HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Erik Burggraaf

Applicant

-and-

Convergys CMG Canada ULC, Convergys Information Management Group, Convergys New Brunswick Inc., and Convergys Canada ULC

Respondents

DECISION

Adjudicator: Romona Gananathan

Date: October 17, 2025

File Number: 2018-34003-I

Citation: 2025 HRTO 2599

Indexed as: **Burggraaf v. Convergys CMG Canada ULC**

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APPEARANCES

Erik Burggraaf, Applicant	)	Danielle Smithen, and Eyitayo Kunle-Oladasu, Counsel
Convergys CMG Canada ULC, Convergys Information Management Group, Convergys New Brunswick Inc., and Convergys Canada ULC, Respondents	)	Kiersten Amos and Nakita Samson, Counsel

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INTRODUCTION

[1] This Application alleges discrimination with respect to employment because of disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). Specifically, the applicant alleges that the respondents failed to accommodate his blindness when he was refused a Sales Associate position in August 2017.

[2] There is no dispute between the parties that the applicant is blind and is a person with a disability as defined under the *Code*, or that the applicant's disability was the reason that he was not hired by the respondents in September 2017.

[3] The issue in this case is whether the Respondents failed to accommodate the Applicant, to the point of undue hardship.

[4] A videoconference hearing was held by the Tribunal over several days in February and March 2024. I heard from the applicant, and Giuseppina D'Intino, an Accessibility Consultant, who was presented as an expert witness by the applicant. The respondents presented one witness, Natalie Paris, Convergys' Director of People Solutions for North America/ Wellness Leader/Global Culture Champion for Canada.

Preliminary Issues

[5] The applicant filed a Request for Production of documents on September 29, 2023, after the parties had disclosed their arguably relevant documents to each other. The applicant sought an Order from the Tribunal that the Respondent produce a copy of Mr. Burggraaf's online job application, and a copy of the Memorandum of Understanding (MOU) signed during Mr. Burggraaf's job interview. The Respondent took the position that the online application was not retained in the respondent's applicant tracking system for more than 12 months, and was no longer available, and that it had no knowledge of the MOU that the applicant sought. This issue was addressed as a preliminary matter during the hearing. As a result of the documents not being available, the applicant withdrew the Request for Production.

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Qualification of an Expert Witness

[6] Giuseppina D'Intino, was introduced as an expert witness by the applicant, with professional credentials and over 20 years of expertise as a senior accessibility consultant and subject matter expert in diversity, accessibility and disability inclusion. Ms. D'Intino is a certified professional in Accessibility Core Competencies with the International Association of Accessibility Professionals, and has a master's degree in inclusive design from OCAD University, amongst other credentials. Her resume outlines over two decades of experience working as an Accessibility Strategies Consultant with various government departments, banks, and institutions across Canada and Internationally. She has received the Queen Elizabeth II Diamond Jubilee Medal from the Lieutenant Governor for outstanding leadership and achievements in Canadian accessibility and employment.

[7] The respondent had no issue about Ms. D'Intino being qualified as an expert with expertise in accessibility for the blind in the employment context, but sought clarification that the scope of the expertise did not extend to any opinion on the respondents' sole client AT&T and its software programs, and confirmation of independence from the applicant. The applicant's counsel agreed to these limitations in the scope of the expert's evidence, and the issue of independence is addressed below.

[8] The factors set out in *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9, requires the Tribunal to consider whether the proposed expert opinion is relevant, necessary to the trier of fact, excluded by some other exclusionary rule; and whether the proposed witness is properly qualified.

[9] In this case, Ms. D'Intino appears to have some special knowledge and training in the area of technology and accessibility issues for the blind, that goes beyond the Tribunal's knowledge or expertise on the subject. I find that the opinion is relevant and necessary to the issues being decided, and that it should be included. See, See, *R. v. Marquard* [1993] 4 SCR 233.

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[10] The Rules of Civil Procedure require experts to acknowledge their duty to provide opinion evidence that is "fair, objective, and non-partisan". The Court in *White Burgess Langille Inman v. Abbott and Haliburton Co*., 2015 SCC 23 has been instructive that expert witnesses have an ongoing duty to be independent, impartial, and unbiased in providing their opinions and evidence throughout the proceedings. The Tribunal must consider whether there is a realistic concern that the expert is unable or unwilling to comply with this duty. However, as the Court states:

> Exclusion at the threshold stage of the analysis should occur only in very clear cases in which the proposed expert is unable or unwilling to provide the court with fair, objective, and non-partisan evidence. Anything less than clear unwillingness or inability to do so should not lead to exclusion, but be taken into account in the overall weighing of costs and benefits of receiving the evidence.

