

CANADIAN JOURNAL OF

Disability Studies

Published by the Canadian Disability Studies Association · Association Canadienne des Études sur l'Incapacité

Canadian Journal of Disability Studies

Published by the Canadian Disability Studies Association

Association Canadienne des Études sur le Handicap

Hosted by The University of Waterloo

www.cjds.uwaterloo.ca

**Access to Inclusive Education for Students with Autism:
An Analysis of Canada's Compliance with the United Nations Convention on the Rights of
Persons with Disabilities**

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Abstract

This article argues that Canada fails to meet its obligation under article 24 of the United Nations Convention on the Rights of Persons with Disabilities to provide students with autism with access to inclusive education. Moving beyond Canadian legislation, under which every province and territory recognises the right of all students to an inclusive education, it analyses Canada's education system and the implementation of the goal of inclusive education. It points out the effect of five interrelated factors on the inclusiveness of the Canadian education system and its accessibility for students with autism: reductions in funding for education; the inadequacy of individual support measures and parent participation; the lack of education and training for teachers; the use of language indicative of the medical model of disability by governments; and "voluntary segregation" – the voluntary removal of children from the public education system by their parents. It concludes that Canada likely does not meet its obligations under the United Nations Convention on the Rights of Persons with Disabilities.

Keywords

Autism, Inclusive Education, Convention on the Rights of Persons with Disabilities, Discrimination

Introduction

One in 54 children is autistic (Maenner et al., 2020, p. 3).¹ Since autism is an intrinsic characteristic (Myers & Johnson, 2007),² it is imperative that students with autism be included within the Canadian education system. This is especially true considering that only 49 percent of adults with disabilities are employed (Turcotte, 2014, p. 2). Although persons with disabilities experience higher unemployment rates regardless of their education level, education improves their employment prospects (Turcotte, 2014, p. 2).

Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (2007) recognises the right of persons with disabilities to an inclusive education. It specifies that State Parties, such as Canada, are to provide “an inclusive education system at all levels” (UNCRPD, 2007, art. 24(1)).³

Canada’s compliance with the UNCRPD provisions on inclusive education is easier to study for students with autism than for students with other disabilities. The UNCRPD indeed provides for the possibility that a very small number of students “with serious and multiple limitations” may not be successfully included within the mainstream education system (de Beco, 2014, p. 285).⁴ It is clear that students with autism do not fall under this category, as there is

¹ There is no comprehensive study on the prevalence of autism in Canada, so I rely on statistics from the United States Government.

² Although there has been pressure from both inside and outside of the community of persons with autism, recent ethnographic data suggests that many adults with autism accept that autism is an intrinsic characteristic. This acceptance has redefined both individual and collective identities. On these points, see Bagatell (2010).

³ The concept of inclusive education is defined in the UNCRPD through a long list of statements and examples. It is centred around equal access to education and does not necessarily involve putting all students in the same classroom. For further detail on how inclusive education has been interpreted, see Committee on the Rights of Persons with Disabilities (2016, p. 2) (the guidance document issued by the United Nations on the interpretation of the UNCRPD) and Runswick-Cole (2011).

⁴ It is worth mentioning that there is disagreement in the scholarly community as to the fact that certain students could or should not be included in the mainstream education system.

widespread consensus that they can successfully be included within the education system (Cavanagh & Keller, n.d.; Moore, 2016).

In Canada, education is a provincial power (Constitution Act, 1867, sect. 93). Provinces and territories are therefore free to enact their own legislation. Currently, each of the 10 provinces and 3 territories has in some way recognised a child’s right to inclusive education (McCrimmon, 2015, p. 235). In practice, however, several aspects of the Canadian education system⁵ fall short of the obligations embodied in the UNCRPD. Inclusive education cannot be legislated into existence. If governments fail to take proper measures implement inclusive education, legislation will do little to effect it. Furthermore, legislation cannot be assumed to express a government’s intention where that government’s actions and efforts (or lack thereof) directly and indirectly contradict its stated intention.

More specifically, this article argues that five interrelated factors suggest that Canada fails to meet its obligations under the UNCRPD to provide an inclusive education system to students with autism: reductions in funding for education (Section I); the inadequacy of individual support measures and parent participation (Section II); the lack of education and training for teachers (Section III); the use by governments of language indicative of the medical model of disability (Section IV); and “voluntary segregation” – the voluntary removal of children from the public education system by their parents (Section V).

