IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Schrader v. McGregor Child Care Society,* 2025 BCSC 1335

Date: 20250714
Docket: S241944
Registry: Vancouver

Between:

Elizabeth Leah Schrader

Petitioner

And

McGregor Child Care Society, British Columbia General Employees Union, and British Columbia Labour Relations Board

Respondents

Before: The Honourable Justice Tammen

Reasons for Judgment

Representative of the Petitioner, Elizabeth Leah Schrader, appearing in person:	R.G. Harrison
Counsel for the Respondent, McGregor Child Care Society:	A.I. Demerse J. Wong
Counsel for the Respondent, British Columbia General Employees Union:	M.F.P. Rozee
Counsel for the Respondent, British Columbia Labour Relations Board:	J.M. O'Rourke
Place and Dates of Hearing:	Vancouver, B.C. January 20-21, 2025
Place and Date of Judgment:	Vancouver, B.C. July 14, 2025

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Introduction and Overview

[1] The petitioner, Elizabeth Leah Schrader, seeks judicial review of a decision of the Labour Relations Board dated January 30, 2024 (the "Decision"). In that Decision, the Board dismissed Ms. Schrader's application for leave and reconsideration of an earlier decision, indexed at 2023 BCLRB 164, made on October 26, 2023 (the "Original Decision").

[2] Ms. Schrader is an early childhood educator who is a member of the respondent B.C. General Employees Union (the "Union"), and employed by the respondent McGregor Child Care Society (the "Employer"). The broad backdrop to this petition proceeding is Ms. Schrader's contention that the Employer is in breach of the collective bargaining agreement between the Employer and the Union because the Employer hired and continued to employ a manager who in Ms. Schrader's view is unqualified in accordance with provincial childcare licensing regulations. Ms. Schrader has made repeated complaints related to that issue, and has received discipline as a result. That discipline has consisted of two separate suspensions from work, one with pay, one without pay.

[3] The Union filed grievances in respect of the discipline, and chose mediation as the preferred means of resolution. Ms. Schrader strongly disagrees with that decision, and has sought recourse via multiple proceedings before the Board. One of those proceedings, brought pursuant to section 12 of the *Labour Relations Code*, alleges that the Union breached its duty of fair representation. The other proceeding, at issue here, was an application pursuant to sections 5, 9 and 14 of the *Code*, claiming that both the Union and the Employer committed unfair labour practices.

[4] The background to both proceedings, and their limited interrelationship, is succinctly set out in the first part of the Decision, under the heading "Background and Original Decision." I here reproduce that portion of the Decision, paras. 2-6.

> 2. The background to this dispute is set out in the Original Decision. Briefly, the Applicant is an early childhood educator who challenged, and continues to challenge, the Employer's decision to hire a particular manager on the basis that, in her view, the manager is not qualified in accordance with

provincial childcare licensing regulations (Original Decision, para. 5). The Applicant has received discipline related to her ongoing challenges to the manager (Original Decision, para. 6) which the Union has grieved (Original Decision, para. 6).

3. The Applicant filed a related Section 12 application alleging the Union breached its duty of fair representation. The Board dismissed the Section 12 application on the basis it was premature because it appeared the grievance process remained ongoing at the time (Original Decision, paras. 12-14, Elizabeth L. Schrader, 2023 BCLRB 145 (the "Section 12 Decision")).

4. The Original Decision finds the Applicant's allegations under Sections 5, 9, and 14 of the Code raise many of the same issues as were addressed in her Section 12 application (para. 15) but also include allegations: that the Union is "helping the [E]mployer to continue to rel[y] on a fabricated excuse for [her] unpaid suspension" (ibid.); that the discipline imposed on her was retaliatory because she had complained the Employer was breaching childcare licensing regulations (para. 16); that the Employer breached the collective agreement by employing and failing to supervise the manager (para. 17); and that the Union's conduct denied her due process by proceeding directly to grievance mediation, thereby avoiding an investigation, and was therefore "arbitrary, discriminatory, and in bad faith" (paras. 18-19).

5. The Original Decision sets out the scope of Sections 5, 9, and 14 of the Code (paras. 26-30), noting, "Section 14 is not a section which can be breached by a party" (para. 26). The Original Decision finds the Applicant's allegations do not fall within the scope of Sections 5 or 9 (paras. 31-37). The Original Decision also addresses and dismisses the Applicant's allegations that the Union's conduct was arbitrary, discriminatory or in bad faith (paras. 38-41). The Original Decision therefore dismisses the application on the basis the allegations do not establish a breach of the Code.

