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CASE SUMMARY: SCHOOLED BY THE BCSC FOR PREMATURITY

The BC Supreme Court dismissed a petition for judicial review of an interlocutory BC Human Rights Tribunal decision as being premature because all remedies before the Tribunal had not been exhausted and the Tribunal process had not been concluded.

Administrative law – Decisions reviewed – Human Rights Tribunal – Judicial review application – Premature – Remedies – Interlocutory injunctions – Schools and school boards – Discrimination

Independent School Authority v. Parent, [2022] B.C.J. No. 623, 2022 BCSC 570, British Columbia Supreme Court, April 7, 2022, W.A. Baker J.

The petitioners, a private school, seek an order quashing an interlocutory order of the BC Human Rights Tribunal amending the original complaint to include a personal claim by a parent for discriminatory treatment of a family member by the school.

The complaint before the Tribunal, filed by the parent on behalf of their child, alleged the School and School Authority (the “School”) failed to provide the child with adequate educational supports, *inter alia*. Two years later, the parent sought to be added to the complaint. It is the Decision of the Tribunal allowing the addition of the parent as a complainant that was the subject of judicial review.

The petitioner’s basis of judicial review was that the Tribunal member who made the Decision had a prior professional relationship with counsel for the parent and child, which was not disclosed to the petitioners. The Court found that the petitioners had not exhausted the remedies available to them under the Tribunal Code of Conduct (the “Code of Conduct”) by failing to raise their bias concerns by way of an application for reconsideration.

The respondents advanced the argument that the petition for judicial review was premature. In assessing the strength of the petitioner’s case as a first step to the prematurity analysis, the Court looked at the parties’ arguments with respect to the analysis of discrimination.

In reaching the Decision, the Tribunal found that the parent’s complaint set out facts that, if proven, could establish the necessary connection between adverse impact and the parent’s family status, which could amount to discrimination under the Human Rights Code. The petitioners argued that this was the wrong test to apply, and the correct test was whether there was a nexus between the alleged adverse treatment and the prohibited grounds of discrimination. The Court favoured the respondents’ analysis of the test, namely that the nexus is established by showing that the protected characteristic was a factor in the adverse impact.

The Court was not satisfied that the petitioners had presented a case establishing exceptional circumstances permitting the Court to engage in judicial review of the Decision prior to conclusion of the BCHRT’s process. The Petition was dismissed as premature.

This case was digested by Roshni Veerapen of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at rveerapen@harpergrey.com or review his biography at <http://www.harpergrey.com>.