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## What does equal education look like after the landmark court ruling?

By Erin Anderssen

*When a province promises equal education for all students, school boards must deliver, Supreme Court ruling says*

In Grade 1, Sophia could not read the word "cat." But when her mom told her to go to sleep, she protested that her teddy bear was keeping her up – "he's nocturnal," she said. She invented elaborate creative worlds, but struggled with simple math. Her parents, professionals who raised her in a home full of books, hoped, as Sophia's teachers reassured them, that these were simply signs of a busy brain taking a longer path.

But their best efforts could not move her past a stumbling C-A-T. "It felt like all the thoughts were there, but it wasn't coming out," says Sophia's mom, Jennifer Bell, who is now working on her PhD in Toronto. (Sophia's father is a political consultant with a graduate degree from Yale University.)

Psychological testing did not produce a clear diagnosis, and her school, with its well-meaning individual-learning plan, could do only so much to help. "There was a special-ed teacher who did a lot of colouring," Ms. Bell recalls. "We just knew that they wouldn't be able to really answer her needs."

At first, her parents sent Sophia twice a week to a private tutor with expertise in dyslexia. But when she came home from school calling herself stupid and banging her head against the wall in frustration, her parents decided that it was time to go further. Now 10 and attending a Toronto private school with small classes and one-on-one help, Sophia still reads below grade level, but is steadily improving.

Despite the financial sacrifice, fighting a shorthanded public system seemed the costlier long-term option: "If we imagined the trajectory of our daughter – she would have been unhappy, low-achieving and possibly permanently damaged." Instead, "it's the first time in our lives we have a child who can't wait for the weekend to be over."

Should Sophia stay at her private school, her parents will quickly surpass \$100,000 paying for her education. That is roughly the amount that the Supreme Court of Canada awarded to Jeffrey Moore's family this month after they sued the province of British Columbia and the North Vancouver school board to recoup the money they paid for private school after the board closed a program for dyslexia that Mr. Moore – now 24, and working as a plumber – would have attended in Grade 4.

The ramifications of the unanimous decision go far beyond one family's tuition bills. Already, there is a class-action suit in the works to bring more claims against B.C. school boards. Similar actions probably can be expected in other provinces from the families of students with all kinds of special needs. And while this case involved private school, it's not clear that other costs, such as tutoring or private testing, would be excluded.

The Supreme Court ruling is part of a larger cultural shift toward accommodating difference, in classrooms and in the workplace. It comes at a time when our understanding of learning issues has grown, thanks to child-development and brain research, and the social stigma that once kept families silent has lessened.

What it makes clear: When a province promises equal education for all students, school boards must deliver – not just an equality of opportunity but a real striving for equally positive outcomes for all, at least within each person's limits.

But there is so much it does not address: What does equality in the classroom look like in practice? Where is the money to pay for it? And what might get lost in the process?

What should worry school boards is that there are a lot of unhappy parents. According to a 2006 report by Statistics Canada, while the majority of parents felt their children's needs were being met in school, close to half said they had experienced difficulty arranging special education, especially in smaller communities. About 25 per cent of the parents in the study said they had a child needing special help who was not getting any – whether from education assistants, laptops, or more time writing exams.

The Supreme Court ruling was clear: Budget constraints are not an excuse to cut help for these students. Considering the legislated responsibility, as defined in the B.C. School Act, to ensure that "all learners" meet their individual potential, Madam Justice Rosalie Abella wrote in the decision: "Adequate special education, therefore, is not a dispensable luxury."

The evidence is certain that early intervention and support are essential to academic success. And as learning-disabilities expert Judith Wiener puts it, "It's either pay now or pay later." When these kids do not get help, they are more likely to grow up to be underemployed, to struggle with mental-health issues or to end up in jail.

"Jeffrey Moore is now a plumber paying taxes. Jeffrey Moore without a proper education might be unemployed and on the dole," says Dr. Wiener, who works at the Ontario Institute for Studies in Education (OISE) at the University of Toronto.

But how far does accommodation go before it begins to erode the academic experience for other students, including the ones who are not great readers but scrape by? And what determines who gets priority when money is tight? In one sense, there is a stronger social argument for rescuing the future of a child with dyslexia than for helping a gifted kid, who is less likely to become a problem citizen in any academic stream. But if that student, lacking stimulation, ends up an average rather than a brilliantly productive adult, is society on board with that too?

Sophia's mother, Ms. Bell, herself points out: "I don't want to be the person who says we're entitled to everything, because that has to come out of someone else's pockets."

Just under 15 per cent of the total elementary- and secondary-school population, according to the most recent statistics in Ontario, are classified as having special needs, which range from dyslexia and attention-deficit disorders to autism, developmental delays and mental-health issues.

Learning disabilities – which can affect memory, reading ability and comprehension, and executive functions such as planning and decision-making – account for nearly half: The number varies from about 4 to 10 per cent of students.

Funding calculations vary widely by province, but school boards receive the most money for students with the most profound issues, who require educational assistants. Though they receive funds for assistive technology such as computers, the money is not tied to individual students. And boards are often required to cover the cost of classroom help for learning disabilities.

This has created a system that varies widely between classrooms and between schools. Parents often report that the level of help their child receives depend on the engagement of teachers and principals; often they begin each school year feeling they have to fight all over again.

"Some teachers are great, others could care less," says Greg Davis, who eventually put her son, now 18 and attending college, in an Ottawa private school so that he could get special support for his dyslexia. "It was just a minefield. You could never count on some sense of stability. I wasn't willing to take the gamble to bet on him finishing high school."

