

Discrimination at School?

Student
Guide

Learning and Evaluation Situations

Ethics and Religious Culture – Secondary Cycle II



SPECIAL THANKS

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IMPORTANT NOTICE

This document has legal information up to date as of June 1, 2017. None of the information in this guide should be taken to be legal advice.

The summaries of court decisions in this guide do not reflect the actual decisions: they have been changed for pedagogical purposes.

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Your firm of lawyers opened two years ago. Since then, the firm has been very interested in questions of discrimination and reasonable accommodation in Quebec schools. You have been hired on several occasions to take part in mediation sessions to help find solutions to conflicts between parents and school administrators. Mediation is a process that tries to help two sides to a disagreement find a solution without going to court.

Today, you got a request to accompany parents in a mediation. They believe their children have been victims of discrimination. You have to do some preparation to represent your clients' interests. For the moment, you only have part of the information about the file. The rest of the information will be given to you soon.

Here is the information you have for now:

- **Your clients are parents who believe that their children have been victims of discrimination at school. They want to ask the school to accommodate their children to ensure that their children's rights are respected.**
- **The school refuses to grant this accommodation request.**

Will you be able to successfully present the point of view of the parents and defend their rights?

Preparation

Before diving into your clients' file, you should review some important concepts...

1. What is discrimination?
2. What is reasonable accommodation?
3. Is it true that accommodation measures are always related to religious issues? Are there other reasons for accommodation measures?
4. What are the main features of the mediation process?

Outline of Your Assignments

First, review the various protections under the Canadian and Quebec charters (pp. 4 and 5).

Make sure you have a good understanding of how the charters define discrimination, and of the principles of reasonable accommodation. As a lawyer, you must clearly explain why your clients have the right to an accommodation measure and why the proposed measure is reasonable (pp. 6 to 8).

Next, you will be asked to study the decisions of the courts in similar cases (pp. 9 to 12).

Finally, your group must arrive at the mediation session with the following documents:

1. A **table** (the Legal Analysis Framework) that will help you determine whether your clients have a right to an accommodation measure. As a lawyer, before presenting your clients' request, you must ensure that it is legitimate. (See the document at p. 16.)
2. A **case study** based on the positions of the various people involved and the values at stake. You are asked to evaluate the possible impact of adopting each of these positions, both on the people directly involved and on society at large. (See the document at pages 16 to 17.)

Your teacher will collect these two documents to evaluate your group's work.

The mediation session will take place in a few days. Time to get to work!

Activity 1

The Charters: Norms for Guiding Governments and Citizens

Your teacher will briefly present the *Canadian Charter of Rights and Freedoms* and *Quebec's Charter of Human Rights and Freedoms*.

Try to answer the questions below. For help, refer to the info-sheet on the next page.

Comprehension Questions

1. What is a charter?
2. Who has to respect the Canadian and Quebec charters of rights?
3. Name two kinds of discrimination prohibited by the Quebec charter?



Learning
Activity

4. Identify one difference between the Canadian and the Quebec charters.

Dialogue: Do the charters have gaps?

At your summer camp, there is only one meal choice today: meat loaf! As a vegetarian, you're not happy. You think eating meat is bad for the environment and bad for your health.

Unfortunately for you, vegetarianism is not one of the grounds of discrimination mentioned in the Quebec charter. This means it is not a type of discrimination that is against the law. (See the Summary Table.)

- Despite what the Quebec charter says, do you think this situation is unjust? Why?
- Could vegetarianism fit under another ground for discrimination prohibited by the Quebec charter? If so, which one (or which ones)?
- Do you think that vegetarianism should be a kind of discrimination prohibited by the Quebec charter?
- Can you think of other grounds for discrimination that should be prohibited?

Info-Sheet on the Charters

The Charters: Instruments for Protecting Fundamental Rights and Freedoms

A charter is a text describing the basic human rights and freedoms that a society protects.

In Quebec, there are two charters that protect our rights:

- the **Canadian Charter of Rights and Freedoms** (Canadian charter). It is part of the Constitution, which is the most important law in the country.
- the **Charter of Human Rights and Freedoms** (Quebec charter). It is not part of the Constitution. However, in most cases, all other Quebec laws must respect the basic rights mentioned in this charter.

Here are some examples of rights protected by these charters:

- freedom of speech
- the right to privacy
- the right to be treated **equally** and without **discrimination**.

