

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Marianne Rivoalen  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

	)	<b><i>K. T.</i></b>
	)	<i>on their own behalf</i>
	)	<i>(via audio conference)</i>
	)	
<b><i>K. T.</i></b>	)	<b><i>D. M. G. Hiebert and</i></b>
	)	<b><i>B. K. Cornick</i></b>
<i>(Applicant) Appellant</i>	)	<i>for the Respondent</i>
	)	<i>University of Manitoba</i>
<i>- and -</i>	)	
	)	<b><i>S. M. Garfinkel and</i></b>
<b><i>UNIVERSITY OF MANITOBA and THE</i></b>	)	<b><i>V. Liu</i></b>
<b><i>MANITOBA HUMAN RIGHTS</i></b>	)	<i>for the Respondent</i>
<b><i>COMMISSION</i></b>	)	<i>Manitoba Human Rights</i>
	)	<i>Commission</i>
<i>(Respondents) Respondents</i>	)	
	)	<i>Appeal heard:</i>
	)	<b><i>March 6, 2026</i></b>
	)	
	)	<i>Judgment delivered:</i>
	)	<b><i>April 17, 2026</i></b>

On appeal from *KT v University of Manitoba and Manitoba Human Rights Commission*, 2025 MBKB 96

**RIVOALEN CJM**

Introduction

[1] The underlying dispute in this appeal is whether it was reasonable for the executive director of the respondent, the Manitoba Human Rights Commission (the MHRC), not to extend the one-year time limit (the

limitation) prescribed in section 23 of *The Human Rights Code*, CCSM c H175 [the *Code*], for filing a complaint.

[2] The applicant applied before a judge of the Court of King's Bench (the reviewing judge) for judicial review of the MHRC executive director's decision (the MHRC decision) refusing to extend the time for filing their complaint. The reviewing judge dismissed their application. The applicant now appeals to this Court.

[3] For the reasons that follow, I would dismiss the appeal.

### Background

[4] The applicant, a student at the University of Manitoba (the UM), was registered with the UM's Student Accessibility Services due to hearing loss from 2011 until they were expelled indefinitely from the UM in May 2019 by the University Discipline Committee (the UDC) for harassing, threatening and disruptive behaviour towards UM staff.

[5] In May 2023, the applicant received a formal mental health diagnosis, identifying a different disability that partly explained the symptoms leading to their expulsion. Consequential medical treatment led to considerable progress and a stabilization of the applicant's behaviour.

[6] On August 27, 2023, the applicant sent a draft complaint against the UM to the MHRC office. In the draft complaint, they submitted that, rather than exploring their mental health condition and possible accommodations, the UM chose a path of disciplinary action, culminating in the applicant's

expulsion from the UM on May 8, 2019 for non-academic misconduct and disruptive behaviour.

[7] It should be noted that all communications between the MHRC and the applicant were in writing.

[8] The draft complaint included the applicant's position that the UM's failure to inquire about their mental health condition and their subsequent expulsion caused significant distress and negatively impacted their academic progress and overall well-being.

[9] On September 6, 2023, the MHRC intake officer (intake officer) responded to the draft complaint and explained that the *Code* provided for a one-year time limit from the date of the last contravention to have a complaint registered. The intake officer also explained that the MHRC is a neutral third party—not an advocacy agency—and could not provide legal advice or intervene or act on behalf of the applicant.

[10] The intake officer advised that it appeared from the information provided by the applicant that the date of the last contravention was when the UM expelled them in 2019, which was several years past the limitation imposed in the *Code*, and, for this reason, it was unlikely that a complaint would be registered.

[11] Later that same day and the following day, the applicant and the intake officer exchanged emails. The applicant advised that they had asked the UM to reconsider the expulsion and asked whether, depending on the UM's response, the draft complaint could be amended to include the UM's response. The intake officer responded that no open complaints were

registered with the MHRC. The intake officer recommended that the applicant wait until they received a response from the UM and then the MHRC could provide more details about whether there would be a basis for filing a complaint.

