

Our HRTO Journey

Fundamental to our family's understanding of the way the world should be, is the concept that society is ultimately measured by the way it provides for its weak and vulnerable.

Our son is one of those weak and vulnerable. His venturing out into the world as he grows opened our eyes to the reality that society generally, and institutions specifically, do not always act with the weak and vulnerable in mind and that there is often tremendous resistance to simply do the right thing.

Often institutions - in our case our son's school board - run counter to their altruistic sounding visions and mandates and erect obstacles and barriers which are put in the way of those in the special needs community ... until the light is shone and change is forced upon them.

Unfortunately, litigation is sometimes the only answer ... it was in our case.

Respectfully, when it became clear just what the education system, and more specifically, his school board was prepared to provide our son, as knowledgeable people, we knew it was wrong and needed to be changed.

A violation of the human rights of your child naturally evokes an extreme and complex mix of emotions – mainly anger and resentment. We knew that what was being done to our son - a child with an Autism diagnosis - by his school board was wrong. He was being denied access to education and provided no meaningful or tangible supports to meet his needs. To us, as educators ourselves and as parents, we believe that every child has a right to be a part of his/her community, to be at school, and to be provided meaningful access to education.

Being that my wife and I are both teachers within the board where my son is a student, we figured that we could propose something that the Board would be amenable to and would help our son... their student. Surely, these fellow educators would be open and progressive enough to try something different in the altruistic pursuit of helping our child to effectively learn and grow. We couldn't have been more naive.

The answer was simply no. In turn, the school board wanted our child and our family to take a wait and see approach. They stated that there was an HRTO case related to our concerns currently going through the Tribunal system and we should be patient - to see what the outcome would be. They also stated that there was a provincial pilot program that was just beginning and was related to our concerns. They suggested that we should wait for the outcome of that program before making any changes to our son's special education programming.

Imagine, being told as parents that our child who is desperately in need of support from his school board, should simply take a wait and see approach. In the meantime, nothing tangible was offered (expert reports would later prove that).

Confronted with an organization that was willing to dismiss our son and deny him his basic human rights required very deep breaths. Our initial instinct was to fight - that's who my wife and I are. We were furious and incredulous that this institution which is supposed to be a pillar of our society would act with such indifference to our son's needs... a student's needs.

There seemed no choice but to act through litigation... but when?

Not wanting to react in haste based on the rage that we felt, my wife and I decided to take a resentful deep breath and do some research. We read other case files, went through the laws that exist, and began gathering the information from all sources available to support our case.

Unfortunately, what became obvious through our research, was that these legal fights are complex, require a lot of documentation, and there is a ton of work to do. We knew as parents and as educators what the school board was prepared to do. But we needed to establish that the school board was, in fact, violating his rights to education ... that he was being harmed. So we waited an entire year and gave the school board every opportunity to make things right and prove us wrong.

After giving the school board an entire school year in good faith, when it was clear they weren't prepared to provide for our child, we filed our HRTO application.

The first thing we did was prepare a meticulous timeline of events, building the narrative for our legal team and indexing every document we thought that was pertinent and every correspondence between our family and the parties we were filing against.

We also made the decision to be honorable in our battle. We did not run to the media as we were not trying to embarrass anyone or disparage a particular individual. We also knew that these are very nuanced issues and the media does not always grasp the nuances. Speaking to the media also gives the responding party a lot of information about your position. Playing things out in the media or over social media can also present challenges and complexity as to your motives for making the application. We just didn't want any of this clouding our position or case as it moved forward.

We were very mindful of who we were fighting. Having the benefit of being teachers, we knew that the frontline workers are often also victims in some of these fights due to a lack of money, training, resources, and guidance when trying to address students with special needs in their classrooms. So we wanted our case to focus on the school board as a whole and the greater systemic problems that prevented our child from getting what is his right.

As prepared as we thought we were, let us state here that human rights battles are not for the meek. They are fraught with frustration, emotional extremes, and they require a lot of patience... and a willingness to fight with great endurance. It is also important to be prepared to be shocked at how the law functions and is applied and the tedious nature of a case's progression. What seems like a simple case of right and wrong can be wrought with complexities and minutia of the many angles the arguments will or could take.

For example, if we were simply parents, we would have the right to speak freely about this case and about our child's experiences. However, as we are teachers within the board we were challenging, we unexpectedly were warned by the school board that by speaking about this case and our son's experiences, we could be accused of "disparaging the employer" and as a result, disciplined.

Imagine.

Further, we had been warned that there is the possibility that not only could the school board take disciplinary action themselves; they could also send us in front of the Ontario College of Teachers for further disciplinary action.

Apparently, and unbelievably, there is no clear delineation for us in our role as teachers *and* as parents and this had been used in attempts to silence us.

One of the strategies we learned when taking on a big organization like a school board with what seems like limitless resources, is that the organization will not hesitate to try and defeat you through financial attrition. They will delay, distract, and try to change the focus of the case. Responding to these tactics costs money and causes tremendous stress. There will be moments when you want to quit. It takes immense personal fortitude to press onward.

For us, the main source of the pressure and stress of our legal battle was the immense cost involved. Frankly, and unfortunately, without financial support from outside sources, it seems as though human rights are designed for the people with substantial resources. It is almost as though the system is designed so that average families like ours are required to “stay in our lane” and accept what we get and hope that someone else with the resources required to take on these battles will come along and solve the problem for you. Or hope that by some miracle, those who are in the wrong will independently see the light.

It is critical that one considers, plans and prepares financially for the long-haul and that conversations about costs are carefully laid out. My wife and I are both professionals with a reasonable level of resources available to us and yet the fight for rights carries a tremendous financial weight that could easily have ended in financial ruin. Taking an organization the size of a school board to the Human Rights Tribunal is a daunting and cost prohibitive task. To have a chance to correct these wrongs requires large sums of money. While we were fully invested in this battle for our child many times we wondered if our financial resources were going to be enough.

One of the ways to reduce costs is to listen to your counsel’s advice about ways to keep them down. Another highly effective way to keep costs down is to be fully vested with time to help your legal team. Researching, reviewing, and being willing to do some of the work yourself - contacting people, corresponding in strategic ways, providing documents and pertinent information to your legal team. It is also important to avoid creating situations that your legal team must respond to. So it’s important to be measured in how you interact with the other party and it’s important to divulge anything and everything from the start to your legal team, even if it is not helpful to your case. Giving your legal team time to prepare and deal with things effectively saves time and money.

We have learned that there are a few ways that HRTTO cases can be resolved.

One way is to see the process all the way through to tribunal and hearings. Again, there are many variables that need to be weighed when contemplating this route - financial risks, the greater good of having a public decision and the possibilities for further public fundraising to name a few.

Mediation toward a settlement is another way an HRTTO case can be resolved. The HRTTO prefers this route. However there are variables that are involved in this process - when to enter mediation, the cost of mediation, what can be gained through settlement is often greater than

through decision, and the fact that settlement cannot be judicially reviewed (the Tribunal equivalent to an appeal). Keep in mind though, that settlement almost always comes with confidentiality, so your result is not public and will only be pertinent to you and your case

Ultimately, our family was willing to take on the fight despite all we feared. We knew we had a good case - we had done our research - and felt strongly that it was the right thing to do. Most importantly, we were willing to dedicate the tremendous amount of time and energy that was required for it to be successful which was all fueled by a burning passion to do the right thing for our child. My advice for any parent in a similar situation and considering legal options in order to protect your child's rights: do your homework, know what you are up against and settle in for the long haul--both emotionally, and if you're using a lawyer--financially.