

Edmonton Regional Learning Consortium/Alberta Education

Moore v. British Columbia (Education): What
does it mean for inclusive education in Alberta

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- *The content of this presentation is intended to provide general information pertaining to the subject matter and should not be construed as legal advice. If you require advice about your specific circumstances, the services of a competent professional should be retained.*

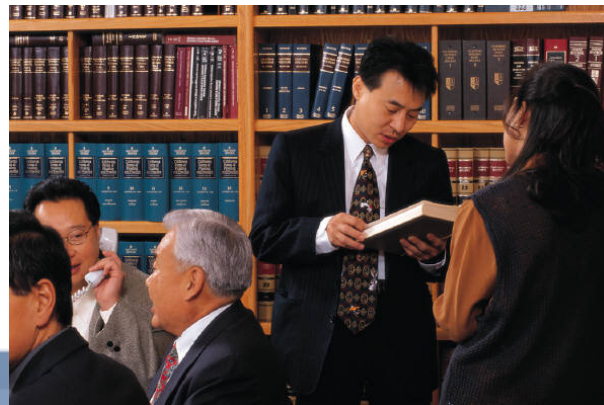
Purpose

- This session will review the impact of the Supreme Court of Canada decision on *Moore v. British Columbia* on inclusive education for application in Alberta public schools.



Purpose

- To review what the Supreme Court of Canada said about the provision of educational services to students with special needs in the B.C. context.
- To review implications from the *Moore* decision . . . Does *Moore* mean more?



Purpose

- To provide a framework within which Division officials can analyze if practices are compliant with Supreme Court of Canada direction, to ensure its practices are not discriminatory.
- To review funding and budgetary considerations which may arise in responding to requests for additional support.

What is Moore all about?

- November 9, 2012 –Supreme Court of Canada unanimously confirmed a B.C. Human Rights Tribunal Ruling that a North Vancouver school district failed to give Jeffery Moore, a student with special needs, access to the educational opportunities offered by the school board to other students, and that this practice was discrimination under the *B.C. Human Rights Code*.

Jeffery's Circumstances

- Had dyslexia – was considered severely disabled.
- Initially attended district's special education program and accessed specialized services through district's diagnostic centre.
- Required intensive remediation to address his needs.

Jeffery's Circumstances

- Father files complaint with Human Rights Commission alleging that the school district and the province of B.C. had discriminated against Jeffery because of his disability, denying him a service customarily available to the public.

B.C. Human Rights Tribunal

- Finds that the district and the province had discriminated against Jeffery, following a 43 day hearing in which significant evidence was received about the funding and administration of special education in the district.



Human Rights Tribunal found:

- District failed to give Jeffery the support he needed to have meaningful access to educational opportunities offered by the district, as required under B.C. legislation, which constituted discrimination.

Award

- Costs associated with paying Jeffery's tuition from grade 4 to grade 12.
- \$10,000 for injury to Jeffery's dignity and feelings of self-respect.



The Ruling

- “Adequate special education ... 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 ...”

What Does This Mean?

- For students with learning disabilities, special education is not the service; it is the means by which those students obtain meaningful access to the general education services available to all students.
- The “service” is education.



Question

- Who is the proper comparator group for reviewing whether students with special needs are being provided with “meaningful access to education”?
 - A. Other children with special needs
 - B. All school children
 - C. Children who are home schooled

Prima Facie Discrimination

- Complainant must show that:
 - ▶ they have a characteristic protected from discrimination;
 - ▶ they have experienced an adverse impact with respect to the “service”; and
 - ▶ the protected characteristic was a factor in the adverse impact.

Prima Facie Discrimination cont.

- If complainant successful in establishing a *prima facie* case of discrimination, the burden shifts to the respondent to justify the conduct or practice.

