

**NO. L040820
VANCOUVER REGISTRY**

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

AFFIDAVIT

I, **LYNNE McGIVERN**, College Instructor, of 2035 N. Woodsville Drive, in the City of Visalia, in the State of California, being one of the United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am one of the Plaintiff's in this action as well as the guardian ad litem and mother of the infant plaintiff, Justin McGivern-Roberson (hereinafter referred to as "Justin") and as such have personal knowledge of the matters and facts hereinafter deposed to, save and except where the same are stated to be upon information and belief, and as to such matters I verily believe them to be true.
2. My son Justin resides with me and was born in Fresno, California, on November 20th, 1987. He is now 18 years of age.
3. During the early years of Justin's education through kindergarten to grade three we lived in California and I suspected during that time that he might have learning difficulties because of his poor handwriting skills and his tendency to reverse letters.

4. During this period of his life there were no assessments made with the object of determining the existence of learning disabilities.

5. In August 1997, Justin and I moved to Vancouver, British Columbia, as it was my plan to start in the doctoral program in the Faculty of Education at UBC. In early September I took Justin to the University Hill Elementary School where he was registered for Grade 4 and attended through grades 4, 5 and 6 following which we returned to California for family reasons for one year at the end of which we came back to Vancouver in July 2001 and Justin started grade 8 at Lord Byng Secondary School.

6. In September 1997 before Justin began attending classes at University Hill Elementary School I attempted to speak with the Vice-Principal of the school and his classroom teacher about his anxiety when experiencing new places and they assured me that they knew how to deal with these situations and would schedule a meeting with me in two weeks.

7. At the meeting, which was attended by the classroom teacher, a classroom aid and myself, I was advised by the teacher that Justin was not suitable for education in the system here in British Columbia and that I should look for alternative programs for him. She advised me that she had determined that he had "a behavioural problem" on the basis of having seen him over the previous two week period.

8. During this same meeting I requested that Justin's learning abilities be assessed as his problems with letter reversals, reading and writing were still present. The teacher then asked me how long Justin and I intended to reside in Vancouver whereupon I explained that I was engaged in a doctoral program at UBC and might possibly apply for permanent residency. When I questioned her as to why my residential status was relevant she explained that the testing was expensive and that therefore the school district prioritized testing opportunities for

those students who would remain in the system. At this point I insisted that he be assessed and it was finally decided that Justin would be tested for learning disabilities. Although Justin did receive an assessment I was never provided with a copy of the report or details of the assessment. I was subsequently informed that Justin's problems were of an **emotional and behavioural** nature.

9. Notwithstanding the School District's determination that Justin's difficulties were related to emotional and behavioural problems as opposed to learning disabilities, he was, nevertheless, placed in the Learning Assistance Centre where he remained throughout his time at University Hill Elementary School.

10. During this time Justin was continually described to me by his teacher and other school officials as a behavioural problem and a student who lacked concentration. His 6th Grade teacher was adamant that he was disruptive and lazy. There was never any suggestion that he be re-tested.

11. Justin spent his Grade 7 year in California where he was encouraged to and did seek and obtained counseling for depression. He returned to Vancouver, B.C. in July 2001 and enrolled in Grade 8 at Lord Byng High School in Vancouver in September 2001.

12. Justin began his 8th Grade year at Lord Byng Secondary School without any tutorial support, nor any school based support for his perceived emotional and behavioural problems other than a few meetings with the school counsellor. He continued to display anti-social and aggressive behaviour and to experience continuous bouts of depression. He was unable to concentrate or keep up with his work and so it was suggested that he take correspondence courses. He was unable to keep up with that work as well and at this point it was suggested that he transfer to an Alternative Program.

13. My continued requests that Justin be tested for the existence of learning disabilities during this period went unheeded and were ignored.

14. At this time Justin transferred to Foundation, a local Alternative Education Program where students do the majority of their work on a computer. Unfortunately he was unable to keep up with the work and left the program after one term.

15. He then attended another Alternative Program, the Vinery, associated with Kitsilano Secondary School. He began there in January 2003 but had to leave after one term because of a conflict with one of the program aids and this resulted in a further transfer to another Alternative Program, Byng Satellite associated with his original High School, Lord Byng Secondary School. On the advice of his psychiatrist he attended school on a part-time basis only and I was informed that if he was unable to attend full-time he would be transferred once again. If this had occurred he would have attended five schools in two and a half years.

16. During the winter and spring term of 2003 when Justin was at the Vinery the Director, Mr. Robert Best, who was aware of Justin's difficulties made arrangements for him to begin seeing a psychologist at the Kitsilano Mental Health Centre. He began seeing him in February and later in March, he was hospitalized for psychosis. At this point there was a realization of how serious Justin's marginalization due to the educational system had become and he was now being treated for psychosis and paranoia. It was then that his drug use also became apparent and so I then made arrangements to take him to an addictions counselor.