This article focusses on whether Canada complies with the UNCRPD. It does not explore whether the issues pointed out with regards to compliance are justiciable. While alternatives may be proposed in furthering its argument, it does not systematically explore how the issues

⁵ Throughout this article, I refer to the “Canadian education system.” As mentioned above, education is a provincial power, so there are as many education systems as there are Canadian provinces and territories. In this article, the phrase “Canadian education system” refers to these education systems collectively.

identified can or ought to be solved. As a general rule, international conventions such as the UNCRPD are not sources of justiciable rights unless domestically implemented by statute (*Baker v. Canada*, 1999, para. 69).⁶ International conventions have nonetheless been used as interpretive aids in assessing whether the Canadian Charter of Rights and Freedoms and other domestic laws were infringed (*Canadian Doctors for Refugee Care v. Canada*, 2015, paras. 444, 659–669). Litigation, even when unsuccessful on the merits, has played a significant role in bringing the issues facing students with disabilities to public attention and partially closing the gap between the rights recognised under domestic law and those recognised in international conventions (*Brodsky et al.*, 2014).

Section I: Reductions in Funding for Education

The first way in which Canada fails to meet its obligations to students with autism is through reductions in funding for education. Unlike the problems outlined in the next sections, this problem affects student access to an inclusive education in an indirect way, by exacerbating the problems outlined in the next sections. These reductions are indeed bound to disproportionately affect students with autism and other disabilities, as educating these students is costlier than educating other students (*Buescher et al.*, 2014).⁷

The Canadian context is one where considerable and increasing pressure is put on teachers. Direct and indirect reductions in funding have resulted in teachers working longer

⁶ The realisation of social rights in Canada and other developed countries continues to face major barriers. There is often a significant gap between the state of academic research on disability (and the recognition of social rights for persons with disabilities in international conventions) and the rights recognised in domestic law and interpreted by domestic courts (*Brodsky et al.*, 2014).

⁷ This study finds that the cost of supporting an individual with autism throughout her life in the United States is \$2.4M, compared to \$1.4M for an individual without autism. Educational services were one of the two principal costs. There is no analogous data on Canadians with autism.

hours and taking on more students. These significant changes have been exacerbated by the introduction of inclusive education, as teachers have been presented with a more diverse student population, one with diverse needs and learning styles (Council of Ministers of Education, Canada, 2008, p. 30). This context exacerbates several problems. First, teachers are less likely to partake in the continuing education and training (further explored in Section III) which are necessary to ensure that students with autism are included in the education system. Second, measures to ensure the participation of parents in their children's education and the elaboration of individual support measures (the topic of Section II) are less likely to be put in place if teachers lack the time or energy to participate in their development and implementation. (Teachers need to be involved in the creating these measures, as they are at the forefront of their implementation.) Finally, reductions in funding for education are likely to accelerate "voluntary segregation" (analysed in Section V). When students with autism do not have access to a truly inclusive education system, parents are more likely to take the matter in their own hands and ensure that their children get the education they need through segregated, private (and extremely costly) schools.

Meaningful access to inclusive education can hardly be guaranteed in a context where there are reductions to funding for education. Rendering an education system inclusive to students with autism requires both a financial investment and an investment of time by teachers and other public servants, which inevitably also has a financial cost. A legislative recognition of the right to inclusive education is rendered meaningless by a reduction in funding which effectively prevents its implementation and expresses government disinterest in its implementation.

One of the reasons countries are likely to cut funding for education is that education is a right that is subject to progressive realisation. The assumption that delaying the full realisation of the right to inclusive education complies with the UNCRPD is, however, incorrect. Indeed, although rights subject to progressive realisation need not be achieved instantly, state parties are expected to commit the full extent of their available resources to realising them (Quinlivan, 2012, p. 76). For a developed nation such as Canada, a reduction in funding would likely be indefensible. This is especially true insofar as it disproportionately affects students with autism and other disabilities and their right to inclusive education. The absence of any *major* crisis which would require an immediate and temporary diversion of resources further supports this point.⁸ It is also worth noting that the right to non-discrimination is not subject to progressive realisation. Consequently, any measure that results in discrimination against students with autism will be in violation of the UNCRPD.⁹