6. The Original Decision also notes that the Board's expertise is with respect to labour relations, not the regulation of childcare; it finds that whether or not the Employer (and the manager) are in violation of provincial childcare regulations is not relevant to the question of whether the Employer and the Union committed unfair labour practices contrary to the Code (para. 46).

[5] In this petition proceeding, Ms. Schrader seeks the following orders:

1) The Petitioners ask this Court to quash the January 30/2024 Respondent Labour Relations Board decision in *Elizabeth Leah Schrader*, 2024 BCLRB 19 and, Order the lower court tribunal to conduct a fresh review that includes reviewable submissions from all parties.

2) The petitioners ask this Court to find that the Respondent Employer acted with malice and bad faith to publish a letter that falsely accuses

> Petitioner Schrader of fabricating a child protection report to child care licensing authorities.
>
> 3) The Petitioners ask this Court for an Order finding the Union, the Employer, and the LRB tribunal engaged in arbitrary, bad faith, and discriminatory conduct consistent with section 12 of the *Labour Relations Code* of British Columbia.
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> 4) Further and other Orders this Honourable Court deems just.
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> 5) An Order for costs.

[6] It is apparent from some of the orders sought that Ms. Schrader seeks relief which goes well beyond what would be permitted on a judicial review of the Decision. Indeed, in oral submissions, Ms. Schrader's representative referred to the October 26, 2023 decision as the one under review. At para. 3 of her "orders sought", Ms. Schrader asks the court to render a decision on the substance of the section 12 complaint, which is not part of this petition.

[7] For the reasons that follow, I decline to make any of the orders sought by Ms. Schrader.

Preliminary Issue

[8] Prior to considering the merits of the petition, I should comment on a procedural matter which arose at the commencement of the hearing. Ms. Schrader's spouse, Robert Glen Harrison, appeared with Ms. Schrader, and submitted that he should be permitted to argue the petition on her behalf. On January 7, 2025, Ms. Schrader filed an application within the petition proceedings seeking declaratory relief that Mr. Harrison was not in breach of section 15 of the *Legal Profession Act,* S.B.C. 1998, c.9, by acting as advocate for Ms. Schrader. The Law Society of B.C. appeared and opposed that application.

[9] The backdrop to that discrete issue is that Mr. Harrison has previously been declared a vexatious litigant and enjoined from bringing suits on behalf of others.

Most recently, Justice Skolrood, then a *puisne* judge of this Court, granted an injunction against Mr. Harrison permanently prohibiting him from commencing, prosecuting or defending a proceeding in any court, except if representing himself as an individual party to the proceeding. That order was made on July 12, 2022.

[10] Presumably to avoid that proscription, Mr. Harrison was initially a party to this proceeding. The original pleading named both him and Ms. Schrader as petitioners. On September 9, 2024, Justice Kent made an order removing Mr. Harrison as a party.

[11] After hearing brief submissions from Mr. Harrison and counsel for the Law Society, I dismissed the application, but granted Mr. Harrison a right of audience on behalf of Mr. Schrader, in effect temporary and "one off" relief from the Skolrood order. I did so because it was clear to me that Mr. Harrison had been assisting his spouse, Ms. Schrader, throughout these proceedings, and that Ms. Schrader was heavily reliant on him in that regard. Were it not for the fact that the two are spouses, I would not have granted the dispensation.

[12] Mr. Harrison submitted to me that Ms. Schrader would be incapable of advancing her petition on her own, without his assistance. He, on the other hand, would be able to effectively and efficiently make submissions on Ms. Schrader's behalf. Although there was no evidence of Ms. Schrader's inability to self-represent, I canvassed the proposed procedure with her, and she assured me that she wished to have Mr. Harrison make full submissions on her behalf, and she saw no need to supplement his submissions in any way.

[13] On that basis, and frankly, in the interests of expediency, I permitted Mr. Harrison to argue the petition on Ms. Schrader's behalf. Mr. Harrison did so efficiently and effectively, and the matter completed well within the estimated time. Nonetheless, I would not wish the dispensation I granted to Mr. Harrison to serve as a precedent. As I noted, the "carve out" from the injunction made by Justice Skolrood was done in the unique circumstances of the spousal relationship between

Mr. Harrison and Ms. Schrader, coupled with the fact that the matter was ready to proceed, all parties were prepared, and there was court time available.

Factual Background

[14] At all material times, Ms. Schrader has been employed in the field of early childhood education by the Employer and has been a member of the respondent Union.

[15] The Union is the exclusive bargaining agent for all certified employees of the Employer and a party to the collective agreement with the Employer.

[16] The Employer is a non-profit society, which operates a unionized childcare centre located at the Broadway campus of Vancouver Community College, the McGregor Child Care Centre (the “Centre”).