[12] By letter dated February 28, 2024, the UM lifted the applicant's expulsion and they were subsequently reinstated.

[13] With this latest information in hand, in March 2024, the applicant once again sought to file a complaint against the UM with the MHRC, alleging that their disruptive behaviour was partially due to an undiagnosed mental health condition that the UM failed to accommodate. The intake officer advised that it did not appear to be an issue that fell within the one-year statutory time limit. The intake officer noted that, if the applicant wished to proceed with the filing of a complaint, they would have to complete an intake questionnaire, along with a statement that set out the issue, that would be sent to the executive director for her to consider a request to extend the limitation.

[14] The questionnaire provided a notice that the *Code* sets out that the complaint must be filed within one year of the last alleged incident of discrimination. It also referred to the executive director's authority to extend this deadline based on an explanation from a complainant.

[15] The applicant completed the intake questionnaire in which they stated that they were expelled from the UM in May 2019 for disruptive behaviour and that the last discriminatory event occurred on February 28, 2024. The applicant also provided a revised copy of their statement of events, the supporting documentation regarding their mental health diagnosis in May 2023 and the February 28, 2024 letter.

[16] The background information, email exchanges, draft complaints and intake questionnaire were forwarded to the executive director so that she could consider the date of the last discriminatory event and whether she should extend the time for filing a complaint if more than one year had elapsed.

[17] On June 6, 2024, the MHRC executive director issued her decision, refusing to extend the limitation for filing the complaint on the basis that the extension would cause undue prejudice to the UM. As a result, the complaint was not registered and the file was closed.

[18] The MHRC decision stated as follows:

I [the executive director] have now had an opportunity to review your request to extend the one year deadline to file a complaint against [the UM] under [the *Code*]. When you initially contacted [the MHRC] on August 8, 2023, our staff provided you with information on [the *Code*] and the complaint process. At that time, we advised you that the allegations contained in a Complaint under [the *Code*] generally must have occurred in the year preceding its registration. In the information you provided to [the MHRC] it appears that you are alleging that you were treated adversely by [the UM] when you were expelled from the institution on May 8, 2019. I understand that the decision has since been rescinded, but you would like to proceed with your Complaint alleging that [the UM's] decision in 2019 discriminated against you based on your disabilities and gender identity.

As Executive Director, I am authorized to extend that time limit, but in doing so, must ensure the proper administration of justice and be satisfied that no party would be unduly prejudiced by an extension. Given the significant passage of time since the allegations in your Complaint occurred, I am not satisfied that the registration of this complaint would not unduly prejudice a party, or amount to the proper administration of justice. As such, I am not registering your complaint and will be closing your file.

### The Reviewing Judge's Decision

[19] Before the reviewing judge, the applicant argued that:

- The MHRC did not follow the policies, as outlined on its website, and did not follow up on the applicant's completed request with any questions or requests for clarification prior to refusing registration of their complaint.
- The discriminatory conduct did not end at the time of their expulsion in 2019 but, rather, was continuing conduct lasting until their reinstatement in 2024.
- If the conduct was not continuing, the MHRC erred in refusing to extend the limitation on the basis that the applicant explained the timing of their complaint and that the process was procedurally unfair. They further argued that there was no prejudice suffered by the UM.

[20] After considering *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the reviewing judge applied the standard of reasonableness to the MHRC decision.

[21] In reaching the conclusion that the MHRC decision refusing to extend the deadline and therefore refusing to register the complaint was reasonable, the reviewing judge held that the executive director did not err in dismissing the applicant's argument that the discrimination was continuing as opposed to having ended in 2019.

[22] The reviewing judge was satisfied that there were no *Code* or other requirements mandating that the MHRC solicit additional submissions to facilitate the complaint process.

[23] Regarding prejudice, she was satisfied that the executive director's inference of prejudice to the UM was reasonable.