[11] I have taken these issues into consideration in the weighing of the evidence proffered by Ms. D'Intino and found her opinions regarding accessible technology for the blind to be generally independent and unbiased.

[12] Ms. D'Intino confirmed that she had never met the applicant and did not know him prior to being asked to appear as a witness in this case by his counsel from the Human Rights Legal Support Centre. She confirmed that she did not have any expertise or opinion with respect to AT&T.

[13] Although she testified that she had lived experience as a blind person on technology and accessibility issues and has obviously been an advocate for the blind, she did not stray from her field of expertise or attempt to make legal arguments or provide opinions that would usurp the Tribunal's role to determine the issues in this case during the hearing. I found her evidence regarding the applicant's accessibility and technology needs as a blind person to be objective and independent overall.

[14] For all of these reasons, I have accepted Ms. D'Intino as an expert witness, qualified to provide opinions on accessibility in technology for the blind.

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LEGAL PRINCIPLES

[15] Section 5(1) of the *Code* prohibits discrimination in employment on the basis of disability. The onus is always on the applicant to establish a *prima facie* case of discrimination.

[16] The test for *prima facie* discrimination was established by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33, and has been consistently applied by this Tribunal, and upheld including in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62. To prove discrimination, an applicant must show that:

1. They have a protected characteristic under the *Code*,

2. They have experienced a disadvantage or adverse treatment explicitly or through an adverse impact, and

3. Their protected characteristic was a factor in the disadvantage or adverse impact.

[17] In response to such an allegation of discrimination, the respondents can argue that they based their decisions on considerations unrelated to the applicant's disability, or that the applicant was incapable of fulfilling the essential duties of the position. Sections 11 and 17 of the *Code* provide, in part, as follows:

> 11 (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
>
> (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.
>
> (2) The Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be

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> accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.
>
> . . .
>
> 17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.
>
> (2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

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[18] As noted, s. 17(1) of the *Code* specifies that if the individual with the disability is "incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of a disability," then differential treatment is not an infringement of that person's rights.

[19] Section 17(2) incorporates the duty to accommodate into the analysis by specifying that a person with a disability shall not be found incapable of performing the essential duties of the job if the needs of that person can be accommodated "without undue hardship on the person responsible for accommodating those needs." In order to establish undue hardship, the *Code* specifically identifies cost (including outside sources of funding), and health and safety requirements as considerations.

[20] If the Respondents can rebut the *prima facie* case, the evidentiary burden returns to the Applicant to establish that the Respondents' explanation is erroneous or a pretext masking the discriminatory ground. Ultimately, the onus remains on the applicant to prove discrimination.

Duty to Accommodate

[21] The accommodation process has been described as having both a procedural and a substantive component. The Divisional Court in *AGDA Group Consultants Inc. v.*

Lane, 2008 CanLII 39605, described these components as follows at paras. 106, 112, and 117:

> The procedural duty to accommodate involves obtaining all relevant information about the employee's disability, at least where it is readily available. It could include information about the employee's current medical condition, prognosis for recovery, ability to perform job duties, and capabilities for alternate work. The term undue hardship requires respondents in human rights cases to seriously consider how complainants could be accommodated. A failure to give any thought or consideration to the issue of accommodation, including what, if any, steps could be taken constitutes a failure to satisfy the "procedural" duty to accommodate.
>
> …
>
> The substantive duty to accommodate requires the employer to show that it could not have accommodated the employee's disability short of undue hardship. "Accommodation" refers to what is required in the circumstances to avoid discrimination. The factors causing "undue hardship" will depend on the particular circumstances of every case. For example, undue hardship could arise due to excessive cost or safety concerns.
>
> …
>
> Undue hardship cannot be established by relying on impressionistic or anecdotal evidence, or after-the-fact justifications. Anticipated hardships caused by proposed accommodations should not be sustained if based only on speculative or unsubstantiated concern that certain adverse consequences "might" or "could" result if the claimant is accommodated.

[22] The duty to accommodate is a co-operative and collaborative process. See *Chappell v. Securitas Canada Limited*, 2012 HRTO 874, at para. 27. The duty to accommodate is triggered when a respondent is informed of an applicant's *Code*-related needs, and how those needs impact an applicant's ability to work.

