

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MAXINE WENDY WELLS,	)	
	)	<u>Maxine Wendy Wells</u>
applicant,	)	on their own behalf
	)	
- and -	)	
	)	<u>Sarah R. McEachern</u>
THE MANITOBA HUMAN RIGHTS	)	<u>Erin McIntyre,</u>
COMMISSION, AND THE MANITOBA HUMAN	)	<u>Articling Student-at-Law</u>
RIGHTS COMMISSION BOARD OF	)	for Manitoba Human Rights
COMMISSIONERS, AND BORDER LAND	)	Commission and Manitoba
SCHOOL DIVISION,	)	Human Rights Commission
	)	Board of Commissioners
respondents.	)	
	)	
	)	<u>Michael D. Zacharias</u>
	)	<u>Dominique Gibson,</u>
	)	<u>Articling Student-at-Law</u>
	)	for Border Land School Division
	)	
	)	
	)	JUDGMENT DELIVERED:
	)	June 25, 2025

HARRIS J.

INTRODUCTION

[1] Maxine Wells (Ms. Wells or the applicant) is a tireless advocate for her son who had learning disability challenges as a student in the Border Land School

Division (the Division). Ms. Wells was in regular contact with his teachers, school administration and Division personnel¹ regarding his learning challenges and how they should be addressed. Often, there were disagreements about his needs and how they should be addressed. Several times, Ms. Wells retained independent specialists to assess her son's learning disabilities and provide recommendations on how to accommodate those learning disabilities in the school setting. Ms. Wells says that the Division was often dismissive of the recommendations of these specialists. This became increasingly frustrating for her as she wanted to ensure her son had the best possible outcome in an education framework that did not, from her perspective, appear to be giving him the opportunity to succeed. She says that ultimately, her son did not achieve the level of learning he could have had the Division followed the recommendations of the specialists as she urged them to do.

[2] Finally, her frustrations led her, on January 16, 2016, to file a complaint (the Complaint) pursuant to section 13 of ***The Human Rights Code***, C.C.S.M. c. H175 (the ***Code***), seeking remedies under subsection 43(2) of the ***Code***. Ms. Wells alleged that her son was the victim of discrimination due to the prolonged failure of the Division to reasonably accommodate his disability-related needs in the classroom.

¹ Unless there is a reason to distinguish between the Division and the school, I will refer to both as the Division.

[3] At the request of the Manitoba Human Rights Commission (the Commission) the Division replied to the Complaint, detailing its interactions with Ms. Wells, its assessments of her son, its response to assessments provided by Ms. Wells' specialists and how it addressed all of this in her son's learning program (the Reply).

[4] On September 9, 2021, the Investigator appointed by the Commission filed a 54-page report (the Report), which concluded that the evidence demonstrated that the Division acted reasonably in accommodating the disability-related needs of Ms. Wells' son. The Investigator recommended that the Board of Commissioners (the Board) dismiss the complaint pursuant to subsection 29(1)(c) of the **Code** on the basis that there was insufficient evidence to support an alleged contravention of the **Code**.

[5] Prior to considering the recommendation, the Board invited Ms. Wells to comment on the Report. Ms. Wells submitted a 10-page response (the Response). The Board then considered the Report and Ms. Wells' Response and accepted the recommendation of the Investigator and dismissed the Complaint.

[6] Following misinformed legal advice, Ms. Wells filed an application for leave to seek judicial review, which was dismissed by another judge of this court on November 24, 2022. She appealed that decision to the Court of Appeal which concluded that leave was not required to file an application for judicial review. Her Notice of Application for judicial review was then filed and submissions were heard on June 2, 2025.

[7] In its materials filed in response to Ms. Wells' application, the Division raised the issue as to whether the applicant unreasonably delayed bringing her application for judicial review. The Division says that undue or unreasonable delay is a legitimate discretionary basis on which to dismiss an application for judicial review. However, in the interest of efficiency and in order to focus on the Division's main opposition to the review, *i.e.*, that the decision of the Board was reasonable, the Division advised the court that it would not pursue the issue of delay.

[8] The thrust of Ms. Wells' application is that she disagrees with the Division's assessments of her son's needs and the accommodation measures implemented which, in her opinion, were often not aligned with those of outside clinicians. More specifically, she submitted that:

- the Division did not accept assessments provided by experts;
- the Division reported that her son was working to grade level despite her observations at home and reports from the son. (For example, from the report of Dr. Tannis Wiebe, Developmental Pediatrician (undated but based on assessment undertaken on Dec 17, 2015) – "H [the son] is not working at grade level in many areas which is most likely causing some of his frustration at the end of the day when he goes home. School does have adaptive plan for H which seems quite comprehensive. However, the copy that I was provided has many comments from mom that should be reviewed with family and school to see if the plan can be

more useful for H so he can get the most out of the adaptations that have been made”;

