

Lepofsky v Toronto Transit Commission

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The Duty to Accommodate and Undue Hardship

David Lepofsky is both a lawyer and completely blind. In 2007, Mr. Lepofsky filed a complaint with the Ontario Human Rights Tribunal against the Toronto Transit Commission ("TTC") alleging that the TTC failed to accommodate Mr. Lepofsky, among others who suffer from visual impairment, as the TTC failed to announce bus stops at each stop thereby creating a hazard for those visually impaired persons traveling by transit. David Lepofsky contended that the TTC had a duty to accommodate blind persons under the *Human Rights Code*, [R.S.O. 1990, c. H.19](#) so to ensure that all stops are consistently announced. The duty to accommodate is mandatory unless such presents an overly burdensome undue hardship:

Constructive Discrimination

11 (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

Idem



(2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

In the final result, Alvin B. Rosenberg sitting as adjudicator, decided that the TTC failed to accommodate visually impaired passengers. Counsel for the TTC had argued that this would amount to undue hardship as it would be dangerous for the drivers to announce each stop; however, Adjudicator Rosenberg disagreed and stated the following reasons as within *Lepofsky v. TTC*, [2007 HRTO 23](#):

[8] The TTC failed to establish the undue hardship defence for a number of reasons which include:

1. They did not call an expert or even a driver to testify that the proposed accommodation was dangerous.
2. Some drivers do announce all stops and the TTC knowing this not only did not indicate to them to stop because it was dangerous but in fact commended them for their performance.
3. The TTC instruct their drivers to announce major intersections and this is no different from a danger point of view than announcing other stops.
4. They require the drivers to announce all stops when the weather is inclement and the traffic is very heavy or the view of the route is otherwise obstructed. Surprisingly, they are comfortable with announcements in circumstances where they might think it more dangerous i.e. inclement weather. This condition makes it difficult for sighted people to see. By giving these instructions it is clear that the TTC is prepared to accommodate sighted people who have some difficulties but not prepared to accommodate blind people who have severe difficulties.

Ultimately, the TTC was required to announce each stop within 30 days of the decision.

