

CITATION: University of Waterloo v. Roch Longueépée, 2025 ONSC 3653
DIVISIONAL COURT FILE NO.: DC-24-00000526-00JR
DATE: 20250623

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
H. Sachs, R. Reid, S. Nakatsuru, JJ.

2025 ONSC 3653 (CanLII)

BETWEEN:)
)
UNIVERSITY OF WATERLOO) *Kathryn J. Bird, Jordan Simon, Counsel for the*
) *University of Waterloo*
)
)
University)
- and -)
)
)
ROCH LONGUEÉPÉE) *David Baker, Daniel Mulroy, Counsel for the*
) *Respondent Roch Longueépée*
Respondent)
)
- and –)
)
)
HUMAN RIGHTS TRIBUNAL OF ONTARIO) *Mija-Lisa Robinson, Counsel for the*
) *Respondent Human Rights Tribunal of Ontario*
Respondent)
)
- and –)
)
)
COUNCIL OF ONTARIO UNIVERSITIES) *George Avraam, Ajanthana Anandarajah,*
) *Counsel for the Intervenor*
Intervenor)
)
)
HEARD at Toronto: May 12, 2025

REASONS FOR DECISION

S. Nakatsuru J.

A. OVERVIEW

[1] In 2013, Roch Longueépée applied to the University of Waterloo (the “University”) to be a student. His application was turned down. In assessing his qualifications, the University discriminated against him with respect to the receipt of educational services due to his learning disabilities. This violated the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”). No question arises that this was the case. Both the Divisional Court and the Ontario Court of Appeal found this to be so.

[2] Mr. Longueépée’s case returned to the Human Rights Tribunal of Ontario (the “Tribunal”) to fashion an appropriate remedy. In a decision dated May 21, 2024, and a reconsideration decision dated August 8, 2024, (collectively the “Decision”), in addition to a monetary award, the Tribunal ordered a systemic remedy: the University was to implement a pilot admissions process for its undergraduate faculties that departs from its current admissions process.

[3] The University brings a judicial review application to quash the Tribunal Decision arguing that it defies the Ontario Court of Appeal’s previous decision and guidance and is therefore, incorrect, or alternatively, unreasonable.

[4] For the following reasons, the application is dismissed.

B. BACKGROUND

1. The Prior Litigation History

[5] When Mr. Longueépée sought admission, the school grades that the University assessed were obtained before his disabilities had been identified. Those marks reflected his level of educational achievement without any accommodation or recognition of his significant learning disabilities. To gain admission, Mr. Longueépée relied upon other relevant information for admission including evidence related to his past experiences, activities, and significant achievements, as well as letters of reference and endorsements of such achievements and skill sets.

[6] The University’s decision to deny admission based on his inadequate marks was reviewed before the Human Rights Tribunal of Ontario (the “HRTO” when used in other contexts than the decision-maker in issue). The HRTO dismissed the application as well as the University’s subsequent request for reconsideration.

[7] The Divisional Court allowed Mr. Longueépée’s application for judicial review. The court found that the HRTO erred in finding that the University had reasonably accommodated Mr. Longueépée since it anchored its admission decision in his unaccommodated past grades. The court referred the matter back to the Admissions Committee: *Longueépée v. University of Waterloo*, 2019 ONSC 5465.

[8] The University appealed the Divisional Court’s decision to the Ontario Court of Appeal. *Inter alia* the University argued that the Divisional Court acted inappropriately when it bypassed the HRTO, and, instead, referred the matter back to the Admission Committee without conducting an analysis as to whether this was an exceptional case where such a remedy was warranted.

[9] The Court of Appeal allowed the University’s appeal in part. Though the court agreed with the Divisional Court that the University discriminated against Mr. Longueépée, it also found that the remedy directed by the Divisional Court was not appropriate. The matter was referred to the HRTO to determine the appropriate remedy in accordance with the *Code*: *Longueépée v. University of Waterloo*, 2020 ONCA 830, 153 O.R. (3d) 641 (C.A.).

[10] The Court of Appeal urged the HRTO to consider certain key issues and facts relating to Ontario universities, specifically that universities enjoy a measure of autonomy in the pursuit of their mission that must be understood and respected. It has long been accepted that courts should be reluctant to interfere in the core academic functions of universities. As such, the admissions process being a core feature of university autonomy, should thereby attract a higher degree of deference.

2. The Re-Hearing Before the HRTO

[11] At the eight-day re-hearing, both parties relied on witnesses and introduced considerable documentary evidence.

[12] Mr. Longueépée testified about his postsecondary education experiences, his choice to apply to the University and being denied admission. He stressed that during the application process he did not have access to the Accessibility Office of the University and was denied accommodation. He testified that had the University used a process like the Prior Learning Assessment and Recognition (the “PLAR”), this could and/or potentially would have helped him and he would have been successful at obtaining the desired university qualification.

[13] Mr. Longueépée called two proposed expert witnesses to be qualified by the Tribunal.

[14] Dr. Donna Ouchterlony, a medical physician who practiced in the area of brain injuries and neurorehabilitation, assessed Mr. Longueépée in 2014 and gave evidence regarding his identified disabilities and their impact at the previous HRTO hearing. At the re-hearing, Dr. Ouchterlony reiterated some of her previous evidence regarding Mr. Longueépée’s disabilities and her opinion that his unaccommodated grades were not reflective of his abilities. She stated that in her opinion Mr. Longueépée should have been assessed on what he had done, rather than only considering, and relying upon, his unaccommodated academic grades. On cross-examination, she agreed that some of her evidence was personal opinion. Dr. Ouchterlony recommended the Adverse Childhood Experiences scale to determine accommodations, but then agreed that this score more typically relates to emotional developmental issues, not cognitive abilities.

[15] Dr. Jutta Treviranus is an expert in post-secondary admissions and accommodations. She is the Director and founder of the Inclusive Design and Research Center at the Ontario College of Art and Design (OCAD University), is a full professor at OCAD University and holds adjunct teaching positions at the University of Toronto and Syracuse University. Dr. Treviranus has also been involved in developing accessibility legislation standards and specifications both in Canada and internationally. She testified that she supported and endorsed the PLAR process as a way of indicating a student’s capacity to succeed at university.

[16] Dr. Treviranus, who launched a PLAR program at OCAD University, explained that PLAR is a process that allows students to identify and provide information regarding their prior experiences and acquired skills to be considered when seeking admission to an educational program. University officials who are trained in PLAR assess the student portfolios in a structured and objective manner to determine whether admission should be granted.

[17] PLAR is a customizable program. For example, the University of Waterloo School of Pharmacy implemented a PLAR program to “give students credit for competencies already achieved through informal or nonformal learning”. This program systematically validates skills, knowledge, and abilities, whether acquired through work, life experience, or formal training and gives credit for the acquisition of the skill or competency. PLAR programs have been implemented across a variety of Canadian university programs.

[18] Ontario's policy on PLAR for colleges of applied arts and technology ("*Memorandum 132*") underscores the importance of supporting mature students towards achieving their Ontario Secondary School Diploma and moving forward to sustainable employment, postsecondary education, and/or apprenticeship. *Memorandum 132* states that the PLAR process for mature students involves two components: "equivalency" and "challenge". Specifically, all credits granted through the PLAR process must represent the same standards of achievement as credits granted to students who have taken the courses. These PLAR "grades" can then be used for admissions to colleges and universities.

[19] Dr. Treviranus outlined the major benefits of the PLAR process. She maintained that it is a more equitable means of assessing prior learning and learning potential. Her opinion is that it is a well-researched and proven method of identifying students worthy of admission into competitive programs and is frequently used in post-secondary education in the advanced admission context. When reflecting on the University's current admissions process, which had changed since Mr. Longueépée applied in 2014, Dr. Treviranus described it as "burdensome" and "unjust". This is because grades are not a reliable indicator of academic success. They are impacted by biases and stereotypes, and this is even more pronounced when the student seeking admission is "unlike the statistical average", like those living with learning disabilities.

[20] The University called two witnesses.

[21] Mr. Jardin, Associate Registrar, Admissions at the University of Waterloo, described that following the court decisions in the current case before the Tribunal, the University's admissions process was thoroughly reviewed in 2019 and 2020. Mr. Jardin described how the University consulted other large universities, such as Western University and the University of Toronto, and that the current process reflects the University's efforts to ensure that students with special circumstances relating to a disability have access to sufficient information about the process, as well to a dedicated email address. Mr. Jardin went through the admissions process, how they are managed, and how they assist students with disabilities. He noted that he was not aware of any university that has dispensed with its fundamental grade-based approach for making decisions about admissions in favour of the PLAR process.