Finally, the standard conception that an inclusive education system is more expensive is inaccurate. Such a system has indeed been found to be far less expensive than a segregated system (de Beco, 2014, p. 276). When the indirect benefits of higher participation in the workforce by persons with disabilities are factored in, there is little doubt that inclusive education will never be costlier. It is, however, true that the initial investment in making an education system more inclusive may be considerable. Yet the magnitude of the investment is

⁸ As mentioned in the introduction, education is a provincial power in Canada, and international conventions are not sources of domestic rights. Under domestic law, provinces are under no *legal* obligation to properly fund their education system or special needs programs (*A. L. v. Ontario*, 2006). My treatment of funding reductions is especially relevant at the time this article is published (mid- to late 2020). In 2019, the newly elected conservative Ontario government attempted to significantly cut funding for services for students with autism (Alphonso & Stone, 2019; Nielsen, 2019).

⁹ The consequences of such discrimination are bound to be especially significant for students whose identity makes them vulnerable to multiple and overlapping forms of discrimination on the basis of race, gender, and/or social class (Liasidou, 2012). In Canada, students with autism from diverse backgrounds have faced singular barriers when accessing various essential services (Jiménez, 2009; Khanlou et al., 2017).

the result of a system that was improperly and discriminatorily designed. Making an education system more inclusive has symbolic and actual value in remedying a historical wrong to persons with autism and other disabilities.

Section II: Inadequate Individual Support and Parent Participation

The second way in which Canada fails to meet its obligations under the UNCRPD is by failing to afford parents meaningful participation in their children’s education and by failing to provide students with autism with individualised support. There is no explicit guarantee of a parent’s right to participate in their child’s education in the UNCRPD. Indeed, the UNCRPD does not extensively refer to parents and does not grant them any rights independent from those granted to their children (Kayess & French, 2008, p. 25). The Committee¹⁰ was likely worried that parents would stand in the way of their child’s access to inclusive education. However, insofar as parents support their child’s access to inclusive education, they should be involved.¹¹ General Comment No. 4, which helps guide the interpretation of article 24 of the UNCRPD, refers to parent involvement multiple times. Paragraph 4 recognises a “lack of outreach to all parents” as a barrier to inclusive education for persons with disabilities (Committee on the Rights of Persons with Disabilities, 2016, p. 2). Paragraph 12, which enumerates the core features of inclusive education, states that “[the] involvement of parents/caregivers and the community must

¹⁰ The Committee on the Rights of Persons with Disabilities (CRPD) is “the body of independent experts which monitors implementation of the Convention by the States Parties” (United Nations Human Rights Office of the High Commissioner, n.d.).

¹¹ The assumptions regarding parent participation which underlie the UNCRPD may be worth questioning. In Canada, parents are arguably less likely to stand in the way of their child’s access to inclusive education than in other countries with more limited access to information regarding disability and differing cultural practices. Furthermore, children generally exercise their rights through their parents (often their mothers). This is especially true for children with disabilities. See generally *A. L. v. Ontario* (2006) and *Runswick-Cole* (2007, 2011).

be viewed as assets with resources and strengths to contribute [*sic*]” (Committee on the Rights of Persons with Disabilities, 2016, pp. 5–6).

As for the elaboration of an Individual Education Plan (IEP), section 2(e) of article 24 of the UNCRPD (2007) states that parties to the Convention should provide “effective individualized support measures . . . , consistent with the goal of full inclusion.”¹² It is not enough for governments to mandate that students be included within the public school system: they need to actually be included, which inevitably involves, for students with autism, individualised measures (Kayess & French, 2008, p. 8). The UNCRPD (2007) clearly states that a failure to provide reasonable accommodations,¹³ such as an IEP, constitutes discrimination as defined under article 2. Such discrimination is prohibited under article 4(1) (UNCRPD, 2007).

