the principal and any other persons he or she considers appropriate; and

(c) after granting a hearing to the pupil and his or her parent or guardian;

confirm, modify or remove the suspension.

(5) After confirming, modifying or removing a suspension pursuant to subsection (4), the director or superintendent or person authorized to act in their absence shall immediately submit a written report to the board of education setting out the circumstances of the suspension.

(6) A board of education may investigate the circumstances of a suspension submitted to it pursuant to subsection (5) and, where it does investigate, it shall conclude the investigation before the period of suspension ordered pursuant to subsection (4).

(7) Where a board of education:

(a) has conducted an investigation pursuant to subsection (6); and

(b) is satisfied, based on the investigation, that the pupil has acted in a manner to warrant suspension for a period greater than seven days;

the board may suspend the pupil from all or any of the schools in the division for a period not greater than one year.

(8) Notwithstanding sections (6) and (7), a board of education may:

(a) appoint; or

(b) authorize the director or superintendent or a person authorized to act in their absence to appoint;

a committee composed of those members of the board of education and officials and consultants that the board considers appropriate to conduct an investigation pursuant to subsection (6) and to make a decision to suspend pursuant to subsection (7).

(8.1) The committee appointed pursuant to section (8) may include:

(a) the principal; and

(b) the director or superintendent or a person authorized to act in their absence.

(9) Where a committee appointed pursuant to subsection (8) makes a decision to suspend a pupil, that decision:

(a) is deemed to be a decision of the board of education and is of the same force and effect as if made by the board;

(b) shall be reported immediately to the board of education; and

(c) may be altered, amended or revoked by the board of education at a subsequent meeting of the board.

(10) The pupil and his or her parent or guardian shall be given:

(a) notice of every investigation pursuant to subsection (6) or (8); and

(b) an opportunity to appear and make representations before the board of education or committee appointed pursuant to subsection (8), as the case may be.

(11) Where a pupil has been suspended pursuant to subsection (7) or (9):

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(a) the pupil and his or her parent or guardian, at the expiration of any period that the board of education may specify, in the resolution suspending the pupil, may request the board of education to review and reconsider the suspension of the pupil; and

(b) on receipt of a request pursuant to clause (a) and where a board considers it to be appropriate, the board may:

(i) rescind or vary the resolution suspending the pupil; and

(ii) admit the pupil to a school on those terms and conditions that the board considers appropriate.

154. (1) Notwithstanding section 153, a board of education, by resolution, may exclude a pupil from attendance at any or all schools in the division for a period greater than one year where, in the opinion of the board, it is appropriate to do so based on:

(a) an investigation conducted pursuant to subsection 153(6); or

(b) the unanimous report of a committee pursuant to subsection 153(9).

(2) A pupil who has been expelled, or his parent or guardian, may, after the expiration of one year, request a review and reconsideration by the board of the status of the pupil, and the board may, in its discretion, rescind the resolution expelling that pupil and admit him to a school under such conditions, if any, as it may see fit to prescribe in the circumstance.

155. Except as otherwise provided in this Act, every parent, guardian or other person having charge of a pupil who is of compulsory school age shall take all steps that are necessary to ensure regular attendance of that pupil:

(a) at the school determined or authorized by the board of education of the division in which the pupil resides; and

(b) for the period during which the school described in clause (a) is in operation each year.

(2) A parent, guardian or other person who neglects to discharge his duty and responsibility pursuant to subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$100.

(3) Upon a conviction for an offence under subsection (2), the magistrate or judge may, in his discretion, substitute for and in the place of a fine the requirement that person so convicted post a bond in the penal sum of \$200, with such securities as may be required, on the condition that that person shall cause the pupil to attend school as required and, upon breach of that condition, the bond shall be forfeited to the Crown.

(4) This section applies to a person who has received into his home, as a resident, another person's child who is of compulsory school age, but the duty and responsibility of the parents or guardian of the child shall not thereby be affected.

156. A pupil may be exempted from attendance at a school, and no parent, guardian or other person shall be liable to any penalty imposed by this Act, where:

(a) the pupil is under a program of instruction approved by the director or superintendent at home or elsewhere:

(a.1) the pupil is in attendance at a registered independent school;

(b) the pupil is unable to attend school by reason of illness, certified by a physician if required by the board of education, or other unavoidable cause considered sufficient by the local attendance counsellor;

(c) the distance to a school which the pupil is entitled to attend or to a school bus route is in excess of four kilometres, as measured by the nearest passable road from the place of residence of the pupil to the said school or school bus route, as the case may be;

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(d) the pupil has been suspended or expelled from school;

(e) the pupil has been excluded from attendance at school under *The Public Health Act*;

(f) the director or superintendent, upon due enquiry or investigation, is of the opinion, and certifies in writing to that effect, that continued attendance at school is not productive or is detrimental to the pupil or to the school;

(g) the pupil is engaged in work-experience or other educational programs authorized or approved by the board of education;

(h) the pupil is absent from school on a holy day of the church or religious denomination of which he or his parent or guardian is a member;

(i) the pupil is absent from school with the approval of his parent or guardian for the purpose of receiving medical or dental treatment; or

(j) the pupil accompanies his parent or guardian on extended travel outside the division but, where such travel requires more than five school days, the parent or guardian shall inform the principal of the period of absence from school which is anticipated as a result of such travel and shall, where considered advisable by the principal, consult with him and such of his teaching staff as may be appropriate with respect to the measures to be taken to maintain reasonable continuity in the progress of that pupil in his courses, and those measures shall be the responsibility of the parent or guardian during the period of the pupil's absence from school.

169. (1) every school shall be organized to provide the following instructional components or any of them as may be determined by the board of education:

(a) kindergarten, which is to provide instruction and training to pupils of such an age that they become eligible within one year to be enrolled in grade 1 in a school in the division;

(b) the Elementary Level which is to provide a five-year program of instruction following completion of the kindergarten year;

(c) the Middle Level which is to provide a four-year program of instruction to follow completion of the Elementary Level;

(d) the Secondary level which is to provide a three-year program of instruction to follow completion of the Middle Level.