[17] Craig Smith is the manager of the Centre and has been employed by the Employer since 2016. Mr. Smith is not certified as an early childhood educator. His role at the Centre does not include education, and is restricted to managerial responsibilities.

[18] Commencing in February 2021, and continuing through May 2022, Ms. Schrader made complaints to the board of directors of the Employer about Mr. Smith. Those complaints alleged bullying and harassment against Mr. Smith, and reference to Ms. Schrader’s view that Mr. Smith was not appropriately qualified for his position, since he was not certified in early childhood education.

[19] On April 26, 2022, the Employer, via letter signed by the chair of the board of directors, advised Ms. Schrader that Mr. Smith was qualified for his position as manager, and that the regulations she referenced with respect to early childhood education qualifications apply only to educators, not managers. The letter also advised Ms. Schrader that if she continued to make false allegations against Mr. Smith and the board of directors, the Employer would consider such to be

harassment, and would take action, including potentially terminating Ms. Schrader's employment.

[20] The letter also stated that, if Ms. Schrader believed her concerns had merit, she should take that up with the licensing body, Vancouver Coastal Health Community Care Facilities Licensing ("CCFL").

[21] Mr. Harrison made a complaint to the CCFL on Ms. Schrader's behalf on May 2, 2022, via a telephone call to that body. A licensing officer with the CCFL advised Mr. Harrison that the regulation on which he relied (requiring early childhood education qualifications) did not apply to managers, and that the CCFL was not concerned about the matter.

[22] Mr. Harrison and Ms. Schrader jointly sent a letter to the CCFL on May 4, 2022, reiterating their complaint, and suggesting that the CCFL had a duty to act. They threatened to file a petition in the courts to force the CCFL to ensure that managers had appropriate qualifications. That letter was copied to the Employer.

[23] On May 25, 2022, the Employer wrote to Ms. Schrader asserting that her complaint to the CCFL was a continuation of bullying and harassment of Mr. Smith and the Employer's board. In that letter, the Employer imposed an immediate suspension with pay, and advised Ms. Schrader to contact the Union.

[24] On December 2, 2022, the Employer advised Ms. Schrader that it had completed its investigation, and that she would be suspended without pay for 30 days.

[25] On December 9, 2022, the Union grieved the suspension. That grievance process is ongoing.

[26] In June 2023, the Union advised Ms. Schrader that a mediation would be scheduled to address the grievance. On July 17, 2023, Ms. Schrader advised her representative that she did not agree to mediation as the mechanism by which to resolve the grievance.

[27] Ms. Schrader has made two separate complaints to the LRB in respect of these matters. In March 2023, Ms. Schrader filed an application with the LRB alleging that the Union had breached s. 12 of the *Code*, which prohibits the Union from acting in a manner that is arbitrary, discriminatory or in bad faith. That application alleged that the Union had acted arbitrarily and in bad faith by failing to grieve the decision of the Employer to continue to employ Mr. Smith and to ensure the Employer was in full compliance with the regulatory scheme.

[28] The LRB dismissed the Section 12 complaint in a decision dated September 12, 2023, indexed as 2023 BCLRB 145. Ms. Schrader did not seek either reconsideration or judicial review of that decision.

[29] On August 3, 2023, Ms. Schrader filed an application with the LRB alleging unfair labour practices in breach of sections 5 and 9 of the *Code* (the "ULP Complaint"). Thereafter, Ms. Schrader and Mr. Harrison provided additional materials in relation to this complaint to the LRB on August 25 and September 7, 2023.

[30] The ULP Complaint alleged bad faith on the part of both the Union and the Employer. With respect to the Union, the complaints included the decision to attempt to mediate the grievance; the failure to investigate the grievance; and, failing to confront the Employer about the decision to continue to employ Mr. Smith. With respect to the Employer, the complaints included a request by the Employer to attend for an investigative meeting while the matter was subject to grievance and the decision to impose a suspension, which Ms. Schrader alleged was retaliatory.

[31] By letter dated September 11, 2023, the LRB advised the Union and the Employer that it had received the ULP Complaint and that it was not seeking responding submissions.

[32] The ULP Complaint was dismissed on October 26, 2023.

[33] On November 20, 2023, Ms. Schrader filed an application pursuant to section 141 of the *Code*, seeking leave and reconsideration of the October 26, 2023 decision.

[34] On January 30, 2024, the LRB dismissed that application for leave and reconsideration, in reasons indexed as 2024 BCLRB 19. That is the decision which is subject to this judicial review application.