17. With Justin's ongoing problems in the British Columbia school system and my continuing effort to assist him in resolving those problems I made contact, in the Fall of 2002 with Dr. Linda Siegel, an acknowledged expert in the field of

child learning disabilities and a professor in the Department of Educational and Counselling Psychology and Special Education, Faculty of Education, University of British Columbia. In November 2002 Justin received an assessment under the supervision of Dr. Siegel in which he was diagnosed with a learning disability (specifically **dyslexia**) which was affecting his academic performance in reading, reading comprehension, spelling, arithmetic and written output. A further assessment, again under the supervision of Dr. Siegel, was conducted on April 30th, 2003, confirming the previous diagnosis of **dyslexia**. These diagnoses of dyslexia made by Dr. Siegel were brought to the attention of School District authorities without delay.

18. Notwithstanding these diagnoses of ongoing dyslexia, Justin continued in the school system without any remedial learning support. He continued to lose educational possibilities because of this and the educational authorities responsible for his education refused to provide appropriate and adequate assistance for his **dyslexia**.

19. In August 2004, Justin and I finally left Vancouver, returning to California where I was able to obtain more appropriate and adequate assistance in dealing with Justin's now diagnosed dyslexic condition. On arrival in California Justin was immediately tested and put into a program run by the local school district in conjunction with the Ventura County Mental Health Department. His needs had escalated from those of educational support of children with learning disabilities to those of children with learning disabilities in combination with emotional difficulties such as bi-polar, a condition which he had developed before leaving Vancouver.

20. Justin had a very difficult time adjusting and soon ended up being diagnosed as **gravely disabled** due to suicidal tendencies with the result that he was placed in an adolescent psychiatric ward where he stayed for approximately

one week. The psychiatrist who worked with him in Ventura expanded his diagnosis to include social phobias and anxiety disorder.

21. My decision to move with Justin back to California in August 2004 was made for no other reason than to secure both the educational and medical assistance which he needed. Notwithstanding his diagnosed condition of dyslexia Justin received no educational support in British Columbia other than to be sent to different alternative programs. He attended classes on a part-time basis and had not even completed Grade 9 by the time we left in the summer of 2004. This was after having spent three years going from one school to another in Vancouver without collecting enough credits to complete the 9th grade.

22. The decision to move back to California was at great cost to me as I had to leave the doctoral program at UBC before completing my degree. A substantial amount of the time and money spent in my effort to achieve this goal was lost.

23. Justin is currently enrolled in a State Government school which deals exclusively with students that require special education. Each student has an independent learning plan and each student is in a small classroom with no more than 9 students. The classroom provides one teacher trained in special education and two classroom aids also trained in special education needs. Justin is doing well in this environment since he now receives the attention he needs.

24. Justin's experience in the British Columbia school system has had a very detrimental effect on his life. He attended school in British Columbia for six years during which time both he and I were continually told that he was stupid and had a behavioural problem. He has had to adapt to being in classes with students who are much younger than he is and socially, this continues to be very difficult for him. He is a bright young man who lacks self-confidence and whose future

looks shaky due to his educational difficulties. He should be graduating from high school this year however he will likely continue until he is 20 years old or older in order to obtain the credits he needs to graduate.

25. My educational background includes both a Bachelor's and a Master's degree in linguistics. I was working on a doctorate in language and literacy education in the Faculty of Education at UBC when I was forced to bring Justin back to California. I am hopeful that we will be able to return to British Columbia in the future at which time it will be my intention to reapply to UBC so that I can complete my doctoral studies.

26. It has always been assumed that Justin would continue on to college and university, particularly in view of our family's educational background which includes many who are university educated to a high professional level. I believe, however, at the present time, that Justin, because of his unfortunate experience, is lacking in the confidence required to attend college once he graduates from high school. His future, for this reason, is filled with uncertainty.

27. While I have no independent information concerning the size of the potential class in this matter, as a result of my discussions with Dr. Linda Siegel who made the diagnosis of Justin's dyslexia and with Mr. James M. Poyner, the lawyer representing me in this action, I am satisfied that the members of the potential class will number in the thousands.

28. I know of no fact material to the application for certification being brought herein pursuant to the provisions of the *Class Proceedings Act* that has not been disclosed in my Affidavit or in any Affidavits previously filed in this proceeding.

29. I know of no conflict that would prevent me from acting as a Representative Plaintiff in this matter.

SWORN BEFORE ME, at the City of)
Visalia, California, United States of)
America, this day of March, 2006.)
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_____)

LYNNE McGIVERN

Name:
A Notary Public
My Commission expires: