

Meaningful Access to Post-Secondary Education: Beyond Legal Perspectives

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Overview

1. Promises of meaningful access to education, and of enhanced human rights principles in admissions
2. Additional Legal Instruments for accessible post-secondary education
3. Non-Legal Tools for improving access to post-secondary education
4. Throughout: Still "Miles to go" - Possible avenues to travel

Moore v. British Columbia (Education)

2012 SCC

The concept of meaningful access to education:

“[S]pecial education is not the service, it is the means by which those students get meaningful access to the general education services available to all of British Columbia’s students . . .” (para 28)

- ***Meaningful access means having adequate supports to obtain education on an equal basis with others.***

Avoid “separate but equal” approach

“To define ‘special education’ as the service at issue also risks descending into the kind of “separate but equal” approach which was majestically discarded in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).”

“Comparing Jeffrey only with other special needs students would mean that the District could cut all special needs programs and yet be immune from a claim of discrimination. It is not a question of who else is or is not experiencing similar barriers.” (Abella J., para 30)

- “[I]f a service is ordinarily provided to the public, it must be available in a way that does not arbitrarily - or unjustifiably - exclude individuals by virtue of their membership in a protected group.” (para 26)
- The unjustified denial of meaningful access to the general education to which students in British Columbia are entitled = discrimination

➤ ***Moore* presented new, different, forward-thinking ideas yet still within a reasonable accommodation paradigm**

Longueépée v. University of Waterloo

2020 ONCA 830

Facts :

- applied to the University of Waterloo
- had incomplete degree from Dalhousie University
- undiagnosed and unaccommodated disabilities while at Dalhousie
- did not realize that he had these disabilities until after he had left Dalhousie
- matter was sent to a special admissions committee at Waterloo but the committee did not grapple with how to evaluate the unaccommodated grades.
- reference letters, work experience not taken into account

Longueépée - ONCA holding

- Ontario Court of Appeal - the admissions committee did not make any effort to understand how Mr. Longueépée's disabilities might have affected his ability to obtain the minimum grades required for admission to Waterloo
- Other indicators of barriers or successes in the application file?

Longuepée v. University of Waterloo 2020 ONCA 830

- ✓ opened university admissions processes, previously insulated as part of the autonomy of universities, to human rights scrutiny
- ✓ While the door has been opened to scrutiny, it remains to be determined the extent of scrutiny and precisely what the scrutiny will look like
 - General principles, to be applied on a case-by-case basis
 - When will human rights tribunals require consideration of factors other than grades and when will the argument that this is undue hardship be accepted?
 - We're still working within a reasonable accommodation paradigm...

Legal Instruments for Accessible Post-secondary education

Statutory Human Rights Legislation

Constitutional Law - the Canadian *Charter*, s.15

The CRPD – Article 24(5)

Accessibility Standards

Accessibility Standards for education

- **Accessibility legislation generally** - Enacted in four provinces, 5th province (NL) on its way; and at the federal level (See [Annotated ACA](#))
- **Positive and negative aspects of accessibility legislation** – proactive, avoids much of reasonable accommodation perspective, collaborative consultation, timelines, enforcement and compliance
- Ontario = first province with post-secondary education accessibility standards (draft, 2021 – link in resources)

Ontario's AODA post-secondary education accessibility standards

- 170+ recommendations, including
 - Accessibility standards for teaching and learning to be designed for lectures, labs, field placements, etc.
 - Mandatory research training on accommodation processes, ableism, microaggressions, allyship etc for faculty staff
 - Asserts importance of inclusion both in class and in extracurricular and leadership activities

Non-Legal Tools

- We need first-order equality
- In the classroom: use broad, inclusive evaluative processes
- Throughout departments and faculties in the University - at least one committee of experts on disability issues. This committee will be responsible for receiving concerns with disabled student representatives
- Within the broader curriculum - re-consider learning outcomes generally and the tools required to reach them
- Incorporate readings, especially first-hand by disabled people, about disability experience, across the curriculum

Additional resources-suggested readings

- Supreme Court of Canada [Moore v. British Columbia \(Education\) 2012 SCC 61](#)
- Government of Ontario, Ministry of Seniors and Accessibility, [Development of proposed postsecondary education standards – 2021 initial recommendations report](#)
- National Educational Association of Disabled Students (NEADS), [Enhancing Accessibility in Post-Secondary Education Institutions](#)
- Laverne Jacobs, Ruby Dhand, David Ireland, Richard Jochelson, Freya Kodar and Odelia Bay, [Law and Disability in Canada: Cases and Materials](#) (LexisNexis, 2021).
- Laverne Jacobs, *Disability, the Right of Access and the Law: from Litigation to Citizen Participation* (forthcoming - Routledge, 2023)

Thank you!

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