[22] The University's second witness was Dr. Gillis, the then-Director of AccessAbility Services at the University of Waterloo. She was hired in 2016 and was not involved in Mr. Longueépée's application. Dr. Gillis described the process for accessing the special consideration process at Waterloo, and addressed the matter of considering comprehensive and detailed medical information when determining whether the special consideration process is appropriately applicable in the case of each student who seeks it. Dr. Gillis described the process utilized by the AccessAbility team to ensure that the required information is available when the Admissions Committee meets to make its decision about admitting a student who has been through the special considerations process. She did not sit on the Admissions Committee. Dr. Gillis echoed Mr. Jardin's statement that the University's current and amended admission processes met all the accommodation and *Code*-related requirements that ensure that any potential students with the same or similar circumstances to that of Mr. Longueépée are appropriately accommodated and are not denied access to a postsecondary education due to their unaccommodated or unrecognized disabilities.

[23] In submissions before the Tribunal, Mr. Longueépée submitted that following the Divisional Court and Ontario Court of Appeal decisions, rather than eliminating the discriminatory components that resulted in his inability to gain admission to the University, the University created new barriers for students with disabilities. He strongly promoted the adoption of the PLAR program to provide equity and appropriate admission processes for students with disabilities, especially those whose previous experiences did not include full and comprehensive accommodations. In addition, Mr.

Longueépée sought financial compensation in the amount of \$50,000 for the lost opportunity of acquiring a university degree and the long-term negative effects and implications of this denial. Given his health issues, he could not realistically seek belated admission to the University.

[24] In its submissions, the University reminded the Tribunal of the Divisional Court and Court of Appeal decisions that set out that the admissions process deserves respect and should not be dismissed or ignored. It submitted that they had “largely” addressed the issue. The University argued against broad-based and wide-ranging public interest remedies noting that no comparable Ontario university has recognized the PLAR system as an accepted form of decision-making. The University submitted that the Tribunal should not grant any non-monetary remedies in this case and suggested that \$20,000.00 general damages should be deemed more than adequate.

3. The Tribunal Decision

[25] The Tribunal held that the sole matter before it was the remedy that the Tribunal orders as compensation to Mr. Longueépée for the accepted and confirmed breach of his *Code* protected rights. The Tribunal set out that the purpose of compensation under the *Code* is to restore an individual as far as reasonably possible to the position that he or she would have been in, had the discriminatory act had not occurred.

[26] The Tribunal was satisfied that restricting Mr. Longueépée’s right to bring forward systemic remedies did not apply here. The Tribunal found that the most appropriate action for the University was to initiate a PLAR pilot project as soon as it is feasible for the next cycle of admission considerations for students who have disabilities and who find the current process challenging. The Tribunal held, contrary to Mr. Longueépée’s position, that it could not direct the University to implement a full scale PLAR process without determining whether a PLAR process would help.

[27] The Tribunal decided this with the previous decisions in mind. The Tribunal reflected that this decision was aimed at creating the balance that the Court of Appeal advised, and the *Code* allows. The Tribunal stated that it was cognizant of the Court of Appeal’s warning as set out in para. 106 of its decision, that “nothing in these reasons is intended to discourage or disparage the University’s grades-based admissions standards”. However, deference owed to universities did not completely insulate their academic decisions from tribunal or judicial scrutiny.

[28] The Tribunal therefore ordered the University to undertake the necessary steps to create such a pilot project and make its evaluation in an appropriate and timely manner. In addition, the Tribunal directed the University to pay Mr. Longueépée a sum of \$35,000 with 5.3% prejudgment interest and 7% post judgment interest.

4. The Reconsideration Decision

[29] The University requested reconsideration of the re-hearing remedy decision.

[30] The University submitted that the general damages award was excessive and conflicted with Tribunal jurisprudence. Further, the public interest remedy involved a matter of public importance because the Tribunal imposed a cost-intensive experimental process that significantly interferes with the University’s independence and autonomy with respect to its admission process as set out in the *University of Waterloo Act, 1972*, S.O. 1972, c. 200.

[31] Mr. Longueépée submitted that the process for implementing the pilot project was fully under the University’s control and that the remedy did not usurp the University Senate’s role, but

rather put it squarely in the centre of the pilot project’s development and evaluation process.

[32] First, the Tribunal upon reconsideration found that a general damages award of \$20,000 was more appropriate given the overall seriousness of the discrimination and Mr. Longue  p  e’s emotional distress.

[33] Second, the Tribunal considered the public interest remedy. The Tribunal relied on caselaw stating that the “*Code* provides the Tribunal with broad remedial authority to do what is necessary to ensure compliance with the *Code*”, and that the Tribunal’s remedial decisions fall at the very heart of its expertise.

