

ONTARIO HUMAN RIGHTS TRIBUNAL

B E T W E E N:

PHILIP ANISIMOV

Applicant

and

UNIVERSITY OF ONTARIO INSTITUTE OF TECHNOLOGY

Respondent

APPLICANT’S REQUEST FOR RECONSIDERATION – SCHEDULE A

I. OVERVIEW

1. Philip Anisimov (the “**Applicant**”) requests a reconsideration of the decision of Adjudicator Lavinia Inbar (the “**Adjudicator**”) dismissing his application (the “**Decision**”) against the University of Ontario Institute of Technology (the “**Respondent**”).

2. The Applicant’s grounds for this Request fall under paragraphs (c) and (d) of rule 26.5. Specifically, the Applicant raises three issues:

- i. the Adjudicator failed to apply the *Amselem*¹ test and inverted the subjective test for religious belief by requiring objective grounds for the Applicant’s sincere belief that his faith required him to abstain from receiving COVID-19 vaccines;
- ii. the Adjudicator disregarded binding Court of Appeal jurisprudence that defines adverse impact discrimination as requiring merely that the Applicant’s religion be connected to the adverse impact experienced; and

¹ *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#) [Amselem].

iii. the Adjudicator misapprehended the evidence by adopting a factual claim made in the submissions of counsel for the Respondent which was unsupported by evidence into the findings of fact.

3. The above three errors wholly undermine the basis for the Decision and led to a legally and factually unsupportable dismissal of the application. Correcting the errors is necessary for the Tribunal to correct harmful precedents and ensure the fairness of its decisions.

4. If granted, the Applicant requests that the Tribunal make a decision on the substance of the Request without further submissions from the parties or any re-hearing of the application. If the above errors are corrected, the only appropriate decision available is to grant the application. Aside from the specific misapprehension of evidence which can be corrected by a review of the recording of the hearing, the Applicant is not contesting the factual findings in the Decision. By applying the correct legal tests to those findings of fact, the Tribunal can rescind the Decision and grant the application without the need for re-hearing evidence or further submissions. The record provides the evidence necessary for the Tribunal to determine an appropriate remedy on the application.

II. FACTUAL BACKGROUND

5. The Applicant was a student enrolled in the Respondent University from 2017-2023.²

6. He is a Protestant Christian and a member of the Baptist Church.³ Based on his belief in the Bible, he believes that he is religiously required to abstain from products that have been developed or brought to market in reliance on abortion or any products derived therefrom because he believes that abortion is murder and he must not use the fruits of immoral practices.⁴

² *Anisimov v. Ontario Tech University*, [2025 HRTO 2377](#), at paras. 17, 23 [the “Decision”].

³ *Ibid*, at para. 14.

⁴ *Ibid*, at paras. 14-15.

7. Following his religious beliefs, the Applicant was morally opposed to the COVID-19 vaccines available in 2021-2022 because they used abortive fetal tissue cell lines in their production and testing.⁵

8. In August 2021, the Respondent notified students that they would be required to provide proof of vaccination against COVID-19 to attend campus in the upcoming academic year.⁶ On August 23, 2021, the Applicant submitted a request for accommodation citing his religious beliefs as a basis for objecting to the COVID-19 vaccines.⁷

9. Following an exchange of rejections from the Respondent and responses from the Applicant, the Applicant was ultimately refused an accommodation but granted an interim accommodation for the fall term that allowed him to complete his exams online.⁸ He was still not allowed to attend campus in person.

10. In the winter term, the Applicant was deregistered from two courses: Industrial Ergonomics and the Capstone Course. The Capstone Course consisted entirely of group work with only two in-person presentations to be given near the end of the semester. Industrial Ergonomics had an in-person exam at the end of the year.⁹ Mr. Anisimov required an accommodation allowing him to attend campus for the two presentations and to complete the Industrial Ergonomics exam virtually (or else be allowed to attend a third time).

11. Having not received the accommodation, Mr. Anisimov was required to attend university for an extra year from 2022-2023 to complete his degree requirements. He received his diploma on May 11, 2023.¹⁰

⁵ *Ibid*, at para. [16](#).

