



AODA Alliance

Accessibility for Ontarians with Disabilities Act Alliance

How Ontario's Human Rights Tribunal Went Off the Rails in an Important Disability Accessibility Case–Read the New Article by AODA Alliance Chair David Lepofsky on the Tribunal's Ruling Against an 8-Year-Old Student With Autism Who Wanted to Bring His Autism Service Dog to School

Accessibility for Ontarians with Disabilities Act Alliance Update

United for a Barrier-Free Society for All People with Disabilities

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How Ontario's Human Rights Tribunal Went Off the Rails in an Important Disability Accessibility Case–Read the New Article by AODA Alliance Chair David Lepofsky on the Tribunal's Ruling Against an 8-Year-Old Student

With Autism Who Wanted to Bring His Autism Service Dog to School

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SUMMARY

Two years ago, the Human Rights Tribunal of Ontario rendered a controversial and deeply troubling decision about the rights of students with disabilities in Ontario schools. An 8-year-old boy with autism wanted to bring his certified autism service dog to school with him. The school board refused. His family filed a human rights complaint with the Human Rights Tribunal of Ontario. The Tribunal ruled in favour of the school board and against the student.

Many reacted with surprise or shock at this ruling. Now you have a chance to delve deeper and see what went wrong. AODA Alliance Chair David Lepofsky has written a 28-page article analyzing this human rights decision. He found that there are several problems with the decision. His article is entitled “Ontario’s Human Rights Tribunal Bungles the School Boards’ Human Rights Duty to Accommodate Students with Disabilities – J.F. v Waterloo District Catholic School Board – An Erroneous Rejection of A Student’s Request to Bring His Autism Service Dog to School.”

In the fall of 2020, this article will be published in volume 40.1 of the National Journal of Constitutional Law. You don’t need any legal training or background to read this article.

Below we set out this article's introduction. You can download the entire article in an accessible MS Word format by clicking here <https://www.aodaalliance.org/wp-content/uploads/2019/07/ASD-Dog-Article-by-David-Lepofsky-Accepted-for-Publication-in-the-NJCL-dated-july-4-2019.docx>

The published text of this article next year may have minor editorial changes.

The AODA Alliance has pressed the Ford Government for over a year to get the Education Standards Development Committee back to work, developing recommendations for what should be included in an Education Accessibility Standard to be enacted under the AODA. Among other things, we plan to propose detailed standards to bind all schools on letting students with autism bring their qualified service animal to school.

AODA Alliance Chair David Lepofsky is a member of the K-12 Education Standards Development Committee. On March 7, 2019, the Ford Government said it was lifting that freeze. Yet no date for the next meeting of that AODA Standards Development Committee is set.

There have been 155 days since the Ford Government received the final report of the Independent Review of the implementation and enforcement of the Accessibility for Ontarians with Disabilities Act by former Lieutenant Governor David Onley. That report found that Ontario is full of “soul-crushing” barriers that impede over 1.9 million Ontarians with disabilities. It calls on the Ontario Government to show new leadership and to take strong action on accessibility for people with disabilities. the Ford Government has not announced a plan to implement the Onley Report.

MORE DETAILS

Excerpt from the Article " Ontario's Human Rights Tribunal Bungles the School Boards' Human Rights Duty to Accommodate Students with Disabilities – J.F. v Waterloo District Catholic School Board – An Erroneous Rejection of A Student's Request to Bring His Autism Service Dog to School" by AODA Alliance Chair David Lepofsky to be Published in Volume 40.1 of the National Journal of Constitutional Law

A child with autism spectrum disorder (ASD) can experience anxiety, challenges in self-regulating their mood and behaviours, and difficulty adjusting to transitions. Helpful measures to address these needs contribute to a child's developmental progress. An autism service dog can help with these needs.

ASD's emotional, behavioural and communicational impacts on a child cannot be measured, day-by-day, by a blood test or thermometer. It is typically not possible to isolate and quantify exactly when and how an intervention such as a service dog has helped, any more than an omelet can be unscrambled. This does not derogate from the benefits experienced from using such a service dog. For children with ASD, as with many others, trial and error is so often the best approach.

This article examines a troubling case where a school board, and then Ontario's Human Rights Tribunal, each got it wrong when it came to accommodating a student with ASD. In J.F. v. Waterloo District Catholic School Board, an eight-year-old boy with ASD benefited at home from a trained autism service dog. His family asked the school board to let him bring the service dog to school, to help accommodate his ASD. The school board said no. The Tribunal sided with the board.

There was no showing that board employees, addressing this issue, had prior knowledge, experience or expertise with autism service dogs, or that those officials tried to

observe the boy outside school when using the autism service dog. There was no indication that the board took any proactive steps to learn about the benefits of these service dogs, or considered a trial period with this boy bringing his autism service dog to school.

In contrast, some other Ontario school boards let students with ASD bring a service dog to school. If other school boards can do so, the Waterloo District Catholic School Board could do the same, rather than putting barriers in the path of a vulnerable student.

The boy's family filed a human rights complaint against the school board. It alleged a violation of his right to equal treatment in education without discrimination due to his disability, guaranteed by s. 1 of the Ontario Human Rights Code. The family argued that the board failed to fulfil its substantive duty to accommodate (its duty to provide a disability-related accommodation he needed), and its procedural duty to accommodate (its duty to adequately investigate his disability-related needs and the options for accommodating them). In a widely-publicized and erroneous decision, the Tribunal ruled against the boy on both scores.

The school board and the Human Rights Tribunal of Ontario failed to properly apply human rights principles to a vulnerable student with an undisputed disability. This case provides a powerful illustration of a Human Rights Tribunal that failed to properly apply both the human rights procedural duty to accommodate and the substantive duty to accommodate. The school board's failure to fulfil its procedural duty to accommodate this boy's disability also serves to substantially weaken the board's claim that it met its substantive duty to accommodate.

As well, this case illustrates unfair accessibility barriers that students with disabilities too often face in Ontario's education system. It shows how families must repeatedly fight against the same barriers, at school board after school board. This case also highlights serious flaws in Ontario's controversial system for enforcing human rights. It shows why Ontario needs a strong and effective Education Accessibility Standard under

the Accessibility for Ontarians with Disabilities Act, to remove such recurring disability accessibility barriers in Ontario's education system.

Had this school board redirected more of its effort and public money towards working out a way to let this student bring his autism service dog to school, rather than fighting against him, a more positive outcome here was likely. Instead the Board marshalled its formidable legal resources to fight against this boy.

This article first delineates the case's largely undisputed facts. It then explores the evolution of the procedural duty to accommodate in human rights law. The importance of the duty to accommodate in the education context is then investigated.

Attention next turns to problems in the Tribunal's reasoning that led it to find that the school board did not violate the procedural duty to accommodate. After that, serious problems are identified with the Tribunal's finding that the school board did not violate its substantive duty to accommodate.

This article concludes with a look more broadly at this case's implications. This case typifies problems since 2008 with the way human rights are enforced in Ontario. This case also illustrates the need for the Ontario Government to adopt a reformed approach to the education of students with disabilities in Ontario schools as well as the need for an Education Accessibility Standard to be enacted under the Accessibility for Ontarians with Disabilities Act.