

Court File No.: DC-25-00000929-00JR

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

PHILIP ANISIMOV

Applicant

and

**THE HUMAN RIGHTS TRIBUNAL OF ONTARIO and THE UNIVERSITY OF
ONTARIO INSTITUTE OF TECHNOLOGY**

Respondents

APPLICATION UNDER Rules 14.05(2) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990,
Reg. 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c J.1.

FACTUM OF THE APPLICANT

April 10, 2026

CHARTER ADVOCATES CANADA

[REDACTED]

Hatim Kheir (LSO#79576J)

T. [REDACTED]
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Counsel for the Applicant

I. OVERVIEW

1. The Applicant, Philip Anisimov, seeks judicial review of the decision of the Human Rights Tribunal of Ontario (the “**Tribunal**”) denying his application. In the application below, the Applicant argued that the University of Ontario Institute of Technology (the “**University**”) discriminated against him on the basis of religion by refusing to grant his request for accommodation from the University’s vaccine policy.

2. The Applicant is a Christian with a religious objection to the COVID vaccines available at the time because of their use of fetal cell lines in their testing and development. When the University implemented a policy requiring students to get vaccinated, he used the provided forms to seek an accommodation for his religious beliefs. Ultimately, the University rejected his requested accommodation and deregistered him from two courses in the winter 2022 term which resulted in the Applicant taking an additional year to complete his degree requirements.

3. The Applicant brought an Application to the Tribunal alleging that he had been discriminated against on the basis of creed. Under the test from *Moore v. British Columbia (Education)*, the Tribunal had to first determine if there was a *prima facie* case of discrimination and, if so, whether the Applicant could be accommodated without undue hardship to the University.¹ Following a hearing, the Tribunal rejected the application (the “**Initial Decision**”).

4. The Tribunal concluded that *prima facie* discrimination had not been established because the Applicant’s beliefs were not protected under creed and, even if they were, the Applicant’s deregistration was unconnected to his creed. The Tribunal also found that, even if *prima facie* discrimination had been present, the University could not accommodate the Applicant without undue hardship. The Applicant requested that the Tribunal reconsider its Initial Decision, which

¹ *Moore v. British Columbia (Education)*, [2012 SCC 61](#) at paras. [33](#), [49](#) [*Moore*].

the Tribunal also rejected (the “**Reconsideration Decision**”) (the Initial Decision and Reconsideration Decision are referred to collectively as the “**Decision**”).

5. On this application, the Applicant makes four substantive arguments:

- i. that the Tribunal, in finding that the Applicant did not engage the protected ground of creed, misapplied the applicable test from *Syndicat Northcrest v. Amselem*² by imposing an objective requirement for religious beliefs which the majority of the Supreme Court rejected;
- ii. that the Tribunal was unreasonable in finding that the Applicant’s deregistration was unconnected to his religious beliefs by shifting the focus of the analysis away from the discriminatory effects of the University’s decision to its motivations, contrary to governing jurisprudence;
- iii. that the Tribunal misapprehended evidence by attributing a claim made by University’s counsel in closing submissions to a witness and thus making a finding without an evidentiary basis. The Applicant argues that if this misapprehension is corrected, the Tribunal’s finding that the University could not accommodate the Applicant without undue hardship is unreasonable because the University had granted the same accommodation to another unvaccinated student; and
- iv. the Tribunal unreasonably excluded the expert evidence of Dr. Thomas Warren who opined on the relative risk of an unvaccinated student with a negative antigen test as compared with vaccinated students. The Tribunal found that Dr. Warren’s evidence was not relevant to any issues it had to

² *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#) [*Amselem*].

decide. However, the Tribunal then based its conclusions on the issue of undue hardship on the health and safety risks posed by accommodating the Applicant.

II. FACTUAL BACKGROUND

A. The Applicant's Request for Accommodation

6. The Applicant was a student enrolled in the University from 2017-2023.³

7. He is a Protestant Christian and a member of the Baptist Church.⁴ 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.⁵

8. 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.⁶

9. 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.⁷ 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.⁸

³ *Anisimov v. Ontario Tech University*, [2025 HRTO 2377](#), at paras. [17](#), [23](#) [the “**Initial Decision**”]; Record of Proceedings (“**ROP**”), Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at para. 5.

⁴ Initial Decision at para. [14](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at para. 2.

⁵ Initial Decision at paras. [14-15](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at paras. 3-4.

⁶ Initial Decision at para. [16](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at para. 10.

⁷ Initial Decision at para. [19](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at paras. 8-9.

⁸ Initial Decision at para. [21](#).; ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at paras. 12-13.

B. The University's Denial of the Applicant's Requested Accommodation

10. 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.⁹ He was still not allowed to attend campus in person.

11. 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.¹⁰ The Applicant 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).

12. Having not received the accommodation, the Applicant was required to attend university for an extra year from 2022-2023 to complete his degree requirements. He received his diploma on May 11, 2023.¹¹

13. 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.¹²

C. The Hearing before the Tribunal

14. The application was heard by the Tribunal over two days on April 15-16, 2025.¹³ On the first day of the hearing, the Applicant called two witnesses: Dr. Thomas Warren and the Applicant.

