Current Issues in Language Planning
Vol. 10, No. 3, August 2009, 255–271

Equity in education: signed language and the courts

Kristin Snoddon*

Second Language Education, Modern Language Centre, Department of Curriculum, Teaching and Learning, Ontario Institute for Studies in Education, University of Toronto, Toronto, Canada

This article examines several legal cases in Canada, the USA, and Australia involving signed language in education for Deaf students. In all three contexts, signed language rights for Deaf students have been viewed from within a disability legislation framework that either does not extend to recognizing language rights in education or that presents obstacles to systemic language planning. The limitations of disability rights legislation in each country is outlined, along with alternate legal arguments for signed language planning in education.

Keywords: signed language; deaf education; language rights; disability rights; legislation

Introduction

Court decisions relating to signed languages and bilingual education for Deaf[1] students have often grappled with the lack of an appropriate legal framework for these issues. In Canada, when disability rights legislation has recognized Deaf individuals' right to American Sign Language (ASL) or Langue des signes québécoise (LSQ), it has often perceived these languages as an accommodation provided in order for Deaf people to access public services on an equitable basis. However, this type of legislation seems to better serve the needs of autonomous Deaf adults who already know and use ASL or LSQ. It does not appear to address the matter of the pre-tertiary Deaf student's right to learn or receive an education in signed language. Legislation that is designed to uphold the civil rights of persons with disabilities has been shown to be of limited scope when, as in the case of Deaf people, it is brought into the arena of language rights and language planning.

This report presents a critical analysis of two recent Canadian legal decisions regarding signed languages in education in relation to similar cases from the USA and Australia. In all three countries, legal decisions regarding signed languages have been made from within a disability legislation framework that has either not been extended to apply to education for Deaf students or has failed to enact the systemic changes in Deaf education, which might properly be termed language planning. This paper also discusses the conceptual assumptions of legislators in ruling for and against Deaf students' ability to access an education in signed language. Finally, the argument will be submitted that present disability rights or special education legislation may not provide sufficient protection for the language

*Email: ksnoddon@oise.utoronto.ca

ISSN 1466-4208 print/ISSN 1747-7506 online

DOI: 10.1080/14664200903116303
http://www.informaworld.com

rights of Deaf children and alternate legal arguments must be made in order to provide equity in education for Deaf and hard of hearing students.

Background

Education and early intervention approaches for Deaf children have most often assumed a separate underlying proficiency (SUP) model of bilingualism (Cummins, 2001; Snoddon, 2008). In the SUP model, first and second language proficiencies are separate from each other, and learning of one language does not support learning of the other. Although the SUP model has been refuted by evidence from numerous studies of bilingual education programmes from around the world (see Cummins (2001) for a review of selected literature), in the case of Deaf education its assumptions remain widespread. In practice, this has meant forbidding the use of ASL and other native signed languages of the Deaf community in the education system, owing to conceptions that learning of a signed language will interfere with the development of spoken and written language skills. However, Deaf and hard of hearing children lack access to the same auditory base that hearing children have for acquiring a spoken language. Depriving Deaf children of signed language, especially in the early years of life, has often resulted in delayed or incomplete first-language acquisition, as documented in studies by Newport (1990, 1991), Mayberry and Eichen (1991), Mayberry (1993), and Morford and Mayberry (2000).

Oralist models of Deaf education are frequently cited as dating from the 1880 International Congress for the Improvement of the Condition of Deaf-Mutes in Milan, Italy, where delegates adopted a resolution asserting the superiority of spoken language for educating Deaf students (Carbin, 1996; Gibson, Small & Mason, 1997). As Carbin (1996) notes, however, oralist attitudes in Canada, the USA, and Europe predate the Milan congress, and the sanction granted by the congress delegates for prohibiting the use of signed language in education was largely symbolic.

Over the decades, oralist education has been deemed a widespread failure by researchers assessing Deaf students' literacy skills in the majority language (Allen, 1986; Conrad, 1977; Goldin-Meadow & Mayberry, 2001; Karchmer & Mitchell, 2003; Myklebust, 1964; Paul & Quigley, 1986; Trybus & Karchmer, 1977; Wrightstone, Aranow & Moskowitz, 1963). Accordingly, in the 1970s, various systems for manually encoding spoken language, including Total Communication and signed English, were introduced in classrooms for Deaf students in Canada and the USA (Gibson et al., 1997; Kuntze, 1998). These systems for representing spoken English using signs borrowed from ASL continue to place Deaf students at a disadvantage (Gibson et al., 1997; Johnson, Liddell, & Erting, 1989; Kuntze, 1998). Petitto (1994) explains that these invented, sign-based codes for spoken language do not possess the qualities of genuine languages. They attempt to amalgamate parts of spoken language structure and parts of signed language structure but do not posses the full grammar of either language (Marmor & Petitto, 1979; Petitto, 1994). Hence, students who are taught using these methods fail to fully acquire ASL or English (Schick & Moeller, 1992; Schick, 2003; Supalla, 1991).

In the 1990s, bilingual bicultural education programmes were introduced at several schools for Deaf students in Canada and the USA. These programmes follow a bilingual education model that incorporates both the native signed language of the Deaf community and the majority language of the country where students reside (Gibson et al., 1997). However, the progress and implementation of bilingual bicultural education programmes for Deaf students continue to face serious impediments, including the lack of support for native signed languages in the school and teacher education systems and the subsequent

impact on the Deaf community. In short, when Deaf students' bilingual development is not adequately supported by the education system, this in turn affects the numbers of Deaf university graduates, teachers, and professionals who can both provide and advocate for bilingual bicultural models of education (Canadian Hearing Society, 2004a, 2004b; Roots & Kerr, 1998).

Signed language as an access right

Several legal decisions and instruments have recognized the legal right of Deaf people to receive public services in ASL or LSQ, notably the Supreme Court of Canada's decision in *Eldridge v. British Columbia (Attorney General)* (1997). The *Eldridge* decision dealt with the responsibility of governments to provide signed language interpreters in health care and other settings as an equality right under section 15(1) of the Canadian Charter of Rights and Freedoms, which is a constitutional bill of rights. In the *Eldridge* judgement, the Supreme Court of Canada ruled that Deaf individuals belong to an enumerated group under section 15(1), namely the physically disabled. Section 15(1) reads in full:

> Every individual is equal before and under the law and has the right to 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.

In addition, section 14 of the Charter recognizes Deaf individuals' legal right to an interpreter for courtroom proceedings. In Canada, however, education is under the jurisdiction of individual provinces. Only the Ontario Ministry of Education has recognized ASL and LSQ as languages of instruction under the Education Act (Small & Mason, 2008).