(2) Notwithstanding subsection (1), the rate of progress of any pupil or group of pupils in completing the work of any Level may, in the discretion of the teacher but subject to the policies of the school, be accelerated or decelerated and the content of any of the courses taken by that pupil or group of pupils may be altered, augmented or otherwise adjusted as the teacher considers advisable and in the interests of the pupils.

178. (1) Every pupil shall be provided, insofar as is practicable within the policies and programs authorized by the board of education, with a program of instruction consistent with his educational needs and abilities, but:

(a) where a pupil is considered by the principal, by reason of disability, handicap or other disabling personal attributes, to be unable to profit from the instruction ordinarily provided, the principal shall, in accordance with subsection 184(5), make a referral to the director or superintendent, or to the supervisory officer assigned the responsibility for pupils with special needs, for such study and evaluation as the circumstances warrant;

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(b) where a parent or guardian considers that a pupil under his control and custody is unable, by reason of disability, handicap or other disabling personal attributes, to profit from instruction ordinarily provided in the school, or where for similar reasons a pupil has not been enrolled in school, the parent or guardian may request the principal to make a referral to the director or superintendent, or to the appropriate supervisory officer, for such study and evaluation as the circumstances warrant, and the principal may, in his discretion, determine the nature of the action to be taken on such request;

(c) where a teacher or a parent or guardian considers that the ordinary program of instruction is insufficient to employ the superior capabilities, talents and interests of a pupil, the teacher or parent or guardian may confer with the principal with a view to such action as the principal may consider appropriate, including referral to the director or superintendent for further study and evaluation.

(2) Where a referral has been made pursuant to subsection (1), the director or superintendent or his designate shall direct such studies, evaluation and diagnostic procedures as may be appropriate and practicable and in conformity with the policies of the board of education and shall in due course confer with the principal, teacher, parent or guardian, pupil or any of them with respect to the results of such investigations and with respect to recommendations for alterations in the educational program of the pupil concerned.

184. (1) For the purposes of this section, "pupil with a disability" includes a pupil who, under criteria prescribed in the regulations, is deemed to be unable to participate at an optimal level in the benefits of the ordinary program of the school by reason of personal limitations attributable to physical, mental, behavioral or communication disorders.

(2) Subject to the regulations, a board of education shall provide educational services on behalf of pupils with disabilities, but:

(a) where it is considered advisable, the board may exclude from attendance in a specific curricular program any pupil who, in the opinion of the director or superintendent, is incapable of responding to instruction in that program or whose presence is detrimental to the education and welfare of other pupils in attendance in that program, but no such exclusion shall deprive a pupil of access to alternative educational services provided by boards of education to pupils with disabilities under this section; and

(b) where, upon investigation by and in the opinion of the director or superintendent, a pupil is so seriously disabled as to be unable to benefit from any of the instructional services provided by the board, the board shall consult with that pupil's parents or guardian, make available any of its consultant services that may be of assistance and clarify and arrange other services appropriate to the needs and circumstances of the pupil.

(3) A board of education may discharge its responsibilities under subsection (2) by providing such services within the school or in other facilities in its control or by entering into agreements with another board of education, agency, institution or person to make these services available.

(4) Where educational services are provided to a pupil with disabilities with the approval of the department in a special institution in Saskatchewan or elsewhere, the responsibility of the board of education for payment of all or a portion of the cost of maintenance, tuition, transportation and support of such pupil shall be prescribed in the regulations.

(5) All diagnostic and investigative procedures which precede a recommendation or decision with respect to placement of a pupil in a specialized institution or program shall be conducted with the knowledge of, and in consultation with, the parents or guardian of the pupil.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

(6) Notwithstanding subsections 144(2) and 173(1), a school division that has entered into an agreement pursuant to subsection (3) with another board of education, agency, institution or person to make educational services available to pupils with disabilities maintains responsibility for those pupils so long as the parents or guardians of the pupils remain residents of the school division that entered into the agreement.

188. (1) Subject to subsection (2), a board of education, or two or more boards of education jointly on such terms as are mutually agreed upon, may provide for medical and dental examination and treatment of pupils and of children under the age of seven years in the division, and for those purposes may, subject to the regulations, employ such personnel as may be determined by the board or boards.

(2) No treatment mentioned in subsection (1) shall be given without the consent of the parent or guardian of the pupil or child.

(3) Notwithstanding subsections (1) and (2), a board of education may enter into arrangements directly with the Department of Health or any agency thereof for the provision of any of the services mentioned in this section or may participate in health service programs for schools which are conducted or co-ordinated co-operatively by the department and the Department of Health.

(4) Every school shall observe the regulations with respect to the maintenance of standards concerning sanitation, lighting and communicable diseases and may make provision for safety patrols for the protection of pupils in the vicinity of the schools.

189. (1) A board of education may employ one or more teachers qualified in guidance to provide specialized services to pupils and such counselling as will enable them to plan, select and pursue studies for their educational and vocational advancement.

(2) A board of education may employ specialized personnel to provide psychological

and related services considered by the board to be necessary to the growth, development and general well-being of pupils as individuals and in their educational advancement.

190. A board of education may enter into arrangements with other departments of the government and their agencies and with agencies and individuals in the community that provide specialized services related to the health and welfare of pupils, for the purpose of maximum rationalization and co-ordination of such services and for the enhancement of the benefits thereof to the pupils.

192. (1) Transportation services provided to pupils pursuant to clause 91(k) and the bylaws of the board of education shall be provided at the cost of the division.

(2) Notwithstanding subsection (1), a board of education may make payments to the parent or guardian of a pupil in lieu of transportation and, where applicable, such payments may include allowances for board and room where a pupil must reside away from home to attend school.