Summary Table: The Charters

Charters	Who Must Respect the Charters	Prohibited Grounds of Discrimination
Quebec Charter	<p>Everyone!</p> <ul style="list-style-type: none"> • Quebec government (e.g., government departments, municipalities, public schools, municipal and provincial police officers) • businesses, non-governmental organizations (e.g., private schools) • individual Quebecers 	<ul style="list-style-type: none"> • race • ethnic or national origin • colour • religion • sex • gender identity or expression • age, unless permitted by the law (e.g., prohibition against selling alcohol or cigarettes to people under 18) • pregnancy • sexual orientation • civil status (e.g., being married or single) • political beliefs • language • social status (e.g., being unemployed) • disability (e.g., being blind) • use of an aid to cope with a disability (e.g., the use of a seeing-eye-dog by a blind person in places where animals are normally not allowed)
Canadian Charter	<ul style="list-style-type: none"> • Quebec government (see above) • Canadian government (e.g., government departments, RCMP officers) 	<ul style="list-style-type: none"> • race • ethnic or national origin • colour • religion • sex • age • physical or mental disability • any other similar characteristic (e.g., the Supreme Court of Canada has added sexual orientation to this list)

Activity 2 – The Right to Equality and Freedom from Discrimination

After reading the info-sheet and summary table about the charters, and the information below about discrimination, answer the comprehension questions on the next page.

Discrimination

Discrimination refers to not respecting someone’s right to equality. Discrimination happens when someone is prevented from

1. enjoying the same rights and services as other people
2. because of a personal characteristic mentioned in the charters. These characteristics are the **prohibited grounds of discrimination**. They include characteristics such as religion, ethnic origins or a disability.

See the table on the previous page to learn about the other grounds of discrimination prohibited by the charters.

Discrimination can either be direct or indirect. The table below explains what we mean by direct discrimination and indirect discrimination.

Types of Discrimination

	Direct	Indirect
Definition	When a rule or action deliberately deprives a certain group of individuals of a right. (It creates a distinction.)	When a rule or action applies to everyone in the same way, without directly discriminating, but the impact of the rule prevents some people from exercising their rights like everyone else.
Example	A school board decides to not admit Blacks.	A school board decides that no animals can be in its schools.
Explanation	This rule prevents certain people from going to school because of the colour of their skin.	At first glance, this rule doesn’t target anyone. But blind people who need to use a seeing-eye-dog to move around might be discriminated against.

How do the charters deal with these types of situations?

Direct Discrimination:

If a rule is recognized as directly discriminatory, it will be declared invalid. In other words, it will no longer apply.

Indirect Discrimination:

The charters allow for special measures called **reasonable accommodations**. If a reasonable accommodation is possible, the rule will not be invalidated. Rather, it will be applied in a different way.

Comprehension Questions

1. In your own words, what is discrimination?

2. Do you think that discrimination is the same thing as intolerance? Explain.



Activity 3 - Reasonable Accommodation: What Is It?

Read the text below, and then answer the comprehension question.

Reasonable Accommodation: Who? Why? When?

The notion of reasonable accommodation comes from the right to be treated equally and to be free from discrimination. Accommodation involves making an exception for some people so they can enjoy the same rights and services as others.

An accommodation measure should be granted if

- a. someone makes a request,
- b. that person is a victim of **discrimination**,
- c. and the accommodation does not impose **undue hardship** on the organization being asked to accommodate. This is the “reasonable” aspect of the accommodation. It means that an accommodation **measure must be granted unless**
 - the cost is too high for the organization involved,
 - the measure would interfere with the proper operation of the organization, or
 - the measure would significantly affect the safety or infringe the rights of other people.

Comprehension Question

In groups of two, think of a scenario in which a request for accommodation would not seem “reasonable” to you. Explain your thinking.

Activity 4 - Exploring Real Court Cases

When starting a case, lawyers do their homework to see whether the courts have already decided similar cases. This lets them prepare the arguments they will use to represent their clients and to anticipate the arguments of the other side.

Take the time to carefully read the two case summaries below. These cases will help you complete the assignments that await you.