Issues and Discussion

[35] Ms. Schrader seeks judicial review of the Decision on two bases:

1) The Decision was made in a manner that was procedurally unfair;
2) The Decision is flawed because it contains substantive errors of both fact and mixed fact and law.

[36] The standard of review is different for these two discrete avenues of review. Put simply, they are situated at opposite ends of the spectrum of deference. For issues of procedural fairness, the court owes no deference to the tribunal and the standard of review is correctness. For the remaining grounds advanced by Ms. Schrader, the standard of review is "patent unreasonableness", the most deferential standard applied in this province.

[37] The foregoing is mandated both by the governing legislative provisions and authority from our Court of Appeal, which also provides guidance on how each of those standards is to be applied.

[38] Sections 136-138 of the *Labour Code* and section 58 of the *Administrative Tribunals Act* in large measure dictate the two applicable standards of review. Section 136 confers exclusive jurisdiction in the Board to hear and decide applications and complaints under the *Code*, and s. 137 removes jurisdiction from the courts. Section 139 states that the Board has exclusive jurisdiction to decide a question arising under the *Code*. Section 138 is a strongly worded privative clause, which renders all such decisions "final and conclusive…not open to question or review in a court on any grounds."

[39] Section 58 of the *Administrative Tribunals Act reads*:

> **58** (1)If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2)In a judicial review proceeding relating to expert tribunals under subsection (1)
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> (a)a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> (b)questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> (c)for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
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> (3)For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> (a)is exercised arbitrarily or in bad faith,
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> (b)is exercised for an improper purpose,
>
> (c)is based entirely or predominantly on irrelevant factors, or
>
> (d)fails to take statutory requirements into account.

[40] In *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc*., 2013 BCCA 55, our Court of Appeal succinctly summarized the correct approach to judicial review of issues of procedural fairness, at para. 52:

> [52] I agree with the submissions of Seaspan (with which BCFS is in substantial agreement) that the standard of review applicable to issues of procedural fairness is best described as simply a standard of “fairness”. A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal’s own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal’s choice of procedures.

[41] In *Red Chris Development Company Ltd. v. United Steelworkers, Local 1-1937*, 2021 BCCA 152, the Court of Appeal confirmed that the standard of patent unreasonableness continues to apply to judicial review of decisions made under the *Code* notwithstanding the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, and that that standard "continues to mean what it meant when the [*Administrative Tribunals*] *Act* came into being" (para. 29).

[42] Justice Saunders then said as follows, at para. 30:

> [30] A useful explanation of patent unreasonableness is found in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229):
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> [65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan* [*Law Society of New Brunswick v. Ryan*, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in *Ryan*, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.

[43] Before I address the arguments made by Ms. Schrader under each of these headings, however, I should set out in brief compass the substance of both the Original Decision and the Decision.

The Original Decision – Oct. 26, 2023

[44] The Original Decision was made by the Vice-Chair and Registrar of the Board, J. Najeeb Hassan. At the outset, the decision noted that the complaint alleged unfair labour practices against both the Employer and the Union, contrary to sections 5, 9 and 14 of the *Code*.

[45] The decision then set out, in considerable detail, the allegations and complaints made by Ms. Schrader in both her original application, and the two amendments. In respect of the Union, the decision noted that there was considerable overlap with the earlier Section 12 complaint, which had been dismissed. The decision summarized the complaint against the Union as an allegation that the Union had assisted the Employer "to continue relying on a fabricated excuse for the unpaid suspension", thereby breaching sections 5, 9 and 14 of the *Code*.

[46] In respect of the Employer, the decision noted that the allegations focussed on Ms. Schrader's view that the Employer had committed breaches of the childcare licencing regulations by continuing to employ an unqualified manager, and had then imposed discipline on Ms. Schrader when she complained about those breaches.

[47] The decision referenced the additional material filed by Ms. Schrader on September 7, 2023, which Ms. Schrader submitted showed clear evidence that the Union attempted to deprive her of due process and avoided an investigation by proceeding directly to mediation. Within that filing, Ms. Schrader distilled her fundamental position as hinging on the question of whether the manager was in violation of the governing childcare licencing regulations.

[48] In her materials, Ms. Schrader made extremely serious allegations against Vancouver Coastal Health Authority in relation to their handling of her complaints and interpretation of the licencing regulations. Ms. Schrader also asserted that the Employer and the Union jointly permitted the violation of the collective bargaining agreement by failing to ensure that the childcare licencing requirements were met.

[49] In the "Analysis" portion of the decision, at the outset it was noted that section 14 of the *Code* governs the process the Board must follow when it receives a complaint, and is not a section which can be breached by a party.