⁹ Initial Decision at paras. [22-23](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at paras. 14-23.

¹⁰ Initial Decision at paras. [25-26](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at paras. 26-29.

¹¹ Initial Decision at para. [26](#); ROP, Vol. 1, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at para. 31.

¹² ROP, Vol. 2, Tab 32, Exhibit 15, Witness Statement of Monica Jain at paras. 26-27; see also Initial Decision at paras. [44-45](#).

¹³ Application Record ("AR"), Tab 4, Affidavit of Darren Leung at para. 2.

15. Dr. Warren, an Infectious Diseases consultant and Medical Microbiologist, provided an Expert Report which opined that 1) COVID vaccines did not have a significant effect on transmission; 2) the risk posed by an unvaccinated person who has tested negative with an antigen test was comparable to that of a vaccinated person; and 3) the risk posed by an unvaccinated person in a largely vaccinated population is negligible. Dr. Warren testified in a *voir dire* and he was ultimately not qualified as an expert witness.¹⁴ The Tribunal held that it “would not be making determinations with respect to the above issues.”¹⁵

16. The Respondent called Monica Jain (Director of Careers, Counselling and Accessibility) and Hossam Kishawy (Dean of the Faculty of Engineering).¹⁶ The witnesses provided their evidence in chief by adopting witness statements and were cross-examined on their statements.¹⁷

17. On the second day of the hearing, Dr. Kishawy concluded his evidence, and the parties made their closing submissions.¹⁸

18. In Ms. Jain’s witness statement, she explains that all students who requested accommodation on the basis of a religious objection to vaccines which used fetal cell lines were given an interim accommodation. She added that one unvaccinated chemistry student was permitted to attend campus to complete a lab requirement (the “**Student**”).¹⁹ During her cross-examination, Ms. Jain testified that the Student was required to take a rapid antigen test, go directly to the lab, and leave immediately after completing the lab.²⁰ Ms. Jain did not say anything about the Student being alone in the lab.²¹

¹⁴ AR, Tab 4, Affidavit of Darren Leung at para. 3.

¹⁵ Initial Decision, at paras. [29-30](#).

¹⁶ AR, Tab 4, Affidavit of Darren Leung at para. 3.

¹⁷ See ROP, Tabs 20, 32, and 34.

¹⁸ AR, Tab 4, Affidavit of Darren Leung at para. 6.

¹⁹ Decision at para. [42](#); ROP, Vol. 2, Tab 32, Exhibit 15, Witness Statement of Monica Jain at para. 24.

²⁰ AR, Tab 4, Affidavit of Darren Leung at paras. 4-5.

²¹ AR, Tab 4, Affidavit of Darren Leung at paras. 9, 11.

19. During closing submissions, counsel for the University submitted that the Student was alone in the lab and argued that this fact distinguished the Student’s circumstances from the Applicant’s requested accommodation.²² Counsel for the Applicant raised the issue in his reply submissions, stating that there was no evidence on the record which supported the claim that the Student was alone in the lab. He argued that, in the absence of that distinction, the University’s decision to permit the Student to attend campus in person demonstrated that the Applicant’s requested accommodation could be granted without undue hardship.²³

D. The Initial Decision

20. The Tribunal released its Initial Decision on September 22, 2025. The Tribunal denied the application, finding that there was no *prima facie* case of discrimination and, in the alternative, even if there were, the Applicant could not have been accommodated without undue hardship on the University.²⁴

21. In the course of its review of the evidence, the Tribunal stated that Ms. Jain had provided evidence that the Student was alone in the lab when permitted to attend campus.²⁵

22. In finding that the Applicant did not have a protected characteristic engaged in the application, the Tribunal accepted that the “applicant’s religious beliefs appear to be sincerely held.”²⁶ However, the Tribunal went on to find that:

[76] A belief or practice based in the belief, does not become part of a creed simply because a person has both the belief and the creed and finds support for their belief or practice in the creed. The creed may well provide support for many different beliefs.

²² AR, Tab 4, Affidavit of Darren Leung at para. 8.

²³ AR, Tab 4, Affidavit of Darren Leung at para. 10.

²⁴ Initial Decision at paras. [3](#), [65](#), [112](#).

²⁵ *Ibid*, at para. [42](#).

²⁶ *Ibid*, at para. [72](#).

[77] The protections of the Code do not cover beliefs, not matter how sincerely or widely held. Just 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.

[78] In addition to personal beliefs, to establish a creed, the Tribunal has previously held that an objective principle or guideline that prohibits a practice, is required...

[79] The applicant has not pointed to any objective religious precepts that forbid vaccines, aside from his own interpretations of Biblical passages.

[80] Similarly, the applicant has not established some nexus or connection to an organization or community that professes a shared system of belief. While it is not necessary for religious leaders to endorse a belief for it to have some nexus to an organization or community, 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.

23. The Tribunal also found that the Applicant had not established that his creed was a factor in his adverse impact.²⁷ The Tribunal’s conclusion was driven by its finding that the University’s “research entirely informed its ultimate decisions which resulted in the disadvantage or adverse impact experienced” by the Applicant.²⁸

24. The Tribunal also found that the University could not accommodate the Applicant because permitting him to attend campus in person after submitting to antigen testing “would amount to undue hardship because of the health and safety considerations at play at the time.”²⁹

E. The Reconsideration Decision

25. On October 22, 2025, the Applicant submitted a request for reconsideration of the Initial Decision to the Tribunal.³⁰ The Applicant raised three grounds for reconsideration of the Initial Decision. The Applicant argued that:

- i. the Tribunal failed to apply the *Amselem* test by imposing a requirement for an objective ground for the Applicant’s sincerely held religious beliefs;

²⁷ *Ibid*, at para. 84.

²⁸ *Ibid*, at para. 87.

²⁹ *Ibid*, at para. 111.

³⁰ ROP, Vol. 1, Tab 5, Request for Reconsideration.

- ii. the Tribunal disregarded binding Court of Appeal jurisprudence defining adverse impact discrimination as merely requiring the Applicant’s religious belief to be connected to the adverse impact he suffered; and
- iii. the Tribunal misapprehended the evidence by adopting a factual claim made in counsel’s submissions which was unsupported by evidence (i.e. that the Student was alone in the lab when permitted to attend campus in person).³¹

26. On October 29, 2025, the Tribunal released the Reconsideration Decision, which was rendered by the same adjudicator who rendered the Initial Decision.³² The Tribunal denied the request for reconsideration.

27. With respect to the Applicant’s arguments that the Tribunal failed to adhere to the *Amselem* test and jurisprudence governing the connection between protected grounds and adverse impacts, the Tribunal found that the Applicant did not “establish, pursuant to Rule 26.5(c), that the Tribunal’s Decision conflicts with established jurisprudence or procedure.”³³

28. With respect to the Applicant’s argument that the Tribunal misapprehended the evidence, the Tribunal did not address whether the evidence supported the claim that the Student was alone. Rather, the Tribunal concluded that the finding of undue hardship was not dependant on whether the other Student was alone in the lab.³⁴ The Tribunal dismissed the relevance of the other Student’s accommodation on the basis that the Student was permitted to attend campus in person during the fall term whereas the Applicant requested accommodation for the following term.³⁵ The Tribunal added that “[e]very accommodation request must be considered on its own facts and the Decision

³¹ ROP, Vol. 1, Tab 5, Request for Reconsideration, Schedule A, para. 2.

³² *Anisimov v. Ontario Tech University*, [2025 HRTO 2702](#) [the “**Reconsideration Decision**”].

³³ *Ibid*, at para. [21](#).

³⁴ *Ibid*, at para. [25](#).

³⁵ *Ibid*, at para. [26](#).

was made in the context of the factual situation presented in this specific case.”³⁶ The Tribunal did not otherwise explain how the Applicant’s circumstances were different from the Student’s.

III. ISSUES AND LAW

29. The Applicant raises the following issues on this application:

- a. the applicable standard of review;
- b. whether the Tribunal erred in applying the *Amselem* test by imposing an objective requirement for sincerely held religious beliefs;
- c. whether the Tribunal was unreasonable in finding that the Applicant’s deregistration was unconnected to his religious beliefs;
- d. whether the Tribunal was unreasonable in making findings without a basis in the evidence and which materially impacted its conclusions about undue hardship;
- e. whether the Tribunal was unreasonable in refusing to qualify Dr. Warren to provide expert evidence on the basis that it would not make determinations on the issues on which he opined and then contradictorily basing her finding of undue hardship on the health and safety considerations at play at the time; and
- f. if the Decision is quashed, the appropriate remedy.

A. Standard of Review

i) Governing Principles

30. The starting position is that the standard of reasonableness presumptively applies. Courts may depart from the presumption where required by legislation or the rule of law.³⁷ Two situations (among others) where the rule of law requires departing from the presumption and applying a

³⁶ *Ibid*, at para. 28.

³⁷ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 31-32 [*Vavilov*].

correctness standard are constitutional questions and questions of law of central importance to the legal system as a whole.³⁸ The category of constitutional questions includes “whether a *Charter* right arises, the scope of its protection, and the appropriate framework of analysis.”³⁹

31. The category of questions of law of central importance to the legal system captures questions which require uniform and consistent answers because of their impact on the administration of justice. Questions which are of fundamental importance and have broad applicability with significant legal consequences for the justice system and other institutions of government require correctness review.⁴⁰

ii) Principles Applied

32. The Applicant submits that the issue of whether the Tribunal misapplied *Amselem* is reviewable on a standard of correctness because it both engages a constitutional question and is of central importance to the legal system.

33. Although this case relates the application of the *Amselem* test to the meaning of creed in a human rights context, the same test applies to the interpretation of s. 2(a) of the *Charter* and creed under the *Code*. The category of constitutional questions applies to the issue of the appropriate framework of analysis for *Charter* rights. The issue of the proper application of *Amselem* will have consequences for both *Charter* litigation and human rights litigation. Therefore, the Court ought to provide a determinative answer on the issue.

34. In the alternative, the issue raises a legal question of central importance to the legal system. As noted above, it has implications for both constitutional and human rights cases. The same concept of creed is protected under human rights legislation across the country. Whether *Amselem*

³⁸ *Ibid*, at para. [53](#).

³⁹ *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, [2024 SCC 22](#) at para. [63](#).

⁴⁰ *Vavilov*, *supra*, at para. [59](#).

has an objective component shapes the boundaries of religious protection which will influence the behaviour of government across its institutions. Accordingly, the issue ought to have a consistent answer set by the court.

35. For the remaining issues, the Applicant submits that the presumptive standard of reasonableness applies.

B. The Tribunal Misapplied the *Amselem* Test

i) Governing Principles

36. In determining whether the Applicant had established a *prima facie* case of discrimination, the Tribunal had to first determine whether he had a protected characteristic.⁴¹ The term “creed” under the *Code* encompasses religion.⁴² The test consistently applied by the Tribunal for creed is the *Amselem* test.⁴³

37. In *Amselem*, the Supreme Court held that freedom of religion “encompasses objective as well as personal notions of religious belief, ‘obligation’, precept, ‘commandment’, custom or ritual. Consequently, both obligatory as well as voluntary expressions of faith should be protected... [emphasis added]”⁴⁴ The Supreme Court explicitly added that “a claimant need not show some sort of objective religious obligation, requirement or precept to invoke freedom of religion.”⁴⁵

38. The Supreme Court articulated the test for religious claims as follows:

...an individual advancing an issue premised upon a freedom of religion claim must show the court that (1) he or she has a practice or belief, having a nexus with religion, which

⁴¹ *Moore, supra*, at para. 33; *Peel Law Association v. Pieters*, 2013 ONCA 396 at paras. 55-59 [*Pieters*].

⁴² *Jazairi v. Ontario (Human Rights Comm.)*, 1997 CanLII 12445 (ON SC) at paras. 36-38, aff’d 1999 CanLII 3744 (ON CA).

⁴³ See *Oulds v. Attorney General of Ontario, et al.*, 2025 ONSC 2763 (CanLII) at para. 56;

Clipperton-Boyer v. RedFlagDeals.com, 2014 HRTO 1796 at paras. 15-16;

Hamilton-King v. Norwich (Township), 2024 HRTO 1648 at para. 5.

⁴⁴ *Amselem, supra*, at para. 47.

⁴⁵ *Ibid*, at para. 48.

calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual’s spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and (2) he or she is sincere in his or her belief...
[emphasis added]

39. Labour arbitrators applying the *Code* and other human rights legislation have repeatedly held that sincere religious objections to vaccination against COVID are protected beliefs.⁴⁶ In many of the decisions, arbitrators accepted claims for accommodation arising from the same religiously-based concerns with fetal cell lines as in the Applicant’s case.⁴⁷

40. A consistent thread through the arbitral jurisprudence is that the *Amselem* test is satisfied by subjective interpretations of religious obligation. A few examples include:

- *Public Health Sudbury* – an Ontario arbitrator held that “[t]here can be multiple reasons for objecting to vaccination, but as long as one of the reasons is sincerely and legitimately based upon one’s creed, as subjectively interpreted and applied, an applicant would be entitled to an exception under the *Code*.”⁴⁸
- *Wilfred Laurier* - another Ontario arbitrator noted that a university’s denial of requests for accommodation due to a “failure of the Grievors to provide objective evidence that their respective faiths required them to decline vaccination” was “not the right analysis.”⁴⁹

⁴⁶ *Public Health Sudbury & Districts v Ontario Nurses’ Association*, 2022 CanLII 48440 (ON LA) [*Public Health Sudbury*]; *Wilfrid Laurier University v United Food and Commercial Workers Union*, 2022 CanLII 120371 (ON LA) [*Wilfred Laurier*]; *Nova Scotia Nurses’ Union v IWK Health Centre*, 2022 CanLII 57410 (NS LA) [*IWK*]; *Island Health v United Food & Commercial Workers Local 1518*, 2022 CanLII 127683 (BC LA) [*Island Health*]; *Perren v. Canadian National Railway Company*, 2025 CHRT 110 (CanLII) [*Perren*]; *Canadian Union of Public Employees, Local 79 v. Toronto (City)* (11 April 2023), Toronto, Unreported, (ON LA), Book of Authorities, Tab 1 [*Re De Castro*]; *British Columbia Rapid Transit Company Limited v Canadian Union of Public Employees, Local 7000*, 2022 CanLII 100817 (BC LA) [*Rapid Transit*]; *Canadian National Railway v Teamsters Canada Rail Conference Rail Traffic Controllers*, 2024 CanLII 87100 (CA LA) [*CNR*]; *Air Canada v Air Line Pilots’ Association*, 2026 CanLII 16803 (CA LA) [*Air Canada*].

⁴⁷ *Public Health Sudbury*, *supra*, at para. 50; *Wilfred Laurier*, *supra*, at paras. 80, 82; *Island Health*, *supra*, at para. 83; *CNR*, *supra*, at paras. 15, 36.

⁴⁸ *Public Health Sudbury*, *supra*, at para. 50.

⁴⁹ *Wilfred Laurier*, *supra*, at para. 106.

- *Island Health* – a British Columbia arbitrator held that “it is not relevant how others practice the same religion or whether church officials require or do not require a particular practice.”⁵⁰ That same arbitrator also found that even beliefs about the world (such as the ingredients of vaccines) which implicate religious obligations, if sincerely held, engage creedal protections.⁵¹

ii) Principles Applied

41. The Tribunal failed to properly apply the subjective test from *Amselem* and, instead, imposed an objective requirement for the Applicant to demonstrate the religious nature of his beliefs.

42. The Applicant has been a Baptist Christian his entire life. He explained in his requests for accommodation and to the Tribunal that he believes abortion is wrong because the Bible teaches that murder is a sin and human personhood begins in the womb.⁵² The Applicant further explained that his moral objection to abortion extends to products made, developed, or brought to market in reliance on the byproducts of abortion because the Bible forbids using the fruits of evil.⁵³

43. The Tribunal accepted that the Applicant’s religious beliefs were sincere,⁵⁴ that his beliefs about vaccination were part of the overarching system of Christianity,⁵⁵ and that they were integrally linked to his self-definition and fulfilment.⁵⁶ Those facts should have determined the Tribunal’s conclusion under *Amselem*. The Applicant’s objection to vaccination was a part of his religiously based morals.

⁵⁰ *Island Health*, *supra*, at para. 78 see also *Air Canada*, *supra*, at para. 36.

⁵¹ *Ibid*, *supra*, at para. 83. The arbitral jurisprudence is replete with similar examples. See the cases listed at footnote 46 for a full list.

⁵² ROP, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov, para. 3; Exhibit 3, Schedules A, C, E..

⁵³ ROP, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov, para. 4; Exhibit 3, Schedule C.

⁵⁴ Initial Decision at para. 72.

⁵⁵ *Ibid*, at para. 74.

⁵⁶ *Ibid*, at para. 73.

44. Yet, despite accepting the above, the Tribunal found that the Applicant's creed was not engaged. The Tribunal imposed a requirement that the Applicant present "an objective principle or guideline that prohibits a practice."⁵⁷ The Tribunal found that the Applicant had "not pointed to any objective religious precepts that forbid vaccines, aside from his own interpretations of Biblical passages."⁵⁸

45. Respectfully, the above analysis utterly disregards the Supreme Court's ruling that, to be protected, beliefs need only be sincere, have a nexus with religion, and be subjectively obligatory. To the extent that something more than a mere assertion is required to establish the religious nexus, the Applicant provided that by rooting his beliefs in Bible passages. Nothing more than "his own interpretations" was necessary. As articulated by an Ontario arbitrator, the "individual decision about what one's faith requires of a member to avoid condoning, cooperating with, or participating in abortion remains a decision about how a member interprets and applies their faith, and has a nexus to the individual's creed."⁵⁹

46. The Tribunal went farther and imposed a requirement that the Applicant "show that the belief is a tenet of an organization or at least a community comprised of more than a number of connected individuals who happen to be members of the same religion."⁶⁰ Such a requirement is at odds with *Amselem* where the Supreme Court explicitly rejected the need for evidence of the practices and beliefs of other adherents of the faith.⁶¹ The focus of the inquiry is what the claimant views as his personal religious obligations.⁶²

⁵⁷ *Ibid*, at para. [78](#).

⁵⁸ *Ibid*, at para. [79](#).

⁵⁹ *Public Health Sudbury, supra*, at para. [48](#).

⁶⁰ Initial Decision at para. [80](#).

⁶¹ *Amselem, supra*, at para. [54](#).

⁶² *Ibid*.

47. The Tribunal reversed the *Amselem* test by transforming the inquiry into a test of the objective validity of the Applicant’s belief. Accordingly, the Tribunal’s analysis was incorrect. Alternatively, if the Court applies a reasonableness standard, the Decision is unreasonable because it is untenable considering the relevant factual and legal constraints.⁶³

C. The Tribunal Unreasonably found that the Applicant’s Deregistration was Unconnected to his Religious Beliefs

i) Governing Principles

48. Under the test established by the Supreme Court in *Moore v. British Columbia (Education)*, the third step of establishing a case of *prima facie* discrimination is to show that the protected characteristic was a factor in the alleged adverse treatment.⁶⁴ This third step only requires “a connection between the prohibited ground and the adverse treatment. The connection does not need to be causal” and can “co-exist with other non-discriminatory factors.”⁶⁵ The prohibited ground does not need to be the only reason, or even the predominant reason, for the adverse treatment.⁶⁶

ii) Principles Applied

49. The Tribunal unreasonably found that the Applicant’s religious beliefs were not a factor in his deregistration. The Tribunal found that the University’s refusal of the Applicant’s request for accommodation was “entirely informed” by the University’s research.⁶⁷

50. The Tribunal’s approach to this issue collapses the category of adverse impact discrimination by shifting the focus from the effects experienced by the Applicant to the intention

⁶³ *Vavilov, supra*, at para. 101.

