

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**JUSTIN McGIVERN-ROBERSON, an infant by his Guardian Ad Litem,
LYNNE McGIVERN and the said LYNNE McGIVERN**

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

Brought Under the *Class Proceedings Act*

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff, JUSTIN McGIVERN-ROBERSON, an infant who was born on November 20th, 1987, is a student and resides at 5626 Montgomery Place, in the City of Vancouver, in the Province of British Columbia.
2. The Plaintiff, LYNNE McGIVERN, is the mother of the infant plaintiff, his Guardian Ad Litem and also resides at 5626 Montgomery Place, in the City of Vancouver, in the Province of British Columbia.
3. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (the "Crown"), is named in these proceedings pursuant to the provisions of the Crown Proceedings Act RSBC 1996 c.89 and amendments thereto.

NATURE OF CLAIM

4. The infant plaintiff has a learning disability called dyslexia.
5. The infant plaintiff and all other dyslexic people in British Columbia are entitled to

receive proper and accepted methods of testing/assessment for the condition of dyslexia and are entitled to be treated through the use of proven methods of remedial treatment and education. The Defendant is bound by law to provide those services to the infant plaintiff and has failed in this obligation in breach of the infant plaintiff's rights and at great expense and loss to both of the Plaintiffs.

DYSLEXIA

6. Dyslexia is an impairment in the brain's ability to translate written images received from the eyes into meaningful language. Dyslexia is one of the most common learning disabilities in children. Its cause is neurological.
7. Dyslexia occurs in children and adults with normal vision and normal intelligence. Children with dyslexia usually have normal speech but often have difficulty interpreting spoken language and writing.
8. Dyslexia is one of a number of learning difficulties. Dyslexia is often missed because it is a hidden handicap. Although the child is often ignored, his/her problems are, nevertheless, extremely debilitating, affecting most areas of educational performance.
9. While the dyslexic condition remains undiagnosed, the student will not receive appropriate assistance or the Learning Disabilities ("LD") label is often used as a synonym for dyslexia. This confusion is a contributing cause in the improper identification and timely remediation of students with dyslexia. The damage done in these years is immeasurable.
10. Dyslexia affects between 5% and 10% of the population despite social levels and intellectual levels.
11. Most people with learning disabilities suffer from dyslexia which makes it the largest learning disability in our society.

12. Devising a treatment plan for people with dyslexia and monitoring their progress involves an evaluation of medical, cognitive, sensory processing, educational and psychological factors.
13. Left untreated, dyslexia may lead to low self esteem, behavioural problems, delinquency, aggression and withdrawal or alienation from friends, parents and teachers.

DETECTION OF DYSLEXIA

14. Dyslexia is a learning disability easily identified by detection using tests of achievement in reading and spelling. This is the most accurate system for the early detection of learning disabilities such as dyslexia and has a reasonable degree of accuracy in the early stages of development.
15. There are a number of detection tests which have been recognized and accepted as efficient and effective by recognized authorities such as The Canadian Dyslexia Association, The International Dyslexia Association and The British Dyslexia Association. Tests for the detection of dyslexia which are effective and feasible are readily available for use and implementation by all organizations whose responsibility it is to detect and accommodate dyslexia in young people.

LEARNING METHODS FOR DYSLEXIC PEOPLE

16. Dyslexic people, rather than being described as people with a “Learning Disability” are more appropriately referred to as people who have **a different way of learning** because dyslexics can, with a different way of learning, succeed with their studies. This is a commonly accepted and well documented reality.
17. People suffering from dyslexia require special learning programs which cater to their particular needs. There are numerous programs of different linguistical formations based on the Orton-Gillingham system which are available for the

development of literacy skills. The program developed for The Canadian Dyslexic Centre is the Simultaneous Multisensory Teaching Method (SMT) – a language re-education method developed to meet the needs of dyslexic students of all ages. It is available in French and English and involves a number of sequential lessons.

