

Introduction

- [1] Rhonda Oulds (“Oulds”) seeks judicial review of a decision of the respondent, the Human Rights Tribunal of Ontario (the “Tribunal”) dated July 31, 2023, reported at 2023 HRTO 1134, (the “Decision”), and of a reconsideration decision dated February 7, 2024, reported at 2024 HRTO 177 (the “Reconsideration Decision”). Collectively, the “Decisions”.
- [2] The Decisions relate to Oulds’ application to the Tribunal (the “HRTO Application”). In it, Oulds alleged that she had been discriminated against on the basis of creed, association with a person identified by a protected ground, and reprisal with respect to employment, goods and services, and contracts, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended, (the “Code”).
- [3] Specifically, Oulds alleged that the respondents, the Office of Ontario’s Chief Medical Officer of Health and Kieran Moore (collectively, “Ontario”) had discriminated against her when they instituted a mandatory Covid-19 vaccine policy and when Oulds’ employer, the respondent, Bluewater Health (Bluewater”), terminated her employment for failure to comply with the policy.
- [4] In the Decision, the Tribunal dismissed the complaint on the basis that it did not have jurisdiction as Oulds had failed to establish that her choice not to be vaccinated was based on “creed”.
- [5] Oulds requested a reconsideration of the Decision, which was also dismissed.
- [6] This application raises three main issues:
1. What is the applicable standard of review?
 2. Was Oulds denied procedural fairness?
 3. Were the Decisions reasonable?

Background

- [7] In May 2018, Oulds was employed by Bluewater as a personal support worker. The respondents, David Shepherd and Colleen Cook, were Bluewater employees. The respondent, Service Employees International Union (the “Union”) was Oulds’ union. Ontario issued Directive 6, which required various organizations, including Bluewater, to establish, implement, and ensure compliance with a Covid-19 vaccination policy for its employees.
- [8] On August 18, 2021, Bluewater implemented a policy, (the “Vaccination Policy”), by which all Bluewater employees were required to be fully vaccinated against Covid-19 by October 31, 2021. The Vaccination Policy provided that employees who were not fully vaccinated by October 31, 2021, would be subject to disciplinary action, including unpaid leaves of absence and/or termination of employment.

- [9] When Oulds advised Bluewater on November 1, 2021 that she was not fully vaccinated, she was placed on a time-limited unpaid leave of absence and granted to November 3, 2021 to provide proof of vaccination, failing which, her employment would be terminated.
- [10] In a letter from her lawyers dated November 2, 2021, Oulds asked to be exempted from the Vaccination Policy on the basis of creed (the “Exemption Request”).
- [11] The Exemption Request set out seven core beliefs to support Oulds’ exemption based on creed. The Exemption Request reads in part as follows:

At page 32:

“Creed” is often thought of as a religious belief. Although it does cover religious beliefs, creed does not have to be a belief that is strictly religious in its origin. It can also be thought of in terms of an ideology, deeply, firmly held, that makes up a part of who the person is.

At page 35:

Statement of Creed

Pursuant to the Ontario Human Rights Code, I am requesting, for a religious/creed-based reason, an exemption to the Covid-19 vaccination.

My spiritual beliefs govern my conduct day to day, and with all my decisions they play an integral role. My beliefs, for me answer questions about existence. They have not been forced upon me. I have taken to these beliefs through prayer and meditation. I am perfecting those beliefs as I gain wisdom.

I am up to date with all my vaccinations. I am fully vaccinated with all the childhood vaccine requirements and my adult boosters are up to date.

I am not against medical advancements. I would require more information before taking any treatment that has not been thoroughly identified or tested. This has not been accomplished to the point that my conscience is clear to accept it. Regardless, of its governmental approval or lack thereof.

I have a conscience given to me by my Creator. That God conscience I access through prayer and meditation. This forms part of my connection to my creator. Upon accessing that conscience, I am simply told by my Creator "no" in regard to this mandatory vaccination.

Informed consent is a connected belief of mine. There is not enough data available to gain my consent at this time.

