

Date Issued: April 5, 2024

File: CS-006655

Indexed as: Vick v. Board of Education of School District No. 41 (Burnaby), 2024 BCHRT 104

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Jocelyn Vick

COMPLAINANT

AND:

Board of Education of School District No. 41 (Burnaby)

RESPONDENT

REASONS FOR DECISION
TIMELINESS OF COMPLAINT
Section 22

Tribunal Member:

Steven Adamson

On her own behalf:

Jocelyn Vick

Counsel for the Respondent:

Natasha Wood

I INTRODUCTION

[1] On April 6, 2022, Jocelyn Vick filed a complaint alleging the Board of Education of School District No. 41 (Burnaby) [the **School District**] discriminated in providing services based on mental disability, contrary to s. 8 of the *Human Rights Code* [**Code**]. Ms. Vick had initially named the Ministry of Education as the respondent, but later changed it to the School District in an amendment to the Complaint.

[2] On September 18, 2023, the Tribunal accepted the Complaint for filing as a continuing contravention under s. 22(2) of the *Code*. However, on October 19, 2023, the Tribunal reconsidered that decision and referred the matter back for a further decision under s. 22(2) and s. 22(3) after concluding the complaint contained one timely allegation, see the June 1, 2021, Allegation below, with significant gaps in time between other allegations filed outside the one year for filing deadline. I make no findings regarding the merits of this complaint.

[3] For the reasons that follow, I find that the Complaint is not a continuing contravention of the *Code*, and it is not in the public interest to accept the late filed complaint allegations for filing.

II BACKGROUND

[4] Ms. Vick alleges having a learning disability and other mental disabilities. She is a former student at the School District. Ms. Vick was a minor during the period when the allegations in question occurred and at the time she filed this complaint.

[5] Ms. Vick alleges generally that multiple teachers at the School District were hostile towards her for being unable to complete course work on time because of her learning disabilities and mental illnesses. She says this occurred despite the teachers knowing about her disabilities.

[6] To facilitate the continuing contravention analysis found later in the decision, It is necessary to recount below in detail the dates and nature of each of Ms. Vick's discrimination allegations. It is also necessary to discuss her efforts to start a prior complaint as part of the public interest analysis that follows.

[7] On January 1, 2018, Ms. Vick alleges a teacher sent a rude email to her mother in response to her mother's request that Ms. Vick be accommodated for her disabilities [the **January 1, 2018, Allegation**].

[8] On July 1, 2019, Ms. Vick alleges a summer schoolteacher refused to provide her with any accommodations while her support teacher was on a break. She says the teacher also stood beside her desk, pressuring her to finish a test [the **July 1, 2019, Allegation**]

[9] On November 1, 2019, Ms. Vick alleges that she asked a teacher for an extension of time to finish an assignment, but permission was not granted until her support teacher later asked on her behalf. Later the same day, Ms. Vick alleges she was told to leave the class during a manic episode, despite not acting aggressively [the **November 1, 2019, Allegation No. 1**]

[10] On November 1, 2019, Ms. Vick alleges a teacher made fun of one of her disabilities by asking if she was manic in a joking and sarcastic way [the **November 1, 2019, Allegation No. 2**]

[11] On June 1, 2021, Ms. Vick alleges a teacher who was aware of her disabilities acted in a hostile manner when she was unable to finish her homework on time following a "mixed episode". Ms. Vick says the teacher later told her in an email that it was not discrimination to refuse an accommodation. Finally, Ms. Vick alleges the teacher later dismissed the class 40 minutes early preventing her from doing a mandatory presentation, which resulted in her failing the class [the **June 1, 2021, Allegation**].

[12] On September 9, 2021, Ms. Vick filed a complaint against the Ministry of Education alleging it neglected to make reasonable adjustments in how it provided education to those with mental illnesses, including herself, which would reduce the negative effects of mental illness on education outcomes. Ms. Vick alleges teachers' lack the training related to teaching students with mental disabilities. She also alleges teachers failed to identify children with disabilities needing to be referred for an assessment of their diagnosis. Finally, teachers failed children with mental disabilities as they did not know the options for accommodating their disabilities.

[13] On March 8, 2022, the Tribunal informed Ms. Vick that it could not proceed with her September 9, 2021, complaint as it did not contain information about how the Ministry of

Education failed to accommodate her learning and other disabilities. Prior to making this decision the Tribunal asked Ms. Vick whether the Ministry was the appropriate the respondent as opposed to the School District. It also asked for specifics concerning details of the allegations and dates, including allegations related to accommodating her disabilities.

[14] On July 28, 2022, the Tribunal reminded Ms. Vick that it closed the previous September 9, 2021, complaint because it did not receive the required further information it had requested from her. The Tribunal reminded Ms. Vick that it sent her complaint information to the Community Legal Assistance Society [**CLAS**] with her permission to facilitate receiving the requested information, however, nothing further was received. The Tribunal then sought further information regarding the current complaint filed on April 6, 2022, specifically asking whether she wished to name the School District as respondent instead of the Ministry of Education. It further asked whether Ms. Vick wanted to add any more details and allegations to her complaint.

[15] In the August 8, 2022, complaint amendment, Ms. Vick confirmed she wanted to name the School District as the respondent in the April 6, 2022, complaint. She also provided more complaint details about the July 1, 2019, Allegation, stating the teacher wanted her to do all her practice questions in a booklet even though it would have taken her a very long time to do so because of her learning disability.

III ANALYSIS AND DECISION

[16] Section 22 of the *Code* provides:

- (1) A complaint must be filed within one year of the alleged contravention.
- (2) If a continuing contravention is alleged in a complaint, the complaint must be filed within one year of the last alleged instance of the contravention.
- (3) If a complaint is filed after the expiration of the time limit referred to in subsection (1) or (2), a member or panel may accept all or part of the complaint if the member or panel determines that:
 - (a) it is in the public interest to accept the complaint, and

(b) no substantial prejudice will result to any person because of the delay.

[17] The time limit set out in s. 22 of the *Code* is a substantive provision which is intended to ensure that complainants pursue their human rights remedies diligently: *Chartier v. School District No. 62*, 2003 BCHRT 39.

A. Time Limit and Continuing Contravention

[18] The Complaint was filed on April 6, 2022. To comply with the one-year time limit under s. 22(1) of the *Code*, the alleged act of discrimination had to occur on or after April 6, 2021.

[19] As noted above, the Tribunal accepted the June 1, 2021, Allegation for filing and this aspect of the September 19, 2023, notice of complaint proceeding decision was not the subject of the reconsideration and referral back for this s.22(2) and s. 22(3) timeliness decision.

1. *Are the 2018 and 2019 allegations of discrimination arguable contraventions of the Code?*

[20] As set out above, the other allegations in this case are dated January 1, 2018, July 1, 2019, and two from November 1, 2019. While these allegations occurred beyond the one-year time limit for filing, they may be found to be filed in time if they form part of a continuing contravention of the *Code* s. 22(2). I note each allegation must be capable of standing on its own as a separate allegation of discrimination. After reviewing the information and submissions, I am satisfied that each of these four events contain allegations of discrimination: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para 33. Ms. Vick has shown that, if proven, she can establish that she has mental disabilities, experienced an adverse impact with respect to the services provided by the School District; and that the disability was a factor in the alleged adverse impacts in all four instances.

[21] The School District appears to accept all the 2019 events contain allegations of discrimination, but takes issue with whether the January 1, 2018, Allegation, is an arguable contravention of the *Code*. The School District argues the information regarding the email does not amount to a discrimination allegation as it lacks details about what was said in the email and how it was connected to Ms. Vick's disabilities.

[22] While appreciating the School District’s concerns about the lack of particulars concerning the January 1, 2018, Allegation, I am satisfied it contains an allegation of discrimination for the purposes of this decision. Ms. Vick states her mother asked her teacher for an accommodation and I believe this is enough to connect the email to her mental disabilities without explicitly referencing them. Further, it can be implied from the use of the term “rude email” that something negative came in response to the request that had an adverse impact on Ms. Vick’s education and her disabilities were a factor. As such, I am unwilling to reject the January 1, 2018, Allegation as not containing an arguable contravention of the *Code*.

2. *Do the 2018 and 2019 allegations of discrimination form part of a continuing contravention of the Code?*

[23] A complaint is filed in time if the last allegation of discrimination happened within one year, and older allegations are part of a “continuing contravention”: *Code*, s. 22(2); *School District v. Parent obo the Child*, 2018 BCCA 136 at para. 68. A continuing contravention is “a succession or repetition of separate acts of discrimination of the same character” that could be considered separate contraventions of the *Code*, and “not merely one act of discrimination which may have continuing effects or consequences”: *Chen v. Surrey (City)*, 2015 BCCA 57 at para. 23; *School District* at para. 50.

