

Moore v. British Columbia (Supreme Court of Canada; 2012)

Case at a glance

Full citation

[Frederick Moore on behalf of Jeffrey P. Moore v. Her Majesty The Queen in Right of the Province of British Columbia, as represented by the Ministry of Education, and Board of Education of School District No. 44 \(North Vancouver\), formerly known as The Board of School Trustees of School District No. 44 \(North Vancouver\) and others, 2012 SCC 61, \[2012\] 3 S.C.R. 360](#)

Forum

Supreme Court of Canada

Date of decision

9 November 2012

Summary of decision

The Supreme Court of Canada upheld a decision of the British Columbia Human Rights Tribunal (the 'BC HRT') (reversing the decisions of both the British Columbia Supreme Court and the British Columbia Court of Appeal) that the Board of Education of School District No. 44 (North Vancouver) (the 'School District'), by closing a facility that provided intensive services and individualised assistance to students with severe learning disabilities, had denied a child with severe dyslexia access to a service customarily available to the public, being education, contrary to the British Columbia Human Rights Code (R.S.B.C. 1996, c. 210, s. 8). Although the School District was subject to severe funding constraints, it was found to have not acted with a bona fide and reasonable justification, which could have provided a defence to the Human Rights Code violation.

Significance to the right to education

The decision confirmed that special education is not a 'dispensable luxury' for those with severe learning disabilities, but is 'the ramp that provides access to the statutory commitment to education made to all children in British Columbia'. School districts are not justified in removing access to special education facilities simply by reason of financial difficulties, and they need to assess alternatives (financial and otherwise) reasonably available to accommodate special needs before deciding to reduce or remove special education services.

Issues & keywords

Persons with disabilities; Public schools; School authorities; Special education; Mental or physical disability; Learning disabilities; Dyslexia; Discrimination; Prohibited grounds

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Context

In the early 1990's, following the implementation of a revised funding model by the government of the Province of British Columbia (the 'Province'), the School District was faced with significant financial pressures which resulted in budgetary shortfalls. Despite requests, the School District did not receive additional funding from the Province; however, it was permitted to run temporary deficits. Consistent deficits led to wide-scale budget cuts by the School District, including a significant reduction in spending for certain services for students with learning disabilities.

The preamble to the British Columbia School Act (1989, c. 61, as amended by the School Amendment Act, S.B.C. 1993, c. 6) at the time included a statement that: 'the purpose of the British Columbia school system is to enable all learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy'.

Under the British Columbia Human Rights Code, 'A person must not, without a bona fide and reasonable justification... deny to a person or class of persons any... service... customarily available to the public... because of the... physical or mental disability... of that person or class of persons'. The issue was whether the reduction in services, including specifically the closure of a diagnostic centre that provided services to students with severe learning disabilities, resulted in the denial of a service customarily available to the public, without reasonable justification.

Facts

Jeffrey Moore was diagnosed with severe dyslexia and he required significant remedial support in order to learn to read. When Jeffrey entered kindergarten in 1991, students with special needs in the School District were supported in several ways: they received assistance in and out of the classroom from special education aides; they were referred to the school-based learning assistance centre where they would work with learning assistance teachers or tutors and a small number of them were placed in a diagnostic centre for more intensive assistance.

As a result of severe financial difficulties, the School District decided to make cuts including the closure of the diagnostic centre. As a result, Jeffrey's parents enrolled him in a specialised private school beginning in grade 4 and were required to pay the cost of tuition themselves.

Jeffrey's father, Frederick Moore, filed a human rights complaint against the School District and the British Columbia Ministry of Education alleging that Jeffrey had been discriminated against and had been denied a service customarily available to the public because of his disability.

The BC HRT found that Jeffrey had been denied a service customarily available to the public because of his disability and that this was not reasonably justified. The British Columbia Supreme Court set aside the decision of the BC HRT and the British Columbia Supreme Court decision was upheld by the British Columbia Court of Appeal.

