Tribunal Finds School Board Did Not Discriminate Against Parent of Student By Denying School Transfer Request

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In *Bettencourt v. Dufferin-Peel Catholic District School Board,* 2019 HRTO 607 (CanLII), released on April 3, 2019, the applicant (Bettencourt), who was a parent of a student, claimed that the Dufferin-Peel Catholic District School Board (the School Board) discriminated against him on the basis of race, disability, family status and marital status, contrary to the Ontario Human Rights Code (the Code).

Specifically, Bettencourt alleged that the School Board acted in a discriminatory manner by denying his request to transfer his son to a new school without either obtaining the consent of his former spouse (with whom he was engaged in a custodial dispute) or providing legal documentation supporting his right to make sole educational decisions with respect to his son.

He argued that the School Board improperly denied his transfer request, despite knowing that Bettencourt's disability affected his ability to drive his son to a school out of district. Bettencourt further claimed that his son's "primary residence" was with him and that the School Board ought to have relied on this fact alone in giving him the authority to make educational decisions on his son's behalf.

The School Board requested that the application be dismissed as having no reasonable prospect of success at a summary hearing. At the summary hearing, the School Board argued that it was acting in accordance with an existing Court Order at the time, as well as its statutory obligations under the *Education Act* and the *Children's Law Reform Act.* The School Board further stated that the requirements for the mother's consent and legal documentation is applied similarly to all parents, regardless of their race, disability, family or marital status, leaving no basis upon which Bettencourt could claim discrimination, contrary to the Code.

The Human Rights Tribunal of Ontario (HRTO) agreed with the School Board and ultimately granted its request to dismiss Bettencourt's application on the basis that it had no reasonable prospect of success. The Vice Chair noted that Bettencourt could not provide any legal basis to support his view that his son's primary residence gave him the authority to make education decisions on his son's behalf. Furthermore, he

failed to show that the School Board was wrong in citing that it required the mother's consent or the noted legal documentation in order to facilitate the school transfer.

The Vice Chair found, however, that neither of these two points, even if proved, would result in a successful outcome for Bettencourt's human rights application. While Bettencourt may have felt aggrieved by the School Board's alleged actions, he was unable to point to any evidence that could reasonably support his claim that the conduct was related to any of the protected grounds of discrimination identified under the Code, namely race, disability, family status or marital status.

The decision is a welcome reminder to school boards across Ontario that the HRTO does not have the power to deal with general allegations of unfairness, even if the allegations are proven true. Parents who file a human rights application on their own behalf or on behalf of their children are required to demonstrate that there is evidence of discrimination beyond mere speculation and accusations connected to one of the protected grounds under the Code. Otherwise, the HRTO may dismiss the application as having no reasonable prospect of success at a summary hearing.

By

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