The Multani Case*

**This is a summary of the case *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 Supreme Court of Canada.*

The Facts

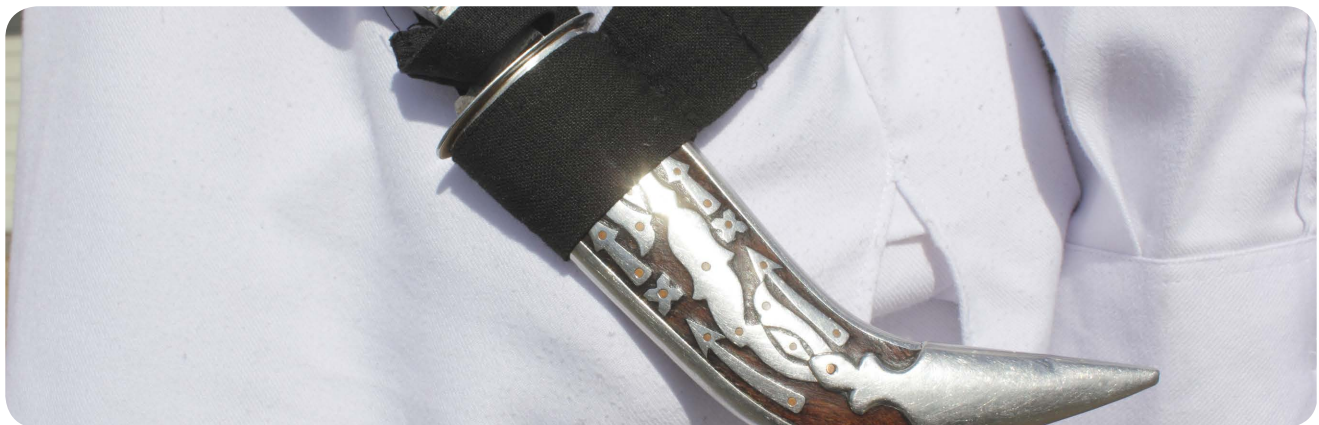
Gurbaj was a high school student who was an orthodox Sikh. Gurbaj sincerely believed that his religion required him to wear a kirpan at all times, including at school. This object couldn't be seen because it was hidden under his clothing. But one day, the kirpan accidentally fell out of his clothing in the school yard.

After this incident, the principal told Gurbaj he could not wear his kirpan at school. This reason was that the school's Code of Conduct prohibited the carrying of weapons or dangerous objects at school. The school board, like the principal, refused to let Gurbaj bring his real kirpan to school. However, the board said that he could bring a symbolic kirpan that was not dangerous, for example, a plastic kirpan.

Gurbaj's father did not agree with the school board's proposal. He felt the decision infringed his son's freedom of religion. Gurbaj's father asked a court for a reasonable accommodation measure to allow his son to wear a real metal kirpan at school, one that would be sealed and sewn inside his clothing.

WHAT IS A KIRPAN?

It is a religious metal object that resembles a dagger. It is worn by certain practicing Sikhs as a reminder to fight against oppression and injustice.



THE DECISION

The Supreme Court said that the rule in the Code of Conduct prohibiting the carrying of weapons was valid. It was meant to ensure the safety of students and applied in the same way to everyone. But the rule nevertheless had the effect of preventing Gurbaj from having access to the same services as other students. Why? Because Gurbaj sincerely believed that he couldn't go to school without the metal kirpan required by his religion. The court said that the school rules resulted in indirect discrimination that could be remedied by an accommodation measure.

After analysing the facts, the court concluded that an accommodation in favour of Gurbaj wouldn't impose excessive burdens on the school. Also, the religious practice in question didn't infringe the rights of other students or compromise their safety:

- No cases of violence involving a kirpan in schools had been reported.
- The goal of the school rule was to ensure a **reasonable** level of safety at school, not **absolute** safety.
- Allowing Gurbaj to wear his real metal kirpan under certain conditions allowed for a reasonable level of safety in the school.

The court decided in favor of Gurbaj. It overturned the decision of the school board and allowed Gurbaj, by way of an accommodation measure, to wear his real kirpan to school under certain conditions: the kirpan had to be in a wooden case and kept securely sealed under his clothes.

Points for Reflection: the Multani Case

1. Could this decision apply to other religious practices?
2. Should we ban all religious symbols in schools?
3. a the desirable level of safety in your school? Absolute safety (this would mean no scissors, compasses or hockey sticks) or a reasonable level of safety?
4. Would the decision in the Multani case be the same in a place where there is a low tolerance for risk, for example, in airports?

The Collège Notre-Dame Case*

**This is a summary of the case Commission des droits de la personne v. Collège Notre-Dame, 2001 Quebec Court of Appeal.*

The Facts

Maud was 11 years old. She suffered from a disability that reduced the mobility of her legs. Despite this, she could walk independently and even did some sports, such as swimming and skiing.

