

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



ALLIANCE FOR EQUALITY OF BLIND CANADIANS v. CANADA (ATTORNEY GENERAL), 2021 FC 860

Federal Court of Canada, Little J, 23 August 2021

Allegation of discrimination by a nonprofit corporation against a government agency whose website was not accessible to those with a vision impairment.

Key words: Discrimination, Canada, Grant, Corporation, Person, Standing, Jurisdiction

1. The Alliance for Equality of Blind Canadians (AEBEC) is a national non-profit organisation and a registered charity that is run by and for blind, deafblind and partially sighted Canadians. Its board members are volunteers, and the organisation consists of volunteers. Its mission is to advocate for and increase awareness of the challenges faced by blind, deafblind and partially sighted Canadians.
2. Employment and Social Development Canada (ESDC) is a government agency which operates the Social Development Partnerships Program (SDPP), a grant program to improve participation and increase the social inclusion of persons with disabilities in all aspects of Canadian society.
3. AEBEC wished to apply under the SDPP for a grant to increase its organizational capacity to provide leadership in advocating for blind, deafblind and partially sighted Canadians. It appeared that ESDC invited AEBEC to apply.
4. The application was only available online and ESDC's website was not screen-reader accessible. AEBEC volunteers struggled to fill out the digital forms. AEBEC resorted to submitting several components of the grant funding application directly to ESDC by email.
5. AEBEC was unsuccessful in the grant program. It believed that this was due to the emailed supporting material not being considered.
6. An individual member of the AEBEC Board of Directors, submitted a complaint "on behalf of AEBEC" to the Canadian Human Rights Commission (the Commission) alleging a breach of s. 5 of the Canadian Human Rights Act, RSC 1985, c H-6 (as amended) (the CHRA).
7. Section 5 of the CHRA provides:

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public:

- (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
- (b) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

8. The complaint alleged that ESDC's failure to provide an accessible service and application process discriminated against AEBC.
9. An officer of the Commission recommended that the complaint not be dealt with because the AEBC lacked standing under the CHRA, as it was a corporation. CHRA sections 40 and 41 provide that the Commission can only deal with complaints filed by an "individual" or a "group of individuals". Further, the SDPP disability funding was only available to non-profit or indigenous organizations.
10. Despite AEBC's protests, the Commission agreed with the officer's conclusions.
11. AEBC then applied to the Federal Court for judicial review to set aside the decision of the Commission. AEBC argued that:
 - a) The Commission erred in characterizing the nature and contents of the complaint, by ignoring the individual victims affected by the discriminatory funding application process.
 - b) The Commission did not recognize that organizations can file CHRA complaints on behalf of members of protected groups.
12. The Attorney General argued that a corporation is a person in law, but is not an "individual" or "group of individuals", and therefore could not file a complaint under the CHRA.
13. The parties agreed that the onus was on the applicant to demonstrate that the decision was unreasonable. A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and is justified in relation to the facts and law that constrain the decision maker.
14. The Court found that the Commission did not make a reviewable error as it demonstrated that it understood the issues after reviewing the evidence and some cases. The Court explained that (at [93]):

...the Commission's decision in respect of the complaint displayed the required hallmarks of intelligibility, transparency and justification and respected the legal and factual constraints that applied to it. The Commission's decision is therefore reasonable and the application for judicial review must be dismissed.
15. Although AEBC was unsuccessful, the Court decided not to make a costs order because AEBC was acting as a public interest litigant in bringing this application.

IMPLICATIONS



The Court opined (at [89]):

...[T]he applicant’s submissions to this Court on the merits of the Commission’s decision exposed a frustrating irony for the individuals it represents. Organizations (whether business, not-for-profit or charitable) can only act through individuals. If services are not provided in a way that allows those individuals to access them and carry out their work for that organization, both the individual and the organization suffer. In this case, a not-for-profit organization whose mission is to advance the interests of its members and other Canadians who experience disadvantages and challenges due to what the CHRA calls a “disability”, claimed that it could not fairly apply for government funding designed to provide financial support to that very kind of organization, and Indigenous organizations, to carry out their mandates. Indeed, AEBC’s complaint noted that it was invited to apply for the funding by EDSC itself. And the Federal Court of Appeal decided in 2012 in [Canada (Attorney General) v. Jodhan, 2012 FCA 161] that a failure to provide accessible websites constituted a violation of Ms Jodhan’s rights under s. 15 of the Charter.

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/ca/fct/doc/2021/2021fc860/2021fc860.html>

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