[24] The assessment of whether discrete allegations are a continuing contravention is a “fact specific one which will depend very much on the individual circumstances of each case”: *Dickson v. Vancouver Island Human Rights Coalition*, 2005 BCHRT 209 at para. 17. A relevant consideration is whether there are significant gaps between the allegations: *Dickson* at paras. 16-17. Whether or not a gap is significant will be assessed contextually, considering the length itself and any explanations for the gap: *Reynolds v Overwaitea Food Group*, 2013 BCHRT 67, at para. 28. A significant, unexplained, gap in time will weigh against finding a continuing contravention: *Bjorklund v. BC Ministry of Public Safety and Solicitor General*, 2018 BCHRT 204 at para. 14.

[25] I have first considered whether the timely June 1, 2021, Allegation is of the same character as the other allegations of discrimination from 2018 and 2019. The School District argues the allegations are not of a similar nature because they involved different teachers. Further, from the information provided the School District argues that it does not appear that the allegations involve the same issues of accommodation. Ms. Vick argues the allegations are of the same character because they involve teachers in the School District causing harm because of her disabilities. She submits that the conduct is the same because it all involves teachers with inadequate training trying to teach students with disabilities, resulting in a negative impact on their education outcomes.

[26] After reviewing the allegations in 2018 and 2019 with the timely allegation in 2021, I find they are of a similar character sufficient to form part of a continuing contravention of the *Code*. I note the June 1, 2021, Allegation, the November 2, 2019, Allegation No. 1, and the July 1, 2019, Allegation all concern allegations related to the School District not providing Ms. Vick with sufficient time to complete assignments as an accommodation of her disabilities. While the January 1, 2018, Allegation references a request for accommodation without explicitly referring to Ms. Vick needing more time to finish her homework, in my view there is a strong probability that this allegation also concerns this issue given Mr. Vick's summary of her allegations being related to hostility associated with not handing in her homework on time. I recognize that the November 1, 2019, Allegation No. 2 does not specifically reference a failure to accommodate Ms. Vick's disabilities by giving her more time to complete her schoolwork assignments, however, this allegation can be described as failing to accommodate her disabilities in school generally in that she was ridiculed for her manic behaviour and removed from the classroom instead of being appropriately accommodated. In all four allegations, I find Ms. Vick's disabilities were not properly accommodated by the School District in relation to the educational services it provided her, which makes all the allegations of a similar nature for the purposes of s. 22(2) of the *Code*.

[27] The other question related to a finding of a continuing contravention is whether a succession of allegations exists. It is necessary to look at whether any gaps exist between the allegations of discrimination and, if gaps are found, whether they can be explained. Ms. Vick

argues there were many separate incidents with multiple different teachers during her time in high school. However, from my review of the complaint information there are significant gaps between her allegations that are not explained. First, a gap of more than 1.5 years exists between the June 1, 2021, Allegation and the two November 1, 2019, Allegations. Further, there is a four-month gap between the November 1, 2019, Allegation and the July 1, 2019, Allegation. Finally, there is a 1.5-year gap between the July 1, 2019, Allegation and the January 1, 2018, Allegation. In my view, the multi month gaps between the allegations in question fail to indicate a succession of allegations occurred for the purposes of s. 22(2) of the *Code*. Further, Ms. Vick has not provided any significant explanation as to explain why these significant gaps between the allegations occurred. In the end, I find no continuing contravention exists in this case as the many month gaps in time between the allegations, where no explanation for the gaps was provided, are too lengthy to indicate a succession of allegations necessary for the existence of a continuing contravention of the *Code*.

[28] I find Ms. Vick's complaint allegations from 2018 and 2019 are not a continuing contravention of the *Code*. As such, these allegations were late filed and I now proceed to an analysis of whether the Tribunal should exercise its discretion to accept them outside the one-year time limit because it is in the public interest to do so, and no substantial prejudice will result to any person because of the delay: *Code* s. 22(3). I begin with the public interest determination.

B. Public Interest

[29] Whether it is in the public interest to accept late-filed allegations from 2018 and 2019 is a multi-faceted analysis. The enquiry is fact and context specific and assessed in accordance with the purposes of the *Code*: *Hoang v. Warnaco and Johns*, 2007 BCHRT 24 at para. 26. The Tribunal considers a non-exhaustive list of factors, including the length of the delay, the reasons for the delay, and the public interest in the complaint itself: *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 [**Mzite**] at para. 53. These are important factors, but they are not necessarily determinative: *Goddard v. Dixon*, 2012 BCSC 161 at para. 152; *Mzite* at para. 55.

