CITATION: The Centre for Israel and Jewish Affairs v. Minister of Public Affairs and Business Delivery and Procurement, 2025 ONSC 5477
DIVISIONAL COURT FILE NO.: 066/25
DATE: 20251029

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Matheson, Shore and O'Brien JJ.

BETWEEN:	
THE CENTRE FOR ISRAEL AND JEWISH AFFAIRS/LE CENTRE CONSULTATIF DES RELATIONS JUIVES ET ISRAÉLIENNES Applicant	*Neil M. Abramson and Melanie Zetusian*, for the Applicant
– **and** –	
MINISTER OF PUBLIC AND BUSINESS SERVICE DELIVERY AND PROCUREMENT and UNIVERSITY OF WINDSOR Respondents	*Michael J. Sims and Kristina Yeretsian*, for the Respondent Minister *Raj Anand and Jonas Granofsky*, for the Respondent University of Windsor **HEARD at Toronto:** September 29, 2025

REASONS FOR DECISION

THE COURT:

[1] The applicant, The Centre for Israel and Jewish Affairs, is the advocacy arm of Jewish Federations of Canada-United Israel Appeal. The application relates to two agreements the University of Windsor entered into with student groups in the context of protest encampments on university property. The agreements included a provision limiting the pursuit of institutional academic agreements with Israeli universities. The applicant wrote to the Assistant Deputy Minister of Public Service Delivery and Procurement, who is the Director under the *Discriminatory Business Practices Act*, R.S.O. 1990, c. D.12 (the *Act*), alleging that a provision found in both agreements violated the *Act*. The applicant sought an order to comply with the *Act* and a declaration that the impugned provisions are a nullity.

[2] In a letter dated December 23, 2024 (the Decision), the Director concluded that the *Act* was not engaged by the student agreements. The applicant seeks judicial review of the Decision.

[3] This judicial review decision is about one specific term in the student agreements, and whether it violated the terms of one specific provision in the *Act*. It is not a decision about any of the other terms in the agreements or whether any other legislation would apply.

[4] For the reasons set out below, the application is dismissed.

Discriminatory Business Practices Act

[5] The purpose and intent of the *Act* is set out in s. 2 – to prevent discrimination of "persons employed in or engaging in business."

[6] The *Act* defines three categories of discriminatory business practices in s. 4, including refusals to engage in business (s. 4(1)1), refusals or failures to employ, appoint or promote a person (s. 4(1)2), and the third category, at issue here (s. 4(1)3. Each category includes an element of conducting or engaging in business. Section 4 provides as follows:

> 4(1) For the purposes of this Act, the following shall be deemed to be discriminatory business practices:
>
> 1. A refusal to engage in business with a second person, where the refusal,
>
> i. is on account of an attribute,
>
> A. of the second person, or
>
> B. of a third person with whom the second person conducts, has conducted or may conduct business; and
>
> ii. is a condition of the engaging in business of the person making the refusal and another person.
>
> 2. A refusal or failure to employ, appoint or promote a second person or a dismissal or suspension of a second person from employment, where the refusal, failure, dismissal or suspension,
>
> i. is on account of an attribute,
>
> A. of the second person, or

B. of a third person with whom the second person conducts, has conducted or may conduct business; and

ii. is a condition of the engaging in business of the person making the refusal, failure, suspension or dismissal and another person.

3. Entering into a contract that includes a provision that one of the parties to the contract,

i. will refuse to engage in business with a second person; or

ii. will refuse or fail to employ or promote or will dismiss or suspend from employment a second person,

on account of an attribute of the second person or of a third person with whom the second person conducts, has conducted or may conduct business.

[Emphasis added.]

[7] The applicant relies on s. 4(1)3(ii), submitting that the University's agreements with the student groups are contracts that include a provision under which the University "will refuse or fail to employ or will dismiss or suspend from employment" University of Windsor professor(s) or Israeli academics. The applicant does not submit that the refusal, failure or other conduct in s. 4(1)3(ii) has happened, nor that there needs to be a prospect that it will happen, because s. 4(1)3 only requires that the contract be "entered into" and meet the other requirements of s. 4 of the *Act*.