18. The SMT method can be taught to students of all ages and all grade levels. It allows for much earlier intervention for dyslexic children, even if they have not been formally diagnosed, because it can be taught as early as Grade 1.
19. The SMT method and many other approved and accredited methods for the remedial development of literacy skills of dyslexic people are readily available for use by those organizations whose responsibility it is to provide this type of remedial treatment and education to dyslexic students.
20. Dyslexic students who are properly tested and screened by approved methods and are then treated through proven and accepted systems of remedial treatment and education have the capability of progressing through normal educational pursuits and through their lives in a normally productive and satisfactory manner.

JUSTIN McGIVERN-ROBERSON HISTORY

21. From kindergarten to grade 3, Justin lived and attended school in California. His mother suspected that he might have learning difficulties due to his poor handwriting skills and his tendency to reverse letters. During that time he received no formal assessment or intervention for his reading and writing skills.
22. In August 1997, Justin and his mother moved to Vancouver, British Columbia, and he was enrolled in the fourth grade in the University Hill Elementary School.
23. When he first entered the University Hill Elementary School, Justin's mother

attempted to see the Vice-Principal to explain his difficulties as she understood them to be. She was told that they would see her in two weeks.

24. When school officials met with Justin's mother two weeks later they told her that in their opinion he had emotional and behavioural problems and that she would have to find alternative schooling for him.
25. Justin's mother advocated for an assessment of her son and by the end of the meeting it was decided that Justin would be tested for learning disabilities.
26. Justin did receive an assessment and his mother was informed that he had emotional and behavioural problems, but no academic problems. He was placed in the Learning Assistance Centre where he remained throughout his time at University Hill Elementary School.
27. Justin spent three years at University Hill Elementary School, completing Grades 4, 5 and 6. During this time he was continually reported as a behavioural problem and a student who lacked concentration. He was described by his Grade 6 teacher as being disruptive and lazy. He was bullied and made fun of. It was never suggested by any of his teachers that he be re-tested.
28. Justin spent his Grade 7 year in California where he was encouraged to and did seek and obtained counselling for depression. He returned to Vancouver, B.C. in July 2000. He enrolled in Grade 8 at Lord Byng High School in Vancouver in September 2001.
29. Justin continued to display anti-social and aggressive behaviour and to experience continuous bouts of depression. He was constantly frustrated and angry and his teachers continued to complain about his disruptive behaviour and his inability to concentrate and complete his work.

30. Justin's mother's continued requests that Justin be tested for the existence of learning disabilities during this period went unheeded and were ignored.
31. There were no arrangements made for additional school based support for his ever increasing emotional and behavioural problems. It was at this time that he turned to drugs "because it is the only thing that makes me feel better". The Lord Byng High School officials continued to ignore his need for additional help, labelling him as "a major behavioural problem who could not make it in the High School". They continued to ignore his mother's requests that he be tested for learning disabilities.
32. Justin did not finish Grade 8 at Lord Byng High School but moved to Foundation, a local alternative education program where students do the majority of their work on a computer. Unfortunately, he could not keep up with the work and left the program after one year.
33. In January 2003, he was transferred to The Vinery, another alternative school program. He began receiving psychiatric attention in February and by March became extremely suicidal and depressed and was hospitalized at the Children's Hospital Adolescent Crisis Centre where he began receiving treatment for psychosis and paranoia. He also became involved with an Addictions Counsellor to assist him in dealing with his drug problem.
34. While at the Vinery, Justin had a verbal altercation with a Teacher's Aid who had reported him as being violent and dangerous. As a result, in December 2003, he was once again transferred to another alternative school program known as Lord Byng Satellite. There is concern that he will be transferred again. He is still struggling with Grade 8 and 9 level of studies and he continues in school without any learning support whatsoever.