⁶⁴ *Moore, supra*, at para. 33.

⁶⁵ *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364 at para. 51 [*Imperial Oil*].

⁶⁶ *Ibid.*

⁶⁷ Initial Decision at para. 87.

and rationale of the University. All that is required to establish a connection between the Applicant's protected ground and adverse impact is that it is a factor. In shifting the analysis to the University's decision-making process, the Tribunal imposed a stricter test which was "counter to the evolution of human rights jurisprudence, which focuses on the discriminatory effects of conduct, rather than on intention and direct cause."⁶⁸

51. The Applicant's religious beliefs dictated his decision not to get vaccinated. His refusal to get vaccinated put him in conflict with the University's policy and led to his deregistration. Under the governing case law, it is unreasonable to find that his religion was not a factor in his deregistration. In so finding, the Tribunal has disregarded the very concept of adverse impact discrimination which occurs when a policy is neutral on its face but has an adverse impact on a particular group defined by a prohibited ground.⁶⁹ On the undisputed facts of this case, the Decision is untenable in light of the governing jurisprudence and is unreasonable.

D. The Tribunal Made Findings of Fact not Based in Evidence which Materially Affected the Issue of Undue Hardship

52. Ms. Jain did not provide any evidence supporting the claim that the unvaccinated Student was permitted to attend campus in person was alone in the lab, either in her witness statement or on cross.⁷⁰ However, in closing submissions, counsel for the University alleged that the Student was alone, which distinguished his circumstances from the accommodations requested by the Applicant.⁷¹ Counsel for the Applicant raised this matter in his reply submissions.⁷²

⁶⁸ *Pieters, supra*, at para. 60.

⁶⁹ *Imperial Oil, supra*, at para. 62.

⁷⁰ AR, Tab 4, Affidavit of Darren Leung at paras. 9, 11.

⁷¹ AR, Tab 4, Affidavit of Darren Leung at para. 8.

⁷² AR, Tab 4, Affidavit of Darren Leung at para. 10.

53. Despite this, the Tribunal, in its review of the evidence, found that Ms. Jain had testified that the Student was alone.⁷³ The Applicants raised this misapprehension as a basis for reconsideration. The Tribunal did not make any findings about whether the factual finding was substantiated by evidence, but held that whether the Student was alone did not affect the Tribunal's conclusion on the issue of undue hardship.⁷⁴

54. To be reasonable, a decision must be justified in light of the facts. A decision may be rendered unreasonable where a decision maker has misapprehended the evidence before it. While a reviewing court will not interfere with factual findings absent exceptional circumstances, the circumstances of this case fall into that exception.

55. The finding that the Student was alone is entirely unsubstantiated on the evidentiary record. The Applicant is not quibbling with the Tribunal's assessment of credibility or conclusions drawn in the face of competing evidence. Rather, the Applicant's submission is that a fact not based in evidence but only asserted in submissions has made its way into the Tribunal's evidentiary review. The Tribunal's finding is unjustified in light of the evidence before it.

56. This one fact undermines the Tribunal's findings on the issue of undue hardship. If the University was able to permit one unvaccinated Student to attend campus as an accommodation, then either a) it was able to do the same for the Applicant without undue hardship, or b) there must be differences which distinguish the Applicant's circumstances from those of the Student. In the absence of any evidence that the Student was alone, there is no factual basis to distinguish his accommodation from the one requested by the Applicant and the Tribunal's conclusion on undue hardship is rendered unreasonable.

⁷³ Initial Decision at para. [42](#).

⁷⁴ Reconsideration Decision at paras. [25-28](#).

57. In the Reconsideration Decision, the Tribunal noted that the fact that one student was accommodated in a particular manner in one semester was not determinative of the University's ability to accommodate the Applicant the following semester.⁷⁵ However, the only differences identified by the Tribunal are that 1) the Student was accommodated in the fall and the Applicant's request was for the Winter term; and 2) the Student was permitted to attend campus as part of an interim accommodation while the University allegedly reviewed information about the connection between COVID vaccines and fetal cell lines, whereas that review was complete by the time the Applicant needed to be accommodated.

58. Neither of these differences have any bearing on the Applicant's submission that the University's ability to accommodate the Student belies its claim that providing the same accommodation to the Applicant would cause undue hardship. First, the differences in semester only bolsters the Applicant's argument. The vaccine policy was lifted within a month of the time when the Applicant was requesting to go to campus.⁷⁶ There is no evidence that there was any greater risk in the winter term. Second, the fact that the Student was permitted to attend campus as an interim accommodation does not mean the University could not have made the same exception for the Applicant had the University accepted the validity of his religious beliefs.

59. The Tribunal's insistence that "every accommodation request must be considered on its own facts" does nothing to grapple with the Applicant's argument that it is unreasonable to accept that the University could accommodate the Student but "health and safety reasons" prevented it from giving the same treatment to the Applicant.⁷⁷ The Tribunal's treatment of this issue and its conclusion is unreasonable.

⁷⁵ *Ibid*, at para. [25](#).

⁷⁶ ROP, Tab 20, Exhibit 3, Witness Statement of Philip Anisimov at para. 30.

⁷⁷ Reconsideration Decision at para. [28](#).

E. The Tribunal Unreasonably Excluded the Evidence of Dr. Warren

60. The Tribunal’s own analysis on the issue of undue hardship contradicted its basis for excluding Dr. Warren’s evidence.

61. Dr. Warren’s expert report addressed the following issues:

- a. Do COVID vaccines prevent transmission? If not, do COVID vaccines decrease transmission?
- b. How does the risk of transmission from a vaccinated, untested person compare to that of a person who is unvaccinated but has taken a rapid antigen test and received a negative result?
- c. If an unvaccinated person poses a greater risk of transmission, to what extent is that risk mitigated when in a population where nearly everyone else is vaccinated?⁷⁸

62. The Tribunal did not qualify Dr. Warren as an expert witness because it concluded that it “would not be making any determinations with respect to the above issues.”⁷⁹ However, the Tribunal went on to find that the University “has established that it instituted mandatory vaccination as it judged necessary in order to protect the health and safety of the university’s community” and accommodation would “amount to undue hardship because of the health and safety considerations at play at the time.”⁸⁰

63. The Tribunal’s reasoning is contradictory. It prevented the Applicant from calling evidence about the impact of the Applicant’s requested accommodation on health and safety at the University campus yet accepted the University’s determination that such accommodation posed an unacceptable risk to health and safety.

⁷⁸ Initial Decision at para. [29](#); ROP, Tab 18, Exhibit 1, Expert Report of Dr. Thomas Warren.

⁷⁹ Initial Decision at para. [30](#).

⁸⁰ *Ibid*, at para. [111](#).

64. The Tribunal explained that its conclusion was not based on whether the University's assessment of the risk of COVID transmission was factually or scientifically correct, but rather on the public health and regulatory protocols in place which the University was obligated to follow.⁸¹ However, the undisputed evidence before the Tribunal was that the provincial government gave universities the option of permitting students to decline vaccination for reasons other than medical reasons so long as they completed an educational session.⁸² Universities were also given discretion over implementation, including the consequences for non-compliance.⁸³ Thus, the regulations which bound the University did not explain the University's decision that it could not accommodate the Applicant. The University made its decision on the basis of health and safety which the Tribunal accepted.⁸⁴

65. The Tribunal's contradictory reasons render its Decision unreasonable because it constitutes a fatal flaw in its overarching logic.⁸⁵ Administrative decisions must be based on internally coherent reasoning.⁸⁶ An irrational chain of analysis or clear logical fallacies render a decision unreasonable.⁸⁷

66. The Tribunal has both restricted the Applicant from bringing evidence of the health and safety of allowing a tested, unvaccinated student on campus while basing its Decision on an acceptance of the University's assessment of the same issue. The Tribunal's analysis makes Dr. Warren's evidence relevant and renders the Tribunal's exclusion of his evidence unreasonable.

⁸¹ *Ibid*, at para. [109](#).

⁸² ROP, Tab 32, Exhibit 15, Witness Statement of Monica Jain at para. 11; Exhibit 9 (to Tab 32), Instructions of the Chief Medical Officer of Health dated August 30, 2021.

⁸³ ROP, Tab 32, Exhibit 15, Witness Statement of Monica Jain at para. 13.

⁸⁴ Initial Decision at para. [111](#).

⁸⁵ *Vavilov*, *supra*, at para. [102](#).

⁸⁶ *Ibid*.

⁸⁷ *Ibid*, at para. [102-03](#).

F. The Court Should Substitute a Finding of Discrimination and Remit the Matter Only to Determine the Appropriate Quantum of Damages

i) Governing Principles

67. When the reasonableness standard of review is applied, if a decision is quashed, the general rule is to remit the matter.⁸⁸ However, where exceptional circumstances apply, declining to remit the matter and substituting a decision may become appropriate. Some circumstances warranting a departure from the general rule include: when “a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose”, “concern for delay”, or when “the administrative decision maker had a genuine opportunity to weigh in on the issue in question.”⁸⁹

ii) Principles Applied

68. The Court should decline to remit this matter and instead substitute its own decision. With respect to the issue of whether the Applicant has raised a protected ground, the Applicant submits that a correctness standard applies. The general rule in *Vavilov* does not apply. To settle the issue of the proper application of the *Amselem* test and provide guidance to courts, tribunals, and arbitrators, the Court should simply substitute its finding.

69. With respect to the remaining issues, the Applicant submits that only one outcome is inevitable if a reasonable analysis is applied to the uncontroverted facts before the Tribunal. First, when the correct test for a connection between adverse impact and a protected ground, it is clear that the Applicant’s religion was a factor in his deregistration.

70. Second, if the misapprehension of evidence the Applicant has raised is corrected, the University’s own decision to permit another unvaccinated student to attend campus in person is dispositive of the issue of undue hardship. The University has already demonstrated that permitting

⁸⁸ *Vavilov*, at paras. [141-42](#).