⁶ *Ibid*, at para. [19](#).

⁷ *Ibid*, at para. [21](#).

⁸ *Ibid*, at paras. [22-23](#).

⁹ *Ibid*, at paras. [25-26](#).

¹⁰ *Ibid*, at para. [26](#).

12. Other than the interim accommodations given for the fall term, the Respondent denied all accommodation requests connected to a religious objection to the use of fetal cell lines.¹¹ One student given an interim accommodation was permitted to attend campus for a lab requirement.¹² Note that the findings made by the Adjudicator with respect to this other student form the basis for one of the grounds for reconsideration discussed more fully below.

III. ISSUES AND ARGUMENT

13. The Applicant raises three grounds for reconsideration falling under paragraphs (c) and (d) of rule 26.5. The Decision conflicts with established jurisprudence by failing to properly apply the *Amselem*¹³ test and disregarding the adverse impact discrimination experienced by the Applicant. The Decision also contains a finding of fact that was not in evidence, but merely asserted by counsel in closing submissions, which outweighs the public interest in the finality of Tribunal decisions.

A. The Decision Conflicts with *Amselem* Test

14. Despite citing *Amselem* at paragraph 69 of the Decision, the Adjudicator proceeded to disregard binding precedent from the Supreme Court of Canada.

15. The Adjudicator cited *Amselem* for the proposition that religious practices encompass those practices “which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice of belief is required by official religious dogma...”.¹⁴

¹¹ Witness Statement of Monica Jain at paras. 26-27; see also Decision at paras. [44-45](#).

¹² Decision at para. [42](#).

¹³ *Amselem*, *supra*.

¹⁴ Decision at para. [69](#) cit’g *Amselem*, *supra*, at para. [46](#).

16. However, despite citing this clear statement from the Supreme Court, the adjudicator went on to find that “[j]ust because a person has a religion, and has beliefs that they ascribe to that religion, it does not mean that the beliefs constitute a creed for the purposes of the Code.”

17. The Adjudicator found that the Applicant’s religious beliefs are sincerely held¹⁵ and was “prepared to accept” that the beliefs are linked to his identity¹⁶ and that the Applicant’s objections to vaccines are part of the overarching system of beliefs entailed by his Christian faith.¹⁷

18. Nevertheless, the Adjudicator found that the Applicant did not have a protected characteristic under the *Code* because the Applicant “has not pointed to any objective religious precepts that forbid vaccines, aside from his own interpretations of Biblical passages.”¹⁸ The Adjudicator also found that the Applicant “must be able to show that the belief is a tenet of an organization or at least a community comprised of more than a number of unconnected individuals who happen to be members of the same religion.”¹⁹

19. The Decision repudiates the principle from *Amselem* that a belief need only have a nexus with religion and be sincerely held. The Adjudicator’s findings of fact that the Applicant’s beliefs were sincere and that they were a part of his Christian beliefs are dispositive of the issue. In *Amselem*, the Supreme Court explained that the test “encompasses objective as well as personal notions of religious belief, ‘obligation’, precept, ‘commandment’, custom or ritual” and that “both obligatory as well as voluntary expressions of faith” are protected.²⁰ The Court was explicit that

¹⁵ Decision at para. [72](#).

¹⁶ *Ibid*, at para. [73](#).

¹⁷ *Ibid*, at para. [74](#).

¹⁸ *Ibid*, at para. [79](#).

¹⁹ *Ibid*, at para. [80](#).

²⁰ *Amselem*, *supra*, at para. [47](#).

“a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion.”²¹

20. Nevertheless, the Applicant *did* point to an objective basis for his beliefs. He cited Bible passages that form the basis for his belief that 1) murder is sinful, 2) unborn children have personhood, and 3) he is morally required to abstain from the fruits of evil. Based on these beliefs, there is a clear nexus between his decision to avoid vaccines that were developed or tested on fetal cell lines and his religious beliefs.