[50] Section 14(6) permits the Board to reject a complaint "at any time" where the Board is of the opinion that the complaint is without merit. That is the subsection on

which the decision relied in reaching its ultimate conclusion in respect of the allegations that there had been breaches of sections 5 and 9 by both the Union and the Employer.

[51] At paragraphs 29 and 30, the decision addressed a fundamental question, specifically the likely inapplicability of both sections 5 and 9 to the essential complaints made by Ms. Schrader. I reproduce those paragraphs here:

> 29 As the language of Section 5(1) makes clear, it is designed to protect persons who are, or will be involved in proceedings under the Code or who have exercised or are exercising their rights under the Code. Section 5 is not a general protection provision for persons engaged in the exercise of their perceived rights in matters not governed by the Code, for example a person concerned that childcare services are being provided inconsistent with the law.
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> 30 Section 9 of the Code prohibits a person from using "coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union". Section 9 also has a limited scope. It only applies to circumstances that could reasonably have the effect of compelling or inducing a person to refrain from becoming or to continue or cease to be a member of a trade union. It is not a catch-all provision designed to cover any circumstance of alleged coercion and intimidation unrelated to trade union membership.

[52] The decision addressed the section 5 complaint related to the Employer by assessing whether the conduct of the Employer amounted to intimidation or coercion, which is proscribed by s. 5(1)(d). The decision found that the conduct did not constitute intimidation or coercion. Even if it did amount to intimidation or coercion, the conduct of the Employer was not covered by section 5 because it was not aimed at any of the things set out in the concluding portion of the section, all of which relate to proceedings under the *Code*.

[53] The decision noted that section 9 could not apply to Ms. Schrader's application, since there was no basis to find that anything done by the Employer was done for the purpose of inducing Ms. Schrader to "become or to refrain from becoming or to continue or cease to be a member of a trade union."

[54] The decision then addressed, briefly, Ms. Schrader's allegation that the Union and Employer conspired to breach the collective agreement by allowing the

Employer to hire and continue to employ the manager. The decision found that there was no evidentiary support for the existence of such a conspiracy.

[55] With respect to the Union, the decision noted that the complaint, although framed as falling under sections 5 and 9, used terminology more commonly used in section 12 complaints. The decision then briefly analyzed the complaint through that lens, and found no apparent contravention of s. 12 of the *Code*.

[56] In the penultimate paragraph, the decision addressed Ms. Schrader's assertion that her entire complaint hinged on the question of whether the manager at McGregor was in violation of the relevant childcare licencing regulations. In that regard, the decision held: "it is necessary to note that is not a question for the Board to determine. The Board's expertise lies in labour relations, not the regulation of childcare. Others are better placed to address the Applicant's perceptions that the Employer is violating those regulations."

[57] The Board then dismissed Ms. Schrader's application.

The Decision – January 30, 2024

[58] The application for leave and reconsideration was decided by a three member panel, chaired by Jennifer Glougie, the Chair of the Board.

[59] The governing section of the *Code* is s. 141, which reads:

> 141 (1) On application by any party affected by a decision of the board, the board may grant leave to that party to apply for reconsideration of the decision.
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> (2) Leave to apply for reconsideration of a decision of the board may be granted if the party applying for leave satisfies the board that
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> (a)evidence not available at the time of the original decision has become available, or
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> (b)the decision of the board is inconsistent with the principles expressed or implied in this Code or in any other Act dealing with labour relations.
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> (3) Leave to apply for reconsideration of a decision of the board under this section may be granted only once in respect of that decision.
>
> (4) Subsection (1) does not apply to a decision of the board to grant or deny leave under subsection (2) or to a decision made by the board on reconsideration.

(5) An application under subsection (1) must be made within 15 days of the publication of the reasons for the decision that is the subject of the application.

(6) If an application for leave is made under subsection (1), another party affected by the decision may apply for leave under that subsection within

(a) the period referred to in subsection (5), or

(b) 5 days of receiving the application,

whichever is longer.

(7) On reconsideration under this section the board may vary or cancel the decision that is the subject of reconsideration or may remit the matter to the original panel.

(8) An application under this section must be made in accordance with the regulations.

[60] As set out in para. 4 of these Reasons, the Decision succinctly set out the background to Ms. Schrader's ULP complaint, and its interrelationship with her earlier section 12 complaint, at paras. 2-6.

