THE SUPREME COURT OF CANADA RULING ON LEARNING DISABILITIES

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The recent ruling by the Supreme Court of Canada (in Moore[1]) has affirmed the legal rights of students with learning disabilities to receive an education that gives them an opportunity to develop their full potential. The decision was unanimous. The decision has significant implications for all students in Canada with learning disabilities. The following is the story of Jeffrey Moore which led to the critical decision and a summary of some of the key factors identified by Canada's highest court.

THE CASE OF JEFFREY MOORE

Jeffrey Moore still could not read by the end of the third grade (1994). School assessments had identified him as having a learning disability, specifically dyslexia, and he received a combination of in-school and private supports. His learning disability was ultimately classified as severe. Recognizing his need for more intensive, individualized help, Jeffrey's teachers referred him to a separate special program within the school district (School District No. 44 North Vancouver). However, funding cuts resulted in the program being closed. As a result, the school recommended that Jeffrey attend a private school specifically for students with learning disabilities. His parents, desperate for help, remortgaged their home and enrolled Jeffrey in that school where he made good progress.

The story so far is all too familiar to countless families of children with learning disabilities. However, what happened next stands to redirect program planning for students with learning disabilities and reconfirm the responsibility of schools to identify and respond effectively to the individual education needs of students.

Jeffrey's parents filed a complaint to the British Columbia Human Rights Commission, charging that the school district's decision to close the special program and without replacing it with an appropriate alternative, denied their son the right to the type of education he required, which constituted discrimination. After months of deliberation and testimony of expert witnesses, the British Columbia Human Rights Tribunal agreed that Jeffrey had been discriminated against. Further, financial compensation for the family was awarded. However, both a reviewing judge and, subsequently, the British Columbia Court of Appeal overturned that decision. Undeterred, the Moore family appealed to the Supreme Court of Canada. A number of groups, including the Learning Disabilities Association of Canada attained Intervener status to be a part of the process.

On November 9th, 2012, some 12 years later, the Supreme Court of Canada unanimously ruled to uphold the Human Rights Tribunal's ruling of discrimination and, in so doing, made an articulate and powerful statement: ***"…adequate special education, therefore, is not a dispensable luxury. For those with severe learning disabilities, it is the ramp that provides access to the statutory commitment to education made to all children…".*** This is a significant recognition that needed services must be provided when required as a matter of course. Educators at all levels need to pay particular attention to

[1] Moore v. British Columbia (Education), 2012 SCC 61 (CanLII)

this binding statement. It is also significant the ruling agreed that financial compensation be awarded to the Moore family for all the costs they incurred.

IMPLICATIONS

In today's era of inclusive educational program planning, the Supreme Court of Canada validated the position long held by learning disability associations across Canada in their support for: ***"the right of all students with learning disabilities to adequate special education programs and services, including intensive evidence-based interventions for those who need them."***

In a country where educational policy, practice and discourse are heavily splintered by provincial/territorial jurisdiction, the ruling establishes a common bar or standard for students all across the country. As current practice is increasingly influenced by education models such as "Response to Intervention" and "Differentiated Instruction" which challenge the need for formal assessments, diagnosis and individualized programs, the ruling cautioned that, ***"…discrimination was made out based on the insufficiently intensive remediation provided by the District for Jeffrey's learning disability in order for him to get access to the education he was entitled to."*** This highlights that educators have an obligation to provide individualized programs for individual needs based on appropriate assessment.

In the months ahead, the implications of the Supreme Court of Canada ruling will reverberate through Ministries of Education, professional training schools, including psychologists and teachers, teachers' unions and countless families. Interpretations, debate and conflict will flourish. This ruling, however, should stop the initiatives toward an interpretation of inclusive education in which placement in the regular class is a preferred option for all students. The authors suggest that the following constructs will be central to the ensuing application of the Supreme Court of Canada ruling.

THE VALIDATION OF LEARNING DISABILITIES AS A DISABILITY

"There is no dispute that Jeffrey's dyslexia is a disability. There is equally no question that any adverse impact he suffered is related to his disability." This language of the ruling legally secures both the diagnosis of Learning Disabilities as a disability under the law (including dyslexia) and its potential to inflict harm, if unattended. It challenges educational practices that shy away from assessment and diagnosis and the need for programs specifically designed to lessen the impact of the disability and enhance learning. The ruling concluded that dyslexia carries with it the potential to inflict ***"adverse impact"*** and ***"suffering"*** which carried with them the need for both identification and appropriate effective intervention. Such a position challenges the unduly long waitlists for assessments, reiterates the need for early identification and intervention, and reminds educators of their inherent responsibility to minimize suffering. Expeditious identification and provision of individualized interventions in the most enabling environment are critical for students with learning disabilities.