Maud began preparing to start high school. Like her friends, she dreamed of studying at Collège Notre-Dame. This high school put a lot of emphasis on the physical education. For example, the program included one hour of obligatory physical activity every day.

Maud attended the “open house” day at the College and completed the entry exams. She passed the exams, but was refused admission. The College said that her disability would prevent her from efficiently moving around the school and participating in the mandatory physical education classes.

Maud thought she was a victim of discrimination based on her disability. The College didn't even consider adapting its education program or school facilities to respond to her particular needs. Maud went to court to challenge Collège Notre-Dame's decision.

THE DECISION

The court recognized that the College placed a lot of importance on physical education (e.g., mandatory physical education courses for all students). The court acknowledged that this was a good policy. However, having this kind of policy did not mean the school could exclude all students with physical disabilities. The court found that the physical education program in issue was not a specialized sports-study program. It also found that the College's main objective was to offer a general high school education and not to train athletes.

The court concluded that Maud had been a victim of discrimination: the refusal of the College to admit her due to her disability prevented Maud from attending the school like other students.

According to the court, the physical abilities of each student should be evaluated in an individual manner. If it did not impose an excessive burden on the school, the College was obliged to offer accommodation measures tailored to the physical disabilities of a student.

The court found that Maud's physical abilities let her meet the goals of the education program at the College. Maud's integration **would not impose an excessive burden** on the school. In particular, the court found that it would not be too expensive to adapt the school's facilities to accommodate Maud. The College therefore had to admit Maud and to implement some accommodation measures (e.g., let her use the elevator) so she could move around the school and participate in the physical education classes.



Points for Reflection: the Collège Notre-Dame Case

1. The College didn't offer to adapt its education program or facilities for Maud in response to her special needs. What happens when students are temporarily injured or sick? Should a school have to take special measures in those situations?
2. In your opinion, if the College had a sports-study program aimed mainly at training high-level athletes, could it exclude students with physical disabilities?
3. According to the court, it was reasonable to require the College to adopt accommodation measures to help Maud move around the school and go about her regular activities. Can you think of some examples of accommodation measures that could be put into place?
4. In your opinion, could this decision also apply in the case of a student who suffers from an intellectual disability?

CDPDJ v.
Collège Notre-
Dame 2001 SCC

Activity 5 - Case Study

Finally, your clients' files have arrived at your office!

Listening to your teacher's instructions, get together in teams of three. You will do the preparation work with this team.

Your teacher will tell you the file number assigned to your team. The file number corresponds to one of the fact situations and accommodation requests described below.

Using this fact situation and accommodation request, complete the assignments at **pages 16 et 17** of this guide.

Learning
Activity



JOËL

Joël is 14 years old. He was recently in a serious car accident and is now a paraplegic (his two legs are paralyzed). He must use a wheelchair to move around.

After a long recovery, Joël is preparing to return to the public high school in his neighbourhood. He is anxious to see his friends again and finish his third year of high school! However, Joël realizes that he will not be able to get into the school using a wheelchair. The only way to enter is by walking up a flight of stairs.

Accommodation Request: Joël requests that a wheelchair ramp be installed at the school entrance.

SARAH

The school cafeteria decides to offer only one meal on Wednesdays in December: pork stew. A lot of students don't eat pork. Sarah, who is Muslim, is one of these students. She therefore cannot use the cafeteria services on Wednesdays in December.

Accommodation Request: Sarah requests that the cafeteria offer a second meal option on Wednesdays in December.

JESSIE

Jessie is diabetic. Because of her illness (considered a disability), she must always have insulin needles in her locker. Her life depends on it!

Jessie recently received a warning from a supervisor at school. He saw her needles and recalled that there is a rule in the school's Code of Conduct prohibiting needles at school.

Accommodation Request: Jessie requests permission to keep insulin needles in her locker.

SASHA

Sasha, who is 13 years old, grew up in Russia. Her living situation suddenly changed last June when her father was transferred to Quebec for his work. Sasha's family had to move to Quebec. It came as quite a shock, especially because Sasha can't speak a word of French!

Sasha is registered in a special French initiation program at the high school in her neighbourhood. This means that she is learning to read, speak and write in a special class designed for non-francophones. But for Secondary One math, gym, and fine arts classes, she is in the regular stream.