[8] Subsection 4(2) defines "engaging in business" as including "selling goods or services to or buying goods or services from, and "engage in business" has a corresponding meaning."

[9] Under ss. 1 and 7 of the *Act*, the person designated as the Director under the *Ministry of Consumer and Business Services Act*, R.S.O. 1990, c. M.21, receives and acts on complaints under the *Act*. The *Act* provides for certain orders that the Director may make under the *Act*.

The Applicant's Complaint

[10] By letter dated August 20, 2024, the applicant complained to the Director about a single provision in the agreements between the University and two student groups: the University of Windsor Students' Alliance (the Student Alliance) and the Windsor Liberation Zone Team (WLZT). The applicant submitted that the specific provision in the agreements, which were made in July 2024, violated the *Act*.

[11] The applicant's submissions relied on s. 4(1)3(ii) of the *Act*, focusing on what the applicant broadly described as "contractual relationships". The applicant requested that the Director issue

an order to comply under the *Act*[1] and declare a clause that appears in both agreements (quoted below) a nullity.

[12] Both agreements include several other clauses that are not the subject of this judicial review. The WLZT agreement included the obligation to remove the encampment that had been established on University property until May 2025.

[13] The applicant is seeking judicial review with respect to a single provision in the agreements. In the complaint, the applicant described the provision at issue as an "academic boycott provision". The applicant relies on the provision in both agreements that states as follows:

> Academic and Research Relationships
>
> [numerous University commitments and initiatives, finishing with this clause]
>
> 5. The University does not hold any active institutional academic partnerships with Israeli institutions. Because of the challenging environment for academic collaboration the University agrees not to pursue any institutional academic agreements with Israeli universities until the right of Palestinian self-determination has been realized, as determined by the United Nations, unless supported by the Senate. This does not prevent individual academics at the University of Windsor from working (or collaborating) with academics in Israel. (the "Provision") [Emphasis added.]

[14] The applicant submitted that the provision "not to pursue any institutional academic agreements with Israeli universities" "unless supported by the Senate" is an agreement that the University "will" refuse or fail to employ a person or promote or dismiss or suspend a person from employment" in circumstances covered by s. 4 of the *Act*.

[15] In support of the complaint, the applicant provided letters from the "Boycott Divestment and Sanctions movement [BDS]", the "Network of Engaged Canadian Academics", a former Dean of the Windsor Faculty of Law, and The Hebrew University of Jerusalem in support of the complaint. Very generally, those letters spoke about the BDS movement, discrimination and anti-semitism, academic freedom, and the potential detrimental impacts of the agreements on scholarship, research and students.

[16] The applicant also provided a letter of clarification, indicating that the complaint was premised on the two agreements violating the *Act*, "*in and of themselves,* and without the need for any ensuing facts to further unfold and be proven" (emphasis in original)

[1] In oral submissions, counsel advised the applicant was no longer seeking this remedy.

[17] The notice letter was not sent to the University. The record before the Director did not include any submissions from the University responding to the submissions in the above letters and how they may or may not apply to the University or the agreements in question.

Decision

[18] After reviewing the materials provided by the applicant, the Director concluded that the *Act* was not engaged by the two agreements. The Director found that the University was not "engaging in business," as it is a public academic institution with the primary purpose of education and research, not making a profit, citing *Beauchamp v. North Central Predators AAA Hockey Assn.*, (2005) 247 D.L.R. (4th) 745 (Ont. S.C.).[2]

[19] The Director found that even if he had concluded that the agreements were subject to the *Act*, he would have determined that the requirements of s. 4(1)3(ii) were not met because the agreements did not require the University to refuse, fail to employ or promote, dismiss or suspend from employment another person. The Director found that the Provision appeared to prevent the University from pursuing "institutional academic agreements with Israeli universities" unless supported by the Senate.

[20] The Director noted that the Decision and reasons did not speak to the propriety (or lack thereof) of the University entering into the agreements. Before this Court, the applicant emphasized that it does not object to any other provision in the agreements – only that part of the Provision that it submits falls within s. 4(1)3(ii).

