



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Sparkes v. Newfoundland and Labrador (Occupational Therapy Board)*,  
2025 NLSC 130

**Date:** October 6, 2025

**Docket:** 202401G2320

BETWEEN:

**SUSAN SPARKES**

APPLICANT

AND:

**NEWFOUNDLAND AND LABRADOR  
OCCUPATIONAL THERAPY BOARD**

RESPONDENT

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**Before:** Justice Justin S.C. Mellor

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**Place of Hearing:**

St. John's, Newfoundland and Labrador

**Date of Hearing:**

May 22, 2025

**Summary:**

The Complaints Authorization Committee (CAC) of the Newfoundland and Labrador Occupational Therapy Board (Board) issued three caution/counsels to Ms. Sparkes. Ms. Sparkes sought judicial review of the CAC's decision.

**Held:** The decision imposing three caution/counsels is not reasonable. The CAC did not engage with any of Ms. Sparkes' submissions nor did it identify the facts it relied upon in reaching its conclusions. There is no rational chain of analysis in the decision and it is of little or no assistance in guiding Ms.

Sparkes' future conduct. The decision is therefore quashed and remitted back to the CAC for reconsideration.

### Appearances:

Robert W. Buckingham	On behalf of the Applicant
Augustine F. Bruce, K.C.	On behalf of the Respondent

### Authorities Cited:

**CASES CONSIDERED:** *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17; *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67

**STATUTES CONSIDERED:** *Occupational Therapists Act, 2005*, S.N.L. 2005, c. O-4.1

**RULES CONSIDERED:** *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

## REASONS FOR JUDGMENT

**MELLOR, J.:**

### INTRODUCTION

[1] Susan Sparkes is an occupational therapist (“OT”) who received three caution/counsels from the Complaints Authorization Committee (“CAC”) of the Newfoundland and Labrador Occupational Therapy Board (“Board”). She seeks judicial review of the CAC decision, claiming that it is not reasonable due to the inadequacy of the reasons.

## BACKGROUND

[2] Ms. Sparkes is employed by Eastern Health at the Janeway Children's Hospital (the "Janeway"). She is supervised by Jan Young Guerra, who is the Regional Manager of Direct Home & Autism Services & Janeway Child Development.

[3] Ms. Sparkes and Ms. Young Guerra have different theoretical approaches to occupational therapy. Ms. Sparkes supports a neurodiverse-affirming approach, whilst Ms. Young Guerra, is described as a behaviouralist. This difference in practice orientation was the source of much conflict. Ms. Sparkes advocated internally for the use of the term Pathological Demand Avoidance ("PDA"). This term is employed extensively in the United Kingdom to describe complex behaviours in children on the autism spectrum, but it is not used in North America. Ms. Young Guerra strongly opposed its use at the Janeway.

[4] The professional relationship between Ms. Sparkes and Ms. Young Guerra is best described as toxic. Ms. Sparkes felt "threatened" by her supervisor, and Ms. Young Guerra accused Ms. Sparkes of committing "micro-aggressions" and having uncivil body language. Ms. Sparkes filed a workplace harassment complaint against Ms. Young Guerra.

[5] On 26 October 2022, Ms. Young Guerra sat in on one of Ms. Sparkes' sessions with a client. This precipitated two meetings between Ms. Sparkes and Eastern Health management. The first was on 16 November 2022, and the second was on 1 December 2022.

[6] On 2 December 2022, Ms. Sparkes received a disciplinary letter signed by Aisha Penney, a Human Resources Consultant at Eastern Health, on behalf of Ms. Young Guerra. The letter notified Ms. Sparkes that she was suspended without pay for five days. It indicated that Eastern Health had concerns about: insubordination related to Ms. Sparkes' use of the term PDA; Ms. Sparkes working outside the scope of her practice by alluding to PDA in relation to clients; not

respecting and considering the opinions of clients and stakeholders; a lack of professionalism and delays in client care.

[7] Three days after Ms. Sparkes completed her suspension, Eastern Health sought to have her professionally disciplined. On 15 December 2022, Margaret Collingwood, the Regional Professional Practice Consultant in Occupational Therapy for Eastern Health, filed a written complaint against Ms. Sparkes with the Board. Although Ms. Collingwood signed the letter of complaint, it is clear from the content of the letter that the source of many of the allegations was Ms. Young Guerra.

[8] On 21 March 2023, the Executive Director of the Board referred the complaint to the CAC.

[9] The CAC summarized the allegations against Ms. Sparkes as follows:

Concern 1: Repeated use of diagnostic terms, interventions, and references to a diagnosis (PDA) that is not supported by the healthcare team.

Concern 2: A parent reported dissatisfaction with OT services and requested transfer to another occupational therapist. OT service was discontinued with no arrangement for continuation or transfer documented.

Concern 3: Unprofessional behaviour on two occasions at a school. Follow-up was not documented, resulting in a significant delay in intervention.

[10] The CAC investigated the complaint and obtained a large volume of information relating to the allegations. Ms. Sparkes was provided with a copy of the complaint and she submitted two detailed written responses.

[11] Under section 17(3) of the *Occupational Therapists Act, 2005*, S.N.L. 2005, c. O-4.1, if the CAC determines that there are “reasonable grounds to believe that a respondent has engaged in conduct deserving of sanction”, it may:

- (a) counsel or caution the respondent; or
- (b) instruct the chairperson to file the complaint against the respondent and refer it to the disciplinary panel; and
- (c) recommend to the board that:
  - (i) the respondent's practice be suspended or restricted, or
  - (ii) the chairperson conduct an investigation of the respondent's practice, and where the board approves an investigation the chairperson shall conduct it, ...

[12] On 9 October 2022, the CAC rendered its decision and it issued three caution/counsels to Ms. Sparkes.

[13] Regarding Concern 1, the CAC found that there was documentation showing that signs, symptoms, and treatment strategies related to PDA were communicated to the parents and non-healthcare members of the client's team. It found this behaviour to be unprofessional and outside the scope of practice.

[14] On the Concern 2, the CAC found that the allegation that OT services were discontinued without arrangement for continuation of therapy or transfer of the client was not proven. However, the CAC went on to caution/counsel Ms. Sparkes on the basis that she had failed to meet the standards set for communication and collaboration.

[15] With respect to Concern 3, involving two interactions at a school, the CAC found that Ms. Sparkes did not seek advice from colleagues or transfer the client. The CAC determined that her conduct was unprofessional and that she did not ensure timely provision of occupational therapy services.

## ISSUE

[16] Is the CAC's decision reasonable?

## ANALYSIS

### Standard of Review

[17] Since the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the presumptive standard of review for administrative tribunals is reasonableness, subject to two exceptions:

- 1) where the legislature has indicated that it intends a different standard to apply;  
or
- 2) where the rule of law requires that the standard of correctness applied.

[18] In *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17, the Court of Appeal affirmed reasonableness as the standard of review for a Law Society CAC decision. In Ms. Sparkes' case, there is nothing to suggest that the Vavilovian exceptions to the presumptive standard of reasonableness are engaged. Furthermore, there is no dispute between the Parties that the standard is reasonableness.

[19] I will now examine the CAC's reasons in relation to each of the three concerns and assess whether they meet the reasonableness standard as described in *Vavilov*.

## Concern 1

[20] The CAC’s decision on Concern 1 pertains to Ms. Sparkes’ use of the term PDA. It is very succinct, comprising of just four sentences. The first sentence states that the *Act* prohibits occupational therapists from diagnosing clients. The second notes that a diagnosis should be part of a collaborative effort between the healthcare team and a diagnostician. The third states that “Communicating signs and symptoms, suggesting a diagnosis ...,” and then communicating them to “non-healthcare team members ... and then making the statement that you are unable to provide a diagnosis, is unprofessional and outside the scope of practice as an occupational therapist.” The fourth sentence simply indicates that Ms. Sparkes is cautioned.

[21] The lack of specificity in the CAC’s decision on Concern 1 is startling and leaves many unanswered questions. When did the alleged diagnosis or other professional misconduct occur? What specific evidence did the CAC rely on in arriving at its conclusion? What provisions of the *Act* or the Provincial Standards of Practice (2003) did the CAC apply in determining that Ms. Sparkes’ conduct deserved a caution? If the misconduct was in fact a “diagnosis” (which is unclear from the decision), what operational definition or criteria for “diagnosis” did the CAC apply? Subsequent correspondence between Ms. Sparkes and the Board suggests that CAC may have employed the definition in the *Merriam Webster Dictionary*, however, the decision makes no mention of this.

[22] When a decision lacks specificity, it becomes less transparent and intelligible which undermines the very purpose of a caution/counsel. As the Court of Appeal explained in *Buckingham*, at para. 102, “The standard to which the member is being held should be transparent. A counsel or caution will not otherwise be effective at guiding the lawyer’s future behavior and will not advance the goal of public protection.”

[23] There is no indication of what evidence the CAC considered or how it was employed in reaching its conclusion. In *Vavilov*, at para. 126, the Supreme Court of Canada stated that “... a reasonable decision is one that is justified in light of the facts ...”, and that “The decision maker must take the evidentiary record and the

general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them ...”

[24] The Board defends the decision by pointing out that the CAC listed all the evidence it considered. Listing the evidence is not a magical incantation that shields a decision from challenge (*Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, at para. 64). The paragraph in the CAC decision listing the evidence amounts to little more than an index of the record. For a decision to be reasonable, an administrative decision maker must show that it engaged with the evidence.

[25] The Board argues that the CAC’s decision can be sustained if it is read in conjunction with the Record. It argues that the Record has “... multiple instances of the Applicant referring to the PDA diagnosis or hypothesis ... .” Referring to PDA during internal discussions and making a formal diagnosis of a client are quite different. Ms. Sparkes spoke with colleagues about PDA, but nothing in the Record indicates that she went as far as formally diagnosing a client. There is a single patient chart which contains a reference to PDA, but the note in the chart was not written by Ms. Sparkes. There is also an email to a school that references PDA, but Ms. Sparkes makes it explicitly clear that she “... cannot and do[es] not diagnose ...” children.

[26] Not only does the CAC’s decision on Concern 1 lack transparency, but it is also non-responsive to Ms. Sparkes’ submissions. On 15 May 2023, Ms. Sparkes submitted a very lengthy response to the allegations. Eleven pages were dedicated to Concern 1. In addressing Concern 1, she made a multitude of points, including disputing some of the facts. Her submission indicated:

- At no time was she instructed not to use the term PDA.
- She has never diagnosed a client with “any type of developmental condition.”
- She has never used the term PDA in her documentation or clients’ health records.

- She has used the term “demand avoidance strategies” in clients’ health records, but she does not view the language as diagnostic.
- The complaint did not contain specifics about when the alleged diagnosis occurred.

[27] There is no reference in the Decision to any points raised by Ms. Sparkes. Once she raised these and other issues, it was incumbent on the CAC to respond to the more significant ones. As the Court of Appeal explained in *Buckingham*, at para. 80:

A reasonable decision does not have to address every submission but its reasons must meaningfully account for the central issues and concerns raised by the parties (*Vavilov*, at para. 127). Addressing the key arguments shows the parties that their concerns have been heard and can alert the decision maker to inadvertent gaps or flaws in its reasoning (*Vavilov*, at para. 128).

[28] The Board admitted that the CAC’s “... reasons for the Decision could have been more expansive.” With respect, this is an understatement. The reasons are better described as conclusions, and the decision on Concern 1 is not justifiable, intelligible, or transparent and therefore unreasonable.

## **Concern 2**

[29] The CAC states Concern 2 as: “A parent reported dissatisfaction with OT services and requested transfer to another occupational therapist. OT service was discontinued with no arrangement for continuation or transfer documented.”

[30] The CAC determined that there were no reasonable grounds to find that the Respondent “... violated the Code of Ethics and discontinued professional services that are needed unless alternate services are arranged.”

[31] Despite reaching that conclusion, the CAC nonetheless issued a caution. It found that Ms. Sparkes had failed to use a client-centred approach and that there was a failure to collaborate and communicate, such that her conduct did not meet the Provincial Standards of Practice (2003) or the requirements under the Competencies for Occupational Therapists in Canada (2021). The issue of a failure to communicate and collaborate on Concern 2 are not part of the complaint filed by Margaret Collingwood on 15 December 2022. As a result, Ms. Sparkes did not directly address these issues in her response to the complaint.

[32] Many of the problems that I have identified respecting Concern 1, also apply to Concern 2. In the decision, there is no clear identification of the facts relied upon. The closest the CAC comes to a finding of facts on Concern 2 is when it states: “The client and family circumstances are described as complex” and there are “... parenting differences, challenges between mom and dad and references to cultural differences.” These facts regarding the surrounding circumstances of the case support Ms. Sparkes’ argument that she did the absolute best she could under very difficult circumstances.

[33] In her response to Concern 2, Ms. Sparkes rebuts the facts related to the allegation that she did not take a client-centred approach. Her response includes a detailed account of the specific steps she took to develop rapport with the client’s mother. Not only does she address the factual circumstances, but she also argues that it is necessary for the CAC to distinguish between efforts and success in a therapist-client relationship. She argues that there is no ethical breach if an OT makes an honest and best efforts attempt to develop a relationship but nonetheless fails. In its decision, the CAC addresses neither the facts, nor Ms. Sparkes’ argument. To borrow the Supreme Court of Canada’s words in *Vavilov*, these are “central issues and concerns” that must “meaningfully” be addressed by the CAC.

[34] The Board attempts to buttress the CAC’s decision by pointing to the Record. This is of little help. The Record simply affirms that this was an extremely difficult case with dissatisfied parents. It is not apparent how the CAC gets from an extremely difficult case to a failure by Ms. Sparkes to take a client-centred approach and to collaborate and communicate. In *Vavilov*, at para. 103, the Supreme Court of Canada stated that a decision is unreasonable if it “... fail[s] to reveal a rational chain of

analysis ... or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point ... .”

[35] Based on the above, the CAC's reasons on Concern 2 do not meet the reasonableness standard.

### **Concern 3**

[36] Concern 3 is summarized as “Unprofessional behaviour on two occasions at a school. Follow-up not documented, resulting in a significant delay in intervention.”

[37] The CAC issued a caution, finding that Ms. Sparkes' conduct was “... unprofessional and resulted in the relationship and mutual trust with the school, client and parent breaking down.” It concluded that she had failed to act in the best interest of the client and ensure that occupational therapy services were provided in a timely manner.

[38] The CAC's substantive reasoning on Concern 3 amounts to a single paragraph in the decision. The paragraph states:

As an occupational therapist you are required to maintain high standards of professionalism, work in the best interests of clients and society and build respectful relationships with clients, team members and others involved in the system from which you are working. Communication and collaboration are essential competencies for occupational therapists who are expected to communicate in a thoughtful and respectful manner. In challenging situations, how an occupational therapist handles responds and follows up to a situation, is expected to be in keeping with the competencies and standards. Following the second interaction at the school (September 22, 2022), you did not seek advice from your team lead, colleagues or other resources to assist you in navigating this challenging situation. You did not transfer the client which resulted in a delay in the provision of OT services.

[39] In *Vavilov*, the Supreme Court of Canada held, that a decision must contain a “rational chain of analysis”. This necessitates a decision maker identifying the relevant facts, examining those facts in relation to a standard and arriving at a conclusion. In Ms. Sparkes’ case there is no rational chain to follow. The CAC’s reasons do not indicate the facts relied upon or the specific standard applied, and they do not explain how Ms. Sparkes’ conduct violated that standard. To use the words of the Supreme Court in *Vavilov*, at para. 100, these shortcomings are not “... superficial or peripheral to the merits of the decision ...”, rather, they establish that the decision fails to exhibit the “... requisite degree of justification, intelligibility and transparency.”

[40] Again, the Board submits that the Decision’s shortcomings can be resolved by reviewing the Record. It argues that the Record “... contains ample evidence on which the CAC made its Decision” respecting Concern 3. It is important to distinguish between evidence, reasoning, and conclusions in an administrative decision. The Record is the evidence before the decision maker; the reasons are the analytical process of applying the standard and explaining the probative value of the evidence, and the conclusions are the outcome. While a review of the Record may promote a better understanding of the reasoning on a critical point, it is not a substitute for a complete absence of reasons. In CAC’s decision, there is virtually nothing in the way of reasoning. A review of the Record should not be akin to a murder mystery with the judge as the Chief Detective.

[41] As with the other concerns, the CAC failed to respond to Ms. Sparkes’ submission on Concern 3. Ms. Sparkes contests many of the facts and provides a competing narrative. She indicates that she did not abandon the client after a negative interaction with a teacher at the school, and that she followed up with the vice-principal and the guidance counsellor. She points to specific emails demonstrating the follow-up, and she disputes a delay in the provision of services.

[42] The Record contains evidence labelled “Correspondence with the School”. This is in fact not correspondence with the school, but rather handwritten notes detailing Ms. Sparkes’ alleged misconduct. It is not clear who authored these notes, but they appear to be generated by someone at Eastern Health on 1 December 2022. That was the day on which Eastern Health held a disciplinary meeting with

Ms. Sparkes. The CAC's decision does not indicate why it rejected Ms. Sparkes' account of the events and instead preferred the anonymous account in the handwritten notes generated several months later.

[43] The CAC also found that Ms. Sparkes failed to seek advice from her team lead in relation to the incident at the school. Ms. Sparkes does not contest this; however, she argues in her response that the failure to collaborate and seek advice was a result of her practicing in a toxic workplace, in which she was bullied and felt unsafe. The CAC does not engage with Ms. Sparkes' response. There was no attempt by the CAC to reconcile the ethical obligations to collaborate with the need of a member to protect herself from alleged harassment. The failure of the CAC to consider this response is not superficial or peripheral to the merits of the Decision, rather, it suggests that Ms. Sparkes was not listened to.

[44] Based on the above, I must conclude that CAC's decision on Concern 3 is not reasonable.

## **DISPOSITION**

[45] The 9 October 2023 decision of the CAC is quashed and the matter is remitted back to the CAC for reconsideration.

[46] Ms. Sparkes shall have her costs in accordance with Column 3 of the Scale of Costs in the Appendix of Rule 55 of *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

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**JUSTIN S.C. MELLOR**  
Justice