In the USA, the Americans with Disabilities Act of 1990 entrenched Deaf individuals' civil right of access – including the right to an interpreter – in employment, government services, public accommodations, commercial facilities, telecommunications, and transportation (Department of Justice, 2008). However, the Individuals with Disabilities Education Act (IDEA), which originated in 1975 as the Education for All Handicapped Children Act, mandates how students with disabilities are to be accommodated in US schools (Johnson, 2000). The classification of Deaf students as disabled by government officials and educators has prevented these students from benefiting from American legislation that supports the rights of language minority students, such as the Bilingual Education Act of 1968, *Lau v. Nichols* (1974), or *Martin Luther King Jr. v. Ann Arbor School Dist*. (1979) (Lane, Hoffmeister, & Bahan, 1996; Siegel, 2006).

In Australia, as Komesaroff (2004) notes, education for Deaf students is based on a placement model that presents the options of integration in mainstream schools versus placement in specialized programmes for Deaf students, rather than on a language of instruction. Canada and the USA follow a similar placement model (Lane et al., 1996; Ontario Human Rights Commission, 2004). The Australian Disability Discrimination Act of 1992 is a federal law that prohibits discrimination against individuals with disabilities (Komesaroff, 2004). In addition, Australian Sign Language (Auslan) is officially recognized in Australian government policy (Komesaroff, 2005; Lo Bianco, 1987). Commissioned by the Minister for Education of Australia, Lo Bianco's (1987, p. 76) report on a national language policy recognizes the existence and significance of Auslan:

> Deaf Australians have evolved Sign Language to meet their communication needs. Australian Sign Language is considered a language in the same sense as verbal languages and

> consequently is to enjoy the same status. For children who use sign language, it is recognized that this is their language of initial learning.

Komesaroff (2005) argues that despite this policy's explicit recognition of the importance of Auslan for Australian Deaf children, the practices of Australian education authorities have not supported bilingual education for Deaf students. Elsewhere, Lo Bianco (2001) has chronicled the process of language policy in Australia since his original report. According to this author, in more recent years, language planning in an Australian context has worked to exclude the participation of community groups, including the Deaf community, in the field of language policy.

As the following section will show, the various legal instruments cited above have often not been applied or interpreted in ways that uphold Deaf students' right of access to a signed language in the education system. Komesaroff (2005) comments that the position of international organizations and international declarations made in regard to signed languages and bilingual education for Deaf students have often been disregarded by education authorities. The World Federation of the Deaf's (2007, p. ii) Policy on Education Rights for Deaf Childrenstates that.

> even in industralised countries, the majority of current Deaf education programmes do not respect the linguistic human rights of Deaf children. Indeed, most Deaf education programmes fall in to the language deprivation category described in theoretical models of education of linguistic minorities. 'Language deprivation' for Deaf people means ignoring the use of sign language as a basic communication means, as a language of instruction and as a school subject. Following this, the linguistic human rights of Deaf children are grossly violated in educational programmes all over the world.

In addition, the 2006 United Nations Convention on the Rights of Persons with Disabilities calls for state parties to recognize and promote signed languages (Article 21), facilitate learning of signed language by Deaf students, and promote the linguistic identity of the Deaf community in the education system (Article 24).

In light of the above overview of signed language as an access right in Canada, the USA, and Australia, the following section will discuss two cases relating to ASL in education from the Canadian province of Saskatchewan and some conceptual assumptions of educators and legislators involved with making these decisions. These Canadian resolutions will then be compared with several cases in Australia and the USA and parallels drawn concerning legislators' decision-making processes regarding language rights within a disability legislation framework.

Signed languages in education

In Canada, constitutional recognition of the right to signed language has frequently not trickled down to provincial ministries of education. Recent legal judgements in the province of Saskatchewan have shone a light on the practices and assumptions of educational authorities regarding Deaf students' use of signed language. The Provincial Court of Saskatchewan's 19 August 2005 decision in the matter of the Child and Family Services Act of Saskatchewan and Ryley Allen Farnham describes an 8-year-old Deaf student without written, spoken, or signed language abilities. The case brought before the Provincial Court of Saskatchewan centred around an application by the Department of Community Resources and Employment for Ryley to be found a child in need of protection and removed from the custody of his mother, April, who

opposed the education authorities who advised her to persist with her son's cochlear implant and aural-oral training.

Under the guidance of Saskatchewan health and education professionals, namely the Saskatchewan Pediatric Auditory Rehabilitation Centre and the Psycho-Educational Assessment Clinic, Ryley had received a cochlear implant at 1 year of age and was enrolled in various preschool and elementary school programmes emphasizing spoken language. No access to ASL was provided, as following the 1991 closure of the R.J.D. Williams Provincial School for the Deaf in Saskatoon, the Saskatchewan government decided to emphasize the use of cochlear implants and integrated education for Deaf students (Carbin, 1996). Accompanying the government's decision was a corresponding choice to 'de-emphasize the use of sign language' in the education of Saskatchewan Deaf students (Provincial Court, par. 13).

The Provincial Court of Saskatchewan justice's decision describes a 'relentless emphasis on Ryley's developing oral skills' and a series of 'educators and social workers' collaborating with the student (par. 16). In spite of these efforts, at 3 years of age, Ryley's behaviour was described as threatening, and a padded room was constructed for him at the last school he attended in Moose Jaw in order to contain him 'during his terrifying temper tantrums' (par. 23). His mother was described as searching fruitlessly for a way to learn signed language, and also as trying to convince several different authorities of the uselessness of her son's cochlear implant. It is interesting to note that in this case, the efforts of the Saskatchewan government was apparently expended not on remedying the situation of a language-deprived Deaf child, but on demonstrating April Farnham's lack of fitness as mother.

When a small grant was found in the latter half of 2003 for Ryley to receive ASL instruction from Allard Thomas, a Deaf teacher, Ryley was found to have 'almost no communication skills at all' (par. 25). However, according to the justice, 'there was very little if any behavioural trouble with the child, when he was being taught ASL', and soon Ryley had 'increased his vocabulary to about 200 signed items' (par. 26–27). Owing to lack of funding, Thomas' ASL instruction ceased in 2004. Instead, the school replaced Thomas with a hearing 'woman who has been learning sign language' (par. 28).

The student's arduous journey through the Saskatchewan public education system culminated in Justice Orr's ruling that 'massive and vital changes must be made by the Saskatchewan authorities in the situation of Ryley and his mother':

> A massive commitment must be made to teach Ryley American Sign Language. The present regimen of one-hour-per-day instruction by a woman who is not a qualified teacher of sign, and who is herself just learning to sign, is inadequate [. . .]. There was ample evidence presented as to the 'window of opportunity' which exists in Ryley's life for him to learn. The window is already beginning to close, and immediate action is required. (par.25–49[1])

Ryley was found by the court 'to be a child in need of protection, on the sole ground that he has suffered a serious impairment of mental or emotional functioning' (par. 47). The judge ruled that he was to be placed with his uncle for six months but that his mother was 'to be given virtually unlimited access to the child' (par. 47) while studying ASL and dealing with personal matters, before Ryley was returned to her care.