[61] The Decision then set out the four issues advanced by Ms. Schrader, which were:

1) The Original Decision erred in finding no evidence of coercion or intimidation, inasmuch as the Employer's attempts to meet with Ms. Schrader were retaliation for the section 12 complaint;
2) Ms. Schrader was denied procedural fairness in respect of the grievance procedures;
3) The Original Decision erred by holding that the Board's expertise lies in labour relations, not the regulation of childcare; and,
4) Ms. Schrader sought to rely on a decision dated October 11, 2023 as fresh evidence.

[62] The Decision then set out the test to be applied on an application for leave and reconsideration, based on prior Board decisions, namely, "whether the applicant raises a serious question as to the correctness or fairness of the original decision."

[63] The Decision found no error in the Original Decision, nor anything that was procedurally unfair. The Decision noted that the retaliation point appeared to be a new argument, but in any event, the Original Decision correctly held that complaints in that regard could be resolved through the grievance process, which was ongoing. The Decision then found that "the issues raised in the original application and on

application for leave and reconsideration are inextricably intertwined with [Ms. Schrader's] discipline grievance and ought to be decided in that forum in any event" (para. 16).

[64] The Decision noted that many of the complaints about the Union, and its representation of Ms. Schrader, were addressed in the section 12 decision. Inasmuch as the grievance process was ongoing, Ms. Schrader's challenge to the Union's representation of her appeared to be premature.

[65] The Decision then addressed the reliance on the October 11, 2023 decision as fresh evidence. In that regard, the tribunal was not persuaded that the decision was new evidence which should be received on the application for review and reconsideration. In any event, the tribunal was not persuaded that the October 11, 2023 decision would have had a material and determinative effect on the Original Decision.

[66] Finally, the Decision addressed Ms. Schrader's complaint that the Original Decision evinced an erroneous approach to the question of the Union's duty of fair representation. In that regard, the tribunal found no error, noting that the Original Decision had relied on the leading case from the Board on that issue. Prior Board jurisprudence clearly establishes that it is for the Union to decide whether to pursue a grievance, and which litigation strategy to adopt.

[67] In the result, the Decision found that Ms. Schrader's application did not raise a serious question as to the correctness or fairness of the Original Decision, and was therefore dismissed.

Decision Subject to Judicial Review

[68] Prior to commencing my substantive analysis, I should clarify which decision is subject to this judicial review and the approach I will take in conducting that review. As noted, Ms. Schrader at various places in her materials states that the Original Decision is under review. That approach is not in keeping with appellate authority from this province.

[69] Our Court of Appeal has held that judicial reviews should generally be in relation to the Reconsideration Decision, although the review may be informed by the Original Decision in appropriate circumstances: *BC Ferry and Marine Workers' Union v. BC Ferry Corporation, Passenger Transportation Board*, 2013 BCCA 497 at para. 41 and *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329 at para. 40.

[70] I should also note at this juncture that, irrespective which decision one examines, a court must always bear in mind that decisions of the Board involve a specialized tribunal considering and interpreting its home statute. Such tribunals are entitled to considerable deference on judicial review, based on their specialized knowledge and expertise in a given field, in this case labour relations.

[71] With those principles in mind, I will turn to the substance of the judicial review and issues raised by Ms. Schrader.

Procedural Fairness

[72] The primary submission made by Ms. Schrader on the issue of procedural fairness is that both the Original Decision and the Decision on review were rendered in a manner that was procedurally unfair because the decision maker did not require the Employer and Union to file submissions in response to her complaint. I would not accede to this position.

[73] The essential right to procedural fairness consists of both the right to be heard and the right to an impartial hearing. Here, Ms. Schrader was given ample opportunity to present materials and submissions in support of her ULP complaint, and thus was afforded a full right to be heard. There is no suggestion of lack of impartiality made by Ms. Schrader. Her complaint is that the decision maker should have required responding submissions.

[74] The provisions of the *Code* and ancillary Rules clearly provide for the dismissal of a complaint without requiring submissions from the respondent parties.

[75] Section 14(6) of the *Code* gives the Board the power to dismiss a complaint under subsection (1) “at any time” if it believes the complaint is without merit.

[76] Section 126(2) of the *Code* entitles the LRB to make rules governing its practice and procedure and exercise of those powers under the *Code*.

[77] Rule 2(4.1) gives the registrar the discretion to determine if “a reply or other written submission should be requested from a person affected by the application.”

[78] Finally, Rule 17C sets out a panoply of potential procedural bases on which a decision can be reached, first among them “on the basis of written materials on file with the board.”

[79] Thus, the applicable procedural scheme envisages exactly what occurred here, a decision being made on the basis of written materials received from only one party, because the complaint was without merit and responding submissions were not necessary.

[80] I note as well that Ms. Schrader did not raise this issue in her application for leave and reconsideration.