227. A teacher shall be responsible, in co-operation with staff colleagues and administrative authorities, for the advancement of the educational standards and efficiency of the school, participation in educational planning by the staff and the board of education, and the regular advancement of personal professional competence and, without restricting the generality of the foregoing, the teacher shall:

(b) plan and organize the learning activities of the class with due regard for individual differences and needs of the pupils;

(g) report regularly, in accordance with policies of the school approved by the board of education, to the parent or guardian of each pupil with respect to his progress and any circumstances or conditions which may be of mutual interest and concern to the teacher and the parent or guardian;

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Act (SA-2) (cont'd)

372. (1) ... the Lieutenant Governor in Council may make regulations:

...

(r.3) providing for the establishment and administration, under the control of the department, of:

...

(ii) schools for severely disabled pupils;

....

Education Regulations (SA-2.1)

21. In this Part [Basic Program and Course of Study]: ...

(b) "basic course of studies" means the basic course of studies described in subsection 23(2);

(c) "course of study" means a statement of the aims and objectives and scope of content and the nature of the material to be studied in a given subject or area of study at a given grade level;

(d) "program of studies" means the course offerings in a school and their arrangement and sequence.

22. The program of studies provided in a school shall:

(a) include the basic course of studies; and

(b) be approved by the board of education on the recommendation of the director or superintendent who has consulted the principal and teachers.

23. (1) The courses of study that may be used in schools are those authorized by the minister and issued in curriculum guides, bulletins or directives.

(2) ... [listing of subjects in basic course of studies].

37. (1) The board of education shall establish policies concerning:

...

(c) the procedures to be used to ensure that pupils have access to the textbooks, instructional material or learning resource material that they need to complete their course requirements.

....

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Regulations (SA-2.1) (cont'd)

39. (1) In a school division, the parents and guardians of the pupils enrolled or to be enrolled in a designated program on the written application to the board of education form the parents' council.

(2) The parents' council shall act in an advisory capacity to:

- (a) the board of education; and
- (b) the local board of trustees in school divisions that are divided into school districts.

43. The parents or guardian of any pupil attending a designated school are eligible to serve on any local school advisory committee that may be formed with respect to that designated school.

48. In this Part [Special Education]:

(a) "developmental centre program" means an educational program that is offered in a classroom setting for pupils with severe multiple disabilities;

(b) "high-cost disabled pupil" means a pupil with a moderate to severe disabling condition who:

- (i) requires appropriate special educational services;
- (ii) meets the criteria specified in section 49; and
- (iii) is identified as a high-cost disabled pupil pursuant to section 50 or 51;

(c) "low-cost disabled pupil" means a pupil with a mild to moderate disabling condition who requires appropriate special educational services but who does not meet the criteria set out in section 49 for identification as a high-cost disabled pupil.

49. For the purposes of this Act and these regulations, a pupil who is a high-cost disabled pupil if he is:

(a) visually impaired, that is when assessment by a certified practitioner acceptable to the minister affirms that visual acuity is 20/200 or less in the pupil's better eye with proper correction or that pupil's field of vision is so limited that the widest diameter of the visual field subtends an angle of 20° or less;

(b) hearing impaired, that is when audiological assessment by a provincial assessment service acceptable to the minister affirms that the pupil's decibel loss in the speech range is greater than 34 decibels in both ears;

(c) trainable mentally retarded, that is when the pupil has:

(i) an intelligence quotient below 50 plus 5, as measured by an approved individual test; and

(ii) a significant deficit in adaptive behaviour, as measured by an approved individual test or confirmed by an observer who is, in the opinion of the minister, competent;

(d) in Division I to IV and is severely learning disabled, that is when assessment by qualified personnel acceptable to the minister affirms that:

(i) the pupil has an intelligence quotient of 85 or higher, as measured by an approved individual test;

(ii) there is significant discrepancy, one standard deviation or greater, between aptitude and achievement; and

(iii) the pupil's average rate of progress in the skill subjects, including reading, is not greater than half that of average pupils as measured by an approved achievement test;

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Regulations (SA-2.1) (cont'd)

(e) orthopedically disabled, that is when an assessment by a duly qualified medical practitioner certifies that the pupil's physical limitations adversely affect his educational performance, seriously restrict his mobility within the school, seriously limit self-help activities or limit his use of conventional transportation to the extent that special educational services are required;

(f) chronically health impaired, that is when assessment by a duly qualified medical practitioner certifies that the pupil's physical health:

(i) does not permit school attendance and that hospital or home placement is required for a least three months; or

(ii) adversely affects his educational performance at school to the extent that ongoing special educational services are required;

(g) socially, emotionally or behaviourally disabled, that is when a thorough diagnostic study by medical and educational personnel acceptable to the minister affirms that the pupil exhibits excessive, chronic deviant behaviour which adversely affects educational performance; or

(h) severely multiple disabled, that is when medical and psychological assessment acceptable to the minister affirms that the pupil has severe concomitant disabilities of the types described in clauses (a) to (g).

50. (1) The superintendent or director of education for the school division in which a pupil resides is responsible for identifying the pupil as a high-cost disabled pupil in accordance with the criteria set out in section 49 and for placing that pupil in a special education program.

(2) On the request of a parent or guardian of a child who is three years of age or older but less than school age, the Regional Co-ordinator of Special Education may identify that child as a high-cost disabled pupil and place that pupil in a

special education program.

(3) Before a child or pupil is identified as a high-cost disabled pupil and placed in a special education program, the superintendent, director of education or Regional Co-ordinator of Special Education, as the case may be, shall consult with the child's or pupil's parent or guardian and with any medical, psychological, social services, guidance and special education staff that the superintendent, director of education or Regional Co-ordinator of Special Education considers appropriate.

(4) The identification of a child or pupil as a high-cost disabled pupil in accordance with the criteria set out in clause 49(d) or (g) is required annually using current psychometric information related to that child or pupil.

(5) The special education provision for each child or pupil is to be reviewed annually.