[23] A failure by a respondent to take the appropriate steps in the procedural duty to accommodate is a violation of a right under Part 1 of the *Code*. See *Hamilton-Wentworth District School Board v. Fair*, 2016 ONCA 421 ("*Hamilton-Wentworth*"), at para. 51, citing *Lee v. Kawartha Pine Ridge District School Board*, 2014 HRTO 1212 at para. 95, and *ADGA Group Consultants Inc. v. Lane*, 91 OR (3d) 649, 2008 CanLII 39605 (Div. Ct.), at paras. 107 and 113.

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EVIDENCE AND ANALYSIS

[24] There is no dispute between the parties that the applicant is blind and has a disability as defined under the *Code*. The respondents do not contest that Mr. Burggraaf's disability was the reason he was not hired in September 2017.

[25] The burden is therefore on the respondents to show that the applicant in this case was incapable of fulfilling the essential duties of the position, or that the needs of the applicant could not have been accommodated without undue hardship on their part.

[26] The respondents take the position that the use of their client AT&T's proprietary software and the ability to independently navigate and use the software was an essential requirement of the position given the confidential nature of the data involved. The respondents submit that they took reasonable steps to attempt to accommodate the applicant's disability by investigating adaptive tools and programs suggested by the applicant, researching other adaptive tools, and investigating integration options with the third party client's proprietary software.

[27] The respondents submit that although they engaged in the accommodation process, there were no software programs that were available that could accommodate the applicant in the position, that would work cohesively with their sole client AT&T's software. They denied that they violated the *Code*, and submit that the applicant was unable to fulfil minimum workplace requirements or the *bona fide* occupational requirements of the job. As a result, the respondents argued that the applicant could not be accommodated in the position, as it would cause undue hardship to the respondents.

[28] For the reasons below, I find that the Application must be granted, because the respondents have not met their onus to show that they could not have accommodated the applicant to the point of undue hardship.

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The Accommodation Process

[29] The applicant testified that he is blind and that his accommodation needs are those of a person with no sight. He testified that he applied for a frontline Sales Associate position to provide customer service in the respondents' call centre. He completed the application on the respondents' website, and attended a telephone pre-screening interview which was relatively brief. He was asked why he was applying for this location, and explained that his sister lived in the area, and he wanted to move closer to his family.

[30] The applicant testified that he was invited to attend an in-person interview a week later. He described it as a typical corporate interview where they went over the job description, some behavioural questions, pay and benefits and he was asked to sign off on a memorandum of understanding about what was in the job.

The Applicant's Request for Accommodations

[31] The applicant testified that there was a discussion about accommodations during this interview, and he was asked to describe the type of accommodations he would require. He confirmed that he requested a screen reader with braille display, and training materials in an accessible format.

[32] During his testimony, the applicant described that they had discussed the possibility that the proprietary programs would not be compatible with the screen reader and braille display, and a need for training to make sure the systems were compatible. He described that a screen reader is software that takes information on the screen and converts it to braille. The braille display is connected hardware that "reacts" from the screen reader to represent the information in braille. There was an understanding at this interview that the respondents would explore these accommodations and get back to him.

[33] The evidence shows that the respondents were aware of the applicant's disability after the initial screening. An email dated August 11, 2017 documents, that "we have a potential new hire that disclosed to us that he is blind. We have yet to fully assess, but understand that he has suggested 'Jaws' software and use of headset".

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[34] The email also indicates that the respondents had hired a blind employee several years ago and that they eventually needed to part ways because “despite our best efforts, we could not make client systems compatible to allow her to complete her job successfully”. The email also notes that it has been several years since, and then discusses who would reach out to determine if the applications are now compatible for this particular disability.

[35] The applicant’s request for accommodation during the August 23, 2017 interview is also documented in more detail by the respondents’ hiring team in an email dated August 23, 2017. The email communication confirms that the applicant required a screen reader with JAWS or non-visual desktop access, and Braille Display that is driven by the screen reader. The email documents that the software should meet accessibility standards and that testing may be required to see if the language is correct, and also that the new hire training activities may need to be modified to include more hands on reading. The email confirms that the applicant uses a regular keyboard, and required two headsets, one for the screen reader and one for inbound customer calls.

[36] The respondent’s witness, Ms. Paris, testified that there was plenty of discussion and work that occurred internally to try and find a solution to be able to extend an offer of employment to the applicant between August 1, 2017 and September 14, 2017. This included engaging with multiple departments and teams including HR, IT, and the Operations Management department which was responsible for exclusive management of the third party client. However, she confirmed that the respondents were unable to overcome the barrier of the testing phase. They could not find a “work-around” to make it possible for a blind person to be able to use the third-party client’s proprietary customized systems, tools, and software.