[24] In terms of the applicant's contention that the time should not have started running until they had received the diagnosis, the reviewing judge found that the material filed by the applicant was insufficient to establish that the limitation should have been suspended and resultantly extended. She noted that, during the same period, the applicant was actively pursuing other complaints with the MHRC.

[25] In submissions filed later in the proceedings, the applicant raised issues of conflict of interest and bias that the reviewing judge found lacked an evidentiary foundation.

[26] The reviewing judge dismissed the application for judicial review, finding that the MHRC decision was reasonable and that it was rendered in a procedurally fair manner.

### Grounds of Appeal

[27] The applicant lists seven grounds of appeal. They are that the reviewing judge erred in (1) applying the reasonableness standard to procedural fairness issues, (2) inappropriately relying on affidavit information from the UM that was not before the executive director, (3) finding that February 2024 was not the last instance of discrimination date, (4) finding that

the contravention was not continuing, (5) declining to find that the date the limitation should have started running was the date of the diagnosis (the discoverability date), (6) not finding that the MHRC's website and publications created expectations that it did not fulfill, and (7) dismissing the applicant's argument that the UM had an ongoing duty to inquire into possible disability throughout the entire period.

## Analysis

### *Standard of Review*

[28] On an appeal from a judicial review decision of a judge of the Court of King's Bench, this Court must determine whether the reviewing judge correctly selected and applied the standard of review (see *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 12 [*Horrocks*]; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 47 [*Agraira*]). In practice, this Court must "[step] into the shoes" of the reviewing judge and review the administrative decision afresh (*Horrocks* at para 10, quoting *Agraira* at para 46).

[29] The reviewing judge correctly selected reasonableness as the standard of review. As will be explained, in my view, she correctly applied it (see *Vavilov* at para 16).

### *Issues on Appeal*

[30] As indicated above, the applicant raises seven grounds of appeal; however, there are only two issues before this Court: whether the applicant

was afforded procedural fairness by the MHRC and whether the MHRC decision is reasonable.

*There Was No Breach of Procedural Fairness*

[31] Turning first to the procedural fairness argument, as the Supreme Court of Canada held in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), the values underlying the duty of procedural fairness reflect the principle that individuals should have the opportunity to present their cases fully and fairly. Moreover, decisions that affect their rights, interests or privileges should be made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decision (see *ibid* at para 28).

[32] As stated in *Vavilov*, “[i]t is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions. The duty of procedural fairness in administrative law is ‘eminently variable’, inherently flexible and context-specific” (at para 77).

[33] I am satisfied, based on the record that was before the executive director and the provisions of the *Code* under which she must operate, there was no breach of procedural fairness.

[34] The procedural fairness owed here is informed by section 23 of the *Code* that states:

**Time limit for filing**

**23(1)** Subject to subsection (2), every complaint shall be filed within one year after the day of the alleged

**Délai quant au dépôt de la plainte**

**23(1)** Sous réserve du paragraphe (2), les plaintes sont déposées dans un délai de un an

contravention of the Code or, where a continuing contravention is alleged, within one year after the day of the last alleged instance of the contravention.

suivant la date à laquelle la contravention aurait été commise ou, dans le cas d'une contravention qui aurait été continue, dans un délai de un an suivant la date où la contravention aurait été commise la dernière fois.

**Extension for filing**

**23(2)** The executive director may extend the time for filing any complaint except a complaint filed under subsection 22(3), but the executive director shall not extend the time if they are satisfied that the extension would cause undue prejudice to the respondent.

**Dépôt prorogé**

**23(2)** Le directeur général peut proroger le délai de dépôt d'une plainte, à l'exception de celle déposée en vertu du paragraphe 22(3). Cependant, il ne peut proroger le délai s'il est convaincu que la prorogation causerait un préjudice excessif à l'intimé.

**Time limit for serving**

**23(3)** Within 30 days after the day the complaint is filed, the executive director shall cause the respondent to be served with a copy of the complaint, but failure to meet the 30 day time limit does not invalidate the complaint.

