

Eldridge v British Columbia (Attorney General)

The Supreme Court of Canada

1997 3 S.C.R. 624



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Quick Facts

Applicant: Eldridge

Defendant: British Columbia (Attorney General)

Court: Supreme Court of Canada

Date Decided: 9 October 1997

Issue: Whether the denial of sign language interpretation services to the deaf under a publicly funded medical care scheme constituted discrimination on the basis of physical disability and whether such violation of equality right under the Canadian Charter of Rights and Freedoms was justified under s.1 of the Charter.

Case Synopsis: The appellants, Robin Eldridge and John and Linda Warren were born deaf. They preferred to communicate through sign language. After the Western Institute for the

Deaf and Hard Hearing, a non-governmental organization ceased to provide free medical interpreting services for the deaf, the appellants had to pay for the sign language interpretation services to effectively communicate with their doctors. Evidence showed that in the absence of sign language interpretation services, miscommunication between deaf patients and their doctors might lead to misdiagnosis. The appellants filed a suit seeking a declaration that the failure to provide sign language interpretation services as an insured benefit under the publicly funded Medical Services Plan violated s.15 (1) of the Canadian Charter of Rights and Freedoms. In particular, S. 15(1) of the Charter stated as the following:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of

the law without discrimination ... based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

The Court accepted that effective communication was an integral part of medical services and concluded that the absence of a publicly funded sign

language interpretation services violated the appellants’ equality rights. The violation is in form of denying appellants the equal benefit of the provincial health care system and barring them to enjoy the same quality of the medical services as that provided to the hearing people.

Procedural Background

Supreme Court of British Columbia

The court rejected the appellants’ claim on the ground that sign language interpretation was ancillary to the medical services. There was no positive duty on the government conferred by s. 15 to provide benefits.

British Columbia Court of Appeal

The majority ruled that hospitals were not caught by the Charter as they were not “government” within s.32 of the Charter. The minority decision was that effective communication was an integral part of medical care services, so failure to provide sign language interpretation constituted the infringement of right. However, the infringement was saved by s1 due to the deference to administration.

Appeal to Supreme Court of Canada

Leave to appeal was granted and the Supreme Court of Canada heard the appeal.

Case Summary

Application of the Charter to hospital decision (section 32, the Charter)

S32 (1) restricted the application of the Charter that it applies to “(a) the parliament and government of Canada” and “(b) the legislature and government of each province”.

In interpreting s 32 of the Charter, the Court construed the term “government” broadly and set out the principle that the government could not evade her responsibilities under the Charter by privatization of the implementation of the policies or services. As such, a private entity can be subject to the Charter scrutiny in relation to its “inherently governmental actions” and its performance of “specific government programme”.

The Court rejected the argument that the hospitals were private entities only and thus not satisfied the requirement of “government” for the application of the Charter. The Court said that although the hospitals may be autonomous in their daily operation, they were agents for the government to provide the specific medical services set out in the Hospital Insurance Act. This was because the hospitals were merely a vehicle appointed by the legislation to provide the medical care services in the social welfare programme. Besides, the hospitals were not entirely free to perform their functions since the government was still in control of the content of the services and the persons entitle to the services. Therefore, their actions satisfied the meaning of “government” under s.32 of the Charter. The Court also concluded that the Medical Services Commission satisfied the term “government”, by virtue of its sole objective to implement a government policy to ensure all residents enjoying medically required services free of charge.

Applying the principle to the current facts, the court ruled that the hospital and the Commission’s decision not to provide free sign language interpretation services in respect of implementing the objective of providing medical care services under the two pieces of Legislation attracted the Charter’s scrutiny.

Failure constituted infringement (section 15 (1), the Charter)

Before deciding whether the appellants were afforded equal benefit of the law without discrimination under s15 (1), the Court emphasized the principle of substantive equality and highlighted that the principle was to ensure that the benefit of the law was in practice accessible by the disadvantaged groups.

The Court held that effective communication was “quite obviously an integral part of the provision of medical services”. The expert report adduced by the appellants noted that miscommunication between the deaf population and their doctors might lead to misdiagnose. The appellants’ doctor also testified that writing was time consuming and, in some circumstances, unpractical as a means of communication with the deaf patients. By relying on expert reports and the testimony of the appellants, the Court agreed the importance of sign language interpretation services for the deaf people to have an effective communication with their doctors, and decided that they were not merely an ancillary service to health care services.

On the face of the health care system, it applied equally to the hearing and deaf population that all provincial residents were entitled to receive certain medical services free of charge. However, the Court pointed out that this facially neutral policy brought the adverse discrimination effect. Given the importance of effective communication in the medical care system, the Court held that since the deaf population had to pay additional fee for sign language interpretation services to have the equal quality of medical care services as the hearing population, the failure to provide publicly-funded sign interpretation services denied the deaf population of equal benefit of the health care system stipulated under the two Acts, contrary to section 15(1) of the Charter.