THE LEGITIMACY OF "SPECIAL EDUCATION"

The Supreme Court of Canada ruled that ***"…for students with learning disabilities like Jeffrey's, Special Education is not the service, it is the means by which those students get meaningful access to the general education…".*** The special program to which Jeffrey was denied access was a pullout service, in a separate site: this service stands in direct contrast to current interpretations of inclusive practice. The word "inclusion" was not used in the ruling but instead the terminology such as ***special needs***, ***special needs programs***, and ***remedial instruction*** was preferred. The court agreed with the British Columbia Human Rights Tribunal in stating that ***"…a range of services was necessary for these students…"*** The ruling is a clear and unequivocal reconfirmation that a cascade or continuum of interventions for a range of needs is not a ***"luxury"*** and indeed is the standard that must be applied.

THE CONCEPT OF "MEANINGFUL ACCESS"

Undoubtedly, among all the concepts that will be considered from this ruling, ***meaningful access*** will likely be one that dominates. The phrase **"*meaningful access*"** to the curriculum to which all children in British Columbia are entitled is significant. **"*Jeffrey required intensive remediation in order to have meaningful access to education*".** The ruling addressed both the importance of remedial services and equality of opportunity for individual students in order to access and master the curriculum at their individual levels. While students have equal ***access*** to a general education, their ability to achieve within that curriculum, as well as the setting where those services are delivered, is highly individualized. This is a restatement of a long-held position of the Supreme Court, (Eaton v. Brant County School, 1997): **"*In some cases, special education is a necessary adaptation of the mainstream world which enables some disabled pupils access to the learning environment they need in order to have equal opportunity in education*"[2].**

COMPARATIVE DECISION-MAKING

The Supreme Court of Canada rejected comparing the needs of one special needs student with the needs of another special needs student in order to determine the right to meaningful access. The Board of Education of School District No. 44 argued that by closing the specialized center Jeffrey was not individually discriminated against, as it affected all children with similar needs. But, the Supreme Court of Canada ruling states that program decisions must be based on the subjective, child-centered **"*individual needs*"** of each student and that the equal treatment of children is discriminatory as it violates their individual rights. The ruling found that **"*Comparing Jeffrey only to other special needs students would mean that the District could cut all special needs programs and yet be immune from a claim of discrimination… this risks perpetuating the very disadvantaged….*"**

This ruling sends a powerful message to education systems in which special education, particularly pullout service, is often viewed as an antiquated practice and concept. While educators are understandably challenged in responding to the diversity and severity of the needs in their classrooms, triaging accommodation by comparing the needs is not acceptable. This means that the needs of one child cannot negate the needs of another. Likewise, perspectives that one placement option or one program model is the best for all students, or even similar students, cannot be tolerated in our education system.

CONSIDERING "PROPORTIONALITY" OF FUNDING CUTS

Central to the appeal was the school District's decision, due to budget cutbacks, to close the separate specialized program that would have met Jeffrey's needs. Twelve years later, financial challenges have increased so the ruling is particularly relevant today. The District argued that they were forced to make cuts but the Supreme Court of Canada ruling concluded that ***"…cuts were disproportionably made to special needs programs…"*** and ***"… that the district did so without knowing how the needs of students like Jeffrey would be addressed…".*** Other discretionary programs were continued, despite the budget shortfalls and in the absence of ***"… a needs based-analysis…"*** or consideration of ***"…the effect of the closure on students".*** The ruling cautioned educators that in making budget cuts they must consider proportion of impact and not equality or uniformity of expense. ***"Accommodation is not a question of more efficiency"*** and a budget cut could well result in a disproportionate and therefore unfair impact on students with learning disabilities. A heightened level of decision-making and accountability is required at the school district level where decisions are made on how to spend provincially allocated funds. The potential of disproportionate impact of their decisions on students with learning disabilities requires careful consideration.

[2] Eaton v. Brant County Board of Education, (1997) 1 S.C.R.241 [Eaton], at para. 69.

SUMMARY

The Supreme Court of Canada is the ultimate legal decision maker in Canada and its rulings impact public policy and practice. The Jeffrey Moore case is undoubtedly a game changer in the provision of services to students with learning disabilities in this country, as well as to our understanding of identifying and accommodating individual needs within an inclusive society. It challenges those involved in the provision of education to recalibrate both their understanding of the individualized needs of students with learning disabilities and how best to provide services that give them meaningful access to an education that maximizes their potential. It challenges teachers to be increasingly diligent in their professional practice to identify and respond. It challenges psychologists to be thorough and accurate in their assessments, diagnosis and recommendations for interventions. It challenges decision makers to be responsible and accountable for the outcome of funding decisions. It confirms the court's long held stand that the individual needs of students require individual planning and that a continuum of services is required.

Ultimately, this ruling of the Supreme Court of Canada speaks to the power of parents, diligent in their stewardship of protecting the rights of their child, to change a system to best meet their child's needs. The need for shared advocacy for the rights of these students in accessing the best of care by educators, parents, community associations and public servants, is validated.

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Moore v. British Columbia (Education) - 2012 SCC 61 - 2012-11-09 Appeals