Notably, Justice Orr references the *Eldridge* decision in his ruling, although he states that the Provincial Court of Saskatchewan does not have the power to decide whether the student's Charter rights were infringed. Nor, as he writes, does the Provincial Court have jurisdiction over the government authorities overseeing Deaf education in

Saskatchewan. The provincial education system's prior refusal to provide Ryley with an education in ASL – whether by arranging for his enrolment in a Deaf school outside of the province or providing a full-time ASL interpreter in a mainstream classroom – leads Justice Orr to draw parallels with *Eldridge*, where.

> the Supreme Court of Canada held that the rights of deaf persons under section 15 of the Charter were infringed when a provincial medical plan failed to provide them with paid interpreters for medical services, thereby depriving them of medical services equivalent to those received by hearing persons. The Supreme Court also found that the Charter applies to 'private entities' under circumstances where the private entity provided a service normally ascribed to government (e.g. school boards?). (par. 50)

Justice Orr's last parenthesis speculates on an application of Canadian constitutional law that has not yet been made by provincial ministries of education. Were school board programmes ordered by a higher court to meet Deaf students' need for ASL or LSQ as a Charter right, the unfortunate case of Ryley Farnham may not have occurred as it did.

Justice Orr's decision makes reference to another family who brought a complaint to the Saskatchewan Human Rights Tribunal. The situation of Adam Benson, another Deaf student who did not benefit from a cochlear implant but who was able to acquire ASL and access a full-time ASL interpreter in the Saskatchewan separate school system,[2] is contrasted by the justice with the case of Ryley Farnham: 'Why should this child thrive while another's life is blighted?' (par. 49[3]). Justice Orr attributed the disparity between Ryley's and Adam's situation in part to differences in their mothers' social status that affected their respective access to public and legal resources. April Farnham was an aboriginal single mother in receipt of public assistance, while Tammy Benson is white and middle class (par. 38).

However, Benson was led to file a complaint with the Saskatchewan Human Rights Commission over the Saskatoon public school system's refusal to provide an ASL interpreter for her son in the context of a local oral/aural pre-school programme for children with hearing loss. The Human Rights Commission refused to direct a formal inquiry against the Saskatoon Public School Division as requested by Benson. Following the Commission's decision, Benson asked the Saskatchewan Minister of Justice to conduct a review. However, the Saskatchewan Human Rights Tribunal (2006) concluded that the Commission's decision was reasonable and declined to order an inquiry.

Of particular interest in the Human Rights Tribunal's decision – released 6 months after Justice Orr's ruling – is its depiction of ASL, following the evidence provided by school board representatives. Benson's appeal to the tribunal raised several concerns regarding her son's right to language and education, as well as the school board's refusal to accept ASL as a language. The tribunal ruling cites the Saskatoon Public School Division's response to these allegations:

> Benson was refused a sign interpreter for her son in the context of the Lawson Heights Pre-School oral/aural program on a pedagogical basis, as the use of a formal sign system would have severely compromised the integrity of the program and the rights of the oral students who were enrolled in the pre-school at that time. (Saskatchewan Human Rights Tribunal, 2006, p. 5)

The school board further argued that 'Signing on a regular basis is in conflict with the rational objective of the program which is to develop auditory and language skills' (Saskatchewan Human Rights Tribunal, 2006, p. 6). In the tribunal decision, ASL is

depicted as being incompatible with spoken English in classrooms with Deaf students – a position seemingly based on a SUP model of bilingual learning where using more than one language in the classroom environment results in competition and conflict. This position also reveals as robust the long-entrenched attitudes toward signed language by some educators of Deaf students, many of whom continue to lack access to bilingual bicultural education training programmes and support with learning a native signed language (Komesaroff, 2008).

Additionally, the tribunal decision upheld the negative definition of ASL that was provided by the Saskatoon Public School Division. The tribunal cited evidence given by the school board's 'educational consultant for the sensory-impaired': 'Saskatoon Public School Division does not utilize ASL as a mode of instruction. ASL is a distinct language with its own syntax and grammatical features and does not utilize amplification, listening, speech and speech reading' (Saskatchewan Human Rights Tribunal, 2006, p. 4). While the preceding excerpt refers to ASL as a 'distinct language', albeit one that does not involve oral/aural rehabilitation, the school board went on to argue in its submission that 'ASL signing is a system of communication that is not based on language' (Saskatchewan Human Rights Tribunal, 2006, p. 6). As will be seen in the following section, statements by educational authorities and legislators that work to define signed languages by what they lack, and repudiate their status as genuine languages, reveal a common stance by parties seeking to resist change in Deaf education.

The Saskatchewan Human Rights Commission's ruling – cited as a 'correct application of the law' in the tribunal decision – was that

> The Commission believes that it also needs to be aware of the overall objectives of the School Board in relation to hearing impaired pre-schoolers. We have concluded that the Respondent did not discriminate against Adam because the Lawson Heights Pre-School program simply was not designed to provide the type of service the Complainant wanted for Adam. (Saskatchewan Human Rights Tribunal, 2006, p. 11)

In the above excerpt, language rights for Deaf students have been reduced to a 'type of service' that is incompatible with 'the overall objectives' of public education. In a Canadian Deaf education context, it appears that a rigid spoken language-versus-signed language dichotomy has allowed oralist models of education to prevail with support from both governments and the courts, regardless of legislation that supports Deaf people's language rights. The next section will examine several similar cases in Australia and compare the presentation of signed language by Australian educational authorities to the portrayal of ASL by the Saskatoon Public School Division.

Going to court over education in Australia

Komesaroff (2004, 2005, 2007) has studied cases where Australian parents of Deaf students filed complaints against education authorities for failing to provide classroom instruction in Auslan. The writer's analysis of the legal situation in Australia raises several points that are applicable to other countries with disability rights legislation that lacks a specific framework for upholding Deaf students' language rights. Complaints against education authorities have been made via Australia's Disability Discrimination Act and brought to the Human Rights and Equal Opportunities Commission (Komesaroff, 2004). Of the 11 formal complaints mentioned by Komesaroff (2004) that were brought to the Human Rights and Equal Opportunities Commission in regard to access to Auslan in education,

6 reached conciliation, 2 were withdrawn, and 1 was dismissed. However, two complaints reached the Federal Court of Australia and therefore hold implications for Australian case law (Komesaroff, 2004, 2007). These cases are the first to appear before the Federal Court regarding Deaf students' access to Auslan in education (Komesaroff, 2005).