51. (1) A parent or guardian of a child or pupil who disagrees with the identification of or the failure to identify the child or pupil as a high-cost disabled pupil may submit a written appeal to the Regional Director of Education.

(2) When an appeal is made pursuant to subsection (1), the Regional Director of Education shall establish an appeal committee consisting of:

(a) the Regional Director of Education or his designate, who shall act as chairman;

(b) the Director, Special Education Branch of the department or his designate; and

(c) a Saskatchewan professional working in the field of the disability of the pupil under review, who may be nominated by the parent or guardian of the pupil, but who is to be appointed by the minister.

(3) The parent or guardian or his designate and the superintendent or director of education or his designate are entitled to appear before the appeal committee and to make presentations to the appeal committee.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Regulations (SA-2.1) (cont'd)

(4) Any party to an appeal or the chairman may call expert witnesses.

(5) The appeal committee shall:

(a) render a decision on the appeal; and

(b) provide written notice to the parents or guardian of the child or pupil, to the director of education and to the board of education of its decision on the appeal and its recommendation.

(6) The decision of the appeal committee is final.

52. (1) A board of education shall:

(a) make available at no cost to their parents or guardians, special education services for disabled pupils, that are, in the opinion of the minister, appropriate, including special schools, special classrooms, resource rooms and itinerant and tutorial programs, and may provide those services for pre-school age disabled children identified pursuant to subsection 50(2), in order that disabled pupils and children can benefit from the most appropriate and least restrictive program;

(b) ensure that the services described in clause (a) are provided by staff with special training acceptable to the minister;

(c) provide special instruction materials and any modified facilities and reduced pupil-teacher ratio that, in the opinion of the board of education, is appropriate; and

(d) ensure that the costs of the services described in clause (a) generally reflect the expenditures which are prescribed in these regulations.

(2) A board of education that decides to discharge its responsibilities under subsection 184(2) of the Act by entering into an agreement may enter into an agreement only with:

(a) an agency that:

(i) is an association with a board of directors;

(ii) has been incorporated or continued under *The Non-profit Corporations Act*; and

(iii) provides an approved educational service;

(b) an approved institution that provides an educational service to disabled children;

(c) an approved person who is a specialist in providing educational services to disabled children; or

(d) another board of education.

(3) A board of education that enters into a joint agreement pursuant to subsection (2) shall:

(a) subject to subsection (4), pay the actual tuition fees on behalf of the disabled pupil; and

(b) pay the actual costs of room and board and transportation on behalf of the disabled pupil.

(4) A board of education that:

(a) has entered into a joint agreement pursuant to subsection (2) with another board of education; and

(b) has entered into an agreement with that other board of education to provide special educational services reciprocally;

is not required to pay the actual tuition fees on behalf of the disabled pupil.

(5) Notwithstanding subsection (3), if a high-cost disabled pupil is placed in an approved developmental centre program, a board may decide not to make expenditures for tuition, transportation and room and board on behalf of the pupil.

SASKATCHEWAN LEGISLATIVE ACTION - continued

Education Regulations (SA-2.1) (cont'd)

(6) A board of education that provides special education services for a disabled pupil outside the attendance area of the school district in which the pupil resides but within the division shall provide either transportation or accommodation allowances or both, as the case may require, on behalf of the pupil.

(7) A board of education may provide transportation for high-cost disabled pupils who attend school in the attendance area in which they reside.

(8) The board of education is not responsible for the cost of educational services provided for a disabled pupil who is placed in a public institution by an authority other than an educational authority.

(9) Notwithstanding clause 61(b), on and after September 1, 1981 no high-cost recognized per pupil expenditures are to be approved unless the board of education employs teachers and support staff with qualifications acceptable to the minister.

Part XIX

R.J.D. Williams Provincial School for the Deaf

Note. Provisions omitted; school now closed.

Uniform Building and Accessibility Standards Regulations (SA-3.1)

3. (1) The National Building Code of Canada 1990, including:

(a) all Errata and Revisions to the National Building Code of Canada 1990 issued to the date these regulations come into force; and

(b) the revisions, modifications and variations set forth in the Appendix to these regulations;

is declared to be in force.

(2) No person who is required to comply with the Act and these regulations shall fail to comply with the code.

Interpretation Act (SA-4)

7. No provision in an Act shall affect the rights of Her Majesty unless it is expressly stated therein that Her Majesty is bound thereby.

APPENDIX Q

LEGISLATIVE ACTION: YUKON

Human Rights Act (YU-1)

1. (1) The objects of this Act are

(a) to further in the Yukon the public policy that every individual is free and equal in dignity and rights,

(b) to discourage and eliminate discrimination,

(c) to promote recognition of the inherent dignity and worth and of the equal and inalienable rights of all members of the human family, these being principles underlying the Canadian Charter of Rights and Freedoms and the Universal Declaration of Human Rights and other solemn undertakings, international and national, which Canada honours.

(2) This Act does not affect rights pertaining to aboriginal peoples established by the Constitution of Canada or by a land claims agreement.

2. This Act shall be interpreted in a manner consistent with the preservation and enhancement of the multi-cultural heritage of the residents of the Yukon.

6. It is discrimination to treat any individual or group unfavourably on any of the following grounds:

- (a) ancestry, including colour and race,
- (b) national origin,
- (c) ethnic or linguistic background or origin,
- (d) religion or creed, or religious belief, religious association, or religious activity,
- (e) age,
- (f) sex, including pregnancy, and pregnancy related conditions,
- (g) sexual orientation,
- (h) physical or mental disability,
- (i) criminal charges or criminal record,
- (j) political belief, political association or political activity,
- (k) marital or family status,

(l) actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed in paragraphs (a) to (k).

7. (1) Every person has a responsibility to make reasonable provisions in connection with employment, accommodations, and services for the special needs of others where those special needs arise from physical disability, but this duty does not exist where making the provisions would result in undue hardship.