[37] As a result, they ultimately decided they could not offer Mr. Burggraaf employment in the position and communicated the decision to him on or around September 14, 2017. I note that the applicant testified that he received the call on September 9, 2017, but based on email evidence discussing a possible script for the rejection, I am satisfied that it was more likely that the call occurred on September 14, 2017.

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[38] It is clear based on the evidence that the respondents knew of the applicant's disability and his accommodation needs for the position. However, the applicant testified that he was not contacted by the respondent to explore any other accommodation solutions after the in-person interview. He was simply informed by the respondents in a voicemail message that their IT team has done testing on various software programs and none of them worked cohesively with their client systems and tools. As a result, he was refused the position.

The Respondents' Procedural Duty to Accommodate

[39] This Tribunal has held that the procedural duty to accommodate requires a recognition that the accommodation process is a joint process between the parties: *Mazzei v. Toronto District School Board*, 2011 HRTO 400 at para 20. I find that the respondents failed in their procedural duty to accommodate when they did not explore further accommodation solutions with the applicant.

[40] The evidence shows that the respondents did test the screen reader software programs and that the IT department did not find that these programs were compatible with the client systems.

[41] In an email dated August 31, 2017, Alex Trzok, from IT Operations indicates that he has "tested a few other programs that he could find trial versions of, or are free", including:

> NVDA – free program: This did not read out screen elements as indiscriminately as JAWS does, As much as this reduces information overload, it would also require the user to know where everything on the screen is.
>
> Pros: free, works like jaws.
>
> Cons: would require sighted assistance as all user accounts are different and information would not be the same.
>
> STILL doesn't seem to read the majority of elements of client tools (clarify, or anything else that opens through JAVA)

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> Thunder – Free: Pros/cons unnecessary this “works” but is more for reading that interactivity. This would not work for a visually impaired person in this environment. Reads everything, cant always choose what it will read. Reads HTML and contents of the page. Doesn’t interact with CRM.
>
> Serotek – System Access to Go: extreme challenged reading screen elements outside of a browser window. Some challenges reading prompts in browsers that are not Internet Explorer. Did not test Java tools as a great many resources for AT&T are loaded in Firefox and this did not perform in that browser adequately.
>
> It appears that despite all else, finding a screen reader that not only works adequately but also will interact with the CRM, which nothing I’ve tested to date does, is proving to be a significant challenge.
>
> A question.
>
> I believe at some point it was suggested that this person is 100% visually impaired. Despite common nomenclature, peoples with visual impairment can often to quoted as 100% blind when the proper classification would be “legally blind”. To that end, if this person is sighted at all would a larger monitor and screen magnification software vis-à-vis ZoomText be adequate? It just magnifies the screen. I may be really reaching here, but I’m all about options!

[42] There is no indication that this question was posed to the applicant, or whether any of the issues identified by IT were discussed with the applicant to see if there were any workarounds that could be implemented to address the limitations in these programs. For example, an email dated August 22, 2017 describes that “Brain Display” may be a suitable accessibility option, and that there may be a 50/50 chance it would work, but there is no indication that the applicant was ever contacted to get the correct name of the program or discuss this option with him.

[43] Similarly, in an email dated August 31, 2017, Adam Richardson, the Senior Manager for Program Management at AT&T Mobility concludes, “so there’s nothing out there today that will work without client intervention, so we are basically at the mercy of [client] at this point in how far they are willing to do.”

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[44] I accept that the Convergys' Welland site was a call centre that serviced only one singular third party client – AT&T, and that there would be no business activity at this location without that client. I also accept that the business existed only to serve this client, and that the client provided the customers and tools to be used in delivering its customer service program to Convergys which staffed the program.

[45] However, there is no evidence that the respondents pursued accommodation options with their client any further. In *Gaisner v. Method Integration Inc*., 2014 HRTO 1718 at para. 149 the Tribunal clarified that a respondent cannot pursue an undue hardship argument without taking adequate steps to explore accommodation solutions. By failing to pursue further options with its client, the respondents failed in their procedural duty to accommodate.

[46] There is no evidence that the applicant was consulted after the interview about finding a solution to the accommodation barriers that the respondents' IT team had identified. As this Tribunal has held in *Chen v. Ingenierie Electro-Optique Exfo*, 2009 HRTO 1641 at para. 39, respondents have a duty to inquire into the accommodation situation and explore options that may be available to accommodate the applicant's disability with the applicant, up to the point of undue hardship, before making any decision that may adversely affect the applicant's status.

