A Far-Reaching Victory for Canadian Human Rights

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TDS lawyers aid in important legal decision for persons with disabilities in Nova Scotia

The Nova Scotia Court of Appeal issued a ruling that is being celebrated as an important human rights moment for people within Nova Scotia and across Canada. The case centred around human rights complaints by and on behalf of persons with disabilities that the Province of Nova Scotia did not live up to the legislative obligations under the Social Assistance Act, failing to provide the supports and services that non-disabled Nova Scotians are afforded.

Thompson Dorfman Sweatman (TDS) was pleased to offer pro bono support for this case through lawyers **Miranda Grayson**, **Sacha Paul** and **Sharyne Hamm**.

“TDS has a longstanding commitment to pro bono work,” says Sacha Paul, who’s spent 20-plus years with the firm focusing on multiple areas of practice, including Aboriginal and Public/Administrative law. “This was certainly an instance of people coming together for an important issue.”

The case was originally brought forward in 2014 by three individual complainants with intellectual disabilities: Joseph Delaney, the late Sheila Livingstone and the late Beth MacLean. Along with the individual complainants’ counsels, multiple other groups became involved, including Council of Canadians with Disabilities, Inclusion Canada, People First Canada and the Public Interest Law Centre (PILC), who represent groups and individuals on issues affecting the environment, human rights, Indigenous people, consumers and low-income persons.

It was through their relationship with PILC that TDS became involved.

Sacha outlines PILC’s unique role in the legal landscape by stating, “They provide support for and build trust with communities. It’s a lot of work, and this case really highlights the importance of PILC in their ability to bring firms like us into the mix in order to assist with legal advice and support.”

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The initial decision in 2014 stated that the Province of Nova Scotia had discriminated against the three individuals. However, the Board of Inquiry decided to dismiss the included complaint of systemic discrimination on behalf of all persons with disabilities. An award was made to the complainants, but this remedy decision was appealed.

On October 6, 2021, the Court of Appeal ruled that there was ample evidence that the Nova Scotia government's current support practices put persons with disabilities—a community numbering over 1,900 people in the province—at a unique disadvantage. These practices include unjustified institutionalization of hundreds of persons with disabilities. It also saw a growing delay (sometimes totaling years in length) in people being able to obtain the supports and services they're entitled to in order to live in the community, as well as their having to potentially relocate to access those services.

According to Sacha Paul, "The Social Assistance Act is the vehicle that governments and institutions use to assume care for those in need, but the care that was ultimately delivered negatively impacted those individuals' human rights. The law needs to consider the broad implications of such policies. There are certainly other people in the same positions as the original complainants who had been impacted by this systemic discrimination."

The Province of Nova Scotia announced that it sought out permission from the Supreme Court of Canada to have their case heard. On April 14, 2022, this request to appeal was rejected, bringing an end to the case.

Currently, over 5,300,000 Canadians, including 175,000 Manitobans, are living with a disability that affects their freedom, independence and quality of life. This decision sends a strong message to governments and institutions in regions across Canada that the courts continue to take this issue seriously.

Building off of this decision's impact, Sacha offers that there's more to be done in terms of perspective and action. "It's important to continue to develop a body of case law in this area. It behooves everyone to take a long hard look at systems, to realize they're at play and work towards remedies that are both individual and systemic so that everyone can benefit."

TDS is proud to have played a role in this landmark decision by working with the original complainants' counsels, Inclusion Canada, the Council of Canadians with Disabilities and People First Canada. It speaks to the commitment we here at TDS have to strengthen communities and support people through pro bono work—it represents our continued dedication to collaboration and teamwork.

"The day of the single thinker is gone. Both the clients and us as lawyers benefit from different perspectives," concludes Sacha. "I was proud to support Miranda Grayson, Sharyne Hamm, Joëlle Pastora Sala and Byron Williams and to help get this positive result."

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