- Dec 16, 2015 - Dr. Henry Fast of Southern Health reported that “[her son] meets the criteria for Autism Spectrum Disorder and a Specific Learning Disability related to reading, *i.e.*, Dyslexia”;
- April 8, 2014 - Clinical Services team report the fact that [her son] is still making letter reversals at the end of grade 3 could be a concern as it usually disappears around this time;
- April 6, 2017 - Dr. April Buchanan, Registered Psychologist – at the time, the son was in grade 5.7 – “strong listening and oral fluency skills (82nd percentile), low average math skills - grade 3.8 (10th percentile), math problem solving – grade 4.5 (16th percentile), continued significant difficulty in reading ability....Pseudoword decoding - grade 1.8, reading speed (5th percentile), reading comprehension - grade 2.7 (21st percentile), sentence composition (unable to complete), essay composition (1st percentile), spelling - grade 2 (5th percentile), continued letter reversals diagnosis: specific learning disorder with impairment in writing (Dysgraphia)”;
- Gap widening in literacy skills relative to age peers; grade level reading and writing tasks will be very difficult.

[9] Ms. Wells says that despite school continuing to say that her son was performing at grade level, he clearly was not.

THE STANDARD OF REVIEW

[10] The standard of review to be applied when the merits of an administrative decision are challenged is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 16). None of the parties suggested that the Legislature intended a different standard or that the rule of law requires the standard of correctness be applied. (*Vavilov* at para. 17)

[11] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes a reasonableness review from a correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision-maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision-maker's place. (*Vavilov* at para. 15; see also para. 83)

[12] Other principles which guide a reasonableness review are:

- A decision is unreasonable if there is a failure of rationality internal to the reviewing process or where the decision is untenable in light of the relevant factual and legal constraints (*Vavilov* at para 101);
- A decision must be based on reasoning that is both rational and logical (*Vavilov* at para. 102);

- A reasonable decision is one that is justified in light of the facts; the reasonableness of a decision may be jeopardized where the decision-maker has fundamentally misconstrued or failed to account for evidence before it (**Vavilov** at para. 126);
- A decision-maker's reasons must meaningfully account for the central issue and concerns raised by the parties. Where a decision-maker fails to meaningfully grapple with key issues or central arguments raised by the parties, that may result in the decision being unreasonable (**Vavilov** at paras. 127-128).

ANALYSIS

[13] For the purposes of this review, the record consists of the Complaint, the Reply, the Report, the Response, an excerpt of minutes of a meeting of the Board accepting the recommendation to dismiss the Complaint because of insufficient evidence to substantiate the alleged contravention of the **Code** and letters to each of Ms. Wells and the Division notifying them of the Board's decision.

[14] The specific allegation in the Complaint, was that the Division "discriminated against [her son] in the provision of service on the basis of his disabilities (Dyslexia, Learning Disability, suspected to be on the Autism Spectrum Disorder) and/or failed to reasonably accommodate his special needs which are based on his disabilities... without bona fide and reasonable cause contrary to Section 13 of The Human Rights Code." The Complaint comprehensively set out the details of her interactions with the Division regarding her son's needs, including her engagement

of outside experts to assess her son's disabilities and needs, and the Division's responses to these assessments and recommendations.

[15] The Division's Reply is a detailed point-by-point response to each of the specific interactions and issues raised by Ms. Wells, including the Division's understanding of her son's learning challenges and their responses to those challenges.

[16] There is no suggestion that either the Complaint or the Reply were not fulsome.

[17] Likewise, the Report is a comprehensive analysis of the Complaint and the Response, together with what is understood to be all materials that the Division had on file relative to the son's learning disabilities, including assessment reports, education plans developed for Ms. Wells' son, e-mails, notes of meetings, consultations with outside experts and Division policies relevant to the issues raised by the Complaint. The Investigator interviewed both Ms. Wells and the principal of the school regarding the Complaint and the Reply. Detailed summaries of those interviews were included. There was no suggestion that the Investigator did not have all the relevant material when preparing the Report.

[18] The Investigator set out Ms. Wells' allegations that the Division failed to recognize the full extent of issues that her son was experiencing by not formally assessing him or diagnosing his disabilities, and that it therefore did not provide him with the appropriate supports to succeed in school.

[19] The Investigator noted that the Division denied that it failed to reasonably accommodate the son. It says that it provided ongoing support and programming appropriate to his needs based on observations, assessments and medical documentation. The Division further submitted that the son was functioning well at school and was able to meet grade level expectations and academic outcomes with the programming and adaptations in place.

[20] The issues for the Investigator were framed as follows:

1. Did Ms. Wells' son have a disability and related needs of which the Division was aware?
2. If so, did the Division fail to reasonably accommodate her son's disability-related needs?