DYSLEXIA DIAGNOSIS

35. Although Justin 's difficulties have been evident since elementary school, his problems have been consistently regarded by Vancouver School officials as being behavioural, rather than academic.
36. In each of the Vancouver Schools where Justin has been enrolled his mother's consistent concerns and requests for testing for the existence of Learning Disabilities have either been resisted or ignored.
37. Justin's mother, frustrated by her unsuccessful attempts to have him assessed in the school system, took him to Dr. Linda Siegel, a noted expert in the field of childhood learning disabilities and a Professor in the Department of Educational & Counselling Psychology and Special Education Faculty of Education, University of British Columbia.
38. An assessment of Justin was conducted in November 2002 under the supervision of Dr. Linda Siegel and he was diagnosed with a Learning Disability, specifically, **dyslexia**, affecting his academic performance in reading, reading comprehension, spelling, arithmetic and written out-put. This assessment should have qualified him for help but no help was provided for the dyslexia by the Vancouver School Board.
39. On October 30th, 2003, Justin was again assessed under the supervision of Dr. Siegel. At this time, a complete Wechsler Intelligence Scale for Children – Third Edition, (WISC III) was administered. The existence of his **dyslexic** condition was confirmed.

RESULTS OF GOVERNMENTAL FAILURE

40. As a direct result of the Defendant's failure to properly and adequately test the infant plaintiff for learning disabilities and to provide him with adequate remedial treatment and education required for his dyslexic condition the infant plaintiff has

suffered and continues to suffer as follows:

- (a) He continues at sixteen (16) years of age to struggle with the completion of Grade 8 requirements;
 - (b) His ability to develop and realize his full potential has been interfered with or limited;
 - (c) His ability to acquire the means to access knowledge, learning and personal growth has been interfered with or limited;
 - (d) His ability to earn future income to the fullest extent of his capacity has been interfered with or limited;
 - (e) He has been constantly bombarded with assertions that he is an individual with behavioural problems and one who is not, or who is ill-suited for the standard public school system of British Columbia, leading in turn to:
 - (i) Severe depression;
 - (ii) Suicidal ideation;
 - (iii) Social incongruities;
 - (iv) Psychosis;
 - (v) Paranoia;
 - (vi) Aggression; and
 - (vii) Drug abuse;
 - (f) His normal childhood and teenage development has been severely interfered with or limited such that he has been stripped of his opportunity to experience the joy, wonderment and sense of accomplishment that would normally have been his due.
41. As a result of those matters set out and described in the next preceding paragraph the infant plaintiff has sustained damages which are claimed against the Defendant pursuant to Section 24 (1) of the Canadian Charter of Rights and Freedoms.
42. As a direct result of the Defendant's failure to provide adequate testing and

remedial education as aforesaid, the Plaintiff, **LYNNE McGIVERN**, has sustained and continues to sustain damages, including, but not limited to, expenses relating to treatment, testing and education of her son, the infant plaintiff.

43. The Plaintiff, **LYNNE McGIVERN**, also claims damages against the Defendant pursuant to the provisions of Section 24 (1) of the Canadian Charter of Rights and Freedoms.

THE LAW

44. It is the Defendant's responsibility to provide educational services within the Province of British Columbia as set out in the provisions of the School Act RSBC 1996, c. 412 and amendments thereto. The preamble of the Act states the underlying goal and purpose of the Act as follows:

...it is the goal of a democratic society to ensure that all its members receive an education that enables them to become personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society:

[and]

...the purpose of the British Columbia school system is to enable all learners to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy.