In *Clarke v. Catholic Education Office and Another* (2003/2004), the parents of Jacob Clarke, an 11-year-old Deaf student, lodged a complaint against two separate educational institutions over the conditions that were offered for his enrolment in a secondary college (Komesaroff, 2007). The college had offered enrolment to the student on the basis of his receiving note-taking support, with only the possibility of access to Auslan: 'if a staff member . . . were to have these skills and be in a position to input into the learning support program . . . if possible, have . . . peers from . . . his year 7 classes to support him with interpreting and relaying verbal messages' (cited in Komesaroff, 2007, p. 366). The education authorities in question denied the parents' allegation of unlawful discrimination based in part on claims that the student was 'not Auslan dependent . . . the long term goal, agreed on all hands, was for Jacob to be an independent learner and to live as fully as possible in a hearing, that is, non-Auslan world' (cited in Komesaroff, 2007, p. 366).

The notion of access to Auslan creating dependence in Deaf students again surfaces in Komesaroff's (2007) account of being asked to interpret for Jacob Clarke during the court hearing. Present in court to give evidence as an expert witness, the writer points to the illogicality of this situation: 'Despite the agreed need for an interpreter for Jacob in court by all parties involved, the defence and its key expert witness proceeded to argue their case that Jacob would be able to participate in school *without* a sign language interpreter' (Komesaroff, 2007, p. 370, italics in original). Further, the expert witness for the defence argued that not having an interpreter in the classroom 'would provide Jacob with an opportunity to 'learn the strategies for coping in the wider community, which is a hearing community, and go on to university, to tertiary [education], where it's not a closed deaf community'' (cited in Komesaroff, 2007, p. 370). As Ladd (2003, p. 145) notes, 'one of Oralism's tenets is that use of sign language alienates one from society and that integration can only occur via speech'. However, this ideology is challenged by studies documenting the negative effects of depriving Deaf children of signed language and socialization with other Deaf children and adults. Some researchers have suggested that Deaf children educated in mainstream programmes using only spoken language face greater mental health difficulties than children educated in Deaf schools with access to signed language (Hindley & Parkes, 1999; Hindley, Hill, McGuigan, & Kitson, 1994). Other researchers describe the difficulties in acquiring social and communicative competence and participating in peer interaction when Deaf and hard of hearing children are exposed to only spoken language as a means of communication (Antia & Kreimeyer, 2003; Heiling, 1995; Preisler, 1999; Preisler & Ahlström, 1997). In Jamieson's (2007) study of 11 Deaf and hard of hearing students who were integrated in mainstream Canadian educational settings ranging from kindergarten to grade 7, a lack of affiliation with student peers was observed and parents often described their children as isolated, rejected, and lonely. Additionally, the notion that an education without access to signed language fosters independence is opposed by several Deaf individuals who underwent an oralist education (e.g. Emery, 2003) and who maintain that access to signed language and signed language communities enable full participation in public life.

The case brought by Jacob Clarke's parents was ruled in favour of the applicant by Justice Madgwick (Komesaroff, 2007). The Australian Capital Territory Catholic Education Office appealed the justice's decision and the case was brought to the Federal Court of Australia (Komesaroff, 2007). Justice Madgwick's original decision that the

educational institutions in question had unlawfully discriminated against Jacob Clarke by failing to offer him Auslan support in the classroom was upheld by a panel of three Federal Court judges. Damages of $26,000 were awarded to Jacob as compensation (Komesaroff, 2007).

In *Hurst and Devlin v. Education Queensland* (2004/2005), two families with Deaf children brought a complaint against Education Queensland, a state educational authority, over teachers' use of signed English and the absence of Auslan in the classroom (Educational Justice, 2006). The case heard in the Federal Court of Australia in 2005 was determined in favour of Devlin and against Hurst; however, the judgement against Hurst was successfully overturned in appeals court in July 2006 (Educational Justice, 2006).

Several aspects of *Hurst and Devlin* are reminiscent of the Saskatchewan Human Rights Tribunal's decision in the case of Adam Benson. As described by Komesaroff (2007), the parents of Ben Devlin, an 11-year-old Deaf student, alleged in their complaint that Education Queensland had failed to provide their child with an adequate education. Ben was assessed as severely language delayed (Komesaroff, 2007). His parents attributed Ben's predicament to a lack of access to full-time Auslan interpreters and bilingual education programmes for Deaf students in Queensland schools (Komesaroff, 2007). Like the Saskatoon Public School Divison's negative definition of ASL that was upheld by the Saskatchewan tribunal, the justice in *Hurst and Devlin* supported Education Queensland's deficit view of Auslan:

> Auslan does not have an oral or written component. Thus, a person who understands the Auslan language communicates in that language only with his or her hands . . . If [Deaf students] are unable to communicate orally, but only in signing, then they can only communicate . . . with other people who sign. (cited in Komesaroff, 2007, p. 379)

Komesaroff (2007, p. 374) notes that in this case, 'Auslan and English were presented as binary opposites', just as ASL and spoken English were portrayed by Saskatchewan educational authorities as being in competition. Just as the Saskatchewan government and educational authorities directed their efforts at opposing the wishes of April Farnham and Tammy Benson that their children receive an education in ASL, so Komesaroff (2007, p. 381) remarks of Education Queensland: 'Not only did they fail to initiate programs that could meet the needs of the deaf children represented in these cases, but they also failed to reach conciliation when an official complaint was filed against them. Moreover, they defended their actions in court, and . . . appealed the judge's ruling against them'. The adversial stance taken by educational authorities toward access to signed language for Deaf students appears to contradict Canadian and Australian language policy and human rights legislation (Komesaroff, 2007).

As in Ben Devlin's case, the discrimination case put forth for Tiahna Hurst 'was that she ought to have been taught in Auslan because that was not merely the best, but the only appropriate, method of communication with profoundly deaf children' (*Hurst v. State of Queensland*, 2006, par. 6). However, one significant difference between Ben Devlin and Tiahna Hurst – which was central to Justice Lander's deciding against Tiahna in the original case – is that Tiahna is fluent in Auslan, her first language (*Hurst*, par. 15). She has Deaf, Auslan-using grandparents and her hearing mother is bilingual in Auslan and English (*Hurst*, par. 9). In Tiahna's case, the justice had ruled:

> There is no evidence, or no evidence which I am prepared to accept, to support a finding that Tiahna cannot be educated in English, including Signed English . . .On Tiahna's own evidence,

> she has not established that she has fallen behind her hearing peers. It might be that she has not fallen behind her hearing peers because of the attention which she receives from her mother and the instruction which she no doubt receives from her mother in Auslan. (*Hurst*, par. 38)

However, Tiahna's lawyer argued that her ability to cope in a regular classroom environment did not mean that she could reach her full educational potential:

