Eldridge v. British Columbia (Attorney General) (1997) – Equality Rights and Services for the Deaf

In April 1997, the Supreme Court released a landmark case concerning the Charter right to be free from discrimination, guaranteed by section 15. The decision established that a government program can discriminate not only by making distinctions, but also by failing to provide a service in a way that accounts for distinctions that already exist in society. As well, it showed that in some situations courts will be willing to force the government to spend money to ensure that a service does not discriminate. The case dealt with British Columbia's failure to provide sign language interpreters to the deaf as part of publicly funded medical care. The Court had to decide whether this failure violated deaf persons' right to equality. Before addressing that question, however, the Court first had to determine whether the Charter applied to the health care services.

Does the Charter Apply?

The *Charter* only applies to government action such as legislation and government services. Since the provincial legislation that regulates medical care providers did not prohibit hospitals and other medical services from providing sign language interpreters, the Court concluded that the failure to provide this service was not rooted in the legislation.[1] Rather, it was the hospitals and the Medical Services Commission that had decided not to provide this service. The Court therefore had to decide whether the *Charter* applies to these bodies. In a previous case, the Supreme Court had decided that the Vancouver General Hospital was not a government body, so when it adopted a mandatory retirement policy it was not implementing a government policy.[2] However, in this case the Court concluded that hospitals are implementing a government policy when they provide medical services, so the *Charter* applies to them when they act in that capacity.[3]Similarly, the Court concluded that the Medical Services Commission implements a government policy and thus is subject to the *Charter*.[4]

Was There a Violation of the Right to Equality?

Having concluded that the decision not to provide sign language interpreters flows from the hospitals and the Medical Services Commission, and that the *Charter* applies to that decision, the Court then had to assess whether the decision amounted to discrimination. Here, the Court began by acknowledging that section 15(1) of the *Charter* prohibits discrimination on the basis of physical disability.[5] As well, the Court pointed out that disabled persons in Canada have historically been excluded and marginalized from society.

As a result, they tend to have less education, are more likely to be unemployed, and tend to be paid less.[6] Deaf persons, the Court pointed out, suffer all of these disadvantages primarily because of barriers in communicating with the hearing population.[7] The Court then considered the services provided by the medicare system in British Columbia. As the Court pointed out, on its face the system applies equally to the deaf and hearing populations. In other words, it does not explicitly single out deaf people and treat them differently. However, the deaf are less able to benefit from the program because of the lack of sign language interpreters. The claim was therefore that the deaf were suffering "adverse effects" discrimination.[8] The Court reiterated its statement from a previous case that at times identical treatment may produce inequality.[9] As well, the Court pointed out that discrimination can exist even where there is no intention to discriminate. A well-intentioned program can discriminate if its effect is to deny equal protection or benefit of the law.[10] This kind of discrimination is particularly common in cases concerning disability. Governments rarely single out the disabled for discriminatory treatment. Instead, what happens more often is that laws have an unequal impact on the disabled because the laws fail to take into account their unique situation.[11] That was the situation in this case. The Court pointed out that effective communication is central to receiving effective medical treatment.[12] As a result, failing to provide sign language interpretation meant that the deaf population received lower-quality care than the hearing population.[13] Therefore, the government's failure to account for the already disadvantaged position of the deaf community when it provided medical services to the general population amounted to discrimination and infringed section 15(1) of the *Charter*.[14]

Was This Discrimination Justifiable?

Charter rights are not guaranteed absolutely. Rather, once a court has concluded that a right has been infringed, the government is given the opportunity to try to justify that infringement. In this case, the government tried to justify its failure to provide sign language interpreters on the basis of the cost involved. This argument was rejected by the Court because the estimated cost of providing sign language interpretation "was only $150,000, or approximately 0.0025 percent of the provincial health care budget at the time."[15] The government also argued that if they were required to provide sign language interpreters then they could also be required to provide interpreters for other non-official language speakers, which would dramatically increase health care expenditures.[16] The Court also rejected this argument. While not ruling out the possibility that translators may be necessary in other situations, the Court pointed out that it was not entirely clear that deaf persons and non-official language speakers are in the same position and so the argument that such services would also have to be provided was purely speculative.[17] Having rejected these arguments, the Court concluded that the *Charter* rights of deaf persons were violated. The Court therefore gave the government six months to ensure that sign language interpreters would be provided in the delivery of medical services where doing so is necessary to ensure effective communication.[18] Adam Badari (June 17, 2010)

[1]*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 29. [2] *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483. [3] *Supra* note 1 at para. 50 [4] *Ibid*. at para. 52. [5] *Ibid*. at para. 55. [6] *Ibid*. at para. 56. [7] *Ibid*. at para. 57. [8] *Ibid*. at para. 60. [9] *Ibid*. at para. 61, citing *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143. [10] *Supra* note 1 at para. 62. [11] *Ibid*. at para. 64. [12] *Ibid*. at paras. 69-70. [13] *Ibid*. at paras. 71-72. [14] *Ibid*. at paras. 73-80. [15] *Ibid*. at para. 87. [16] *Ibid*. at para. 88. [17] *Ibid*. at para. 89. [18] *Ibid*. at para. 96.