[21] A preliminary issue that the Investigator was required to consider the limitation period pursuant to section 23(1) of the **Code** as the Complaint covered a period starting more than one year before the Complaint was filed. For the Board to consider complaints previous to the one-year period before her Complaint, it would first be necessary to determine whether the Division failed to accommodate her son's needs in the year immediately preceding the filing of the Complaint. If it was determined that there was a failure to accommodate within the year immediately preceding the Complaint, the Commission would then be entitled to consider such earlier continuing contraventions. Put another way, Ms. Wells would have to establish a continuing contravention up to the date her Complaint was filed.

[22] The Investigator wrote that to establish that the Division discriminated against Ms. Wells' son, she must demonstrate that her son had a special need related to his disability of which the Division was aware, and that the Division discriminated against her son by failing to accommodate that special need. Once established, the onus would fall to the Division to prove that the discrimination was bona fide and reasonable.

[23] The Investigator concluded that based on the available evidence, it was accepted that Ms. Wells' son had medical conditions, including learning disabilities, which generally impacted his ability to take part in life's important functions on an equal level with others. The Investigator accepted that the son's conditions constituted a disability within the meaning of the **Code**, and he was therefore afforded protection based on a disability under subsection 9(2)(l).

[24] The Investigator then turned to a consideration as to whether the Division failed to reasonably accommodate the son's disability-related needs. For this assessment, the Investigator considered the Commission's Policy #G-2 "Reasonable Accommodation: Disability", which she identified as setting out the analytical framework for determining whether reasonable accommodation has been made. Factors for consideration include:

1. The procedure used by the Division to assess the issue of accommodation. What steps were taken by the Division to search for and consider options for accommodation?
2. The substance of the accommodation offered to the Complainant.

[25] After setting out the test for the duty to reasonably accommodate, the Investigator wrote that the Division would have the obligation to consider a request for accommodation, discuss and explore accommodation options, and obtain expert (medical) assistance as necessary, all to assess whether it is in a position to offer reasonable accommodation.

[26] The Investigator noted that the evidentiary record established that since the son started attending Roseau Valley School (RVS) in the Division, Ms. Wells and the Division were in regular communication regarding difficulties her son appeared to be experiencing at home and/or at school. From July 2014 onward, Ms. Wells provided the RVS with documentation produced by numerous specialists that extensively outlined testing results, observations, assessments and/or recommendations for ways to assist her son at school, at home and in general. The evidence established that Division personnel, including members of the resource team and clinical services team, also worked with her son, reported their observations and provided recommendations. The Investigator thus concluded that the Division was generally aware of Ms. Wells' son's disability-related needs.

[27] The Investigator considered the accommodation process that the Division had in place, noting that there had been a formal process since April 2006, as outlined in the Appropriate Education Policy. That policy recognized the obligation of the Division to provide students with exceptional learning needs with special education adaptations, equipment and/or programs as required to provide the most appropriate and enabling learning environment available under the

circumstances and within the availability of resources. It also stated that principals should ensure students are referred for specialized assessment with the written consent of parents when the in-school team is unable to assess why a student is having difficulty meeting the learning outcomes.

[28] The Investigator conducted a detailed review of the Record, including the period prior to the year immediately preceding the Complaint and noted the regular communications between Ms. Wells and the Division, their observations regarding the son's disabilities, recommendations to accommodate those disabilities and the disability-related supports that were put in place.

[29] After considering all the evidence in relation to the Complaint, the Investigator concluded that the Board offered reasonable accommodation:

... the evidentiary record suggests that the school provided him with extensive supports, adaptations and programming based on the medical documentation it received, and its own observations of [her] son. The evidence shows that the school often already had supports in place that met or addressed some recommendations in new reports it received. While it may not have been able to implement every individual recommendation immediately or at all time, the school made a concerted effort to update and follow the son's educational plan as per the extensive and changing recommendation made by numerous different clinicians and healthcare professionals through the son's schooling. The school must be given some discretion with respect to the specific programming and supports it provided to its students based on medical documentation and ongoing assessments. As subject matter experts in delivering education, it appears that the school would be in the best position to determine how to provide academic accommodation to students in accordance with its assessments and available medical documentations.

[30] In my view, the Report is a fulsome consideration of how the Division considered and accommodated the learning disabilities of Ms. Wells' son. It is "transparent, intelligent and justified". The Investigator understood Ms. Wells'

concerns and considered the evidence with those concerns in mind. She acknowledged the differences between Ms. Wells and the Division with respect to the son's learning challenges and reasonably concluded that the Division would be in the best position to determine how to accommodate those challenges, taking into account the available assessments.

[31] I agree that there was ample evidence of extensive and reasonable efforts by the Division to accommodate the son's needs, notwithstanding that the applicant did not agree with them. Dissatisfaction with the decisions of the Division do not amount to discrimination.

[32] In my opinion, the Report and the decision to dismiss the Complaint is transparent, intelligent and justified.

[33] The application is dismissed, with costs.

_____ J.