- [12] Noting that the *Code* does not provide a definition of “creed”, at pages 39-41, the Exemption Request stated:

Under the *Code*, creed includes, but is not necessarily limited to, “religious creed” or “religion”. Given the evolving nature of belief systems over time, and the need to apply a liberal and purposive interpretation to *Code* protections for creed, this policy does not provide a universal, “once and for all” definition of creed. However, the following characteristics are relevant when considering if a belief system is a creed under the *Code*. A creed: (This list is neither exhaustive nor do all elements need to be met)

- i) Is sincerely, freely and deeply held
- ii) Is integrally linked to a person’s self-definition and spiritual fulfilment
- iii) Is a particular, comprehensive and overarching system of belief that governs one’s conduct and practices
- iv) Addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence
- v) Has some “nexus” or connection to an organization or community that professes a shared system of belief. [**Footnotes omitted**]

- [13] On November 3, 2021, Bluewater responded that it was unable to grant an accommodation to Oulds as it would create “increased risk to the health and safety of patients and staff”.
- [14] On November 5, 2021, Bluewater advised Oulds that as she had not complied with the Vaccination Policy, her employment with Bluewater was terminated with cause.
- [15] The Union filed a grievance, which was denied on the basis that Oulds had failed to comply with the Vaccination Policy. The Grievance was referred to arbitration and is not before this court.

Application under s. 34 of the Code

- [16] On November 4, 2022, Oulds filed the HRTO Application in which, she included a copy of the Exemption Request and Schedule A, providing details of her claim. The facts set out in Schedule A included Oulds’ statement that she was unable to comply with the Vaccination Policy by reason of her Creed, “which forbade such an act.”

HRTO Issues a Notice of Intent to Dismiss

- [17] On June 20, 2023, the Tribunal sent Oulds a Notice of Intent to Dismiss (“NOID”), notifying her of the Tribunal’s view that the HRTO Application fell outside of its jurisdiction in that:
- (a) Oulds had failed to identify any specific acts of discrimination within the meaning of the *Code* and the Tribunal did not have jurisdiction over “general allegations of unfairness unless the unfairness is connected, in whole or in part, to one of the grounds specifically set out in Part I of the *Code*”; and
 - (b) “creed”, which term “includes, but is not limited to, “religious creed” or “religion” is not defined in the *Code*; and even “if the term is broader than religion, it is not without limits. Not every belief, opinion, expression, practice or matter of conscience is a creed under the *Code*” referencing *H.S. v. The Private Academy*, 2017 HRTO 791”
- [18] The NOID advised Oulds that she was required to identify her creed “within the meaning of the Code and explain how it interfered” with her ability to be vaccinated for Covid-19, referencing *Dube v. Dutch Love Cannabis*, 2021 HRTO 300.
- [19] Oulds was advised that she was entitled to make written submissions, which were to be provided by July 20, 2023.
- [20] Assisted by counsel, Oulds provided a detailed response to the NOID. In her response, Oulds referenced the HRTO Application and repeated the five characteristics set out in the Exemption Request.
- [21] The Tribunal considered Oulds’ response and concluded that it did not have jurisdiction to hear the HRTO Application.
- [22] On August 28, 2023, Oulds submitted a Request for Reconsideration of the Decision.
- [23] The Tribunal invited, and received, submissions from Bluewater, David Shepherd, Colleen Cook, the Minister of Health, and the Union. In the Reconsideration Decision released on February 7, 2024, the adjudicator exercised her discretion not to reconsider the Decision.
- [24] Oulds then brought this application for judicial review.

Issue #1: Jurisdiction and Standard of Review

- [25] Apart from one brief reference at paragraph 24, Oulds’ factum on this application does not address the standard of review. Counsel for Oulds stated that because of page limits imposed on facta, she had reserved her submissions on this issue and other issues, to her oral presentation.