[30] I have first considered the length of delay in filing. As noted above, the latest out of time allegation in this case occurred on November 1, 2021, and the earliest was January 1, 2018. As such, the late allegations range from approximately 1.5 years late to over three years late, which is considered by the Tribunal to be excessive and militates strongly against the public interest: *Naziel-Wilson v. Providence Health Care and another* 2014 BCHRT 170 at para. 13.

[31] Ms. Vick's reasons for her delay in filing focused on not knowing about the *Code* and the Tribunal until recently. Ignorance of the *Code*, or the time required to become aware of one's rights, is generally not an acceptable reason, on its own, for the delay in filing: *Rashead v. Vereschagin (No. 2)*, 2006 BCHRT 74 at para. 12; *Ferrier v. BCAA*, 2009 BCHRT 412 at para. 31. In this case, the evidence indicates Ms. Vick would have been a minor at the time of the late filed events in 2018 and 2019 as she attended high school in the School District. She states that being 13 to 15 years old during the time most of the allegations took place meant she was too young to file complaints. Ms. Vick appears to have been 13 years old when the January 1, 2018, Allegation occurred and 15 years old when the November 1, 2019, Allegations occurred, and this attracts some public interest in allowing her late filed complaint allegations to proceed. However, Ms. Vick demonstrated her maturity regarding the existence of the *Code* and the Tribunal process when she filed her first complaint with the Tribunal in September 2021 and this complaint on April 6, 2022, while still a minor on both occasions. As such, her status as a minor does not automatically attract the public interest for the entire period in question. Certainly, for the period from the time she filed her first complaint in September 2019 until she filed this complaint in April 2022, neither her age or lack of knowledge about the *Code* and Tribunal explain why she did not file her complaint sooner. On balance, I find Ms. Vick's ignorance of the *Code* based on her being a minor attracts some public interest in allowing the late filed allegations of her complaint to proceed.

[32] In determining whether acceptance of a late-filed complaint is in the public interest, the Tribunal also considers whether there is anything particularly unique, novel, or unusual about the complaint that has not been addressed in other complaints: *Hau v. SFU Student Services and others*, 2014 BHCRT 10 at para. 22; *Bains v. Advanced Air Supply and others*, 2012 BCHRT 74 at para. 22; *Mathieu v. Victoria Shipyards and others*, 2010 BCHRT 244 at para. 60. Where a

complaint raises a novel issue on behalf of a vulnerable group, which advances the purposes of the *Code*, this factor may weigh in favour of finding a public interest in accepting the complaint: *Mzite* at paras. 65-66. The Tribunal has considered gaps in its jurisprudence, on the one hand, and the existence of good precedents, on the other hand, in determining whether to permit a complaint to proceed: *Mzite* at para. 67.

[33] Ms. Vick is seeking justice for the School District's alleged failure to accommodate her mental disabilities. She believes her case is unique and novel in that it involves a School District service provider failing to properly accommodate her disabilities. While acknowledging Ms. Vick's submission that her case is different from employment cases involving allegations of discrimination made by teachers the populated her research results, I am not satisfied that her complaint raises a novel issue that should be heard by the Tribunal to advance the purposes of the *Code*. Unfortunately, cases involving a School District's failure to accommodate the needs of a student in the provision of educational services are commonly brought before the Tribunal and the law is fairly settled in this area: *Moore v. British Columbia (Education)*, 2012 SCC 61. My findings about the uniqueness and novelty of this complaint in no way reflect the seriousness and importance of properly accommodating children with disabilities in the classroom.

[34] In the end, I do not find the public interest is attracted in allowing the late filed allegations in this complaint to proceed. While appreciating there is some public interest attracted to much of the time when Ms. Vick was a young teenager, there is a period that cannot be attributed to her age from the time she filed the September 2019 complaint until April 2022 when she filed the Complaint. Further, there is a lack of uniqueness to Ms. Vick's complaint where the Tribunal frequently hears case of a similar nature and the law in this area is fairly settled. As such, I have decided it is not in the public interest to allow the late filed allegations to proceed. Having found insufficient public interest is attracted in this case, I need not address the issue of whether substantial prejudice would result.

IV CONCLUSION

[35] For these reasons, the late filed allegations in 2018 and 2019 are not accepted for filing. The Complaint proceeds on the June 1, 2021, Allegation only.

Steven Adamson
Tribunal Member