Sasha's math exam is just around the corner! She is very worried about it. She has not mastered very much French and is worried that she will not have time to answer all the questions in one hour.

Accommodation Request: Sasha requests an extra 30 minutes to write the exam.

SAMIA

Samia, a student in Secondary 4, is a practising Muslim. Samia sincerely believes that her religious beliefs require her to wear a hijab (a scarf to cover her hair) whenever she leaves home.

Samia has just been expelled from school for refusing to remove her headscarf. The principal said this decision was justified in light of a new school dress code that prohibits students from wearing any accessories that cover the head in school.

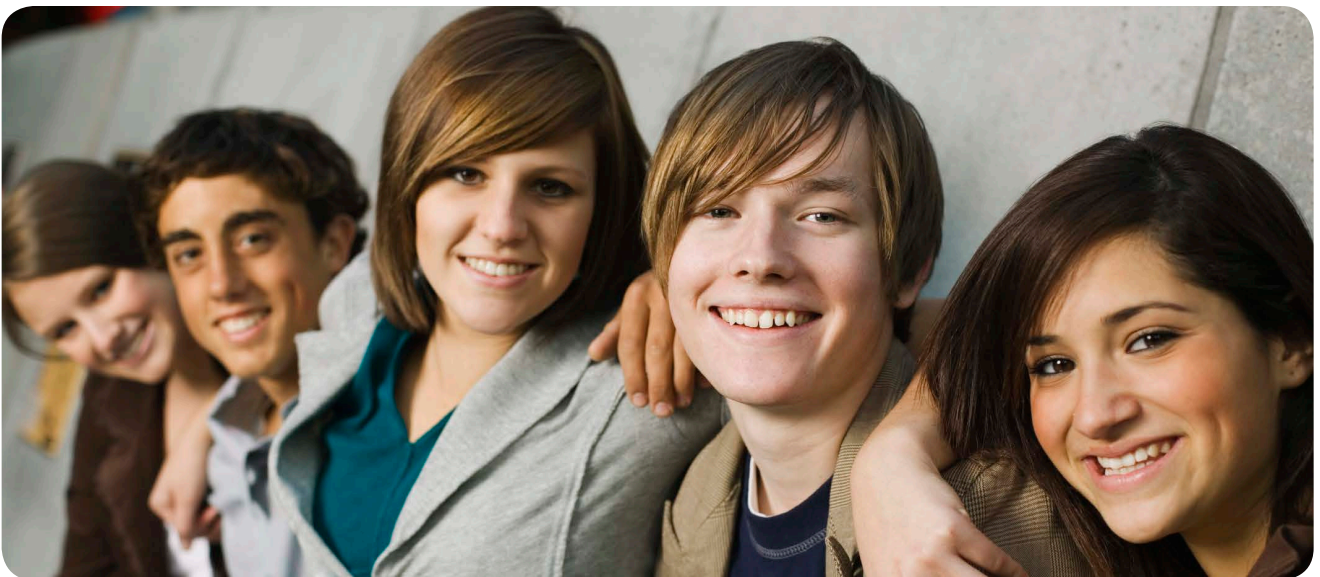
Accommodation Request: Samia requests an exception to the dress code so that she can wear her hijab in school.

MARTIN

Martin suffers from a mild intellectual disability. He has minor learning difficulties and problems adapting to some social situations. Despite these problems, with special coaching, he was able to follow the regular education program at his elementary school.

Martin is now 11 years old. He sent an application for admission to the high school in his neighbourhood. However, without any evaluation of his abilities, the school sent him a letter refusing his application.

Accommodation Request: Martin and his parents challenge the school's refusal. They request that Martin be integrated into a regular class with special services (a psychologist, etc.) to help him succeed academically.



Discussion: The Case Study

Now that you've prepared your file and your documents are ready, the only thing left to do is wait for the mediation session.

While you wait, here are two activities to help you finalize the details of your file.

1. Class Presentation of the Case Studies

To examine in more detail the issues of discrimination and reasonable accommodation, each group has two minutes to present its case study to the rest of the class. The groups must clearly explain the different points of view and moral issues and norms involved.

To prepare, you might want to use the document you will submit to your teacher.

This activity can take place as a round table, with each team acting as an expert on its case of discrimination.

Follow your teacher's instructions.

2. Reflection on Reasonable Accommodation

Each time that people encounter a new moral issue, their views can change. Individually, in groups or as a class, reflect on the questions below, which deal with reasonable accommodation practices in our society.