(2) For the purposes of subsection (1) "undue hardship" shall be determined by balancing the advantages and disadvantages of the provisions by reference to factors such as

- (i) safety,
- (ii) disruption to the public,
- (iii) effect on contractual obligations,
- (iv) financial cost,
- (v) business efficiency.

(3) This Act does not apply to structures which at the commencement of this Act were existing and complied with the applicable requirements of the Building Standards Act and regulations under that Act.

8. No person shall discriminate

(a) when offering or providing services, goods, or facilities to the public,

9. It is not discrimination if treatment is based on

(d) other factors establishing reasonable cause for the discrimination.

10. (1) It is not discrimination for a religious, charitable, educational, social, cultural, or athletic organization to give preference to its members or to people the organization exists to serve....

YUKON LEGISLATIVE ACTION - continued

Human Rights Act (YU-1) (cont'd)

11. Any conduct that results in discrimination is discrimination.

12. (1) Special programs and affirmative action programs are not discrimination.

(2) Special programs are programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination.

(3) Affirmative action programs are programs designed to reduce disadvantages resulting from discrimination suffered by a group identified by reference to a prohibited ground of discrimination.

19. (1) Any person believing that there has been a contravention of this Act against him or her may complain to the commission who shall investigate the complaint.

(a) the complaint is beyond the jurisdiction of the commission,

(b) the complaint is frivolous or vexatious, or

(c) the victim of the contravention asks that the investigation be stopped.

(2) A complaint must be made within six months of the alleged contravention.

20. After investigation, the commission shall

(a) dismiss the complaint, or

(b) try to settle the complaint on terms agreed to by the parties, or

(c) ask a board of adjudication to decide the complaint.

23. (1) If the complaint is proven on the balance of probabilities the board may order the party who discriminated to

(a) stop the discrimination,

(b) rectify any condition that causes the discrimination,

(c) pay damages for any financial loss suffered as a result of the discrimination,

(d) pay damages for injury to dignity, feelings, or self respect,

(e) pay exemplary damages if the contravention was done maliciously,

(f) pay costs....

24. If the board of adjudication concludes that the complaint was frivolous or vexatious or that the proceedings have been frivolously or vexatiously prolonged the board may order the commission to pay to the respondent

(a) part or all of the respondent's costs of defending against the complaint, and

(b) damages for injury to the respondent's reputation.

24.1 If the board of adjudication concludes that the complaint was based on information that the complainant knew to be false the board may order the complainant to pay to the respondent

(a) part or all of the respondent's costs of defending against the complaint, and

(b) damages for injury to the respondent's reputation.

26. (1) Any party to a proceeding before a board of adjudication may appeal final decisions of the board to the Supreme Court by filing a notice of appeal with the court within thirty days after the order of the board of adjudication is pronounced.

(2) The procedure for the appeal shall be the same as for an appeal in the Court of Appeal.

(3) An appeal under this section may be made on questions of law and the court may affirm or set aside the order of the board and direct the board to conduct a new hearing.

YUKON LEGISLATIVE ACTION - continued

Human Rights Act (YU-1) (cont'd)

(4) The only proceeding that may be taken to set aside or vary decisions of the board is the right of appeal given by this Act.

34. In this Act

"physical disability" means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a seeing eye dog or on a wheelchair or other remedial appliance or device;

"mental disability" means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or learning disability;

35. This Act is binding upon the Government of the Yukon Territory and its corporations, boards and commissions.

36. This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act.

Education Act (YU-2)

1. In this Act ...

"attendance area" means the area designated by the Minister for each school committee and Council pursuant to section 58;

"education area" means the area designated by the Minister for each School Board pursuant to section 59;

"Individualized Education Plan" (IEP) is a document which outlines the educational program for a student as determined by a school based team, containing a description of the student's present level of functioning; long term or annual goals; short term goals or specific behavioral objectives; special resources required; suggested instructional materials, methods and strategies; IEP review dates; persons responsible for the implementation of the IEP, including parents; and parents' written, informed consent for implementation;

"school-age" means the age of 5 years and 8 months or older and younger than 21 years of age as at September 1;

2. (1) The exercise of any right or the receipt of any benefit under this Act is subject to those limitations that are reasonable in each circumstances under which the right is being exercised or the benefit is being received.

4. The Minister shall establish and communicate for the Yukon education system goals and objectives, which are:

(a) to encourage the development of the students' basic skills, ...

(d) to provide opportunities to reach maximum potential,

(e) to promote the recognition of equality among Yukon peoples consistent with the Canadian Charter of Rights and Freedoms and the Human Rights Act,

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

...

(j) to prepare for participation in a Yukon, Canadian, and global society.

10. Persons are entitled to receive an educational program appropriate to their needs in accordance with the provisions of this Act

(a) who at September 1 in a year are 5 years and 8 months of age or older and younger than 21 years of age, and

(b) who are Canadian citizens, lawfully admitted to Canada for temporary or permanent residence, a child of a Canadian citizen, or a child of an individual who is lawfully admitted to Canada for permanent or temporary residence.

11. (1) A School Board shall provide to every school-age person who resides in its education area and the deputy minister shall provide to every other school-age person resident in the Yukon, an educational program consistent with the requirements of this Act and regulations and, for the purposes of providing the educational program to the student, the deputy minister or School Board shall

(a) enroll the student in an educational program operated by it, or

(b) direct the student to attend an educational program operated by another School Board or by the Minister where it is reasonable to do so.

(2) Where a student is directed to attend an educational program pursuant to paragraph (1)(b), the School Board or deputy minister shall enter into a tuition agreement with the receiving School Board or the government and shall be responsible for the fees and costs consequent to the student's attendance at the educational program.

(3) Residency of a student shall be determined by the residency of the student's parents.

12. No tuition fees consequent to the student's attendance for an educational program as determined under section 11 shall be charged to the student or the parents of the student.

13. The deputy minister or where there is a School Board, the School Board may permit a person who is 21 years of age or older to enroll in an educational program on such terms as may be prescribed by the deputy minister or School Board.

