British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)

The Supreme Court of Canada

1999 3 S.C.R. 868

Disability Rights Resource Network

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Quick Facts

Applicant: British Columbia (Superintendent of Motor Vehicles)

Defendant: British Columbia (Council of Human Rights)

Court: Supreme Court of Canada

Date Decided: 16 December 1999

Issue: Whether the blanket rejection of Terry Grismer's application for a license without providing individual test violated s. 3 of the British Columbia Human Rights Acts, now the s. 8(1) of the Human Rights Code.

Case Synopsis: This is a case about the right to accommodation. Terry Grismer, a mining truck driver, filed a complaint to the British Columbia Council of Human Rights (the Council) in 1994 as he was unable to retrieve his license which was cancelled by the British Columbia Superintendent of Motor Vehicles (the Superintendent) on the basis that he had homonymous hemianopia (H.H.) and his field of vision was less than 120 degrees because of this. The Council ordered that the discrimination should cease and the Superintendent brought a petition for a judicial review. The case finally went up to the Supreme Court of Canada and the Court reaffirmed the Council's decision that Mr. Grismer (who has already passed away) should have been entitled to individual assessment, $500 nominal damage and the Superintendent should have considered whether restriction on his license was possible if needed because Mr. Grismer's right to reasonable accommodation was violated.

Procedural Background

The Council held in favor of Mr. Grismer. The Superintendent then petitioned to the Supreme Court of British Columbia and the Court dismissed it. An appeal was subsequently made to the British Columbia Court of Appeal and the Court overturned the decision. The case finally came before the Supreme Court of Canada.

Case Summary

This Court applied the test developed in ***British Columbia (Public Service Employee Relations Commission) v. BCGSEU (The Meiorin Case)***. The test required the Council to prove that there was a prima facie discrimination (the Council succeed on this point because Mr. Grismer was rejected due to his physical disability). Then the onus was shift to the Superintendent to prove, on the balance of probabilities, that the decision made had a "bona fide and reasonable justification." In this case, it was "maintaining reasonable road safety", which is justifiable. Then he has to prove that the standard satisfies the following three requirements:

- First, that the standard (persons with H.H. and a field of vision less than 120 degrees cannot be licensed) for the goal was rationally connected to his function of issuing driving license as a Superintendent.

- Second, the defendant has to prove that the decision was made in good faith. In this case, the first and second requirements were met without much dispute.

- The third requirement is that the Superintendent has to prove that the blanket standard was reasonably necessary for achieving the goal. He could achieve this either by proving that all people who suffers from H.H. could never reach the standard of reasonable safety or that providing individual test for people suffering from H.H. would cause undue hardship. He failed to prove to first one as the "Swedish Study" summited by himself provides that many different countries do not restrict people with H.H. to drive in some

conditions and the disadvantages of the patients can possibly be compensated for by using prism lenses. Also, he failed to prove the second one as he gave no precise figures on the cost of assessing people with H.H. and the evidence showed that there are already at least two tests have been developed to serve this purpose. For the reasons listed above, the Court decided to hold in the Council's favor.

Significance

The British Columbia Human Rights Acts 1984 was substituted by the Human Rights Code 1996. Almost all the aspects of the relevant section remain unchanged except "*No person shall*" was changed to "*A person must not, without a bona fide and reasonable justification*". Both parties agreed that the latter should be applied in this case.

This Court also rejected the cost-based argument in the case of ***Eldridge v. British Columbia (Attorney General)*** to illustrate that mere "impressionistic" evidence of increased cost generally does not satisfy the test. In that case, the cost was considered to be modest.

Regarding the ***Meiorin*** case; prior to this case, the test for discrimination were split into two categories, "direct" and "adverse effect" discrimination. The test in ***Meiorin*** was made in the employment context but it applies to all discrimination claims under the Human Rights Code of British Columbia, the Court eliminated the distinction between the two in all areas. The Court of Appeal relied on the old test and that was one of the reasons why the decision was different. The ***Meiorin*** case required that the "standard" itself should accommodate the affected ones' characteristics instead of providing accommodation for the people who cannot meet the standard and keeping the discriminatory standard. As a result, once a standard is considered to be discriminatory, it has to change. In the past, the standard could be maintained if it was categorized as an "adverse effect" discrimination (where the employer did not intend to discriminate, but set up a standard which had the effect of excluding people unjustifiably) and it would continue to exclude the people who were not ready to challenge it.

The book, *Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society*, in analyzing the effect of the present case (the ***Grismer*** case), says that one of the consequences of this "enlarged and remodeled definition of accommodation" is that the burden of demanding equality is shifted from the affected groups or individuals to the general society. Laura Barnett, Julia Nicol and Julian Walker also added that there has been "emerging trends in disability issues" suggesting that duty owner might be expected to act more proactively to recognize different types of accommodation that they have to make for the disabled persons. They cited the Supreme Court of Canada case ***Council of Canadians with Disabilities v. VIA Rail Canada Inc.*** (in which the ***Grismer*** case was applied) and the Canadian Human Rights Commission (2011) to illustrate that "service providers have a duty to be inclusive with regard to persons with disabilities" and sometimes it means involving "all stages of any project or initiative", including, for example, building designing, policy making and even technology developing.

However, as Lynn Harnden has pointed out in her article *"The duty to accommodate after Meiorin and Grismer"*, in some cases which discussed the ***Meiorin*** case and the ***Grismer*** case, some courts "appeared to step back from the expansive view", especially in a private company context (as oppose to government departments). For example, in ***Ontario Human Rights Commission v. Ford Motor Company and C.A.W.***. The employer refused to offer accommodation when two workers demand to be let off work on Fridays nights due to religious reasons. It was argued that it would involve significant cost and the seniority system would be upset. The Court accepted that argument. Another example would be ***Oak Bay Marina Ltd. v. B.C. Human Rights Commission***, which involved seasonal fishing guide who had bipolar disorder. The Court of Appeal stated that *"What is "possible" for one employer - e.g., a government with entire departments and volumes of information available to it - may not be possible for a private company that has to make a decision amid operational pressures posed by scheduling, customer relations, profitability and legal liability..."*, which also indicated that private company may pass the ***Meiorin*** and ***Grismer*** test more easier.

Cases and Resources

- ***British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*** 1999 3 S.C.R. 868
- Lovsund, Per, Anders Hedin and Jan Tornros. "Effects on Driving Performance of Visual Field Defects: A Driving Simulator Study", *Accid. Anal. & Prev*., vol. 23, No 4 (August 1991), pp. 331-42
- Council of Europe. "Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society", *Volume 21 of Trends in social cohesion*, *Council of Europe 2009*, pp.31-32
- Barnett, Julia Nicol, Julian Walker. "An Examination of the Duty to Accommodate in the Canadian Human Rights Context", *Library of Parliament*, No. 2012-01-E, 10 Jan 2012, p.7