> The fact that she could 'cope' without Auslan did not mean she had not been seriously disadvantaged without it. It only meant that her detriment was masked. Lack of Auslan assistance was an educational disadvantage to Tiahna because it denied her the opportunity to realise her full potential. In the case of a less able student, it might cause the student to fail rather than pass. In Tiahna's case, it caused her to perform at an average level rather than excel. In both cases, there is serious disadvantage. Neither student performs to the best of his or her ability. (*Hurst*, par. 56)

A lawyer appearing on behalf of the Human Rights and Equal Opportunities Commission supported Tiahna's counsel in her appeal and cited Australia's responsibility to comply with the United Nations International Covenant on Civil and Political Rights, the Declaration on the Rights of Disabled Persons, and the Convention on the Rights of the Child, in terms of prohibiting discrimination and promoting the independence of children and adults with disabilities (*Hurst*, par. 78–81). The effect of these submissions was to encourage a broad interpretation of Australia's Disability Discrimination Act and of the state's responsibility to provide Deaf students with equitable educational opportunities. Nonetheless, in their appeal ruling the justices avoided making sweeping declarations regarding Deaf students' right to access Auslan:

> It should be stressed that Tiahna's case is not a test case. The judgment of this Court does not establish that educational authorities must make provision for Auslan teaching or interpreting for any deaf child who desires it. It does not establish that Auslan is better than signed English as a method of teaching deaf children. It does not determine that an educational authority necessarily acts unreasonably if it declines to provide Auslan assistance. (*Hurst*, par. 131)

The justices' above refusal to set a legal precedent is illustrative of the nature of an individual complaints-driven system that is created by disability discrimination legislation (Komesaroff, 2005). Such a system may be unsatisfactory where more systemic change is desired, as with the kind of language planning in education that will better support Deaf students in achieving full linguistic and academic proficiency. Further obstacles to systemic change in Deaf education are presented and analyzed in the following section regarding the US legal framework for signed language in education.

The US context: a problem of paradigm

Johnson (2000) discusses special education law in the USA as stemming from the landmark case of *Brown v. Board of Education of Topeka*, Kansas (1954), where the Supreme Court found that a separate education for different groups of students is inherently unequal. Prior to 1975, when the Education for All Handicapped Children Act (later the Individuals with Disabilities Act or IDEA) was enacted, there existed no federal special education legislation in the USA and many children with disabilities were excluded from attending school (Johnson, 2000). IDEA mandates that students with disabilities must be educated in the least restrictive environment possible (Lane et al., 1996). Residential facilities, including state schools for the Deaf, were ranked by IDEA at the bottom of the list of potential

educational placements (Lane et al., 1996). The irony of the least restrictive environment mandate of IDEA, as Siegel (2000, p. 7) notes, is that in the case of Deaf students, 'a rich language environment is not required, and indeed is often considered legally "segregated", whereas a communication-poor environment is often viewed as legally "inclusive"'.

In a case reminiscent of Australia's Tiahna Hurst, Siegel (2000) describes *Board of Education v. Rowley* (1982), where the US Supreme Court set the standard for determining whether students with disabilities received sufficient educational benefit from programmes or services offered by a school district. The Deaf parents of Amy Rowley, a Deaf kindergarten student enrolled in a New York state school district, wanted a qualified signed language interpreter present for all of Amy's academic classes. The school administrators took the position that Amy did not require an interpreter (*Board of Education v. Rowley*). The Rowleys requested a hearing before an independent examiner, who also concluded that Amy did not need an interpreter. On appeal to the New York Commissioner of Education, the examiner's decision was upheld. The Rowleys then appealed this decision to the United States District Court for the Southern District of New York, claiming that the school district's denial of an interpreter for Amy was in contradiction to IDEA's guarantee of a free and appropriate public education. The District Court agreed with the Rowleys and its broad interpretation of the principle of a free and appropriate public education for students with disabilities was affirmed by a divided panel of the United States Court of Appeals for the Second Circuit (*Board of Education v. Rowley*). However, the US Supreme Court both overturned the Court of Appeals' decision, and Siegel (2000, p. 25) writes:

> established a standard that governs disagreements between a parent and a school district, notably that a school district will prevail in any dispute if it can show that: 1) it followed the procedures under IDEA, and 2) the child received some 'educational benefit' from the IEP and offered services or program. 'Educational benefit' was defined as passing from grade to grade. If a school district could meet these two requirements, courts would not become involved in educational disputes.

While the Supreme Court's judgement does not appeal to either the disability rights or human rights and equity frameworks that were cited in Tiahna Hurst's case in Australia, the *Rowley* standard has apparently fossilized education rights for Deaf students in the USA. Siegel (2000, p. 25) explains that.

> the *Rowley* standard has been consistently read to mean that a school district need only show – whether the issue was quality of the interpreter, the signing efficiency of the teacher, the communication mode available in the school, or the location of the program – that the child gained some educational benefit . . . The *Rowley* Court concluded that although Amy Rowley missed 40% of classroom communication without the interpreter, she was still passing her classes and was not entitled to an interpreter and therefore nearly half of the classroom communication.

Siegel's (2000) account highlights the problems inherent in special education legislation that is designed to handle only individual student cases instead of enforcing systemic change, and that fails to address Deaf students' unique linguistic needs. In another case cited by the author, *Poolaw v. Bishop* (1995), the Court of Appeals for the 9th Circuit affirmed the decision of the Federal District Court of Arizona that Lionel Poolaw, a 'profoundly deaf child with insufficient language skills', should be placed in the Arizona School for the Deaf and Blind (Siegel, 2000, p. 27). While *Poolaw* recognized one Deaf student's need to acquire language and affirmed the benefits of an ASL classroom

environment, Siegel (2000, p. 27) notes, '[t]he case was not resolved until the child went through an administrative hearing and two federal court proceedings . . . That one literally must be at the doorstep of the Supreme Court whenever such a fundamental need is in question reveals how limiting IDEA is'. Additionally, the *Poolaw* case – like the cases of Ryley Farnham and Ben Devlin – recognized the language needs of a student who was assessed as language delayed and in need of remedial instruction. In a US context, the *Rowley* standard does not recognize the right of students like Amy Rowley or Tiahna Hurst, who had already acquired language, to excel academically with an education in signed language. Underlying this legal framework, as Siegel (2000) remarks, is the notion that Deaf students must first fail in regular classroom environments before they can gain access to ASL.

Various states have interpreted the mandates of IDEA by phasing out non-mainstream placement options and, in some instances, closing state schools for the Deaf (Siegel, 2000). In Canada, provincial schools for Deaf students in British Columbia, Saskatchewan, Quebec, and Nova Scotia have likewise closed in recent decades (Carbin, 1996). As Siegel (2000, p. 35) writes, 'Once a state closes a centre school for the deaf or a local school district eliminates a language-rich special day class or program, it is difficult, if not impossible, to resurrect it'. State and provincial schools for Deaf students in the USA and Canada, in addition to providing an ASL immersion environment, are historically, as Lane *et al*. (1996, p. 241) note, 'the centre of the DEAF-WORLD'. The general preference of the signed language-using Deaf community for residential schools is another characteristic that places the community at odds with special education legislation like IDEA.