14. (1) On the request of a student or a parent of a student, the deputy minister may authorize the student to attend an educational program at a school in the Yukon other than the educational program determined in accordance with section 11.

(2) Tuition fees and other costs may be levied for the attendance by a student at an educational program authorized under subsection (1).

(3) The department shall inform the School Board, Council, or school committee that is established in the student's resident education area or attendance area of the student's attendance in the educational program referred to in subsection (1) and may direct that a tuition agreement be entered into pursuant to subsection 11(2).

15. (1) Students who, by virtue of intellectual, communicative, behavioral, physical, or multiple exceptionalities are in need of special education programs, are entitled to receive a program outlined in an Individualized Education Plan.

(2) A student who is entitled to an Individualized Education Plan shall have the program delivered in the least restrictive and most enabling environment to the extent that is considered practicable by the deputy minister or by a School Board in consultation with professional staff and parents, having due regard for the educational needs and rights of all students.

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

(3) The Minister shall issue guidelines for the implementation of this Division.

16. (1) The school administration in consultation with professional staff and parents or, where a child is not in attendance at a school, the deputy minister, in consultation with professional staff and parents, shall determine

(a) whether a student is a student with special educational needs and, if so

(b) what Individualized Education Plan is appropriate to meet the needs of that student.

(2) Before a student is determined to be a student with special educational needs and, if so, what Individualized Education Plan is appropriate, the following procedures shall be followed:

(a) the student shall be referred to the department for a determination of the assessments that may be required to be performed,

(b) the parent of the student shall receive written information concerning the procedures outlined in this section,

(c) prior written informed consent by a parent for the psychological and other specialized tests that are not routinely used by teachers shall be obtained,

(d) where appropriate, the assessment shall be multidisciplinary,

(e) the results of the assessment reports shall be provided and explained to the parent,

(f) a parent and, where appropriate, the student, shall be consulted prior to the determination of and during the implementation of an Individualized Education Plan, and

(g) the parents shall be provided with information concerning the right of appeal to the Education Appeal Tribunal.

(3) Parents shall have the right to request for their children a determination in accordance with this section.

(4) Parents shall be invited to be members of a school based team that is established for their child.

(5) Where there is more than one parent for a child, consultation with one parent shall be deemed to be compliance with any consultation requirements of this section.

17. (1) If a disagreement arises respecting

(a) the identification of a student as a student with special educational needs,

(b) the Individualized Education Plan established for a student,

(c) a request by a parent for a determination pursuant to subsection 16(3),

(d) a decision regarding the implementation of the Individualized Education Plan in an environment other than the regular class,

(e) a decision not to implement an Individualized Education Plan in a school where the student would normally attend, or

(f) the apportionment of costs, including non-educational costs, for the provision of an Individualized Education Plan,

the parent, student, School Board, Council, or deputy minister may, within 14 days of the decision, appeal the matter to the Education Appeal Tribunal established pursuant to this Act.

(2) When an appeal is made to the Education Appeal Tribunal, the student shall be enrolled in the program determined in accordance with section 16 until the Education Appeal Tribunal makes its decision.

18. (1) Parents of students attending school are entitled

(a) to be informed of the progress, behaviour and attendance of their children,

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

(b) upon reasonable notice to the principal and teacher, to observe the instruction of their children if the parental visitation does not impede the instruction of other children,

(c) to appeal decisions that significantly affect the education, health or safety of their children, and

(d) to be consulted in the development of any specialized education programs prepared for their children.

(2) A parent of a student attending a school may and at the request of a teacher or principal shall consult with the teacher or principal with respect to the student's educational program.

19. Subject to the provisions of this Act, parents may choose home schooling, private schooling or public schooling for their children.

20. (1) Every school administration shall establish maintain a student record for each student enrolled in its school in accordance with the guidelines established by the Minister.

(2) The parents of a student, a student who is 16 years of age or older, or both the parents and the student, may examine and copy the record of the student.

(3) Subject to subsection (2), a student's record is privileged for the information and use of school and departmental officials as required for the improvement of instruction of the student and is not available to any other person without the written permission of the parent or, where the student is 16 years of age or older, the student.

22. (1) Unless excused under subsection (2), every child who at September 1 in a year is 6 years and 8 months of age or older and is younger than 16 years of age shall attend a school operated by the Minister or a School Board.

(2) A student is excused from attendance at school if

(a) the student is unable to attend school by reason of sickness or other unavoidable cause,

(b) the student is a participant in religious observances, celebrations, or activities recognized by a religious denomination,

(c) the student is a participant in Yukon aboriginal cultural activities or in aboriginal harvesting activities,

(d) the student has been suspended by a school and has not been given permission to enroll in another school,

(e) the student is enrolled and in regular attendance at a private school or a home education program in accordance with this Act, or

(f) the student is enrolled in distance education courses as approved by the deputy minister.

23. (1) The superintendent or director may, on application from a student or a parent of a student, excuse the student from attendance at school and may attach conditions to the permission to be excused.

(2) Prior to excusing a student from attendance at school, the superintendent or director shall consult with the student and the student's parents.

(3) The superintendent or director may direct that a student who is excused from attendance at school receive optional education.

28. The Canadian Charter of Rights and Freedoms and the Human Rights Act shall apply to the delivery of optional education provided for in this Division.

31. (1) A parent of a student may provide, at home, a home education program for the student if the parent complies with this section and if the program meets the goals and objectives outlined in paragraph 4(a)(i) of this Act.

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

(2) The parent shall, prior to the commencement of a home education program for the student and on an annual basis thereafter for as long as the home education program is offered, register the student with the Minister.

(3) An educational plan for each student who is receiving home education shall be prepared and provided to the Minister subject to the following conditions

(a) the initial educational plan shall be prepared and provided to the Minister prior to the commencement of the home education program,

(b) an educational plan shall be for a minimum period of 3 school years and shall cover every year of the home education program, and

(c) each educational plan shall include a description of the learning activities for the student that will comply with the goals and objectives set out in paragraph 4(a)(i) of this Act.