45. The Defendant is bound to discharge its obligations to the people of the Province of British Columbia under the provisions of the School Act in accordance with the constitutional requirements set out in the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 (the Canadian Charter of Rights and Freedoms).
46. The Defendant has either failed, or refused to provide adequate and proper testing of the infant plaintiff for the determination of his learning disability, namely, dyslexia, and has failed, or has refused, and continues to fail or refuse to provide

proper, effective and recognized remedial treatment and education as required by the infant plaintiff because of his dyslexic condition. This failure or refusal by the Defendant to provide services is in breach of the rights of the infant plaintiff to receive educational and other government services under applicable Provincial legislation and is in breach of the infant plaintiff's rights under the Canadian Charter of Rights and Freedoms to be treated equally with all other individuals before and under the law and to be afforded equal protection and equal benefit of the law without discrimination.

CLASS PROCEEDING

47. This action is brought as a putative class proceeding pursuant to the provisions of the Class Proceedings Act RSBC 1996, c. 50 and is intended to include a class of individuals described as follows:

“all students for whom, while resident in the Province of British Columbia, the Defendant has failed to provide proper testing and remedial education for their dyslexic condition.”

RELIEF CLAIMED

48. The Plaintiffs seek a declaration that the Defendant's failure to provide adequate testing of the infant plaintiff's learning disability and proper and adequate remedial treatment and education for his dyslexic condition is a violation of the provisions of applicable Provincial legislation including the School Act and in turn, constitutes a violation of the infant plaintiff's Section 15 rights under the Canadian Charter of Rights and Freedoms in that he has been deprived of his right to the equal protection and equal benefits of the law without discrimination.
49. The Plaintiffs seek a direction that the Defendant, the Government of British Columbia, administer the School Act RSBC 1996 c. 412 and other applicable provincial legislation in a manner consistent with Section 15 (1) of the Canadian Charter of Rights and Freedoms by providing the infant plaintiff with proper and

adequate testing of student learning disabilities and proper and adequate remedial treatment and education for the condition of dyslexia.

50. The Plaintiffs seek an Order for damages to be paid to them pursuant to the provisions of Section 24 (1) of the Canadian Charter of Rights and Freedoms to cover past and future expenses relating to testing for, and remedial treatment and education related to the infant plaintiff's dyslexic condition and any future losses to be sustained by the infant plaintiff as a result of having been deprived of his rights.

Aggravated & Punitive Damages

51. The conduct of the Defendant as hereinbefore set out, constitutes a continuing reckless disregard for the well being of the public, the Plaintiffs and members of the potential class. The Defendant's behaviour is callous, arrogant and offends the ordinary community standards of moral and decent conduct. The actions, omissions or both, of the Defendant involve such want of care as could only have resulted from actual conscious indifference to the rights, safety or welfare of the Plaintiffs and all other members of the proposed class and the Plaintiffs on their own behalf and on behalf of all proposed class members hereby claim for aggravated and punitive damages.

WHEREFORE THE PLAINTIFFS AND EACH OF THEM CLAIM ON THEIR OWN BEHALF AND ON BEHALF OF MEMBERS OF THE PROPOSED CLASS AS FOLLOWS:

- (a) A declaration that the failure to provide proper and adequate testing of student learning disabilities and proper and adequate remedial treatment and education for the condition of dyslexia is:
- (i) In violation of the School Act, and
 - (ii) In violation of Section 15 of the Canadian Charter of Rights and Freedoms;

- (b) An Order directing the Defendant to administer the School Act in a manner consistent with the requirements of Section 15 (1) of the Canadian Charter of Rights and Freedoms by providing for students proper and adequate testing of student learning disabilities and proper and adequate remedial treatment and education for the condition of dyslexia;
- (c) Damages pursuant to Section 24 (1) of the Canadian Charter of Rights and Freedoms;
- (d) Aggravated damages pursuant to Section 24 (1) of the Canadian Charter of Rights and Freedoms;
- (e) Punitive damages pursuant to Section 24 (1) of the Canadian Charter of Rights and Freedoms;
- (f) Interest pursuant to the Court Order Interest Act;
- (g) Costs;
- (h) Such further and other relief as to this Honourable Court may seem meet;

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.

Dated this 29th day of March, 2004.

Solicitor for the Plaintiff

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