The next section will discuss the benefits and drawbacks of several legislative solutions that have been proposed by various writers in order to better serve Deaf children's language rights.

Legal arguments and proposed solutions

Mühlke (1999, p. 729) has written a legal argument based on international human rights instruments that finds Deaf people have the right to use signed language and 'the right to language and linguistic development . . . is a fundamental manifestation of the respect for human dignity' on which international human rights law is based. If first-language acquisition is central to human dignity as Mühlke (1999, p. 729) argues, then

> governments must assume an obligation to ensure the fullest possible linguistic development of their citizens . . . governments may not endorse educational programs that deny deaf children access to sign language or that advise parents to reject sign language. On the contrary, governments should instead take actions to raise awareness of the importance of sign language for the linguistic development of deaf children and should make sure that deaf children have contact with sign language during their education.

Mühlke connects Deaf children's right to signed language with the right to freedom of expression, as does Siegel (2006). Freedom of speech or expression is, as she argues, 'the touchstone for all other civil and political rights' (Mühlke, 1999, p. 744). The writer's focus on the individual's right to linguistic development results in her stating that 'it will be necessary to inform parents of deaf children about the chances that sign language offers for the development of their children' and that 'states may not endorse programs that prohibit or advise against the use of sign language' (Mühlke, 1999, p. 746–747). In addition, '[t]he state must give deaf children early access to sign language wherever possible'

(Mühlke, 1999, p. 747). The implications of these arguments for infant hearing screening and early intervention programmes are significant (see Snoddon (2008) for a discussion of restrictions placed on learning ASL in the context of early intervention services). Mühlke (1999, p. 760) proposes that 'the international community (preferably represented by the UN General Assembly) should issue a declaration on the necessity of language and linguistic development for the enjoyment of human rights in general and on its special significance for deaf persons'.

However, Mühlke opposes Deaf community efforts to achieve recognition as a linguistic and cultural minority. Instead, she argues for Deaf children's right to linguistic development to be seen in the overall context of rights for persons with disabilities – a claim that seems less convincing in light of the legal cases reviewed in this paper. Mühlke sees the right to linguistic development as an individual right instead of a collective right that affords protection to the Deaf community and signed language. In this regard, it should be noted that groups of what Mühlke terms 'Deaf activists' have successfully lobbied for the recognition of native signed languages in various countries and their inclusion in the education system (see the World Federation of the Deaf (2006) for a list of countries that have granted constitutional, legislation, policy, or official government recognition to signed languages). The issue of whether an internationally recognized right to language and linguistic development – which, as the author herself acknowledges, can only bear real significance in the case of Deaf individuals – is preferable to legal recognition of signed languages and their importance in Deaf education is a matter for future research and debate.

Siegel (2006) links the right to communication and language to various principles underlying the United States Constitution, including freedom of speech (the First Amendment), and to the 14th Amendment which guarantees US citizens equal protection under the law. Like Mühlke, he acknowledges that Deaf individuals cannot enjoy fundamental human rights or full citizenship if deprived of language. He calls for constitutional recognition of the right to communication and language for Deaf and hard of hearing children. However, Siegel (2006) focuses on Deaf children's right to communication, rather than specifically to a native signed language. He proposes changes to IDEA, or the creation of a new federal law geared specifically toward Deaf and hard of hearing students, that will grant students with disabilities an equal right to education in alternative settings. Siegel (2000, p. 39) also proposes legislation to mandate that the education of Deaf and hard of hearing children is designed to meet their 'unique communication and cultural needs'. While these ideas hold promise for improving US education, they stop short of affirming the necessity of ASL as a full first language for Deaf students. The danger of this approach may be to encourage a relativism that lacks accountability to Deaf children and to what Cripps (2000) terms their birthright to membership in a signed language community.

In the absence of federal legislation for protecting Deaf children's language rights, Lawrence Siegel's National Deaf Education Project has developed strategies for developing individual state bills of rights for Deaf children. According to the project website, New Mexico and Colorado have passed a Deaf Child's Bill of Rights and several other states have enacted or proposed similar bills (National Deaf Education Project, 2005). It remains to be seen how effective this legislation will be for promoting broad access to ASL in education.

As Lo Bianco (2001, p. 25) writes, a 'commitment to provide equal access to educational opportunities' cannot be achieved in the case of Deaf or minority-language students 'without systematic language policy and planning'. International and national legislation may implicitly recognize Deaf children's right to a fully accessible, signed first language, as Siegel (2006) and Mühlke (1999) argue, but this right has not yet been made explicit in any law. In Canada, constitutional protection of Deaf individuals' right to signed language access has so far

been applied only to the situation of adults in receipt of medical and other government services. General disability rights legislation has often failed to recognize the right to signed language and failed to enforce systemic change in the case of Deaf education. In addition, much special education legislation may actually work against the interests of Deaf students. In each of the cases examined in this paper, a framework for language planning in Deaf education is absent. Such a framework, as envisioned by Nover (2006) and Small and Mason (2008), incorporates attitude, status, corpus, and acquisition planning. Attitude planning in bilingual Deaf education combats ethnocentric assumptions regarding the superiority of spoken languages and signed English over native signed languages of the Deaf community (Small & Mason, 2008). Attitude planning also refocuses the goals of education for Deaf students so that instead of viewing signed languages as a problem or deficiency, they are seen as both a right and an educational resource (Nover, 1995). Status planning involves legal and policy recognition of signed languages in education, while corpus planning involves the development of signed language dictionaries, curricula, technology, and related materials. Acquisition planning centres on support for signed language teaching and maintenance, including formal organizations and training programmes for signed language instructors and further opportunities for teachers of Deaf students to study bilingual bicultural pedagogy.

Conclusion

Perhaps a salient question should not be whether Deaf people are disabled – although this issue has been debated by Bahan (2005) and Lane *et al*. (1996). Rather, it should be asked if the social construction of Deaf people as a disabled group has aided signed language planning in education for Deaf students. This paper has argued that disability legislation – whether geared toward recognizing individual or group rights – has in fact proven ineffective for language planning and upholding language rights in education.

Of all the strategies for educational reform and improvement that have been tried by Deaf communities and associations of Deaf people around the world, the legal approach may be the last frontier. Native signed languages are in need of attitude, status, corpus, and acquisition planning (Nover, 2006; Small & Mason, 2008), if bilingual education for Deaf students is to achieve parity with education for hearing students. Deaf children may remain in a uniquely vulnerable state until special recognition of their language and bilingual educational needs is granted. Further research on the best legal approach and legal arguments to adopt towards this end in the context of individual countries may hasten the pace of developing and enforcing linguistic rights for Deaf children.