[34] The Tribunal was not satisfied that there was a conflict with caselaw or procedure or that the reconsideration was a matter of public importance under Rule 26.5(3) of the HRTO *Rules of Procedure*, as the University was simply re-litigating their arguments from the re-hearing and that they had not identified any factors that outweighed the public interest in the finality of Tribunal decisions.

[35] Other than varying the general damages, the Tribunal dismissed the University’s request for reconsideration.

C. THE STANDARD OF REVIEW

[36] The presumptive standard of review for all questions on judicial review is reasonableness:

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 563.

[37] The Supreme Court of Canada in *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303, at paras. 26-42, reaffirmed the exceptions where the presumption of reasonableness review will be rebutted. In each of the following cases, the court will review the administrative decision on a correctness standard:

- 1) Issues engaging constitutional questions;
- 2) General questions of law of central importance to the legal system as a whole;
- 3) Questions related to the jurisdictional boundaries between two or more administrative bodies; and
- 4) Issues over which an administrative decision maker shares with the courts concurrent first instance jurisdiction.

D. THE ISSUES ON JUDICIAL REVIEW OF THE DECISION

[38] The following issues are raised on this judicial review:

- 1) The improper reliance on Dr. Treviranus’ expert opinion evidence.
- 2) Whether the Decision is unreasonable in that:
 - it imposes an admissions standard that violates the University Senate’s authority under the *University of Waterloo Act 1972*; and/or

- it departs from established caselaw on remedies including those regarding specific performance, the deference to institutions with significant oversight, and the analysis of its impact on the administration of justice.

D. ANALYSIS

The Improper Reliance on Dr. Treviranus' Expert Opinion Evidence

[39] Before assessing the substance of this ground of judicial review, the standard of review must be determined. The University submits that the admissibility of expert opinion evidence is a question of law that attracts the correctness standard as it is a general question of law of central importance to the legal system as a whole.

[40] I do not agree. While I do not question that some questions of law regarding the admissibility of evidence may attract a correctness standard, this is not the case here. It is not contested that the Tribunal articulated and applied the proper test for the admission of expert evidence. It cited and applied the leading authorities: *R. v. Mohan*, [1994] 2 S.C.R. 9; *R. v. Marquard*, [1993] 4 S.C.R. 233; *White Burgess Langille Inman v. Abbott & Haliburton Co.*, 2015 SCC 23. Rather, the error of law the University submits the Tribunal committed was the inappropriate reliance on inadmissible expert opinion evidence in its Decision. This is highly case-specific and does not amount to a general question of law of central importance to the legal system as a whole: *R. v. Whatcott*, 2023 ONCA 536, 168 O.R. (3d) 81, at para. 50; *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, at paras. 22-23. Therefore, the presumption of reasonableness is not rebutted: *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 561 (C.A.), at para. 82.

[41] Although it does not appear the issue of the appropriate standard of review was raised in the case, noteworthy is *Ontario (Minister of Children, Community and Social Services) v. Robinson-Cooke*, 2024 ONSC 3556, at paras. 64-73, where the Divisional Court considered the exclusion of expert evidence by the HRTO on a reasonableness standard of review.

[42] In the alternative, the University submits that the Tribunal's improper reliance on Dr. Treviranus' expert opinion renders the Decision unreasonable. The University points to the fact that the Tribunal found that Dr. Treviranus could not be qualified as an expert for giving opinion evidence. However, the University contends that the Tribunal still relied on Dr. Treviranus' expert opinion evidence regardless of her disqualification. The University submits that this determination was inconsistent with its finding on expert qualification. Moreover, even if consistent, the Decision does not conduct an analysis of what portions of Dr. Treviranus' evidence were admissible and could be relied upon. The University submits that in reaching its ultimate conclusion regarding the PLAR pilot project, the Tribunal must have relied upon Dr. Treviranus' inadmissible opinion evidence. This is because other than her evidence, there was no evidence regarding the ability of a PLAR process to ensure or promote compliance with the *Code* in terms of providing reasonable accommodation. Said differently, it is argued that the Tribunal's findings that Dr. Treviranus' opinion could not be accepted as expert evidence, while simultaneously relying upon that same evidence or not clearly distinguishing between the parts that were admissible vs. inadmissible, renders the logic of the Decision impossible to trace. The Tribunal's analysis simply explains what the University is to do without any analysis or reasoning making the Decision incoherent.