As well, there are long delays for testing and diagnosis (which kick-starts extra board funding); a severe shortage of child psychologists means that even more money will not necessarily clear the waiting list. The more protracted the wait, the worse the likely outcomes: Until Grade 3, students "learn to read;" once they reach Grade 4, they are "reading to learn," which explains why kids with learning disabilities who do not get good help begin to fall down in the higher grades.

Many parents like Sophia's, who can manage to afford it, pay privately for testing, tutors or even private schools. Already, therefore, there is a two-tier system – one for children with savvy, advantaged parents ("If they don't see you as a pain in the neck," Ms. Davis says, "they will ignore your child"), and another for those whose parents, for a variety of reasons, are not effective advocates.

In the U.S., parents of kids with learning disabilities may already request private-school costs when the public system cannot meet their needs. In 2009, the U.S. Supreme Court also ruled in favour of reimbursing tuition to an Oregon family who put their son in private school after public educators refused to accept that he had attention-deficit disorder.

In some places, the principle has not been restricted to special education: An Australian court reimbursed private tuition to a family whose daughter had suffered severe bullying in public school.

Of course, the tension between equal opportunity and special treatment has extended beyond the classroom: Employment discrimination cases in the United States have doubled in the past five years, The Washington Times reports; last December, the Equal Employment Opportunity Commission cautioned American employers that asking for a high-school diploma (when the job may not require one) may discriminate against people with learning disabilities who could not graduate from high school.

There is likewise an ongoing debate about how far SAT providers, universities and legal-bar examiners must go to accommodate special needs. In one U.S. case, a plaintiff was awarded the use of a \$5,000 laptop to write his law bar exam; in another, a dental student with dyslexia was denied the right to take his final exam an indefinite number of times to pass them. In Canada, similar cases are being heard by human-rights tribunals.

"This is about a beefed-up equality of opportunity," says Mary Eberts, a law professor at the University of Saskatchewan, who in 2006 represented (unsuccessfully) the families of children with autism seeking public funding for intensive behavioural treatment.

The Moore decision dealt with an unusually clear set of facts: An entire program was cancelled and there were no other comparable options in the public system. But in principle, Ms. Eberts says, it establishes a higher bar for school boards: "You can't just set up 10 students at the starting line, eight of them in wheelchairs and two of them not, and say, 'Oh well, everyone has a fair shot.' "

The court's approach was to compare the situations of kids with severe learning disabilities to those of mainstream kids, as opposed to requiring equal access to special services among the kids who needed them.

"That's a real victory," Prof. Eberts says, and it reflects a trend in jurisprudence from "formal equality" (everyone being treated the same) to "substantive equality" (everyone being set up for an equal chance at a similar result).

But critics argue that the decision raises an impossible bar for a public system, and one with "financially ruinous consequences," according to Karen Selick, litigation director of the Canadian Constitution Foundation, which intervened in the court on the side of the school board.

"It's one of those opening-the-floodgates type of cases," Ms. Selick argues. "Every parent now who says, 'I am not satisfied with how my child is doing in school,' will be able to look at this and say, 'Well, my kid would do better in private school.' Where are you going to draw the line?"

While that is an oversimplification of the ruling, even supporters are uncertain how far it might reach.

Toward the end of the Supreme Court's decision, Judge Abella argues that the school board failed to consider other cost-cutting measures to save the dyslexia program – specifically citing an outdoor-education class that was saved – which, Ms. Selick suggests, may impinge on the rights of school boards to make their own budget decisions.

She points out that while Jeffrey Moore lost access to a specialized program, he was still getting five hours of individual help a week in school. How do you weigh that extra help, she asks, against the needs of the child sitting next to him, who is undiagnosed with a disability but perhaps also on the borderline of school failure?

"Resources don't fall like manna from heaven. If the disabled kid gets them, other kids won't. We will never know how other programs are being deprived."

However much they have achieved, courts are a costly and time-consuming approach to setting public policy. Advocates on both sides say the Moore decision should serve as a wake-up call to school boards to assess the services they provide. (Judge Abella says as much in the decision.)

But even with the best intentions, that is easier said than done. Learning disabilities are difficult to treat, and what works for one child does not always work for another. Even parents who try private schools often report bouncing between institutions seeking the best options – as Dr. Wiener of OISE points out, the quality varies widely.

Experts such as Linda Siegel, a special-education professor at the University of British Columbia, say a growing body of research suggests that current psychological tests to identify kids with learning disabilities are an inefficient way to focus funding – as well as excluding those students who do not meet the diagnosis but also require help.

American schools are increasingly practising an approach called "response to intervention" – in which all students are tested for potential reading roadblocks so that those who need extra help receive it early, without requiring an official diagnosis.

This approach has reached North Vancouver, where Mr. Moore went to school decades ago. Prof. Siegel has helped develop a program there in which every child in kindergarten is tested, at a cost of \$1,000 per class instead of \$3,000 per individual student. She says it has been a success, improving outcomes in its first few years.

In Ontario, more school boards are getting around waiting lists by writing up individual education plans for students before they get a diagnosis. But while that may be a way to help students on the ground, it does not distribute additional funding to school boards.

Alberta has overcome this with a \$375-million inclusive-education fund, and this year, the

province changed the way school boards receive that money: They still get specific funding for children with severe disabilities, but the largest share is based on broader criteria such as their population of students from low-income families, refugees, aboriginal students or other high-risk categories.

Ultimately, as Ms. Davis says, parents wants schools to help their children in a timely and efficient matter, and to maintain that standard throughout their education. Some students will cost more to educate than others. "Equal does not always mean fair," she says. "If someone needs glasses, you don't give the whole class glasses."

It's clear one educational size does not fit all. But in a nation of increasing diversity and dwindling funds, finding the balance between fairness and equality may be the toughest math equation on the blackboard.

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