Third party interventions:

- Attorney General of Ontario
- Justice for Children and Youth
- British Columbia Teachers' Federation
- Council of Canadians with Disabilities
- Ontario Human Rights Commission
- Saskatchewan Human Rights Commission
- Alberta Human Rights Commission
- International Dyslexia Association, Ontario Branch
- Canadian Human Rights Commission
- Learning Disabilities Association of Canada
- Canadian Constitution Foundation
- Manitoba Human Rights Commission
- West Coast Women's Legal Education and Action Fund
- Canadian Association for Community Living
- Commission des droits de la personne et des droits de la jeunesse
- British Columbia Human Rights Tribunal
- First Nations Child and Family Caring Society of Canada

Decision

The Supreme Court of Canada upheld the original decision of the BC HRT. The Court said that the ‘service’ protected by the British Columbia Human Rights Code is ‘education generally’. Using the preamble to the British Columbia School Act as a reference point for understanding the purpose of the legislation, the court interpreted the protected service as ‘meaningful access to the general education available to all children in British Columbia.’ Consequently, the Court disagreed with the conclusions of the lower courts that special education is itself the protected service. Rather, special education is the means by which those students get meaningful access to education services. It therefore rejected the argument that, in assessing discrimination, Jeffrey should be compared only with other special needs students. Accepting that argument would mean that the School District could cut special needs programmes for all students with disabilities and yet be immune from claims of discrimination.

The combination of a clear recognition by the School District that Jeffrey required intensive remediation in order to have meaningful access to education, the closing of the diagnostic centre, and the fact that Jeffrey’s parents were told that these services could not otherwise be provided by the School District constituted prima facie discrimination.

The School District’s failure to undertake any assessment (financial or otherwise) of alternatives available to accommodate special needs students if the diagnostic centre were closed undermined the argument that it was justified in providing no meaningful access to an education for Jeffrey because it had no economic choice.

Impact

The Supreme Court of Canada upheld the award made by the BC HRT of reimbursement for the costs related to attendance at private schools, as well as C\$10,000 for injury to dignity, feelings and self-respect. However, broader systemic remedies which the BC HRT had ordered in respect of the Province, including regarding funding, accommodation for learning disabilities and service delivery were viewed as being too remote and were not upheld by the court.

Relevant Legal Provisions

Statutes cited

- Human Rights Code, R.S.B.C. 1996, c. 210, s. 8
- School Act, S.B.C. 1989, c. 61, preamble
- School Amendment Act, S.B.C. 1993, c. 6
- Administrative Tribunals Act, S.B.C. 2004, c. 45, s. 59

Case-law cited

- *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)
- *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396
- *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219
- *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624
- *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353
- *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, [2000] 1 S.C.R. 665
- *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650
- *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3
- *Ontario Human Rights Commission v. Borough of Etobicoke*, [1982] 1 S.C.R. 202
- *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970
- *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489
- *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)
- *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114
- *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868

Commentary

While the decision is not inconsistent with the right to education, the findings of the BC HRT, as upheld by the Supreme Court of Canada, were based on the obligation to provide education as described in provincial legislation, under the School Act, and did not engage Canadian constitutional law or international law.

Related cases

The decision has been cited extensively, although mostly in the context of issues unrelated to the right to education. In another more recent decision of the BC HRT ([Dunkley v. UBC and another, 2015 BCHRT 100](#)), a medical student at the University of British Columbia successfully argued before the British Columbia HRT that she was denied a service available to the public, being residency training, because of her disability.

Additional Resources

Philpott, D.F. & Fiedorowicz, C.A.M. (2012). [The Supreme Court of Canada ruling on learning disabilities: LDAC National.](#)

[Right to Education Project's page on the right to education of persons with disabilities](#)

About the Right to Education Project

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With thanks to [White & Case](#) and [Advocates for International Development](#) for their support in compiling this case summary.

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