- [26] In my view, omitting key arguments from her factum was a misguided and inappropriate approach, designed to circumvent the page limits imposed by this court. On an application before this court, the expectation is that each party will set out the law and relevant facts in their factum. Reserving submissions to the oral presentation at the hearing creates an unfairness to the responding parties, who are unable to respond to new issues in their facta. Similarly, by raising new issues in oral argument, the court was deprived of the benefit of full written materials from all parties.
- [27] Notwithstanding these concerns, counsel for Oulds was permitted to make oral submissions, and she was permitted to upload a written copy of those submissions to Case Centre.
- [28] In oral submissions, Oulds argued at some length that the standard of review should be correctness, referring to paragraph 17 of (*Minister of Citizenship and Immigration*) v. *Vavilov*, 2019 SCC 65, ("*Vavilov*"). In the alternative, Oulds submitted that if the court were to find that the appropriate standard is reasonableness, it should find that the Decisions were unreasonable.
- [29] Para. 17 of *Vavilov*, reads, in part, as follows:
- ...the presumption of reasonableness review will be rebutted is where the rule of law requires that the standard of correctness be applied. This will be the case for certain categories of questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies.
- [30] In support of her submission that the correctness standard should apply to this court's review of the Decisions, Oulds submitted that the proper legal interpretation of "creed" under the Code and "the scope of procedural fairness owed when assessing constitutionally protected rights tied to religious or conscientious belief" raises a general question of law that is of central importance to the legal system as a whole.
- [31] Without reference to any legal authority, Oulds submitted that adopting a restrictive definition of "creed":
- 1) "will have far-reaching and detrimental implications" and could limit those who could claim protection based on belief, potentially violating section 15 of the *Canadian Charter of Rights and Freedoms*;
 - 2) gives rise to a risk that employers could decline to accommodate employees' "non-mainstream holidays, dress code and dietary needs", allowing institutions to "reject accommodation requests unless they align with an officially recognized religion";

- 3) could permit tribunals not to “consider or weigh diverse world views or spiritual frameworks” and prevent individuals from raising “creed-based claims if their beliefs fall outside a recognized scope”; and
- 4) becomes “out of step with modern constitutional, human rights and equity principles”.

[32] I do not accept Oulds’ submission that this case falls within the exception identified at para. 17 of *Vavilov*.

[33] As noted by the Court at paras. 58 - 62 of *Vavilov*, general questions of law are those that have implications beyond the “decision at hand”. It is not enough that a question may be of “wider public concern” or touch on an important issue: see also, *Mason v. Canada (Citizenship & Immigration)*, 2023 SCC 1, at paras. 57-58. I also find that at issue in this case is the Tribunal’s interpretation of its home statute.

[34] I adopt the reasoning in *Shaw v Phipps*, 2012 ONCA 155 (CanLII), at para. 10 in which the court upheld the lower court’s determination that “reasonableness” was the “appropriately deferential standard of review on an application for judicial review” of a decision of the Tribunal. The Court agreed with lower court’s application of the reasonableness standard in recognition “that the adjudicator “has a specialized expertise” in the area” [of human rights] and that “the reasonableness standard accords “the highest degree of deference. . .with respect to [the adjudicator’s] determinations of fact and the interpretation and application of human rights law” unless the decision is not “rationally supported”: See also *Ontario (Health) v Association of Ontario Midwives*, 2022 ONCA 458.

Disposition of Issue #1

[35] I conclude that Oulds has not established a basis to impose a correctness standard of review and that the reasonableness standard of review applies to the Decisions.

Issue #2: Was Oulds denied procedural fairness?

[36] There is no standard of review applicable to matters of procedural fairness. A determination of whether there has been procedural fairness “depends on an appreciation of the context of the particular statute and the rights affected”: *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) (“*Baker*”).

[37] The reviewing court must “examine the record and to determine if there has been a failure of justice.” It “considers whether or not fairness has been achieved in accordance with the tribunal’s own procedures and the factors identified” in *Baker: Murray v. Human Rights Tribunal of Ontario*, 2018 ONSC 2953 (CanLII), at para. 15.