[81] With respect to the Decision on review, Rule 29(3) states:

> (3) The board shall determine its own practice and procedure for the hearing of applications seeking leave for reconsideration. Without limiting the foregoing, the board may determine whether submissions should be sought from other affected parties before considering the leave application, and whether a hearing should be conducted.

[82] That Rule is a complete answer to Ms. Schrader’s complaint that the Board was required to request and receive submissions from the Union and the Employer at that juncture.

[83] On November 20, 2023, the Board wrote to Ms. Schrader and notified her that the Board would not be seeking submissions from the respondents at that time. The following day, Ms. Schrader wrote to the Board and attached a request to submit fresh evidence, which included an additional submission. There was no complaint

made about the failure to require response submissions from the Union and the Employer.

[84] The final matter Ms. Schrader raises under the rubric of procedural unfairness is something which she did not advance at any stage in proceedings before the Board. Ms. Schrader now submits that the original decision maker should have required the Union to provide her with the submission made on her behalf as part of the proposed mediation process. Ms. Schrader submits that she was entitled to that submission pursuant to provincial privacy legislation, and that the only reason the Union would refuse to provide it to her was that the Union was "collaborating to allow the Employer to escape consequences."

[85] This is a completely new argument, one which Ms. Schrader did not raise in either of the proceedings before the Board. I am not prepared to consider this issue on judicial review. I see no potential unfairness to Ms. Schrader, given her multiple opportunities to advance this position before the Board. She filed supplementary material and submissions during both stages of those proceedings, and did not make this complaint at any time.

Substantive Review

[86] At the end of the day, the overarching question for determination on this judicial review is this: has Ms. Schrader persuaded me that the Decision was patently unreasonable, in concluding that there was not a serious question raised as to the fairness or correctness of the Original Decision? In order to succeed on judicial review, Ms. Schrader must persuade me that the Decision was clearly irrational, or so seriously flawed that no amount of curial deference can justify permitting it to stand. I cannot so find.

[87] I have set out in some detail the reasoning which led to the Original Decision, as a backdrop to the conclusion reached on the Decision related to leave and reconsideration. The Decision addressed each of the points made by Ms. Schrader in seeking a review of the Original Decision. The Decision adequately summarized Ms. Schrader's position, and the reasons the decision maker was not persuaded by

Ms. Schrader's submissions on review. There is nothing clearly unreasonable in the ultimate conclusion, nor in the reasoning process by which that conclusion was reached.

[88] I will shortly address the individual errors alleged by Ms. Schrader, but say now that I am not persuaded that Ms. Schrader has shown any errors in either the Original Decision or the Decision which, individually or cumulatively, render the Decision patently unreasonable.

[89] Ms. Schrader's two central complaints are, in a nutshell, these:

1) The manager, Mr. Smith, should not be employed by the Employer because he lacks the appropriate certification;
2) Ms. Schrader should not have been disciplined by the Employer for pointing out the manager's lack of qualifications, since it was her duty to do so.

[90] Neither of those issues could be addressed, adequately or likely at all, in the proceedings flowing from Ms. Schrader's ULP complaint. Ms. Schrader's section 12 complaint was based on the failure of the Union to grieve the Employer's decision to continue to employ Mr. Smith. That complaint was dismissed and Ms. Schrader did not seek leave and reconsideration of it. Nor is that decision before me on this judicial review. The ULP complaint could not address anything related to the continued employment of Mr. Smith.

[91] Nor would the ULP complaint be the appropriate forum to consider the questions related to Ms. Schrader's suspension. Those matters were (and likely are) still being addressed in the ongoing grievance procedure. The Board noted repeatedly in the Decision that the grievance process was ongoing, and was the appropriate forum to deal with many of Ms. Schrader's complaints.

[92] At a broad level, the Original Decision considered Ms. Schrader's complaints alleging violations of sections 5(1) and 9 of the *Code* by both the Union and Employer, and provided reasons for the conclusion that neither section properly applied to the fundamental facts presented by Ms. Schrader. The Decision on review determined that there was no serious question as to the fairness or correctness of

that determination. Ms. Schrader now submits, at para. 117 of her written submissions, that I should find otherwise. She seeks:

> An Order that this Honorable Court find the correct Decision in the Unfair Labour practice Application is that the Employer and Union breached sections 5, 9 and 12 of the Code, and the petitioner is entitled to full and fair reparations.

[93] It is axiomatic that I cannot grant much of the relief Ms. Schrader seeks. I could not, even if I were persuaded that the Decision was patently unreasonable, substitute my view for that of the Board. Moreover, I could not decide the section 12 issue, since that was not part of the ULP complaint. The section 12 complaint had already been considered and decided against Ms. Schrader.