Issues and Standard of Review

[21] The applicant submits that the Minister erred as follows:

(i) in finding that the *Act* does not apply to the student agreements because the University is a public academic institution; and,

(ii) in any event, in finding that the Provision in the two agreements does not result in the agreements being caught by s. 4 of the *Act*.

[22] The standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. The application raises questions of statutory interpretation. The court's role is not to conduct a *de novo* interpretation of the statute, but instead, to assess whether the Director's interpretation meets the reasonableness standard: *Vavilov*, at para. 116.

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[2] *Beauchamp* is the main reported decision on the *Act*. It cites two earlier decisions. An appeal was brought from *Beauchamp* and dismissed as moot: 2006 CanLII 20522 (ON CA). The references to *Beauchamp* below are to the Superior Court decision of DiTomaso J.

[23] Although the University raised the question of prematurity in its written material, it did not focus on this submission in oral argument. We therefore decline to address it.

Analysis

Did the Director err in finding that the Act did not apply to the student agreements because the University is a public academic institution?

[24] There is no issue that the University is not a business. None of the parties say that it is. The applicant submits that in this case the University was "engaging in" business, as set out in s. 2 of the *Act*, and its actions met the requirements of s. 4(1)3(ii), which does not require that the University *be* a business. The applicant submits that the Director's Decision that the agreements are not caught by that subsection is unreasonable.

[25] In oral argument, the court heard different perspectives on whether or not the University, although not a business, could be found to be conducting or engaging in business under the *Act*, including counter-factual examples and possibilities.

[26] Although we have considered all submissions made, we conclude that this application for judicial review can and should be addressed on its specific facts regarding the Provision in the two agreements. We need not address the bigger issue of whether circumstances may arise, that are not before the Court, leading to the conclusion that the University is conducting or engaging in business in some other case.

[27] The main issue is therefore whether the Director's interpretation of the *Act* in the circumstances of this case is reasonable. There is no dispute that the *Act* originated as a result of concerns relating to the Arab boycott of Israel and the effects it could have on the Ontario marketplace: *Beauchamp*, at para. 50. *Beauchamp,* applied by the Director, remains the main prior decision interpreting the *Act*. As noted by the court in *Beauchamp,* at paras. 51-52, the *Act* is human rights legislation of a relatively unique kind, to be considered within its context and purpose to prohibit discriminatory business relationships.

[28] The University also puts forward its own statute, which was not before the Director, as relevant to the issue of whether the Decision is reasonable. The University relies on its objects and purposes as set out in s. 3 of the *University of Windsor Act*, 1962-1953, amended by Bill Pr35, including the advancement of learning and the dissemination of knowledge and the development of its members and students and betterment of society.

[29] The applicant submits that the Decision is unreasonable for several reasons. It says s. 4(1)3(ii) does not require that the contracting party's "primary purpose" be to engage in business or have a profit-making objective. It also submits that the Director wrongly relied on *Beauchamp*. The applicant points to an order under the *Act* made against the Ontario Science Centre in 1991 as support for its position that the contracting party need not have the primary purpose of engaging in a business.

[30] The governing statutory scheme will generally be relevant to evaluating whether a given decision is reasonable and is likely to be the most salient aspect of the relevant legal context: *Vavilov*, at paras. 68, 106 and 108. We therefore begin with the interpretation of the *Act*.

[31] The modern rule of statutory interpretation is not at issue. It requires the court to consider the plain language of the provision in light of its purpose and the entire relevant context: *Vavilov*, at para. 118. Section 4(1)3(ii) therefore must be read in context. The *Act* is expressly aimed at business relationships. It is titled the Discriminatory *Business* Practices Act. Section 2 states the purpose and intent of the *Act* is to prevent discrimination "of persons employed in or engaging in *business*." Subsection 4(1) describes practices that, on its wording, "shall be deemed discriminatory *business* practices." And s. 4(1)3 itself deems it a discriminatory business practice where the contract includes a provision that one of the parties will engage in conduct with respect to a second person "on account of an attribute of the second person or of a third person with whom the second person conducts, *has conducted or may conduct business*" (emphasis added throughout).