[38] Oulds submits that the NOID was improperly issued and that it was not plain and obvious that the HRTTO Application was doomed to fail. Oulds submits among other things, that as she was on medical leave, Bluewater could not require her to “get vaccinated”.

- [39] This argument is not supported by the facts. The Exemption Request makes no mention of medical grounds and Oulds identifies “creed” as the basis for the HRTO Application.
- [40] Oulds also asserts that she was denied procedural fairness because the Tribunal did not address her allegation of reprisals. That argument also cannot succeed: as noted in the Decision, there was no factual basis for that assertion.
- [41] Oulds also asserts that her rights to procedural fairness were breached because she was “denied” an oral hearing. I find that argument to be without merit.
- [42] Firstly, Oulds was never “denied” an oral hearing – she never requested one. Secondly, she was given a full opportunity to make written submissions, which she did, assisted by counsel, in respect of the Decision and the Reconsideration Decision.
- [43] Under s. 40 of the *Code*, the Tribunal has the power to adopt procedures and practices which, in its opinion, “offer the best opportunity for a fair, just and expeditious resolution of the merits” of the applications. In choosing to proceed by way of written submissions, the Tribunal was within its statutory authority and was following HRTO procedures, and, specifically, Rules 13.1 and 13.2 of the HRTO Rules of Procedure. This court has determined this process to be procedurally fair: *Wu v. Toronto Ombudsman*, 2023 ONSC 6192, at paras. 40-41.
- [44] Oulds has failed to establish that fairness required that a different process (i.e. an oral hearing) be followed.
- [45] Oulds alleged procedural unfairness on the basis that the Decision and Reconsideration Decision were made by the same adjudicator, who, Oulds submits, was biased. In support of that allegation, Oulds asserts that the adjudicator failed to disclose a conflict of interest; improperly ruled on her own bias; and made adverse findings respecting Oulds’ credibility.
- [46] I do not accept those submissions.
- [47] Oulds submits that the adjudicator “weighed the credibility of Oulds and Respondent” and that the Decision “largely hinges in credibility”. Not only can I identify no credibility findings made by the adjudicator, the adjudicator specifically accepted Oulds’ evidence: see, for example, Decision, at paras. 17 and 20.
- [48] Oulds’ submitted that the adjudicator ought not to have determined the issue of her own bias. That submission conflicts with usual and accepted practice and was made without reference to legal authority.
- [49] The Reconsideration Decision thoroughly canvasses the evidence of alleged bias put forth by Oulds (at paras. 20-25), considers the applicable jurisprudence (at paras. 26-32). In my view, the adjudicator’s conclusion that Oulds failed to meet the “high threshold for establishing a reasonable apprehension of bias” was reasonable and is entitled to deference.

Disposition of Issue #2

[50] For the reasons set out, I would dismiss this ground of appeal.

Issue #3: Were the Decisions Reasonable?

[51] The general principles to be applied in determining reasonableness are found in *Vavilov*, which provides that:

- (a) [T]he burden is on the party challenging the decision to show that it is unreasonable.... The reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency.... The court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” (at para. 100);
- (b) [T]he role of courts ... is to *review*, and...as a general rule to refrain from deciding the issues themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempted to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem...Instead, the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable (at para. 83);
- (c) reviewing courts should pay respectful attention to the decision-maker’s demonstrated expertise and application of specialized knowledge (at para. 93); and
- (d) to be reasonable, a decision must be based on reasoning that is both rational and logical” (at para. 101).

[52] Oulds submits that the Decision was unreasonable in that the adjudicator:

- (i) “cherry picked, parsed and pronounced on theology, and otherwise ignored anything submitted that did not conform to her personal discriminatory biases against COVID-19 non-compliers”;
- (ii) “ignored the totality of submissions, selectively choosing a handful of statements, out of a multipage Creed statements, to claim, or try to give the illusion that this was “singular” belief when in fact it very obvious from the face of the Creed Statement that this was not the case” and
- (iii) applied the legal test for creed that she “devised by herself”, failing to apply the appropriate legal test.