(4) The parent of a home education student may request that tests be administered to the student subject to the requirements of the regulations and to payment of fees prescribed by the regulations for any tests that are administered.

(5) A student in a home education program may attend courses offered by the Minister or a School Board subject to any terms and conditions established by the regulations.

(6) The parent of a home education student may receive for the student educational resource materials and use of school facilities and equipment subject to the regulations.

(7) The Minister may

(a) provide for the assessment of the student's achievement on a regular basis and communicate the results to the parent,

(b) advise the parent if, in the opinion of the

Minister, the student is not making reasonable progress in the program, and

(c) provide the parent with recommendations which will assist the student in improving the level of achievement.

(8) Notwithstanding subsection (1), the Minister may, in writing, terminate the home education program if the Minister is of the opinion, after considering the abilities of the student, that

(a) the home education program no longer meets the requirements of paragraph 4(a)(i), or

(b) the student has failed to meet standards of student achievement, as measured by achievement testing, comparable to those of schools operated by the Minister or a School Board.

(9) The Minister shall, in conjunction with the notice of termination, direct the student to attend a school operated by the Minister or a School Board effective on the date specified in the notice of termination.

32. (1) The Minister shall establish a kindergarten program in accordance with the regulations.

(2) No child shall be compelled to attend a kindergarten program.

(3) Children are not eligible for a kindergarten program unless they have attained the age of 4 years and 8 months by September 1.

(4) A child may not attend more than one session of kindergarten per day as defined in the regulations.

(5) At least one school operated by the Minister or a School Board in each community shall provide a free kindergarten program subject to the regulations.

(6) Where there is more than one school in a community, the Minister or School Board shall designate the school or schools that shall offer the kindergarten program.

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

33. (1) The Minister or a School Board may establish and maintain educational programs for children who have not attained school age.

(2) The Minister or a School Board may charge tuition fees for attendance at the program referred to in subsection (1).

(3) No child shall be prohibited from attending a program referred to in subsection (1) due to the inability of the parent to pay the fee for such attendance.

34. In accordance with this Act, students attending school are entitled to

(a) receive a free educational program appropriate to their needs,

(b) receive an educational program outlined in an Individualized Education Plan when the student is in need of a special education program,

(c) examine and copy their student records,

(d) be provide with accommodation where they are required to live away from home to receive an educational program,

(e) be treated in a fair and consistent manner, and

(f) appeal, either individually or with their parents, decisions that significantly affect their education, health, or safety.

37. Students who have attained the age of 19 are entitled to exercise all the rights and powers, to assume all the obligations, and to receive all the benefits under this Act with respect to them that their parents are otherwise entitled to exercise, assume, or receive on their behalf and their parents shall not exercise those rights and powers, assume those obligations, or receive such benefits.

40. (1) A principal may dismiss a student for a period not exceeding two school days for any breach by the student of the duties specified in

section 38.

(2) When a student has been dismissed, the principal shall

(a) make every effort possible to inform the parents of the student the reason for the dismissal, and

(b) meet as soon as possible with the student and the parents of the student to review the circumstances surrounding the dismissal and to determine appropriate corrective action.

(3) If there is no resolution within two school days, the principal must decide either to reinstate or to suspend the student in accordance with section 41.

41. (1) A principal may suspend a student for a period not exceeding 10 school days for any breach by the student of the duties specified in section 38.

(2) A principal may recommend to a School Board, Council, or where there is no Council, a superintendent that a student be suspended for a period greater than 10 school days.

(3) When a principal suspends a student or makes a recommendation for suspension for a period exceeding 10 school days, the principal shall report in writing to the parents of the student and to the School Board, the Council, or where there is no Council, the superintendent the reason or reasons for the suspension.

(4) The parent of a suspended student and the suspended student may make representations to the School Board, Council, or where there is no Council, the superintendent with respect to the suspension or the recommendation for a suspension for a period exceeding 10 school days.

(5) The School Board, Council, or superintendent may

(a) reinstate the student,

(b) uphold the suspension, or

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

- (c) place the student on a suspension that exceeds 10 school days and that ends at the end of the semester or school year, whichever occurs first.
- (6) The student shall remain suspended until the School Board, Council, or superintendent has reached a decision.
- (7) A student or parent of a student may appeal within 14 days of receipt of a suspension decision by a School Board, Council, or superintendent to the Education Appeal Tribunal established pursuant to this Act.
- (8) The School Board, Council, or superintendent shall inform the student and the parents of the student of the right of appeal under subsection (7).
47. (1) In this section "home" means the home or other residence designated by the Minister as the home of the student for the purpose of this section.
- (2) Where a student's home is more than 3.2 kilometres by the nearest passable road from the school the student attends pursuant to section 11, the Minister shall provide transportation for the student to and from school and the student's home, an allowance in lieu of transportation, accommodation, or an allowance in lieu thereof, or provide an educational program by distance education.
- (3) Where a student's home is less than 3.2 kilometres by the nearest passable road from the school the student attends pursuant to section 11, the Minister may, subject to any fees or conditions prescribed by the regulations, provide transportation for the student to and from the school and the student's home.
56. Students whose parents have a right under section 23 of the Canadian Charter of Rights and Freedoms to have their children receive an educational program in the French language are entitled to receive that program in accordance with the regulations.

58. (1) The Minister may establish any community or portion of a community or any portion of the Yukon as an attendance area.

(2) In the establishment of an attendance area, the Minister may include land in one attendance area that is also included in a different attendance area or in an education area.

59. (1) The Minister may establish any community or portion of a community or any portion of the Yukon as an education area.

(2) In the establishment of an education area, the Minister may include land in one education area that is also included in a different education area or in an attendance area.

60. The Minister may

(a) add land or take land from an education area or attendance area,

(b) divide an education area or attendance area into two or more education areas or attendance areas,

(c) combine two or more attendance areas to form one attendance area, and

(d) combine two or more education areas to form one education area.

