

Lisikh v. Ontario (Education), 2022 HRTO 1345 (CanLII),

<https://canlii.ca/t/jszvd>

Reconsideration

Request: In the interest of public interest, the HRTO re-assesses Paragraph 19 of the Decision of VC Nichols

19] *It is important to note in the Tribunal's jurisprudence that an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be or has been successfully claimed by persons who are white and non-racialized.*

Introduction

1. This request for reconsideration relies on the following Rule:
Any party may request reconsideration of a final decision of the Tribunal within 30 days of the date of the decision.

A request for reconsideration will not be granted unless the Tribunal is satisfied that:

- (c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or
 - (d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions and orders.
1. This decision involves a matter of public importance as it places millions of Ontarians at risk. The decision declares that the Code does not apply to white people and opens the door to legal discrimination against 70% of the province's population. The decision is contrary to jurisprudence as it is contrary to the Code which protects all members of the human family.
 2. In examining sections c and d of the above Rule, this party makes the following points to demonstrate that the Decision which is the subject of the reconsideration request is in conflict with established

jurisprudence, involves a matter of general or public importance, and is of tremendous import to the public interest.

Special programs

3. Paragraph 19 of the Decision runs contrary to the OHRC policy on special programs which has a special criteria. The VC did not apply the criteria to the alleged special program. There is no evidence that all participants of the SummerUp program were/are disadvantaged. This was not examined yet it is a requirement of the special program criteria as established by the OHRC policy.
4. In the OHRC policy, an example is given that free legal aid services should not be given to all South Asian people at the SALCO clinic. This is because the criteria is too broad. The policy states that financial criteria should be established in order for the special program to be legitimate under the Code and a financial assessment is included when assessing access to services at SALCO.
5. See Page 10 of the OHRC Policy:

On the other hand, criteria that are too broad might result in providing benefits to people who don't need them.

Example: Studies show that people of South Asian origin with low income have trouble gaining access to the justice system. The government funds a legal clinic to provide free legal advice and representation to this group.

Criteria too broad: In deciding who could use their services, the legal clinic could help anyone of South Asian origin. However, this would be over-inclusive, because it would allow people with medium and high incomes to benefit. This would partially defeat the rationale behind the program, which is to help people of South Asian origin with low income. Criteria too narrow or not related to the purpose: The legal clinic could offer services only to people whose income is below a certain level, who identify as South Asian, and who belong to a certain creed.

These criteria would be too narrow, since the program is designed to help all South Asian people with low income and allowing people of only one religion to qualify would leave out other South Asian people with low income. The program could also be challenged under the Code as

discriminatory against people based on creed. People are protected from discrimination when they take part in a special program, just as they are when receiving a service that is not a special program. Rules or restrictions placed on people participating in the special program must not disadvantage people based on Code grounds.

https://www3.ohrc.on.ca/sites/default/files/special%20programs%20and%20the%20ontario%20human%20rights%20code_a%20self-help%20guide.pdf

6. The HRTO shall accept a request to consider a OHRC policy if requested. This request is being made.
7. The OHRC policy would not accept the SummerUP program as a special program on its face. The Respondent should have to demonstrate that they are a special program as defined by the policy.
8. There is no evidence that all SummerUp participants qualify under the mandate and scope of the SummerUp program as this issue was not explored.
9. The party making these submissions appreciates that white people may not be eligible for all special programs.
10. There may also be special programs exclusively for white people as well. For example, a Ukrainian Community Centre/Refugee Support Center might require certain staff to be of Ukrainian ancestry/speak Ukrainian which would be a legitimate qualification if the position had specific duties. However, there is no case law- except for VC Nichols at paragraph 19- that states white people cannot successfully claim racial discrimination. This is patently absurd and offensive.

Jurisprudence/Case Law/Legislation

11. It is plain and obvious that the Code applies to all races and the claim that jurisprudence indicates otherwise is patently false. The HRTO should investigate VC Nichols for publishing false information.
12. The party making these submission relies on the spirit of the Code as explained in the preamble to state the obvious. White people are members of the human family.

Preamble

*Whereas recognition of the inherent dignity and the equal and inalienable rights **of all members of the human family** is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;*

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

13. VC Nichols writes that an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be claimed by persons who are white and non-racialized. She cites no case law to support her position that white people are excluded from protection under the Code. This is because none exists. There is now case law to support this- the case-at-bar- and this is why the HRTO needs to address this appalling paragraph.
14. VC Nichols cites no case law exists that states white people cannot claim racial discrimination. This is because none exists.
15. There is jurisprudence in human rights that demonstrates that white people can experience discrimination. This should require an example as it is self-evidence; however, one can refer to *Eva obo others v. Spruce Hill Resort and another*, 2018 BCHRT 238 (CanLII), <<https://canlii.ca/t/hvtxm>>

16. The WSIB found that principal Richard Blitzko experienced harassment and a poisoned work environment as a result of racialized insults against him.
17. There is case law that speaks to special programs and protection of those participants and the eligibility of others; however, paragraph 19 does not specifically and exclusively refer to special programs.
18. Vice-Chair Nichols overrides the Charter in her declaration that White people have no legal right to seek claims of discrimination under the Code. Her Decision explicitly denied White people their section 15 Charter right to equal treatment under the law.

Charter

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Threat to General Public/Public Interest

19. Vice Chair Nichols has opened the door to legalized hate and discrimination against a group of people based on their Code-protected traits (race/colour).
20. An example, one of many, is the BlackOut theatre night, that brazenly discriminates against people based on their race/colour with impunity. In a matter presently before the HRTO, they have used the precedent established by Vice Chair Nichols and openly and potentially legally, thanks to Nichols, discriminate against White people.
21. Black Lives Matter Toronto co-founder Yusra Khogali **once tweeted a request to Allah for** strength “to not cuss/kill these men and white folks out here today.” For White people who work for BLM or receive services from BLM, as determined by the Code’s Social Areas, this would clearly be a Code breach. However, if Vice-Chair Nichols Decision is allowed to remain as part of the HRTO jurisprudence, it would allow the tweet as acceptable because , as per Vice Chair Nichols, the Code does not protect White people.

22. Hate and violence against White people is not a new phenomenon in Toronto. From the 1994 murder of Georgina Vivi Leimonis, to Jane Creba ((Boxing Day Shooting), to Connor Stevenson (Eaton Centre) to Andrea White (Davani and Bigby), to Reese Fallon (Danforth Shooting), to John Wheeler (Christopher Mitchell) to Karolina Huebner-Makurat to many others.
23. In the United States, the examples are far more common. Seth Smith was assassinated by Tony Lorenzo Walker, Carleton Gifford (Oklahoma) murdered out of hate and 8 year old Jackson Sparks and others lost their lives due to the hatred from Darrel Brooks in Waukesha over Christmas 2020, just as Ethan Lemin (Ohio) was killed brutally.
24. There are groups in Canada and the United States that openly advocate for harm to Whites such as the Black Hebrew Israelites and others. Members of BLM, as proven above, have no compunction openly expressing hate against Whites.
25. Vice Chair Nichols' Decision gives everyone a free legal pass to engage in discrimination and hate in the five social areas.
26. Today, thanks to Nichols, comments such as "Nazi", "Devil", "Cracker" and adding the word "White" before expletives are perfectly acceptable in all five of the social areas.
27. Any reasonable person can recognize the harm that this will produce onto society.
28. Any reasonable person will recognize that this Decision mocks the spirit of the Charter and the Code (although this is NOT a Constitutional challenge) and is an affront to the Canadian public interest.
29. Any reasonable would accept that all people are members of the human family.
30. For the above reason, the party requests that Paragraph 17 is addressed by the HRT0 and is noted on public record as an illegitimate finding by VC Nichols. Obviously, this additional review should NOT be conducted by VC Nichols. A further request is that VC Nichols be immediately removed from the panel and a motion put forth by the HRT0 to have her disbarred by the LSO.

All of which is respectfully submitted

David D. Hirsch