[94] To the extent there were issues related to the Union's representation of Ms. Schrader that engaged s. 12 of the *Code*, the Original Decision considered those submissions, and concluded that the Union had not represented Ms. Schrader in an arbitrary, discriminatory or bad faith manner. The Decision noted that the grievance process was ongoing, and thus Ms. Schrader's "challenge to the Union's representation of her in that process continues to be premature" (para. 17).

[95] Ms. Schrader continues to assert that the Original Decision should have found that the Employer's suspension letter of May 25, 2022, was retaliatory in nature, and thus in breach of s. 5(1) of the *Code*. At paras. 31 and 32, the Original Decision addressed those arguments, and found otherwise. In part, Ms. Schrader's submission failed because at the time of the May 25, 2022 letter there were no proceedings in respect of the *Code* extant.

[96] The Decision found no error in the conclusions reached in the Original Decision, and also noted that the original decision maker was correct in holding that the Employer's disciplinary process and consequences could be addressed through the grievance process under the collective agreement. There was nothing unreasonable about those conclusions.

[97] Ms. Schrader also submits that both the Original Decision and the Decision erroneously concluded that her allegations of intimidation and coercion were not related to a proceeding under the *Code*. To some extent, Ms. Schrader challenges the findings of fact made in the Original Decision, which are not subject to this judicial review. On a broader level, Ms. Schrader challenges the manner in which both decisions interpreted the scope and applicability of particular sections of the *Code*. I would not interfere with the interpretation of this specialized tribunal of its own legislative scheme. Ms. Schrader has not persuaded me that either decision interpreted the relevant sections of the *Code* in a manner that was wholly unreasonable. Were I required to opine on the matter, I tend to think the interpretation of the relevant sections in the Original Decision was succinct, cogent and legally correct.

[98] Finally, and with much force, Ms. Schrader submits that both decisions erred in failing to address the central issue of Mr. Smith's qualifications, or lack of same, to be the manager of an early childhood education centre. As noted, the Original Decision, at para. 46, found that the issue of potential non-compliance with the ECE regulatory scheme was a matter beyond the scope of the Board and its expertise, and that others were better placed to address those concerns of Ms. Schrader.

[99] Ms. Schrader submitted on her application for review and reconsideration that para. 46 was in error. About this, the Decision held as follows:

> We further find that the Original Decision's conclusions that Sections 5 and 9 of the Code do not apply in the circumstances do not depend on a finding that the Board's expertise is limited to labour relations and not the regulation of childcare. Therefore, we find it is unnecessary to decide whether the Original Decision errs in reaching that conclusion.

[100] Ms. Schrader now submits that the Decision erred in that conclusion. She submits that "the safety and well-being of children were paramount considerations", which should have operated in her favour. She also submits that the Board demonstrated no concern for the "likelihood that the children and staff of a large child care center were under the control of a non-ECE person and exposed to an environment inconsistent with the *CCLR*."

[101] I can find nothing erroneous in the approach taken by the Board in the Decision.

[102] The application and interpretation of the *CCLR* was clearly not an issue before the Original Decision maker. I agree with the Employer's submission that: "[w]hether or not Mr. Smith and the Employer are in violation of the *Regulations* has no bearing on whether the Employer breached the *Code*."

[103] It follows that there was nothing unreasonable about the finding in the Decision that it was unnecessary to consider any alleged error by the Original Decision maker in this regard, since the ultimate conclusion in no way hinged on that question.

Conclusion

[104] In summary, I have considered all Ms. Schrader's submissions in support of her position that the Decision should be set aside on judicial review either because it was procedurally unfair or that it was patently unreasonable. Ms. Schrader has failed to persuade me that the Decision is vulnerable to challenge on either basis. In large part, Ms. Schrader repeats arguments made at both proceedings below, and invites me to reach different conclusions than did those decision makers. That is not appropriate on judicial review. To the extent that Ms. Schrader advances new submissions, which were not before the earlier decision makers, I decline to give effect to them. Consideration of new legal arguments would also be inappropriate at this juncture.

[105] I reiterate my observations made earlier in this judgment: to the extent Ms. Schrader continues to assert that the Employer should terminate Mr. Smith's employment, that issue was never before the Board in any of the proceedings initiated by Ms. Schrader. To the extent that Ms. Schrader feels she has been ill-treated by the Employer in the discipline thus far meted out, those issues remain unresolved, and can be resolved through the ongoing grievance process.

[106] The petition seeking judicial review is dismissed.

[107] None of the respondents to this petition sought costs, and thus I make no award of costs.

"Tammen J."