[43] I do not give effect to this argument.

[44] The Tribunal's reasons for decision must be viewed as a whole. In the Decision, Dr.

Treviranus' evidence is set out in detail. Although she was proffered as an expert witness by Mr. Longueépée, Dr. Treviranus had considerable experience with the PLAR program such as at OCAD and at other institutions who used it. In other words, her testimony was not just confined to expert opinion evidence.

[45] In addition, the Tribunal's Decision on this issue must be read carefully. After reciting the relevant tests and HRTO rules for expert evidence, the Tribunal stated it could not "appropriately or fully qualify" either Dr. Treviranus or Dr. Ouchterlony as expert witnesses for the proceeding. Regarding Dr. Treviranus, the Tribunal gave two reasons for this: (1) the Tribunal had special knowledge and experience regarding the accommodation of post-secondary students with disabilities as the Tribunal member had been the chair of the largest research project on the topic, thus making the expert opinions proffered unnecessary; and (2) while acknowledging Dr. Treviranus' expertise and experience in the area, given her strong advocacy for the PLAR process as the best form of accommodation, her opinion on this overstepped the boundary of partiality and bias. When this occurs, the Tribunal noted that all or part of the expert's opinion may not be accepted. After dealing with Dr. Ouchterlony's opinion evidence, the Tribunal concludes with the passage impugned by the University:

In spite of the fact that I do not find that either of these witnesses ultimately met the strict threshold for being qualified as expert witnesses for this proceeding, that does not mean that their evidence was not important and useful for the proceeding before me, as the remedy directive below demonstrates.

[46] After dealing with the University's evidence and setting out the positions and arguments of the parties, the Tribunal conducted the analysis whereby it rejects Mr. Longueépée's position that the Tribunal order a PLAR process for admission as a systemic remedy. Instead, the Tribunal settles on a pilot project. Implicitly, from this, the remedy imposed ignores Dr. Treviranus' inadmissible opinion that PLAR was the best way to accommodate these students.

[47] When the reasons are read as a whole and carefully, I find there is a logical and rational chain of analysis to the Decision when it comes to the use of Dr. Treviranus' evidence and the remedy ordered. Dr. Treviranus provided considerable evidence regarding PLAR in addition to strictly her expert opinion evidence. The Tribunal does not say that it is relying on her inadmissible expert opinion. While the Tribunal did not accept Dr. Treviranus' opinion evidence that PLAR was the best and most effective way to accommodate and facilitate the admissions process, it was entitled to rely on other aspects of her evidence such as the factual evidence about the PLAR admissions processes and its previous implementation at schools like the Waterloo Pharmacy program. Moreover, the Tribunal had and relied on evidence like *Memorandum 132*, which explains how the PLAR process is used as an accommodation when barriers in education deny students equal access. From the totality of the evidence, it was open for the Tribunal to conclude, as it did, that PLAR was proven to be a reliable and recognized method for using extracurricular data to establish grade equivalences. The Tribunal had the experience and knowledge to assess this evidence. Even without relying on inadmissible expert opinion evidence, having regard to the record, history of the proceedings and the Tribunal's institutional expertise and experience, the Decision falls within the range of reasonable outcomes that are justifiable. A reviewing court should not focus on how it would have resolved the issue but should rather focus on whether the University has demonstrated that the Decision is unreasonable: *Vavilov*, at paras. 15, 75, 85 and 93.

[48] The University's real complaint seems to be that it required more analysis and reasons by the Tribunal regarding the use of Dr. Treviranus' evidence. However, written reasons must not be assessed against a standard of perfection and a reviewing court must not conduct a "line-by-line

treasure hunt for error.” Reasons shall be considered reasonable if, when they are read holistically and contextually, they allow for the understanding of the basis on which a decision was made: *Vavilov*, at paras. 91, 97; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, 485 D.L.R. (4th) 583, at para. 61.

[49] These reasons, read holistically and contextually, do allow for an understanding of the basis on which the decision was made..

An Admissions Standard that Violates the University Senate’s Authority

[50] The University submits that the remedy ordered significantly interferes with its independence and autonomy with respect to its admissions process, a core feature of its institutional autonomy. The *University of Waterloo Act* empowers the University Senate to determine admissions standards. As such, the University submits that the remedy ordered by the Tribunal imposes admissions criteria outside the Senate’s authority because the PLAR pilot project ordered creates an admissions process not approved by the University Senate. The Tribunal, though stating it was trying to strike a balance as advised by the Ontario Court of Appeal, fails to explain or provide any analysis regarding the basis for such a remedy.