Follow your teacher's instructions.

Reflection Questions

1. Has your perception of reasonable accommodation changed during this activity? Explain your answer.
2. Do you think that reasonable accommodation is necessary in our society? Why?
3. The media generally discusses reasonable accommodation in a religious context. However, it is a useful way to respond to many other situations (discrimination on the grounds of a disability, ethnic origins, etc.). Why does reasonable accommodation based on religious discrimination get so much media attention? In our society, is there a lack of tolerance towards religious beliefs? Explain your answer.
4. A reasonable accommodation request will only be granted if it doesn't impose excessive burdens. This is the "reasonableness" requirement. Is this test appropriate? Should there be a different test? At what point does an accommodation request become "unreasonable"? Explain your answer.

Discrimination at School?

Step 1 - The Context

Briefly explain your fact situation in your own words and identify at least two ethical issues at stake.

Step 2 - Is the accommodation requested reasonable?

Legal Analysis Framework	YES	NO
1. Was the person who requested the accommodation a victim of discrimination?		
a. Does the impact of the rule or practice prevent the person from enjoying the same rights and services as other people?		
b. If yes, is the person disadvantaged on the basis of one of the characteristics mentioned in the charters? (See the section “Prohibited Grounds of Discrimination” in the charters Summary Table.)		
2. Is the accommodation measure requested reasonable?		
a. Does the accommodation measure respect the rights of others (right to security, freedom, etc.)?		
b. Is the accommodation measure within the financial means of the organization being asked to put it into place?		
c. Can the organization function properly even with the accommodation measure?		

- If you answered YES to all of these questions, the discrimination can be remedied through reasonable accommodation!
- Prepare to present your client’s position. Remember to anticipate the positions of the other people involved in the conflict: school, committees, other students, etc.

Step 3 - Analysis of Different Points of Views, Norms and Impact on the Community at Large

<p>1. Think of three individuals or groups involved in your fact situation. Present their positions (points of view).</p>	<p>2. For each position, identify at least two moral points of reference (values or norms) that could support their positions.</p>	<p>3. Assume that the mediation session has taken place. For each position, imagine that it was the one adopted as a result of the mediation. Identify the potential impact of adopting this position on the well-being of each individual involved and on society at large.</p>
<p>Position 1</p>		<p>Positive Impact:</p> <p>Negative Impact:</p>
<p>Position 2</p>		<p>Positive Impact:</p> <p>Negative Impact:</p>
<p>Position 3</p>		<p>Positive Impact:</p> <p>Negative Impact:</p>

Discrimination at School?

Names : _____ Group : _____
 _____ Date : _____
 _____ Submitted to: _____



Grade : _____

Criteria	Check Elements Evaluated	Observable Elements	Evaluation Details (corresponding to a satisfactory completion of the assignment or a B grade)	Evaluation
Ethical Handling of a Situation	<input type="checkbox"/>	The student adequately explained what is at stake in the case.	<p>Step 1:</p> <ul style="list-style-type: none"> The students presented the elements essential to understanding the case (who, what, when, where, how) in a <u>fair and accurate manner</u>. The students presented two relevant ethical issues at stake in a coherent manner. 	
	<input type="checkbox"/>	The student adequately compared the various positions.	<p>Step 2 :</p> <ul style="list-style-type: none"> The students <u>correctly</u> analyzed the sources of the tension underlying the accommodation request. 	
	<input type="checkbox"/>	The student identified the norms or values on which the positions are based.	<p>Step 3 :</p> <ul style="list-style-type: none"> The students identified and presented in a <u>satisfactory</u> way three different positions related to the case studied. The case study chart was completed correctly, i.e., it properly presents the essential elements of each position. 	
Appropriate Evaluation of the Options	<input type="checkbox"/>	The student selected options keeping in mind the impact on community life.	<p>Step 3 :</p> <ul style="list-style-type: none"> The students <u>coherently and accurately</u> identified two relevant moral norms or values for each of the three positions related to the case studied. 	
Appropriate Dialogue	<input type="checkbox"/>	The student adequately analyzed each point of view.	<p>Step 3 :</p> <ul style="list-style-type: none"> The students <u>clearly and accurately</u> identified a positive and a negative impact of adopting the three positions identified. The possible impacts presented (in the short or long term) take into account community life and the well-being of each individual and of society at large. 	

Teacher's Comments: