Tribunal Confirms Parents are Required to Participate in Accommodation Process

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The Human Rights Tribunal of Ontario released its decision in *Y.B. v Conseil des écoles publiques de l'Est de l'Ontario*.

On May 3, 2017, the Human Rights Tribunal of Ontario (the "Tribunal") released its decision in *Y.B. v Conseil des écoles publiques de l'Est de l'Ontario*1, confirming that a person seeking accommodation of a disability (or the parents acting on behalf of a child with a disability) must participate in the accommodation process. While schools clearly have an obligation to accommodate students with disabilities, the student and their parents or guardians must cooperate in finding a reasonable solution. In *Y.B. v Conseil*, the Tribunal found that the parents of Y.B. failed to adequately participate in the accommodation process, and consequently dismissed their application against the school board.

The Duty to Accommodate Students with Disabilities

Section 1 of Ontario's *Human Rights Code* (the "Code") states that "[e]very person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of…disability."2 Subsection 11(2) of the Code imposes a duty on service providers, which includes school boards, to accommodate an individual's disability up until the point of undue hardship.3 Referred to as the "duty to accommodate," this duty is a positive obligation placed on school boards with respect to accommodating students with disabilities.

The duty to accommodate is not a one-sided process. Accommodation also requires the student with a disability and his/her parents or guardians to participate in the process. The following quote from the Tribunal in *Y.B. v Conseil* is instructive:

…accommodation is a collaborative process. All parties involved must participate in good faith in the search to find a reasonable solution. While the respondents must show that they attempted to accommodate the applicant's disability, the applicant must also show that he cooperated in that accommodation process.4

The duty to accommodate involves both procedural and substantive components. The substantive component involves the type of accommodation provided. The procedural component, which was at issue in *Y.B. v Conseil*, involves taking adequate steps to explore what accommodation is needed and assessing accommodation options.5 This includes obtaining all relevant information about a disability, if it is readily available.6 A person seeking accommodation must cooperate in the identification and implementation of reasonable accommodation.7

Facts Before the Tribunal

In December 2013, Y.B. was suspended from school. He did not return to classes after the holiday break on January 6, 2014. On January 16, Y.B.'s father met with the superintendent to discuss Y.B.'s reintegration into school. The meeting was ultimately not successful.

Following the meeting, there were a number of emails between Y.B.'s parents and the superintendent. On January 18, Y.B.'s parents sent an email to the school saying:

Because [Y] is sick at present, we are going to take him to a medical appointment and see with his doctor whether he will be able to write his [January] exams at the beginning of the week, and please let us know the suggestion that he write his exams at [another school] and the possibility of sending us his homework.

The superintendent replied on the same day, asking for a medical certificate and offering home instruction if Y.B. was going to be absent for an extended period. A few days later, Y.B.'s father sent the superintendent an email stating that his son's health would be determined by a health professional and that he would advise when he had any news. Much of this email had to do with Y.B.'s suspension. The superintendent responded that same day:

I hope that your son [Y]'s health has improved. We have not received a medical certificate from you explaining [Y]'s absence. Our offer to accommodate [Y] on a modified timetable for writing his exams is still possible…I would remind you that exams end this Thursday, January 23, 2014, and that [Y] has 4 exams to write…I will await your reply to this offer.

A medical certificate was then sent from Y.B.'s doctor to the school on January 22. On January 28, the superintendent emailed Y.B.'s mother, again offering home instruction to Y.B. Y.B.'s mother responded, saying "He still had to continue his appointments and examinations with the specialists this week, and we will act on their recommendations about his ability to continue his studies or how to continue them. We will contact you when there is news."

There was no communication between the parties until February 26, when Y.B.'s mother wrote to the superintendent inquiring about Y.B.'s exams and course notes for January. On March 3, the superintendent replied to this email. Y.B.'s mother replied "[Y] needs to receive home instruction as soon as possible, even though he is continuing with his medical appointments. Thank you." The Tribunal determined that this was the first time that home instruction was requested by the family.

On March 6, the superintendent replied to the email, making it clear that home instruction was offered:

When the medical certificate was received in January, we offered you home instruction (because of illness) and we received no reply from you. My notes show that the medical certificate is valid until March 7, 2014. If [Y]'s health permits him to return to school at the end of the break, on March 17, a formal meeting should be held between the school principal, yourself, [Y], and myself, before allowing him to return to school.

On March 14, Y.B.'s mother responded:

We asked you for home instruction for [Y], you completely ignored us, and we are still asking for home instruction. Every day that has gone be when [Y] has not had home instruction is your responsibility and the responsibility of your director of education, who is well aware that you are in a conflict of interest in [Y]'s case, and she is encouraging you to continue ignoring and discriminating. Also, any days in the future too, if [Y] does not return to school, that is your responsibility, we are waiting for a report from his psychologist and that is why we cannot know when he will return to his public school…"

The superintendent made it clear in a subsequent email that home instruction was offered on January 28, 2014 and that a request for home instruction was not received until March 3, two days before March break. A transfer request was then received by Y.B.'s secondary school on April 1, and Y.B. was registered in another school board.

Issue Before the Tribunal

The main issue before the Tribunal was whether the school board met its procedural obligations required under its duty to accommodate Y.B. The parents alleged that the school board failed to accommodate Y.B.'s alleged disability from January 6, 2014 until the end of the second semester by not providing him with home schooling. The Tribunal had to determine, based on the evidence, when Y.B.'s parents requested home instruction from the school board, whether the school board satisfied the duty to accommodate, and whether the parents cooperated in the process.

The Tribunal found in favour of the school board, determining that Y.B.'s parents did not request home instruction until March 3 and that the school board had proposed it as a solution on a number of previous occasions.

The school board was found to have met its obligations under the duty to accommodate. The parents of Y.B., however, were found not to have been cooperative. The Tribunal made the following conclusion with respect to the parents' conduct:

[p]arents or legal guardians are not excused from their responsibilities to the accommodation process when they act on behalf of their child. The parents were responsible for the applicant, and had a role to play in the accommodation process. Their refusal to respond to the respondents' communications did not allow the school to determine whether home instruction was the appropriate accommodation in the circumstances. It is because of their failure to cooperate that the Conseil was unable to explore and deliver appropriate accommodation…if the service provider makes a reasonable proposal of a course of action intended to facilitate this process, the applicant has an obligation to participate to the extent necessary.8

Comment

While a school board has a positive obligation to accommodate a student with a disability to the point of undue hardship, the Tribunal's decision in *Y.B. v Conseil* demonstrates that reasonable participation in the accommodation process is required of the student and his/her parents or guardians. When a school board is faced with a difficult and uncooperative party in the accommodation process, offering a reasonable solution can allow the school board to fulfill its procedural obligations under the duty to accommodate.

1 2017 HRTO 492 [*Y.B. v Conseil*].

2 RSO 1990, c H19.

3 *Ibid*.

4 *Y.B. v Conseil*, *supra* note 1 at para 61 citing *MacDonald v Cornwall Public Library*, 2011 HRTO 1323 at para 42.

5 *Ibid* at para 62.

6 *Ibid*.

7 *Ibid* at para 64 citing *Central Okanagan School District No. 23 v Renaud*, [1992] 2 SCR 970.

8 *Ibid*at para 86.

By

Daniel Rosen

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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