[51] The Intervenor supports the University’s position on this. It submits that the Tribunal’s remedy disrupts the established law that mandates individualized accommodation methods, creates uncertainty, and forces universities to determine whether the PLAR pilot project supersedes their own lawful, but institutionally diverse accommodation processes. The Intervenor objects to the Tribunal’s specific commentary that other universities may learn from the PLAR pilot project as implying their current accommodation processes are suboptimal and may not comply with the *Code*. The Intervenor submits that the remedy ordered is contrary to the Court of Appeal’s direction and encroaches on university autonomy.

[52] I do not accept that the remedy fails to respect the autonomy or independence of the University regarding its admissions process or that the failure to provide further analysis renders the Decision unreasonable for the following reasons.

[53] First, the Tribunal was very mindful of the balancing required and the fundamental nature of the University’s ability to exercise its autonomy in the admissions process. The Tribunal referred to the Ontario Court of Appeal’s decision at length, in particular Lauwers J.A.’s concurring reasons where he opined that although the deference owed to universities did not completely insulate academic decisions from tribunal or judicial scrutiny, tribunals and courts must be careful to preserve the integrity of the university admissions process and not to unduly override admissions standards of universities in the mission to ensure accommodation. In fashioning its remedy, the Tribunal states, at para. 134:

My decision in this case, and only in this case, is aimed at creating the balance that the Court advises, and the *Code* allows. In other words, I must be and am cognizant of the Court of Appeal’s warning set out in para. 106, that “nothing in these reasons is intended to discourage or disparage the University’s grades-based admissions standards”.

[54] Second, as Mr. Longuepée points out, the University led little by way of evidence of any potential adverse effects of the remedial order nor did it make any argument based upon undue hardship. Rather, the University argued for its own currently modified admissions process for applicants with similar disabilities – one that the Tribunal questioned as being fully compliant with the *Code* – and from its principled position defending institutional autonomy and independence. It is in that context that the court must assess the adequacy of the Tribunal’s reasons.

[55] Third, the nature of the remedy decision provides significant deference to the University. The Tribunal did not direct the University to alter its admissions process with the actual implementation of PLAR as requested by Mr. Longue  p  e. The remedy left the establishment of academic standards for admissions to the University, subject to the pilot project. Further, the Tribunal left the development and evaluation of the pilot project to the University to ensure that it maintained its autonomy as well as the academic vigour of its programs. Finally, the remedy allows the University Senate the final say in what would be implemented from the results of the PLAR pilot project when the Tribunal directed that the “pilot project must then be considered and implemented *as appropriate* as a further step in the University’s Undergraduate Admissions Process Review Project” [emphasis added] and the Tribunal, though it directed a report back, did not remain seized of the matter.

[56] Fourth, I must afford significant deference to the Tribunal’s Decision regarding remedy. As stated by the Court of Appeal in *Hamilton-Wentworth District School Board v. Fair*, 2016 ONCA 421, 400 D.L.R. (4th) 526, at paras. 92-93, “the *Code* provides the Tribunal with broad remedial authority to do what is necessary to ensure compliance with the *Code*”, and that the Tribunal’s remedial decisions fall at the very heart of its expertise and are entitled to an “extremely high degree of deference”. This deference applies to the balancing of the interests conducted by the Tribunal in fashioning this specific remedy.

Departure from Established Caselaw on Remedies

[57] Lastly, the University takes the position the Decision is unreasonable for a number of other reasons: the wide-reaching remedy conflicts with the Tribunal’s established caselaw without justification; the systemic remedy does not “flow from the factual findings of discrimination in the particular case” since it was a singular finding of liability that the University discriminated against Mr. Longue  p  e and there was no evidence it was a regular occurrence or systemic in nature; the systemic remedy was overbroad and not responsive to the breach the Tribunal was dealing with; the remedy was inappropriate given that there is already significant oversight of University admissions processes and the costs of the remedy ordered are unknown or speculative; and, the remedy would negatively impact the administration of justice given its departure from established caselaw.

[58] The Intervenor also submitted that remedies must be proportional, evidence-based, effective, and specific to proven harm in line with the leading case of *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360, at paras. 64-66.