In Canada, there seems to be a disconnect between government policy and its application. For instance, the Ministry of Education of Ontario mandates that students with autism receive an IEP, written in collaboration with their parents and other community agents, within 30 days of starting school in an inclusive environment (Ontario Ministry of Education, 2004, 2007, pp. 28–

¹² The Committee defines IEPs as follows: “[A]dequate, continuous and personalized support is to be provided directly. The Committee emphasizes the need to provide individualized education plans that can identify the reasonable accommodations and specific support required by individual students, including the provision of assistive compensatory aids, specific learning materials in alternative/accessible formats, modes and means of communication, communication aids and assistive and information technology. Support can also consist of a qualified learning support assistant, either on a shared or on a one-to-one basis, depending on the requirements of the student. Individualized education plans must address the transitions experienced by learners who move from segregated to mainstream settings and between levels of education. The effectiveness of such plans should be regularly monitored and evaluated with the direct involvement of the learner concerned. The nature of the provision must be determined in collaboration with the student, together, where appropriate, with the parents, caregivers or other third parties. The learner must have access to recourse mechanisms if the support is unavailable or inadequate. Any support measures provided must be compliant with the goal of inclusion. Accordingly, they must be designed to strengthen opportunities for students with disabilities to participate in the classroom and in out-of-school activities alongside their peers, rather than marginalize them” (Committee on the Rights of Persons with Disabilities, 2016, pp. 9–10).

¹³ See article 2, which defines reasonable accommodations as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” For a detailed treatment of how Canadian courts have interpreted reasonable accommodations, see Brodsky et al. (2014).

31, 2009).¹⁴ A similar policy exists in other provinces and territories, such as British Columbia (British Columbia Ministry of Education, 2009) and the Northwest Territories (The Northwest Territories, Ministry of Education, Culture and Employment, 2006). In practice, however, parents of children with autism report that the collaboration between them and the government to create an IEP is either non-existent or inadequate (Riva, 2016; Tomasi, 2015; Tomasi, 2017). It is worth noting that the documents describing IEPs have not recently been updated and often even predate the UNCRPD, which may explain why the policies are inadequately applied.

The provision of reasonable accommodations would not be necessary if the education system were truly inclusive, i.e. if assessment and teaching methods were flexible enough to ensure that all students can participate. The main obligation under the UNCRD is to render the education system truly inclusive. If Canada delays a redesign of the education system for financial reasons (as explored in Section I), it must at least ensure that students are provided with reasonable accommodations within the mainstream education system while inclusive education is being achieved.

Section III: Lack of Education and Training for Teachers

The third way in which the Canadian education system fails to meet Canada's obligations under the UNCRPD is by failing to properly educate and train teachers who work with students with autism. Article 4 of the UNCRPD (2007) states that, to effect the realisation of the rights under the UNCRPD, state parties should take measures to employ teachers with disabilities and train all teachers on disability. The right to education under article 24 cannot be realised without such training.

¹⁴ The 30-day period remains applicable (Ontario Ministry of Education, 2017).

Inclusive education cannot be legislated into existence, and it cannot be effected without the participation of teachers. While teacher collaboration has been found to depend on a wide array of factors which are outside of the sphere of influence of government policy (such as a teacher's gender and career span) (McCrimmon, 2015, p. 235), the one factor that is within the reach of government policy, teacher training on and exposure to disability, significantly affects teacher attitude and, consequently, the implementation of inclusive education. A comprehensive review of university programs in education revealed that no Canadian university mandates the systematic exposure of teachers-in-training to disability concepts and related intervention methods (McCrimmon, 2015, p. 235). Similarly, there is no mandatory continuing education on disability in Canadian provinces and territories. Teachers themselves state that they do not feel properly trained to deal with the needs of students with disabilities. This makes it impossible for Canada to truly comply with the UNCRPD. The level of detail included in the provisions of and comments on the UNCRPD make it clear that the UNCRPD mandates not only legislative action but also its implementation.

The combined effect of the pressure put on teachers by decreased funding for education (analysed in Section I) and the lack of training on autism and other disabilities is an increase in teacher stress and burnout. This suggests an additional effect on students with autism: when inclusive education creates additional stress for teachers, they are likely to see it as a burden, which in turn makes them less likely to provide students with autism with the support they need. Once again, students with autism are disproportionately affected, compared to students without disabilities.¹⁵

¹⁵ As mentioned in the previous sections, this violates the UNCRPD provisions on discrimination.