Response to Allegation of Discrimination

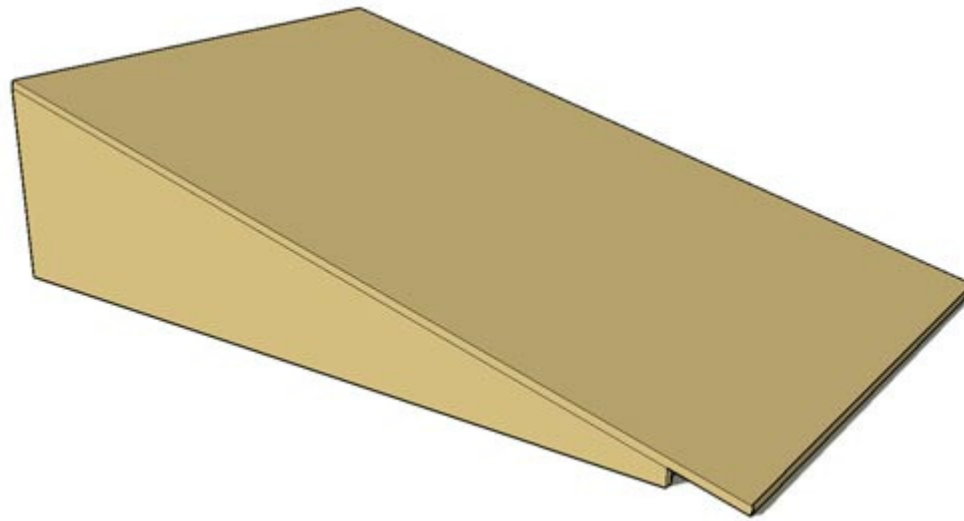
- Analysis – Has a student been denied access to the general education available to other students, based upon the student’s disability, without reasonable justification?
- SCC – Access must be “meaningful”.

Duty to Accommodate

- “Accommodation means making changes to certain rules, standards, policies, ... and physical environments to ensure that they don’t have a negative effect on a person because of the person’s mental or physical disability, ... or any other protected ground. Accommodation is a way to balance the diverse needs of individuals.”

Duty to Accommodate

- A multi-party inquiry
- A reasonable accommodation, not an instant or perfect accommodation



Implications

- Early identification of students with special needs.
- Appropriate assessment of those needs.
- Identification and inclusion of supports necessary to provide a “meaningful” education to a student with special needs.

Question

- Does *Moore* mean that each student gets a full psycho educational assessment each time a parent asks for additional supports?

YES OR NO?

Case Study

- Scenario 1

- ▶ A parent contacts your office to let you know that he is not happy with a decision that was made by the principal at his son's school.
- ▶ This summer the family travelled to the U.S. where they met with a great team of professionals who have provided recommendations for his son.

Case Study cont.

- ▶ The medical doctor who follows the child in Alberta has written a letter endorsing the team's recommendations, including a recommendation that the school provide a highly specialized new therapy for their son, who suffers from a severe form of autism.
- ▶ The school has informed the parent that they do not have any more money to cover the cost of this therapy.

Question

- What is the first step in determining whether to provide these supports to the child?
 - A. Review the budget to see if you can find the money somewhere to provide the supports requested
 - B. Order a full psycho educational assessment
 - C. Conduct research to determine the legitimacy and efficacy of the supports requested
 - D. Review the current supports being provided
 - E. C and D

Does *Moore* Mean More?



- Scenario 2

- ▶ Parent contacts your office to let you know that they are unhappy with their child's progress.
- ▶ They believe their child should be performing at an 80% level; rather the child is performing at around a 60% level.
- ▶ The student came to the district from a Francophone program and was identified by the district as being delayed in his English language development, and related remedial issues were identified.

Does *Moore* Mean More? cont.

- ▶ Internal program put in place to assist the student – parent unhappy with the progress under that program.
- ▶ The family has employed external tutors (i.e. Sylvan/Kumon) to obtain additional services in Math and English, and demands that the board reimburse them for the tutoring costs.



Question

- Is this a case that attracts the application of the *Moore* principles?

YES OR NO?

Question

- If this is a case that attracts the application of the *Moore* principles, which is the most critical first step to take?
 - A. Determine funding
 - B. Conduct a full psycho educational assessment
 - C. Determine if the child has a protected characteristic

Question

- If the child does not suffer from a disability, do you just ignore the request?