21. The Adjudicator’s comment a “creed may well provide support for many different beliefs” is in direct contradiction to the Supreme Court’s holding in *Multani v. Commission scolaire Marguerite-Bourgeoys* that the “fact that different people practice the same religion in different ways does not affect the validity of the case of a person alleging that his or her freedom of religion has been infringed.”²² The Court’s statement was made in interpreting and applying *Amselem* and is equally applicable to the human rights context.

22. The case cited by the Adjudicator, *L.L. v. Dollarama Inc.*, does not support a departure from *Amselem*. In that case, the Tribunal found that the applicant “did not provide any explanation of an objective Christian precept on mask wearing.”²³ The applicant in that case provided a rambling explanation for his objection to mask wearing which referenced Christian ideas – such as being made in the image of God and the apocalypse – but did not explain how an objection against wearing masks was a Christian practice. There was no link between his belief and his practice in that case.

²¹ *Ibid*, at para. 48.

²² *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6.

²³ *L.L. v. Dollarama Inc.*, 2022 HRTO 974 at para. 7.

23. By contrast, the Adjudicator in this case accepted that Mr. Anisimov's objections to vaccines was rooted in his Christian faith and religious objection to abortion. Mr. Anisimov cited specific Bible passages and traced a clear line to his belief that he is religiously required to abstain from the COVID-19 vaccines.

24. The Adjudicator's basis for rejecting the Applicant's religious beliefs as a protected ground under the *Code* is incompatible with the approach outlined in binding Supreme Court jurisprudence. This involves a matter of general public importance as it engages fundamental definitional aspects of protection for religious practices. Uncorrected, the Decision establishes a precedent that invites future Tribunals to engage in explorations of whether religious practices are truly required by an applicant's religion, which the Supreme Court explicitly warned against in *Amselem*.²⁴ To correct this fundamental error and ensure compliance with foundational, binding jurisprudence, the Decision must be rescinded.

B. The Decision Conflicts with the Jurisprudence on Adverse Impact Discrimination

25. The Decision also conflicts with established jurisprudence on adverse impact discrimination. The Adjudicator found that the Applicant's creed was not a factor in his deregistration. The Adjudicator found that the Respondent made its decision to deregister the Applicant based on its research into the link between aborted fetuses and vaccines, the health and safety risks of the COVID-19 vaccines.²⁵ The Adjudicator found that the adverse treatment of the Applicant was "due to the [R]espondent not accepting [the Applicant's] proposed health and safety accommodations."²⁶

²⁴ *Amselem* at para [54](#).

²⁵ Decision at para. [87](#).

²⁶ *Ibid*, at para. [90](#).

26. This analysis misunderstands the third step of the *Moore* test.²⁷ The Ontario Court of Appeal has recently considered the *Moore* test and, in describing the third step, stated that

the applicant need only prove a *connection* between the prohibited ground and the adverse treatment. The connection does not need to be causal. Further, the connection between the adverse treatment and the prohibited ground can co-exist with other non-discriminatory factors. The Prohibited ground need not be the only reason for the adverse treatment, or even the predominant reason. [emphasis added]²⁸

27. The Court of Appeal also affirmed the continuing relevance of the concept of adverse impact discrimination. It stated that adverse impact discrimination “exists where a rule or policy is neutral on its face, but adversely affects members of a protected group.”²⁹ It stressed that the fact that the discriminatory effect is not intended by a neutral rule does not make its effect any less real for the affected group.³⁰ This Tribunal has used a work schedule that requires an employee who observes a Saturday sabbath to work on Saturday as an example of constructive, or adverse impact discrimination.³¹

28. The present case is analogous. The Applicant’s religious beliefs were the basis for his refusal to receive the COVID-19 vaccines. His refusal to receive the vaccines was the basis for the Respondent’s decision to deregister him. That deregistration was the adverse impact. The vaccination requirement, though facially neutral, imposed an adverse impact on the Applicant and the other students with religious objections to receiving the vaccines. Their religious objection was a factor connecting the impact to the protected ground.

²⁷ *Moore v. British Columbia (Education)*, [2012 SCC 61](#).