[59] In oral submissions, the University focused on the issue that HRTO remedies must not be overreaching and must be connected to the Tribunal’s factual findings. It submitted that the systemic remedy ordered was unconnected to Mr. Longue  p  e’s circumstances and did not flow from the discrimination committed against him as required from the authorities. The Decision was unreasonable as the Tribunal failed to justify its departure from this caselaw.

[60] To begin the analysis, section 45.2 of the *Code* provides the HRTO with the discretionary authority to order a broad range of remedies if the HRTO determines that a party to an application has discriminated against the other party including systemic remedies directed at future practices.

[61] Next, regarding the reliance on the unjustified departure from past authorities and practices, an argument not pressed in oral submissions, the crafting of a HRTO systemic remedy is dependent upon the specific issues and evidence in each individual case. It is difficult to establish the HRTO’s past practices or decisions within the meaning of *Vavilov*, at paras. 129-132, where the HRTO is obligated to explain its departure. A similar conclusion was made by the Divisional Court in *Robinson-Cooke*, at para. 91, on the facts before it.

[62] On this point, I observe that the Tribunal was aware that the HRTO has denied requested systemic remedies rather than individual remedies: see *Hatimy v. McMaster University*, 2020 HRTO 899. However, the Tribunal was satisfied in the case at bar that a systemic remedy was appropriate. It referenced the fact that given the long time between Mr. Longueépée’s application for admission to the University and the remedy decision, due to his personal health circumstances, an individual remedy of restoring him as far as reasonably possible to the position that he would have been in, had the discriminatory act had not occurred could not be fashioned: *Piazza v. Airport Taxicab (Malton) Assn.* (1989), 69 O.R. (2d) 281 (C.A.).

[63] Both the University and the Intervenor rely on *Moore* and argue that the Tribunal’s remedy is a significant departure from the principles set out therein. In *Moore*, a young student, Jeffrey, suffered from severe dyslexia for which he received special education at his public school. In Grade 2, a psychologist employed by the school district recommended that since he could not get the remedial help he needed at his school, he should attend the local Diagnostic Centre to receive the necessary remediation. When the school district closed the Diagnostic Centre, the student transferred to a private school to get the instruction he needed. His father filed a complaint with the British Columbia Human Rights Tribunal on his son’s behalf against the school district and the province on the grounds that he had been denied a “service ... customarily available to the public” under s. 8 of British Columbia’s *Human Rights Code*, R.S.B.C. 1996, c 210. The Tribunal concluded that there was discrimination against the student by the district and the province and ordered a wide range of sweeping systemic remedies against both.

[64] At the Supreme Court of Canada, Abella J. upheld the finding of discrimination but struck down the remedies imposed by the Tribunal. The reason for this she said was the following, at para. 64:

But the remedy must flow from the claim. In this case, the claim was made on behalf of Jeffrey, and the evidence giving concrete support to the claim all centred on him. While the Tribunal was certainly entitled to consider systemic evidence in order to determine whether Jeffrey had suffered discrimination, it was unnecessary for it to hold an extensive inquiry into the precise format of the provincial funding mechanism or the entire provincial administration of special education in order to determine whether *Jeffrey* was discriminated against. The Tribunal, with great respect, is an adjudicator of the particular claim that is before it, not a Royal Commission.

[65] The Tribunal in the case at bar was very cognizant of this principle. It stated, at para. 131:

The goal of the matter before the Tribunal is not to create whole scale systemic change throughout the Canadian educational system by eliminating all references to grades and marks, but to determine the appropriate remedy in this case.

[66] Moreover, the remedy of a PLAR pilot project is very different in nature and scope from the remedies that were struck down in *Moore*. In *Moore*, the B.C. Human Rights Tribunal ordered the province to allocate funding and to establish mechanisms and services to ensure appropriate accommodations were made. As well, in *Moore*, the Tribunal seized itself to oversee the implementation of the remedial orders. Justice Abella found these remedies were too remote from the scope of the complaint as well as redundant: at paras. 57-70.

[67] Such is not the case here. The PLAR pilot project direction flows from Mr. Longueépée’s claim.

[68] First, there is a close nexus to his claim and personal circumstances. The PLAR pilot project would provide information to the University that would assist in providing Mr. Longueépée, were he in a situation in his life to do so, a fair and equal opportunity to gain admission despite his disabilities. The Tribunal's public interest remedy responds to Mr. Longueépée's personal discrimination but also paves the way for other students living with similar learning disabilities to access an admissions process that does not rely solely on grades.