Section IV: Use by Governments of Language Indicative of the Medical Model of Disability

The fourth way in which Canada fails to meet its obligations under the UNCRPD is through governments using language which appears to embrace the medical model of disability. The Ontario Ministry of Education's monograph on students with autism lists "learning problems" and "significant impairments" that autistic students face (Ontario Ministry of Education, 1990). For educational funding and other purposes, Alberta requires certain students to be labelled students with "severe disabilities" (Alberta Education, 2009). The Manitoba Government breathtakingly centres its document titled "Towards Inclusion: From Challenges to Possibilities: Planning for Behaviour," around the assertion that "[p]arents, teachers, and school administrators are concerned with the growing impact that behavioural problems are having on the educational system and on their ability to maintain effective learning environments" (Manitoba Education, Training and Youth, 2001).

This model, which focusses on the person with a disability and that what is "wrong" with her is inconsistent with truly inclusive education. The use of such language has far-reaching and wide-ranging effects (Young, 2008, pp. 174–175). It also has a pervasive effect on teacher perception of students with disabilities. Indeed, when these students are described as abnormal, teachers are more likely to find them hard to include within a normal classroom. They are also more likely to consider students with disabilities a burden. These constitute further barriers to inclusive education.

The effect of such inadequate language is further exacerbated by the fact that teachers are more likely to rely heavily on government documents (which contain the inadequate language),

as they constitute their only information on disability – considering the lack of training on disability at the university level, addressed in Section III.

Section V: “Voluntary Segregation”

The fifth and final way in which Canada fails to meet its obligations under the UNCRPD is by indirectly encouraging what I label “voluntary segregation”: parents who, when faced with the inadequacy and lack of inclusiveness of the education system, choose to take the matter in their own hands and educate their children outside of the public system, bearing the additional cost. Segregation does not meet Canada’s obligations under the UNCRPD (2007, art. 2(d)). While voluntary segregation is by definition not mandated by the government, it is caused by an education system which is not inclusive and, thus, by the government. Such segregation is indeed often a result of the issues analysed in the previous sections.

This situation is best illustrated through the example of the Lighthouse Learning and Development Centre. The Centre is a school for students with autism, where the standard Ontario public school curriculum is adapted to meet the needs of students with autism. The teachers have the same training as those in public schools, except for the fact that they have more experience working with students with autism. These two features (specific teacher training and reasonable accommodations for students with autism) are, as stated above, mandated by the UNCRPD. Parents are thus forced to pay tens of thousands of dollars for their children to have access to the education they are entitled to under the UNCRPD (Tomasi, 2015). Similar schools exist in other provinces and territories (Centennial Academy, n.d.; PALS Autism Society, n.d.).

It is worth emphasising that the factors which lead to voluntary segregation are not related to failures of inclusive education, but rather to failures in the adequate implementation of

inclusive education. This distinction may, however, not be clear to parents of students with autism. The education system is indeed explicitly called inclusive. If governments fail to quickly remedy these failures in the implementation of inclusive education, parents will likely develop lasting and potentially permanent distrust for inclusive education, which could lead to similarly permanent voluntary segregation.

Conclusion

This article has argued that Canada fails to meet its obligation under article 24 of the UNCRPD to provide students with autism with access to inclusive education. To do so, it went beyond Canadian legislation, under which every province and territory recognises the right of all students to an inclusive education. It analysed Canada's education system and the implementation of the goal of inclusive education. It pointed out the effect of five interrelated factors on the inclusiveness of the Canadian education system and its accessibility for students with autism: reductions in funding for education (Section I); the inadequacy of individual support measures and parent participation (Section II); the lack of education and training for teachers (Section III); the use by governments of language indicative of the medical model of disability (Section IV); and voluntary segregation (Section V).

This article also pointed out that the various issues explored tend to have a disproportionate effect on students with autism and other disabilities, which suggests a violation of the UNCRPD provisions on non-discrimination.

We live in an increasingly complex world, where we face increasingly complex challenges. We are constantly reminded that conventional thinking fails to provide us with the solutions we so desperately need. In such a world and in response to such complex challenges,

we can no longer afford to shut out the perspectives of persons with autism. Some of the most admired members of our society were and are persons with autism. Captains of industry, scientists, thinkers. Now, more than ever, we need new perspectives. Education acts as an empowerment right. It is a gateway to the exercise of many more human rights. Canada must make its education system truly inclusive. Doing so will not only solve an injustice that is all but acceptable in a developed country, it will also create great economic and social wealth.

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