Acknowledgement

Special thanks to Normand Labrie for his comments on an earlier version of this paper.

Notes

1. This paper follows the convention established by Cripps (2000, Note to the Reader), who states: ‘It is common for authors to use “Deaf” with a capital “D” when discussing individuals who are members of the Deaf community and consider themselves to be culturally Deaf; while “deaf” with a lower case “d” describes an audiological state of being. I have decided not to make this distinction and use capital “D” in every use of the word Deaf. This is not to place a particular identity on particular individuals. Rather, it is to indicate that Deaf culture is the birthright of every Deaf individual by virtue of their having been born Deaf or having become Deaf in childhood, whether or not they have been exposed to Deaf culture’.

2. The Canadian constitution, first enacted in 1867, guarantees Catholics the right to an education following the dictates of their religion. Since in Canada, education is under provincial jurisdiction, several provinces have established parallel public and separate (i.e. Catholic) school systems (Heller, 2006).

Notes on contributor

Kristin Snoddon is a doctoral candidate in Second Language Education at the Ontario Institute for Studies in Education, University of Toronto. Her research interests include early language and literacy development in Deaf children, language planning and policy, and bilingual bicultural education for Deaf students. Her publications have appeared in the *Canadian Modern Language Review*, *Bilingual Basics*, and an Ontario Ministry of Education research monograph.

References

Allen, T. (1986). A study of the achievement patterns of hearing-impaired students 1974–1983. In A. Schildroth & M. Karchmer (Eds.), *Deaf children in America* (pp. 161–206). San Diego, CA: College Hill Press.

Antia, S., & Kreimeyer, K. (2003). Peer interaction of deaf and hard-of-hearing children. In M. Marschark & P. Spencer (Eds.), *Oxford handbook of deaf studies, language, and education* (pp. 164–176). New York, NY: Oxford University Press.

Bahan, B. (2005). Memoir upon the formation of a visual variety of the human race. In B. Eldredge, D. Stringham, & M. Wilding-Diaz (Eds.), *Deaf Studies Today 2004 Conference Proceedings* (pp. 17–35). Orem: Utah Valley State College.

Canadian Hearing Society. (2004a). *Status report on deaf, deafened and hard of hearing Ontario students in post-secondary institutions: Statistics, current trends, barriers and recommendations*. Toronto, ON: Author.

Canadian Hearing Society. (2004b). *Response of the Canadian Hearing Society to Ministry of Training, Colleges and Universities' discussion paper on postsecondary review: Higher expectations for higher education*. Toronto, ON: Author.

Carbin, C. (1996). *Deaf heritage in Canada: A distinct, diverse and enduring culture*. Toronto, ON: McGraw-Hill Ryerson Ltd.

Conrad, R. (1977). The reading ability of deaf school leavers. *British Journal of Educational Psychology*, *47*(2), 138–148.

Cripps, J. (2000). *Quiet journey: Understanding the rights of Deaf children*. Owen Sound, ON: Ginger Press.

Cummins, J. (2001). *Negotiating identities: Education for empowerment in a diverse society* (2nd ed.). Ontario, CA: California Association for Bilingual Education.

Department of Justice. (2008, April 18). *ADA Regulations and Technical Assistance Materials*. Retrieved April 30, 2008, from http://www.ada.gov/publicat.htm?Anchor-14210

Educational Justice. (2006, August 25). *Hurst and Devlin v. Education Queensland [2005] FCA 405 (15 April 2005)*. Retrieved April 30, 2008, from http://edjustice.edublogs.org

Emery, S. (2003). A personal account of my experience as a deaf child in a mainstream (oral) school. In Deaf Ex-Mainstreamers Group (Ed.), *Between a rock and a hard place* (pp. 11–13). Wakefield, West Yorkshire: Deaf Ex-Mainstreamers Group.

Gibson, H., Small, A., & Mason, D. (1997). Deaf bilingual bicultural education. In J. Cummins & D. Corson (Eds.), *Encyclopedia of language and education, volume 5: Bilingual education* (pp. 231–240). Dordrecht, The Netherlands: Kluwer Academic Publishers.

Goldin-Meadow, S., & Mayberry, R. (2001). How do profoundly deaf children learn to read? *Learning Disabilities Research and Practice*, *16*(4), 222–229.

Heiling, K. (1995). *The development of deaf children: Academic achievement levels and social processes*. Hamburg, Germany: Signum.

Heller, M. (2006). *Linguistic minorities and modernity* (2nd ed.). London: Continuum.

Hindley, P., Hill, P., McGuigan, S., & Kitson, N. (1994). Psychiatric disorder in deaf and hearing impaired children and young people: A prevalence study. *Journal of Child Psychology and Psychiatry*, *35*(5), 917–934.

Hindley, P., & Parkes, R. (1999). Speaking sign language from birth can make deaf children confident. *British Medical Journal*, *318*(7196), 1491.

Jamieson, J. (2007, October 18). *Hearing, learning and belonging: The social world of the hard of hearing student*, Presentation at the Canadian Academy of Audiology 10th Annual Conference, Niagara Falls, ON.

Johnson, C. (2000). *How the Individuals with Disabilities Education Act (IDEA) applies to deaf and hard of hearing students*. Washington DC: Laurent Clerc National Deaf Education Centre.

Johnson, R., Liddell, S., & Erting, C. (1989). *Unlocking the curriculum: Principles for achieving access in deaf education* (Gallaudet Research Institute Working Paper 89-3) Washington, DC: Gallaudet University.

Karchmer, M., & Mitchell, R. (2003). Demographic and achievement characteristics of deaf and hard-of-hearing students. In M. Marschark & P. Spencer (Eds.), *Oxford handbook of deaf studies, language, and education* (pp. 21–37). New York: Oxford University Press.

Komesaroff, L. (2004). Allegations of unlawful discrimination in education: Parents taking their fight for Auslan to the courts. *Journal of Deaf Studies and Deaf Education*, *9*(2), 78–86.

Komesaroff, L. (2005). Going to court over education: Researcher as expert witness. *Education and the Law*, *17*(4), 137–153.

Komesaroff, L. (2007). Denying claims of discrimination in the federal court of Australia: Arguments *against* the use of native sign language in education. *Sign Language Studies*, *7*(4), 360–386.

Komesaroff, L. (2008). *Disabling pedagogy: Power, politics, and deaf education*. Washington, DC: Gallaudet University Press.

Kuntze, M. (1998). Literacy and deaf children: The language question. *Topics in Language Disorders*, *18*(4), 1–15.

Ladd, P. (2003). *Understanding deaf culture: In search of deafhood*. Clevedon, UK: Multilingual Matters.

Lane, H., Hoffmeister, R., & Bahan, B. (1996). *A journey into the Deaf-World*. San Diego, CA: Dawn Sign Press.