⁸⁹ *Ibid.*

an unvaccinated student to attend campus on a limited basis with necessary precautions did not cause undue hardship. It should have provided the same treatment to the Applicant. The University's decision not to do so was discriminatory. With the misapprehension of evidence corrected, the Tribunal could not reasonably come to a different conclusion.

71. The excessive time which has already passed also militates in favour of the Court exercising its discretion to decide whether the Applicant has been discriminated against. The underlying application to the Tribunal relates to matters which occurred in early 2022. It has been over four years for what should be a relatively simple matter. In the interest of promoting finality and facilitating an efficient and expeditious conclusion to this matter, the Court should decide the issue of discrimination. The Applicant submits that, if the Court substitutes a finding of discrimination, it can remit the matter to the Tribunal on the limited issue of quantum of damages.

IV. ORDER REQUESTED

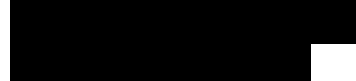
72. The Applicant respectfully requests that this Court quash the Initial Decision and Reconsideration Decision and substitute a finding that the University discriminated against the Applicant on the basis of creed. The Applicant requests that the matter then be remitted to the Tribunal for determination of the quantum of damages.

Dated April 10, 2026



Hatim Kheir

CHARTER ADVOCATES CANADA



Hatim Kheir (LSO#79576J)

T. 
E. 

Counsel for the Applicant

Schedule “A”
Table of Authorities

<i>Air Canada v Air Line Pilots’ Association</i> , 2026 CanLII 16803 (CA LA)
<i>Anisimov v. Ontario Tech University</i> , 2025 HRTO 2377
<i>Anisimov v. Ontario Tech University</i> , 2025 HRTO 2702
<i>British Columbia Rapid Transit Company Limited v Canadian Union of Public Employees, Local 7000</i> , 2022 CanLII 100817 (BC LA)
<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65
<i>Canadian National Railway v Teamsters Canada Rail Conference Rail Traffic Controllers</i> , 2024 CanLII 87100 (CA LA)
<i>Canadian Union of Public Employees, Local 79 v. Toronto (City)</i> (11 April 2023), Toronto, Unreported, (ON LA)
<i>Clipperton-Boyer v. RedFlagDeals.com</i> , 2014 HRTO 1796
<i>Hamilton-King v. Norwich (Township)</i> , 2024 HRTO 1648
<i>Imperial Oil Limited v. Haseeb</i> , 2023 ONCA 364
<i>Island Health v United Food & Commercial Workers Local 1518</i> , 2022 CanLII 127683 (BC LA)
<i>Jazairi v. Ontario (Human Rights Comm.)</i> , 1997 CanLII 12445 (ON SC)
<i>Jazairi v. Ontario Human Rights Commission</i> , 1999 CanLII 3744 (ON CA)
<i>Moore v. British Columbia (Education)</i> , 2012 SCC 61
<i>Nova Scotia Nurses’ Union v IWK Health Centre</i> , 2022 CanLII 57410
<i>Oulds v. Attorney General of Ontario, et al.</i> , 2025 ONSC 2763 (CanLII)
<i>Peel Law Association v. Pieters</i> , 2013 ONCA 396
<i>Perren v. Canadian National Railway Company</i> , 2025 CHRT 110 (CanLII)
<i>Public Health Sudbury & Districts v Ontario Nurses’ Association</i> , 2022 CanLII 48440 (ON LA)
<i>Syndicat Northcrest v. Amselem</i> , 2004 SCC 47
<i>Wilfrid Laurier University v United Food and Commercial Workers Union</i> , 2022 CanLII 120371 (ON LA)
<i>York Region District School Board v. Elementary Teachers’ Federation of Ontario</i> , 2024 SCC 22

Schedule "B"
Statutes and Regulations

N/A

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

PHILIP ANISIMOV

Applicant

and

**THE HUMAN RIGHTS TRIBUNAL OF ONTARIO and THE UNIVERSITY OF
ONTARIO INSTITUTE OF TECHNOLOGY**

Respondents

APPLICATION UNDER Rules 14.05(2) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990,
Reg. 194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c J.1.

APPLICANT'S CERTIFICATE

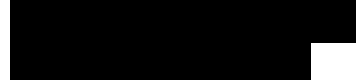
The Applicant's counsel estimates that 1 hour and 15 minutes will be required for his oral argument, not including reply. The Applicant's counsel certifies that he is satisfied that the authorities cited in the factum are all authentic.

Dated April 10, 2026



Hatim Kheir

CHARTER ADVOCATES CANADA



Hatim Kheir (LSO#79576J)

T. 
E. 

Counsel for the Applicant

PHILIP ANISIMOV

APPLICANT

-and-

THE HUMAN RIGHTS TRIBUNAL OF ONTARIO et al.

RESPONDENTS

Court File No.: DC-25-00000929-00JR

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding Commenced at TORONTO

FACTUM OF THE APPLICANT

CHARTER ADVOCATES CANADA

[REDACTED]

Hatim Kheir (LSO#79576J)

T. [REDACTED]

E. [REDACTED]

Counsel for the Applicant