- [53] I do not accept those submissions.
- [54] The Decision references the evidence and arguments put forth by Oulds, and Bluewater’s response: Decision, at paras. 9, and 14-18.
- [55] I also find there to be no merit to Oulds’ assertion concerning the legal test applied by the adjudicator.
- [56] The adjudicator reviewed and considered the applicable case law: *Jazairi v Ontario (Human Rights Commission)*, 1997 ONSC 12455 and *Syndicat Northcrest v Amselem*, 2004 SCC 47 (“*Amselem*”).
- [57] Noting that the Code does not define creed, in accordance with s.45.5 of the *Code*, the adjudicator adopted the policy enacted by the Ontario Human Rights Commission which, having adopted the test in *Amselem*, states the following characteristics to be relevant when determining if a belief system is a creed:
- A creed:
- Is sincerely, freely and deeply held
 - Is integrally linked to a person’s self-definition and spiritual fulfilment
 - Is a particular, comprehensive and overarching system of belief that governs one’s conduct and practices
 - Addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence
 - Has some “nexus” or connection to an organization or community that professes a shared system of belief.
- [58] There is nothing unreasonable about the adjudicator applying its own policy, which incorporates *Anselem*, a case followed by the Tribunal in other decisions.
- [59] In my view, the Decision meets the *Vavilov* standard of “justification, intelligibility and transparency”: the adjudicator accepted that “Oulds’ belief may be sincerely, freely, and deeply held and accepting that it may even be linked to Oulds’ identity and self-definition” but that it lacked an “overarching systemic component” and, applied the HRTO policy in concluding that Oulds had failed to establish that her refusal to accept the Covid-19 vaccine was creed-based.
- [60] The adjudicator’s conclusion that Oulds’ submissions were “focused on a singular belief around the lack of efficacy of the Covid-19 vaccine and some perception that the vaccine could alter DNA, and the need for autonomy to make this specific vaccine choice” was supported by the evidence. As submitted by Bluewater, the HRTO has repeatedly found that a “singular belief”, such as opposing the Covid-19 vaccination, has not met the threshold for the definition of creed: see, for example, *Zammit v. Georgian Radiology*, 2025 HRTO 371 (CanLII).

[61] In her request for a reconsideration, Oulds submitted that: 1) she was not given notice; 2) the Decision conflicted with established case law or Tribunal procedure; and 3) involves a matter of general or public importance.

[62] For the reasons set out above, these submissions have no merit: 1) Oulds did have notice and was able to participate in the Tribunal’s process; 2) the adjudicator properly considered and applied the applicable legal principles (Reconsideration Decision at paras. 13-19); and, 3) the adjudicator thoroughly reviewed and rejected Oulds’ assertions of bias, citing authorities from the Ontario Court of Appeal and the Supreme Court of Canada.

[63] I find that the Reconsideration Decision set out the applicable legal principles and reveals a coherent and rational chain of analysis that is justified on the facts and applicable legal principles.

Disposition of Issue #3

[64] For the reasons above, I conclude that Oulds has failed to show that the Decisions are unreasonable.

Order made:

[65] The application is dismissed with costs payable by Oulds as agreed: \$3,000 to the Union and \$3,000 to Bluewater (inclusive of the personal respondents, Shepherd and Cook).



Justice L. Sheard



I agree

Justice John Fregeau



I agree

Justice Mario Faieta

Released: May 16, 2025

CITATION: Oulds v. Attorney General of Ontario, et al., 2025 ONSC 2763
DIVISIONAL COURT FILE NO.: DC-24-00000008-0000
DATE: 2025/05/16

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Fregeau, Faieta and Sheard JJ.

BETWEEN:

Rhonda Oulds

Applicant

- and -

Attorney General of Ontario, Human Rights Tribunal of Ontario, Bluewater Health, The Office of Ontario's Chief Medical Officer of Health, Kieran Moore, David Shepherd, Colleen Cook, Denice Ghanam and Service Employees International Union

Respondents

REASONS FOR JUDGMENT

Fregeau, Faieta and Sheard JJ.

Released: May 16, 2025