[32] The Supreme Court of Canada has established a test for determining whether an entity is carrying on business. *Ontario (Regional Assessment commissioner) v. Caisse Populaire de Hearst*, [1983]1 S.C.R. 57, sets it out at p. 64:

> If the preponderant purpose is the making of a profit, then the activity may be classified as a business. However, if there is another preponderant purpose to which any profit earned is merely incidental, then it will not be classified as a business.

[33] Considering the context and wording to s. 4(1)3(ii), it was reasonable for the Director to determine the Provision did not apply. We do not need to determine whether the University could be found to be engaging in business on a different set of facts. In this case, the complaint was about the Provision in the student agreements, which addressed the University's academic partnerships and agreements with Israeli universities. Institutional academic agreements are within a core non-business purpose of the University. It was reasonable for the Director to conclude the University was not a business nor engaging in business in relation to the Provision.

[34] We do not find the Director's reliance on *Beauchamp* to be unreasonable. *Beauchamp* found that the *Act* did not apply to the residency and mobility rules of minor hockey associations. The court reasoned the hockey associations were not businesses, nor engaged in business because, among other things, their preponderant purpose was not the making of profit. Although the facts in *Beauchamp* did not directly engage s. 4(1)3, the Director was entitled to consider and rely on the court's reasoning to justify the inapplicability of the *Act* to the University.

[35] The 1991 Ontario Science Centre case does not render the Director's Decision unreasonable. The Science Centre entered into a contract with the Sultanate of Oman to provide and install exhibits for a children's museum in Oman. The contract included a clause boycotting Israeli goods and services. There is no administrative decision by the Director, only an "assurance of voluntary compliance" entered into by the Science Centre with little if any precedential value. In any event, the available information is that the Science Centre stood to gain profit from the

agreement with Oman. The situation involving the Science Centre is not similar to the case before this Court.

[36] Overall, we find the Director's conclusion that the *Act* did not apply to the Provision in the student agreements reasonable.

Did the Director err in finding that the requirements of s. 4(1)3(ii) were not met?

[37] The applicant also takes issue with the Director's alternative finding that the student agreements did not meet the requirements of s. 4(1)3(ii). In the applicant's submission, the effect of the Provision is: first, that Israeli academics will be unable to teach or research at the University; and second, that University faculty members will be precluded from taking advantage of opportunities at Israeli universities which would be a basis for advancement and promotion at the University.

[38] The applicant relies on the letters of support, which raise issues about the possible impact of the Provision on professors. However, the issues raised in the letters and the applicant's submissions go a great distance away from the words of the Provision and the *Act*. First, s. 4(1)3(ii) requires that the Provision "will" mean that the University takes one of the listed steps (to refuse or fail to employ or promote or dismiss or suspend a professor from employment). The Provision is not mandatory. It is subject to the role of the Senate. The applicant raises the concern that including such a step should not be an easy route out of the *Act*. We understand that concern, but it does not arise here. The role of the Senate is established in the statutory regime, not a step added to avoid responsibility, as set out in the *University of Windsor Act* and related By-laws. Again, the Provision relates to institutional academic agreements, not lower-level agreements. We are not persuaded that the role of the Senate is irrelevant.

[39] Next, any uncertainty about the impact on professors is expressly addressed in the Provision itself. It states: "This does not prevent individual academics at the University of Windsor from working (or collaborating) with academics in Israel."

[40] Third, to the extent the applicant's submissions focus on Israeli professors, the applicant has not demonstrated how the University is or would be in an employment relationship with those professors such that the Provision would require the University to "refuse to employ or promote or dismiss or suspend them from employment" as required by the *Act*.

[41] The Director's conclusion that the requirements of s. 4(1)3(ii) were not met therefore was reasonable.

Order

[42] This application is dismissed. As agreed by the parties, the applicant as the unsuccessful party shall pay $15,000 all-inclusive to each of the respondents.

Matheson J.

Shore J.

O’Brien J.

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– **and** –

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REASONS FOR DECISION

THE COURT

Date of Release: October 29, 2025