

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner
Madam Justice Anne M. E. Turner

BETWEEN:

	)	<i>M. W. Wells</i>
	)	<i>on their own behalf</i>
	)	
<i>MAXINE WENDY WELLS</i>	)	<i>S. McEachern</i>
	)	<i>for the Respondents</i>
<i>(Applicant) Appellant</i>	)	<i>The Manitoba Human</i>
	)	<i>Rights Commission and</i>
	)	<i>The Manitoba Human</i>
<i>- and -</i>	)	<i>Rights Commission</i>
	)	<i>Board of Commissioners</i>
	)	
<i>THE MANITOBA HUMAN RIGHTS</i>	)	<i>M. Zacharias</i>
<i>COMMISSION, THE MANITOBA HUMAN</i>	)	<i>for the Respondent</i>
<i>RIGHTS COMMISSION BOARD OF</i>	)	<i>Border Land School</i>
<i>COMMISSIONERS and BORDER</i>	)	<i>Division</i>
<i>LAND SCHOOL DIVISION</i>	)	
	)	<i>Appeal heard:</i>
<i>(Respondents) Respondents</i>	)	<i>June 2, 2026</i>
	)	
	)	<i>Judgment delivered:</i>
	)	<i>June 30, 2026</i>

On appeal from *Wells v Manitoba (Human Rights Commission) et al*, 2025 MBKB 86

PFUETZNER JA

[1] The applicant appeals the order of the reviewing judge, dismissing her application, by way of judicial review, to set aside a decision (the decision)

of the respondent, The Manitoba Human Rights Commission (the commission), and to order a new hearing before the commission. In the decision, the commission dismissed her human rights complaint against the respondent, Border Land School Division (the division), in which she alleged that the division had failed to reasonably accommodate her son's disabilities (the complaint).

[2] The applicant argues that the reviewing judge misapplied the reasonableness test set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, by failing to “grapple with key evidence, [relying] on deference rather than justification, and [not demonstrating] a rational chain of analysis as required by Vavilov”. She asserts that *Moore v British Columbia (Education)*, 2012 SCC 61 [*Moore*], is analogous to the present case. In addition, the applicant submits that the record shows that her son (the son) did not receive meaningful access to education notwithstanding the steps taken by the division, and that the conclusion that the accommodations were reasonable was legally and factually unreasonable.

[3] The parties agree that the reviewing judge was to apply the standard of reasonableness to the decision.

Background

[4] The son, who is now twenty years old, had difficulty in the division's Roseau Valley School (the school) from an early age after immigrating to Canada. While the school said that he was functioning at grade level, the applicant did not agree. She attempted to work with the school, but she was not satisfied with the outcome, so she arranged and paid for private

testing by a series of experts to assess the son's needs and to make recommendations for educational accommodations to meet those needs.

[5] The first significant assessment of the son (at age eight) was a psycho-educational assessment report dated July 18, 2014 from a psychologist at Red Ladder Optimized Learning diagnosing him with dyslexia, recommending several learning supports, and suggesting that the son be evaluated by a speech-language pathologist and an occupational therapist. Subsequently, the son was diagnosed with autism spectrum disorder, pragmatic language disorder, sensory processing disorder, dysgraphia, attention-deficit/hyperactivity disorder and anxiety.

[6] The division agreed that the son had disabilities requiring accommodation, and it pursued some of its own assessments to determine how best to accommodate them. It took steps that it says were sufficient to meet its obligation to accommodate, including implementing an adaptation plan for the 2015-16 school year, which was in the form of a six-page spreadsheet outlining more than forty recommendations provided by the clinicians. However, the son's anxiety associated with being present at the school increased, and he eventually ceased to attend altogether, despite continuing efforts to facilitate his attendance.

[7] After receiving the complaint in January of 2016, the commission ordered an investigation (as it is permitted to do). The investigator reviewed voluminous reports and assessments (including the son's school report cards and individual education plans), meeting minutes and emails. The investigator also interviewed the applicant and the principal of the school. The investigator carefully reviewed the evidence, including inconsistencies

between the applicant's and the school's witnesses' versions of certain events. She also noted the role of the commission, the nature of the division's duty to accommodate the son's disabilities, and that the relevant time frame for the investigation under *The Human Rights Code*, CCSM c H175 [the *Code*] was the one-year period immediately prior to the complaint.

[8] The investigation resulted in a lengthy report (the report) in which the investigator stated: "Although the [applicant] was dissatisfied with the accommodation measures provided to [the] son, it is important to keep in mind that in human rights law, an individual is entitled to *reasonable* accommodation, not perfect accommodation" [emphasis in original]. The investigator concluded that there was insufficient evidence to substantiate the alleged contraventions of the *Code*. The investigator found that the division had made reasonable efforts to accommodate the son's disability-related needs during the year prior to the complaint and recommended that the applicant's complaint be dismissed. The respondent, The Manitoba Human Rights Commission Board of Commissioners, accepted that recommendation and dismissed the complaint.

Analysis

[9] On appeal, the role of this Court is to determine whether the reviewing judge applied the reasonableness standard correctly. In other words, was the reviewing judge right when he found that the decision was reasonable? This requires this Court to step into the shoes of the lower court and perform a *de novo* review of the decision (see *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 10).

[10] I have performed such a review and have carefully considered the report, the decision, the record and the parties' submissions. Having done so, I find that the decision is justified, intelligible and transparent in light of the *Code*, the principles of statutory interpretation, and the evidence and facts before the commission. Moreover, I agree with the reviewing judge's analysis and, in my view, he properly applied the standard of reasonableness to the decision.

[11] Finally, I note that *Moore* is of limited utility in respect of this appeal. In *Moore*, the Supreme Court of Canada found that a child with a learning disability had been discriminated against as his local school district undertook *no* assessment of whether there were any reasonable alternative accommodations for him after it closed a diagnostic centre to which he had been referred in order to receive intensive learning supports (see paras 13-14, 51-52). In the present appeal, the division considered and implemented numerous reasonable accommodations for the son.

Conclusion

[12] For these reasons, I would dismiss the appeal with costs.

Pfuetzner JA

I agree: _____ Mainella JA

I agree: _____ Turner JA