61. (1) The Minister may dissolve an education area or attendance area.

(2) When an education area or an attendance area no longer has a school assigned to it, it shall be deemed to be dissolved.

62. (1) The Minister shall designate the category of residents for whom the education area and attendance area is established.

(2) A designation of residency may be made based on geographic, language, or religious criteria.

(3) In the designation of residency, the Minister shall ensure that the rights of separate schools referred to in the Yukon Act are guaranteed.

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

63. The Minister shall assign

(a) every school existing on the date of proclamation to an attendance area, and

(b) every school established pursuant to section 6 to an education area or to an attendance area.

64. Subject to section 70, for each attendance area established by the Minister, there shall be a School Council.

65. For each education area established by the Minister, there shall be a School Board.

116. (1) A school board shall

(p) if requested by the parents, establish a parent advisory group for every school operated by it when it operates more than one school and make rules for the election and operation of the groups,

156. (1) Where a decision of a person employed in a school significantly affects the education, health, or safety of a student, then the parent of the student, a responsible adult chosen by the student, or the student if that student is 16 years of age or older may, within 30 days from the date the parent or the student was informed of the decision, appeal the decision to the superintendent or, where there is a School Board or Council, through the procedure established pursuant to paragraphs 113(1)(d) and 116(1)(h).

(2) The failure to make a decision is a decision for the purposes of this section.

(3) A decision on the appeal shall be made as soon as practicable but not until the parents, students, and affected persons have had an opportunity to be heard.

(4) An appeal under this section is an administrative proceeding, not a quasi-judicial or judicial proceeding.

(5) This section does not apply to matters that may be appealed to the Education Appeal Tribunal pursuant to the provisions of this Act.

157. (1) The Minister shall appoint a chair, a maximum of 9 other members, and a secretary to the Education Appeal Tribunal.

(2) The chair and the members of the Education Appeal Tribunal shall be appointed for the terms and in the manner specified by the Minister.

(3) The Minister may solicit and consider nominations for the membership of the Education Appeal Tribunal from groups interested in education in the Yukon.

(4) The Minister shall include in the appointments made pursuant to this section a member nominated by the Central Indian Education Authority or, if the Central Indian Education Authority has not been established, by the Council for Yukon Indians.

(5) The chair and the members of the Educational Appeal Tribunal shall swear an oath of non-disclosure in the prescribed form for information gained during an appeal in accordance with this Part.

158. (1) An appeal referred to in the Education Appeal Tribunal shall be heard by the chair and two or more members chosen by the chair.

(2) Where possible, the qualifications of the members of the Education Appeal Tribunal shall be appropriate to the matter under consideration by the Tribunal.

(3) The chair may call upon such experts or consultants as are considered advisable to report to the Education Appeal Tribunal.

159. Prior to the consideration of an appeal by the Education Appeal Tribunal, the chair may appoint a mediator to attempt to settle the matter under appeal.

160. (1) In considering the matter being appealed, the Education Appeal Tribunal may make any investigation it considers necessary.

YUKON LEGISLATIVE ACTION - continued

Education Act (YU-2) (cont'd)

(2) The Education Appeal Tribunal shall set the time, place, and date for a hearing of the appeal and shall notify the parties to the appeal of the time, place, and date of the hearing.

(3) No decision shall be made by the Education Appeal Tribunal without giving the parties to the appeal an opportunity to make representations.

(4) Each party to the appeal shall pay their own costs unless the Education Appeal Tribunal orders that the costs be paid out of funds approved for the budget of the Education Appeal Tribunal.

(5) Appeals to the Education Appeal Tribunal may be heard in any place or community.

161. The Education Appeal Tribunal, in deciding a matter being appealed, may make an order doing one or more of the following:

- (a) confirming or varying the decision that is under appeal,
- (b) identifying a student as a student with special educational needs,
- (c) directing a School Board or the deputy minister to implement an Individualized Education Plan in a particular environment including, but not limited to, a regular class,
- (d) directing a School Board or the deputy minister to enroll a student in a school named by the Education Appeal Tribunal,
- (e) determining that an Individualized Education Plan be prepared for a student,
- (f) apportioning the cost of providing the services required for an Individualized Education Plan to a School Board, the department, or any other department of the Government of the Yukon,
- (g) directing a determination to be made in accordance with section 16,

(h) defining the contents of a student record when the appeal under consideration is pursuant to section 20,

(i) reinstating to school a student who has been placed on an indefinite suspension by a School Board, Council, or superintendent pursuant to section 41, and

(j) approving a proposal for a locally developed course where the appeal is pursuant to subsection 43(3).

162. In the determination of an appeal, the Education Appeal Tribunal shall consider

- (a) the educational interests of the student who is the subject of the appeal,
- (b) the impact of a decision on the total population of the students served, and
- (c) any other factor that appears to be relevant to the matter in dispute.

163. The decision of the Education Appeal Tribunal shall be final and binding upon the parties to any such decision.

164. (1) A copy of an order made by the Education Appeal Tribunal shall be filed with the clerk of the Supreme Court.

(2) On the filing of a copy of an order with the clerk of the Supreme Court, the order has the same force and effect as if the order were an order of that Court.

165. A copy of each decision of the Educational Appeal Tribunal shall be sent to the Minister.

168. Every teacher shall

(c) report on the progress, behaviour, and attendance of students to their parents,

169. A principal of a school shall

(r) keep parents informed of the progress and development of students, ...

YUKON LEGISLATIVE ACTION - continued

Buildings Standards Act (YU-3)**1. In this Act ...**

"National Building Code" means the National Building Code of Canada 1980 as amended or replaced from time to time.

2. (1) Except as otherwise prescribed pursuant to this Act, the National Building Code is hereby adopted as the building code to apply throughout the Yukon as if enacted by the Legislative Assembly....

Interpretation Act (YU-4)

13. No provision in an enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner whatsoever unless it is expressly stated therein that Her Majesty is bound.