[69] Second, the criticism levied against the Tribunal that its remedy is overly broad and casts a net so wide as to include any potential student who has any disability in accessing the PLAR process is unsubstantiated when one views the reasons and the evidence closely.

[70] The evidence led at the hearing establishes that PLAR itself can potentially screen and evaluate persons before they are accepted. For instance, *Memorandum 132* explains that there is a "challenge" process whereby the student must present evidence that they "can provide reasonable evidence to the principal that they would be likely to be successful in the challenge process, in accordance with criteria established in this memorandum, and with policies and procedures established by the board." Therefore, the process itself can have evaluative criteria. The Tribunal's direction leaves the determination of the exact nature of the criteria to the University.

[71] The Decision of the Tribunal is expressly tailored to the specific discrimination complaint. The PLAR pilot project involves the creation of a process to evaluate the effectiveness of PLAR "for the purposes of admission of students who may not be admitted on the basis of the respondent's current admission and evaluation process": at para. 136 of the Decision. In other words, the Tribunal leaves in place the University's current accommodation process and requires the PLAR pilot project to only capture those students with disabilities who may not be admitted using the current process. As well, the Decision refers to the PLAR pilot project "as a way of satisfying the accommodation needs of students with disabilities whose disabilities were not perhaps fully recognized and/or accommodated": at para. 138. In the Order itself the Tribunal directs at para. 139:

As set out above, the respondent must initiate, implement and evaluate a PLAR pilot project for the purposes of facilitating the potential admission of students whose disabilities and past accommodations and experiences would make them ineligible for admission on the basis of a purely grades-based basis. [Emphasis added.]

Thus, although PLAR as a general assessment tool can be used for diverse groups of applicants for admission to an educational institution, the PLAR pilot project ordered in the Decision is constrained to involve only those students that are in the same position as Mr. Longueépée: potential students who because of their disability and lack of previous accommodations and experiences were unable to gain admission under a grades-based process or the University's current admission processes. Even then, provided the University's decision is compliant with the *Code*, the ultimate decision regarding the admission of a student remains with the University.

[72] Read accurately, the Decision does not overshoot the Divisional Court and Court of Appeal's findings. Specifically, the University's obligation is to assess Mr. Longueépée's candidacy without recourse to his unaccommodated marks and to consider other relevant information: *Longueépée v. University of Waterloo*, 2019 ONSC 5465, at para. 57; *Longueépée v. University of Waterloo*, 2020 ONCA 830, 153 O.R. (3d) 641, at paras. 72-84. The PLAR pilot project supplies valuable information to permit this.

[73] In light of this specific remedy crafted by the Tribunal, a body recognized to have expertise in the substance, the legal analysis, and the procedure of statutory human rights law, both through their backgrounds and experience hearing applications and mediating in a high volume, direct-access

system, the need to show deference is important. Additionally, the Supreme Court of Canada has stressed the necessity for flexibility and imagination in crafting remedies for infringements of fundamental human rights: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789, at para. 26. And as Mr. Longuepée argued, the Supreme Court of Canada cautioned against minimizing people’s rights under the *Code* and enfeebling their impact: *CN v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114, at p. 1134.

[74] When viewed as a whole, I find that the Decision on remedy is reasonable.

[75] A parting comment. While it was superfluous for the Tribunal to direct that the results of the PLAR pilot project be made public for the edification of other universities, this does not impact the central aspects of the Tribunal’s reasons to the extent it is rendered unreasonable.

I. DISPOSITION

[76] The application for judicial review is dismissed.

[77] The University submitted a costs outline, though it was not seeking costs. Mr. Longuepée submitted a costs outline, though his appeal is being publicly funded. Considering the relevant considerations, I find that a fair and reasonable costs award is \$20,000 all-inclusive to be paid by the University to Mr. Longuepée.

Nakatsuru J. _____

I agree. _____

H. Sachs J.

I agree: _____

R. Reid J.

CITATION: University of Waterloo v. Roch Longue  p  e, 2025 ONSC 3653
DIVISIONAL COURT FILE NO.: DC-24-00000526-00JR
DATE: 20250623

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

H. Sachs, R. Reid, S. Nakatsuru, JJ.

BETWEEN:

UNIVERSITY OF WATERLOO

University

- and -

ROCH LONGUE  P  E

Respondent

- and -

HUMAN RIGHTS TRIBUNAL OF ONTARIO

Respondent

- and -

COUNCIL OF ONTARIO UNIVERSITIES

Intervenor

REASONS FOR JUDGMENT