YES OR NO?

Does *Moore* Mean More? cont

- Scenario 3

- ▶ In an effort to save money, the school board has contracted with a specific transportation company to transport students for all field trips.
- ▶ The school board adopts a policy that all field trip transportation **MUST** be booked with Go Go Transport.



Does *Moore* Mean More? cont



- ▶ A grade 3 Science Club has planned an extra-curricular field trip to the Royal Tyrell Museum in Drumheller. The cost for the trip is \$100.00. Go Go Transport has been booked. One of the Science Club students, Ben, has complex special needs in which he requires specialized transportation. Go Go Transport does not provide the specialized transportation that Ben needs. Ben's parents have a vehicle that meets Ben's needs, but neither they nor the vehicle are available to transport Ben on the field trip, and Ben really wants to join the club at the Museum. About 2/3 of the Science Club students have decided to go on the field trip. There is a specialized vehicle that is available for rent that will cost \$500.00.

Question

- What factors are relevant in reviewing Ben's request to attend the field trip?
 - A. As this is an extra-curricular field trip, the School District is not obliged to assist Ben with transportation.
 - B. The Policy is clear that only transportation from Go Go Transport can be used for field trips and it must be followed.
 - C. Not all the Club members are attending.
 - D. \$500 is not within the budgeted amount for the field trip.
 - E. All of the above.
 - F. None of the above.

Policy Considerations

- Do any of the jurisdiction's policies have an adverse impact on students with disabilities?
- Boards need to analyze the relevant policies and procedures to ensure a non-discriminatory impact on students with disabilities.

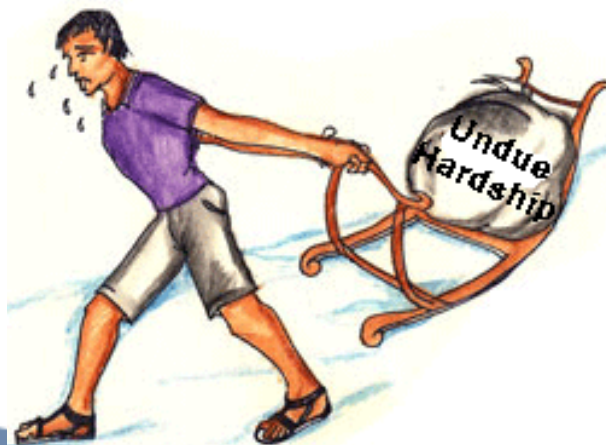


Undue Hardship — AHRC Interpretive Bulletin

- “Undue hardship occurs if accommodation would create onerous conditions for an employer or service provider, for example, intolerable financial costs or serious disruption to business.”
- “An employer or service provider must make considerable effort to find an appropriate accommodation for an employee.”

Undue Hardship — AHRC Interpretive Bulletin

- “Some hardship may be necessary in making an accommodation; only when there is 'undue' hardship can the employer or service provider claim that they have tried all the accommodations available”



Undue Hardship — AHRC Interpretive Bulletin

- “While in some circumstances excessive cost may justify a refusal to accommodate those with disabilities, one must be wary of putting too low a value on accommodating the disabled.” — *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)* [1999] S.C.J. No. 73



Meaningful Access to Education – Are There Any Limits?

- To what standard will my practices be held?
- Do my policies and practices ensure that students with special needs will receive an education that is customarily available to all students?
- Do any of my policies have an adverse impact on a student's ability to access education?

Funding and Budgetary Considerations

- What if the jurisdiction's funding is deemed to be insufficient to meet the needs of all students with special needs?
- How have I come to that determination?
- What evidence do I have about which programs should be cut and why?
- Have you analyzed the impact of any proposed decisions on the ability for students with special needs to access education?



Funding and Budgetary Considerations

- Can you demonstrate how it is that you do not have sufficient funding and what the impact will be on those students; and what alternative arrangements you have made to address these concerns?
- Accommodation must be provided to the point of undue hardship **BUT**, meaningful accommodation does not mean that the parent gets exactly what the parent wants.