Possible justification of the infringement

S1 of the Charter provides that the rights are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” The Court considered the reasonable limits should only be in the form of minimum impairment of the benefits.

The Court ruled that the total denial of sign language interpretation did not constitute a minimum impairment of s.15 (1). The estimated cost of providing such services for the whole British Columbia was only \$ 150,000, approximately 0.0025% of the provincial health care budget then.

The Court granted a declaration that this failure was unconstitutional and to direct the government to make necessary accommodation to rectify the unconstitutionality of the current system.

Significance

Firstly, the actual change and definite assistance offered to the deaf population because of the case is noteworthy. The *Eldridge* case was relied upon in the recent decision *Canadian Association of Deaf v Canada*. In the *Canadian Association of Deaf* case, the Court decided that sign language interpretation services should be provided and paid for by the Government of Canada when a deaf or hard-of-hearing person receives services from or participates in programs administered by the Government of Canada. The reasonable accommodation for the deaf population was not limited to the context of health care system, but extended to other social context.

Secondly, this case has great impact over the Canadian legal framework. This case broadens the range of entities that can be under the scrutiny of the Charter. Prior to the *Eldridge* case, the *Stoffman v. Vancouver General Hospital* case was the authority of to what extent the Charter applied in the health care setting. In *Stoffman*, the hospital did not form part of “government” within the meaning of section 32(1) of the Charter as the hospital management was not subject to the government control. The *Eldridge* case broadened the scope of Charter’s application to the private entities, which implemented specific government policies and programmes. Therefore, the hospitals providing medical services under the comprehensive social welfare programme designed by the Act shall be under Charter’s scrutiny in relation to the specific programme. By virtue of this decision, the government cannot evade the duty imposed by the Charter simply by privatization of its policy of provision of services and welfare. This case enables the citizens to hold their government accountable under the Charter if the government has effective control over the agenda of the private entities.

Moreover, the Court rejected American Supreme Court's approach of formal equality and adhered to the notion of substantive equality. This case placed on the government a positive duty to take special measures of accommodation to ensure the disadvantaged groups can enjoy the benefits afforded by the law. The Court rule that once the government provides a benefit, it must do so equally and has an obligation to ensure the benefits are accessible to the disadvantaged group in practice.

Furthermore, the relevant activists, such as David Lepofsky from Ontario, relied on this case as a useful political tool to lobby the government to have a piece of provincial accessibility legislation. As suggested by Professor Mayerson and Professor Yee, the *Eldridge* case had great influence over Canadian legislation as evidenced by the 1998 amendments to the Canadian Human Rights Act requiring employers to positively accommodate special needs short of undue hardship.

Context

The main issue in the case is the access to public benefits conferred by legislation by the disability groups. The access issue of health care services is very important, as there is a growing number of Canadians (13.7 % in 2012) living with certain types of physical and mental disabilities. The disability rate increases with age. Most of the Canadians would face certain extent or form of disabilities as a result of being old, such as restrictions on hearing and visual and mobility.

The relevant background in the *Eldridge* case was that in British Columbia, medical services were funded under the Medical and Health Care Act and Hospital Insurance Act; provincial residents were entitled to free medical services. The Commission and hospitals had the discretion as to what to provide as medically required benefits and hospital services. Neither the Commission nor hospitals provided sign interpretation services to the deaf for medical services. The deaf hearing population could not enjoy the same quality of medical benefits as the hearing population under the system since they had to pay extra fees for the communication services of sign language interpretation.

Cases and Resources

- *Eldridge v British Columbia* 1997 3 S.C.R. 624
- Mary Cornish and Fay Faraday, “Eldridge v. British Columbia: Defining the Equality Rights of the Disabled under the Charter” (1998)
- Karla Tate, “Disability and Health Care: The Eldridge case” (2001) **(Note: Please kindly convert the word document into PDF file. Thanks!)**
- Professor Martha Jackman, “Giving real effect to equality:” *Eldridge v. British Columbia (Attorney General) and Vriend v. Alberta.* (1998)
- Lisa Vanhala, “Twenty-five Years of Disability Equality? Interpreting Disability Rights in the Supreme Court Of Canada” (2010) 39 *Comm. L. World Rev.* 27
- Arlene B. Mayerson and Silvia Yee, “SYMPOSIUM: FACING THE CHALLENGES OF THE ADA: THE FIRST TEN YEARS AND BEYOND: ARTICLE: The ADA And Models Of Equality” (2001) 62 *Ohio St. L.J.* 535