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CASE SUMMARY: STAY IN YOUR OWN LANE: WHEN ASKED TO REVIEW A DECISION OF AN ADMINISTRATIVE TRIBUNAL, THE COURT OUGHT TO DECLINE JURISDICTION WHERE THERE IS ANOTHER PROCESS AVAILABLE THAT IS MORE APPROPRIATE TO THE ADJUDICATION OF THE CLAIM

The Court has jurisdiction to review decisions of administrative tribunals, but ought to decline jurisdiction where there is another process available to the applicants that is more appropriate to the adjudication of the claim.

Administrative law – Decisions reviewed – University Committees – Judicial review – Jurisdiction – Procedural requirements and fairness – Standard of review – Reasonableness – Correctness – Human rights complaints – Discrimination – Universities

Michalski v. McMaster University, [2022] O.J. No. 2071, 2022 ONSC 2625, Ontario Superior Court of Justice, April 29, 2022, D.L. Corbett, D.A. Broad and C. Petersen JJ.

The applicants are students at McMaster University and are devout Christians. They requested an exemption from McMaster’s mandatory COVID-19 policy requiring all faculty, staff, employees and students to be vaccinated against COVID-19 (meaning having received two COVID-19 vaccinations approved by the World Health Organization). Among their objections to vaccination was the use of fetal cells in the production or testing of the vaccine. They asserted that taking a COVID-19 vaccine is contrary to their religious faith.

McMaster denied the exemption requests and unenrolled the applicants from their courses and programs. The applicants sought an order quashing that decision and remitting their exemption requests back to McMaster for reconsideration. Their applications for review were brought on the grounds that McMaster breached the duty of procedural fairness, and that the decision was unreasonable. The applicants argued McMaster breached the Ontario Human Rights Code in its interpretation and application of the protection against discrimination based on “creed.”

McMaster had developed several teams to evaluate exemption requests. The Human Rights and Dispute Resolution Team within the Equity & Inclusion Office was tasked with evaluating non-medical exemption requests from students. That team was informed by the Ontario Human Rights Commission’s Policy on Preventing Discrimination Based on Creed and Policy Statement on COVID-19 Vaccine Mandates and Proof of Vaccine Certificates along with other resources. They also had guidance from McMaster’s criteria for what constitutes a “creed” in assessing requests for exemptions, and a memorandum prepared by the Ecumenical Chaplain listing a variety of religious faiths and summarizing their historical positions on vaccinations.

The applicants each completed an exemption request form setting out the reasons they decided not to be vaccinated, with supporting materials citing both scriptural and non-scriptural sources. Each applicant received a decision letter from McMaster containing specific reasons why their request was denied.

An allegation of discrimination with respect to services was at the heart of the applicants' arguments about why the decisions were unreasonable. The Court found the true nature of the applicant's submissions was that McMaster violated their right to equal treatment with respect to education services without discrimination based on creed, contrary to s. 1 of the Ontario Human Rights Code. The Court held that it had jurisdiction to review the impugned decisions, but was not the appropriate forum to rule on the applicants' concerns. One discretionary ground for refusing to undertake judicial review is a more appropriate forum for the claims to be adjudicated.

With respect to procedural fairness, the Court held that McMaster was required to develop and implement a process for deciding exemption requests under substantial time and resource limitations, in the context of an ongoing public health crisis that has challenged governments and public institutions around the world. McMaster had an important interest in creating policy to safeguard the health and safety of all students, faculty, and staff. The applicants had an opportunity to make submissions, and received written reasons. The process balanced the interests at stake in a difficult context. The Court held the procedural fairness arguments lacked merit and were not a basis for the Court to adjudicate a claim that should be made before the Human Rights Tribunal.

The Court declined to decide whether McMaster had breached the Ontario Human Rights Code in its interpretation and application of the protection against discrimination. The Court held that claim should be made to the Human Rights Tribunal of Ontario at first instance. The Court has jurisdiction to review decisions of administrative tribunals, but ought to decline jurisdiction where there is another process available to the applicants that is more appropriate to the adjudication of the claim.

This case was digested by [Mollie A. Clark](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Mollie A. Clark at mclark@harpergrey.com.