**Délai de signification**

**23(3)** Le directeur général fait signifier à l'intimé une copie de la plainte dans les 30 jours suivant le dépôt de celle-ci. Cependant, la plainte n'est pas invalidée suite au défaut de signification dans le délai de 30 jours.

[35] Procedural fairness does not require the executive director to seek out further information or submissions from the applicant. The gatekeeping role of the executive director is such that she is tasked with the responsibility to determine whether she should extend the limitation under which a complaint may be registered. She shall not extend the time if she is satisfied that the extension would cause undue prejudice to the UM.

[36] While it is true that approximately six months passed between the date the applicant provided their first draft complaint to the intake officer and the date the UM lifted its expulsion, almost four-and-a-half years had passed between the date the applicant was expelled from the UM and the date they provided the first draft complaint. The applicant provided no further explanation as to why an extension of time should be granted by the executive director.

[37] Substantially, for the reasons expressed at paragraphs 65 to 67 and 80 of the reviewing judge's decision, considering the context and the executive director's gatekeeping role, the applicant was warned of the limitation problem and was given the opportunity to provide fulsome information. I see no breach of procedural fairness.

*The MHRC Decision Is Reasonable*

[38] I will now touch upon the other grounds of appeal raised by the applicant.

[39] The use by the reviewing judge of affidavit material filed after the MHRC decision was rendered, which included information that was not before the executive director, has merit but is of no consequence in light of my finding that the MHRC decision is reasonable considering only the record that was before her and the provisions of the *Code*.

[40] Next, the executive director did not find that there was a continuing discrimination from the time of expulsion (May 8, 2019) until the time it was lifted (February 28, 2024). She was aware the UM's decision to expel the applicant had been rescinded. Nonetheless, she determined that the last

alleged contravention occurred in May 2019. On this record, with no further explanation from the applicant, it was reasonable for her to arrive at her conclusion in this way.

[41] The balance of the arguments made by the applicant can be disposed of as follows.

[42] There is no requirement in the *Code* for the executive director, at the gatekeeping stage, to consider discoverability principles at all. The executive director exercised her discretion in a reasonable way when she interpreted her authority under the *Code* and decided not to extend the time for filing the complaint.

[43] Nor can I accept the applicant's submission regarding their expectations based on the material found on the MHRC website and in their publications. As previously stated, the intake officer clearly explained that the MHRC is a neutral third party—not an advocacy agency. It cannot provide legal advice, intervene or act on behalf of an applicant.

[44] Likewise, the duty to inquire raised by the applicant has no application before the executive director. As explained, the operating provisions of the *Code* did not require the executive director to seek out further information or submissions from the applicant at the screening stage of the complaint process.

[45] Focusing now on the MHRC decision, it was reasonable for the executive director to refuse to extend the limitation for filing the complaint on the basis that the extension would cause undue prejudice to the UM. The passage of time of four-and-a-half years is significant. The role she occupies

would inform her that vital information could be lost over such a considerable passage of time, resulting in prejudice, including fading memories of all parties involved. As stated earlier, based on this record, it was reasonable for her to conclude that the triggering event of the May 2019 expulsion was the point in time the limitation period started.

[46] The MHRC decision is internally coherent and is justified in relation to the materials that were before the executive director and the *Code* that constrained her (see *Vavilov* at para 85). I find that it was reasonable for the executive director to conclude that, in light of the significant passage of time since the allegations in the complaint occurred, the registration of the complaint would unduly prejudice the UM.

[47] In light of the record and the administrative setting in which it was given, the decision, while short, is transparent, intelligible and justified (see *Vavilov* at para 15). The applicant has not demonstrated that the MHRC decision was unreasonable or that there was a breach of procedural fairness warranting this Court's intervention.

Conclusion

[48] Accordingly, I would dismiss the appeal. As the respondents did not seek costs, none should be awarded.

	<u>Rivoalen CJM</u>
I agree:	<u>Cameron JA</u>
I agree:	<u>Mainella JA</u>