²⁸ *Imperial Oil Limited v. Haseeb*, [2023 ONCA 364](#) at para. 51.

²⁹ *Ibid*, at para. 60.

³⁰ *Ibid*, at para. 61.

³¹ *Landau v. Metropolitan Toronto Condominium Corporation #757*, [2021 HRTO 76](#) at para. 30; See also *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985 CanLII 18 \(SCC\)](#), [1985] 2 SCR 536.

29. It is impossible to square the Decision with the statement of law by the Court of Appeal in *Imperial Oil*. Notably, the Adjudicator cited no case law to support her analysis that the current matter did satisfy the third branch of the *Moore* test.

30. Such a blatant departure from established jurisprudence is a matter of general importance. If left uncorrected, it establishes a precedent that undermines the category of constructive, or adverse impact discrimination which is necessary to ensure that discriminatory effects – and not just intentions – are captured by the *Code*. The Decision is inconsistent with a robust protection for human rights and vigorously combatting discrimination and must be corrected.

C. The Adjudicator Misapprehended the Evidence in Making a Finding of Fact that was not Available on the Record

31. The Adjudicator also made a finding of fact that was unsupported by the evidence before her. At paragraph 42 of the Decision, the Adjudicator reviewed the evidence of Monica Jain which was that a student granted an interim accommodation in the fall term was allowed to attend campus to complete his lab requirements. However, the Adjudicator stated that the student was alone in the lab.

32. To the best of this counsel's recollection and notes, that finding is a misstatement of the evidence. A review of the recording of the hearing would be able to verify as much. Ms. Jain did not state that in either her witness statement or during her oral testimony. Counsel for the Respondent asserted that the student was alone in the course of her oral submissions. Counsel for the Applicant raised the issue that the assertion was not in evidence in his reply submissions.

33. This factual finding is crucial to the Adjudicator's finding that the Respondent could not have accommodated the Applicant without undue hardship. Without the finding that the other student was alone, there is nothing to differentiate his situation from that of the Applicant's. If the

Respondent could allow the other student to attend campus in person, then it could have done the same for the Applicant without undue hardship.

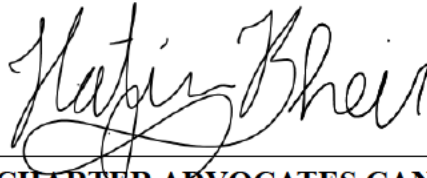
34. Correcting his error outweighs the importance of finality in Tribunal decisions because the decisions must be based on facts reasonably available to an adjudicator on the evidence before her. Here, the Applicant is not disputing a credibility finding, or the wisdom of a particular inference. Rather, a claim wholly unsupported by evidence was made into a factual finding. Correcting the erroneous finding completely undermines the Adjudicator's conclusion on the issue of undue hardship. Allowing the application to be dismissed on unsupported basis is unjust and undermines the purpose of the Tribunal to rectify cases of discrimination.

IV. REMEDY REQUESTED

35. The Applicant requests that the Tribunal make a decision on the substance of the Request without further submissions from the parties. Aside from the one factual error identified above, the Applicant is not disputing the fairness of the hearing process or the summary of the facts stated by the Adjudicator. If the Tribunal accepts the arguments made in this Request, it will have the information it needs to rescind the Decision and grant the Application.

36. Correcting the legal errors made in the *prima facie* discrimination analysis inevitably leads to the conclusion that adverse impact discrimination is present. Similarly, correcting the misapprehension of evidence completely undermines the Adjudicator's analysis on undue hardship. A finding of undue hardship in accommodating the Applicant cannot stand if another student received the same accommodation. With both analyses, corrected, the only appropriate result is to grant the application. The record before the Tribunal is sufficient to allow for a decision on the appropriate remedy on the Application. A rehearing or further submissions would be unnecessary.

DATED this 22nd day of October, 2025

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CHARTER ADVOCATES CANADA

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Hatim Kheir (LSO No: 79576J)

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**Counsel for the Applicant,
Philip Anisimov**