Lo Bianco, J. (1987). *National policy on languages*. Canberra, Australia: Australian Government Publishing Service.

Lo Bianco, J. (2001). From policy to anti-policy: How fear of language rights took policy-making out of community hands. In J. Lo Bianco & R. Wickert (Eds.), *Australian policy activism in language and literacy* (pp. 13–44). Canberra, Australia: Language Australia.

Marmor, G., & Petitto, L. (1979). Simultaneous communication in the classroom: How well is English grammar represented? *Sign Language Studies*, *23,* 94–136.

Mayberry, R. (1993). First-language acquisition after childhood differs from second-language acquisition: The case of American Sign Language. *Journal of Speech and Hearing Research*, *36*(December), 1258–1270.

Mayberry, R., & Eichen, E. (1991). The long-lasting advantage of learning sign language in childhood: Another look at the critical period for language acquisition. *Journal of Memory and Language*, *30,* 486–512.

Morford, J., & Mayberry, R. (2000). A reexamination of 'early exposure' and its implications for language acquisition by eye. In C. Chamberlain, J. Morford, & R. Mayberry (Eds.), *Language acquisition by eye* (pp. 111–127). Mahwah, NJ: Lawrence Erlbaum Associates.

Mühlke, A. (1999). The right to language and linguistic development: Deafness from a human rights perspective. *Virginia Journal of International Law*, *40*(2), 705–762.

Myklebust, H. (1964). *The psychology of deafness* (2nd ed.). New York: Grune/Stratton.

National Deaf Education Project. (2005). *Why the NDEP now?* Retrieved April 30, 2008, from http://www.ndepnow.org

Newport, E. (1990). Maturational constraints on language learning. *Cognitive Science*, *14*(1), 11–28.

Newport, E. (1991). Contrasting conceptions of the critical period for language. In S. Carey & R. Gelman (Eds.), *The epigenesis of mind: Essays on biology and cognition* (pp. 111–130). Hillsdale, NJ: Lawrence Erlbaum Associates.

Nover, S. (1995). Politics and language: American Sign Language and English in deaf education. In C. Lucas (Ed.), *Sociolinguistics in deaf communities* (pp. 109–161). Washington, DC: Gallaudet University Press.

Nover, S. (2006, April 13). *Language planning in (deaf) education.* Retrieved January 27, 2009, from http://www.michigan.gov/documents/Noverpdf_156992_7.pdf

Ontario Human Rights Commission. (2004). *Guidelines on accessible education.* Retrieved April 30, 2008, from http://www.ohrc.on.ca/en/resources/Guides/AccessibleEducation/pdf

Paul, P., & Quigley, S. (1986). A perspective on academic achievement. In D. Lutherman (Ed.), *Deafness in perspective* (pp. 55–86). London: Taylor/Francis.

Petitto, L. (1994). Are signed languages 'real' languages? Evidence from American Sign Language and Langue des signes québécoise. *Signpost*, *7*(3), 1–10.

Preisler, G. (1999). The development of communication and language in deaf and severely hard of hearing children: Implications for the future. *International Journal of Pediatric Otorhinolaryngology*, *49*(Suppl. 1), S39–S43.

Preisler, G., & Ahlström, M. (1997). Sign language for hard of hearing children: A hindrance or a benefit for their development? *European Journal of Psychology of Education*, *12*(4), 465–477.

Roots, J., & Kerr, D. (1998). *The employment and employability of deaf Canadians*. Ottawa, ON: Canadian Association of the Deaf.

Schick, B. (2003). The development of American Sign Language and manually coded English systems. In M. Marschark & P. Spencer (Eds.), *Oxford handbook of deaf studies, language and education* (pp. 219–231). New York: Oxford University Press.

Schick, B., & Moeller, M. (1992). What is learnable in manually encoded English sign systems? *Applied Psycholinguistics*, *13*(3), 313–340.

Siegel, L. (2000). *The educational & communication needs of deaf and hard of hearing children: A statement of principle regarding fundamental systemic educational changes*. Greenbrae, CA: National Deaf Education Project.

Siegel, L. (2006). The argument for a constitutional right to communication and language. *Sign Language Studies*, *6*(3), 255–272.

Small, A., & Mason, D. (2008). ASL bilingual bicultural education. In J. Cummins & N. Hornberger (Eds.), *Encyclopedia of language and education, volume 5: Bilingual education* (2nd ed., pp. 133–149). Springer.

Snoddon, K. (2008). American Sign Language and early intervention. *Canadian Modern Language Review*, *64*(4), 581–604.

Supalla, S. (1991). Manually coded English: The modality question in signed language development. In P. Siple & S. Fischer (Eds.), *Theoretical issues in sign language research* (Vol. 2, pp. 85–109). University of Chicago Press.

Trybus, R., & Karchmer, M. (1977). School achievement scores of hearing impaired children: National data on achievement status and growth patterns. *American Annals of the Deaf*, *122,* 62–69.

World Federation of the Deaf. (2006). *Sign language fact sheet.* Retrieved April 30, 2008, from http://www.wfdeaf.org/pdf/fact_signlanguage.pdf

World Federation of the Deaf. (2007). *Policy on education rights for deaf children.* Retrieved April 30, 2008, from http://www.wfdeaf.org/pdf/policy_child_ed.pdf

Wrightstone, J., Aranow, M., & Moskowitz, S. (1963). Developing reading test norms for deaf children. *American Annals of the Deaf*, *108*(3), 311–316.

List of court cases

Board of Education *v.* Rowley, 458 U.S. 176 (1982).

Brown *v.* Board of Education of Topeka, 347 U.S. 483 (1954).

Catholic Education Office *v.* Clarke [2004] FCAFC 197.

Clarke *v.* Catholic Education Office [2003] 202 ALR 340.

Eldridge *v.* British Columbia (Attorney General) [1997] 3 S.C.R. 624.

Hurst and Devlin *v.* Education Queensland [2004] FAC 427.

Hurst and Devlin *v.* Education Queensland [2005] FAC 405.

Hurst *v.* State of Queensland [2006] FCAFC 100.

Lau *v.* Nichols, 414 U.S. 563 (1974).

Martin Luther King Junior Elementary School Children et al. *v.* Ann Arbor Sch. Dist., 473 F.Supp 1371 (E.D. Mich. 1979).

Poolaw *v.* Bishop, 67 F. 3d 830 (9th Circ, 1995).

Provincial Court of Saskatchewan, The Child and Family Services Act of Saskatchewan and Ryley Allen Farnham, the Honourable Justice Orr, P.C.J., August 19, 2005.

Saskatchewan Human Rights Tribunal Tammy Lynn Benson *v.* Government of Saskatchewan, Chair Anil K. Pandila, Q.C. February 28, 2006.