

**A CRITICAL APPRAISAL OF *WESTERN CAPE FORUM FOR INTELLECTUAL
DISABILITY v GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA* 2011 5
SA 87 (WCC)**

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SUMMARY

The 2011 the *Western Cape Forum for Intellectual Disability v Government of The Republic of South Africa* case flagged a lot of issues faced by persons with disabilities relating to access to education in South Africa. The case tackled certain perceptions about the ineducability of persons with profound and severe disability and the remaining charity-oriented perception by the South African Department of Basic Education. While the court made several important points in advancing universal access to education, the author argues that certain holes in the judgment hinders the existence of judicial finding truly infused with concerns of substantive equality. An example of this short-coming is the court's consideration of reasonableness when the right to basic education is an immediately realisable right. The author also argues that the South African developments in education policy for persons with disability, while positive, is insufficient to truly give effect to substantive equality – the claim to equality being made in the new constitutional dispensation. There is still an attitude that is too permissive of separating students based on abilism. The social model of thinking about requires a complete transformation of the education system that would not require a classification of learners by abilities but have a different constitution so as to accommodate all students and not unduly enable one group over another. The author considers the approaches from Canada and India to explore its responses to education for students with varying levels of ability. Canada's similar conception of equality and India's influence on South African constitutionalism and shared experience with massive equality gaps make these jurisdictions instructive.

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KEYWORDS: disability; *Western Cape Forum for Intellectual Disability v Government of The Republic of South Africa*; substantive equality; Education White Paper 6: Special Needs Education; White Paper 6; Right to Education; Integrated National Disability Strategy; special schools; special needs; separate schools; profoundly and severe disability; Convention on the Rights of Persons with Disabilities; transformative equality; comparative; India; Canada –Newfoundland; *Eldridge v British Columbia (Attorney General)*; reasonable accommodation.