[47] The applicant testified that he felt confident that he had done well in the interview, because they were interested in pursuing his accommodation request. However, about two or three weeks later, he received a telephone message from the company that he was a qualified candidate but that they could not proceed any further with the application. He was told that the respondents had explored the suggested accommodation and none of them worked cohesively with their proprietary software. As a result, he was told they could not accommodate him in the position.

[48] The applicant explained that the respondents never contacted him during this time to discuss any accommodations with him, even though it was apparent from his resume that he has experience in training and testing programs for accessibility for many

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organizations in Canada including government departments, the Canadian National Institute for the Blind ("CNIB") and rehabilitation centres like Helen Keller. He described access technology as a field with "a huge variety of tools that remediate for people with disabilities". His focus was on blindness, and he taught and tested screen readers, braille readers, optical text readers, GPS systems of all stripes, and supported tech for people with blindness or hearing loss.

[49] I accept that the applicant had some expertise in designing and delivering training on software programs for the blind, and may have had some insight into other software solutions, as indicated on his resume and in his testimony. For example, he testified that he had completed software training for accessibility with several federal and international organizations, and that he had tested many software programs that were focussed on access technology from a user perspective. This included training specifically about screen readers, operating systems and braille displays among other accessibility tools for the blind.

[50] Given the applicant's experience and background in accessibility technology for the blind, he would likely have been able to suggest other programs or assist the respondents in finding alternative accommodation solutions that could have worked for him, had he been consulted by the respondents.

[51] The respondents submit that there is a distinction to be made between user experience and technology expertise and these two should not be confused. However, as the person with a disability, the applicant was also in the best position to test any such solutions to see if they would work for his particular accommodation needs. Even if he was not considered an expert by the respondents, he was not contacted after the interview or provided any opportunity to test the software for himself, even in a limited way, if there were any concerns such as confidentiality.

[52] The respondents did not provide any documentation that they consulted with their single client AT&T in any significant way to see if its proprietary software could be adapted to accommodate the applicant. Given that the client also could have *Code*-related human

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rights obligations and may have turned their mind to these possibilities, the failure to explore that option with the client was a failure on the respondents part to explore collective options and satisfy their procedural duty to accommodate.

[53] Based on all of the evidence, I find that the respondents failed in their procedural duty to accommodate the applicant under the *Code*. After the interview and the initial accommodation request, the applicant was never provided any opportunity by the respondents to have any input into the accommodation process or to trial the software to see if it would work for him. He was never consulted about any alternatives or contacted after the interview to discuss options that may have been viable alternatives for his particular accommodation needs.

[54] As noted above, this Tribunal has recognized in *ADGA* above, that insufficient time and effort spent on the procedural obligation followed by a rush to judgment is a failure to accommodate. For these reasons, I find that the respondents failed in their procedural duty to accommodate the applicant.

The Respondents' Substantive Duty to Accommodate

[55] As noted above, to satisfy the substantive duty to accommodate, the respondent must show that it could not have accommodated the applicant's *Code*-related needs short of undue hardship.

[56] The respondents did not present any evidence on the costs of any software programs that they pursued. They simply take the position that there was no software that was compatible with their client, AT&T's proprietary programming.

[57] The respondents' witness testified that the respondents had one client and due to the proprietary nature of the software, and the branding and control exercised by the client, they had no ability to exercise discretion. This led to the decision that they could not accommodate the applicant in the position that he had applied for.

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[58] When questioned further about whether there was any discussion about the costs of these programs during the interview and whether the costs would be prohibitive, the applicant confirmed that they had some discussion during the interview, comparing software costs between $1,200 and $2,400 depending on the features that would be required, with an annual cost of about $150 for upgrades. He also testified that there would be a significant difference in costs between JAWS for windows which is a software program, and non-visual desktop access (NVDA) programs. However, there was no evidence advanced that the respondents consulted with external organizations that may have had some expertise in finding accommodation solutions or funding for such programs, such as the Canadian National Institute for the Blind (CNIB) or the Canadian Council of the Blind (CCB).

[59] The applicant's expert witness, Ms. D'Intino, testified that refreshable braille display is software that interfaces with customizable systems, and has been widely available and used for many years. She testified that it requires nothing more than a connection to the computer as a "plug and play" and is used like a keyboard, and that it can work with JAWS or NVDA to translate what is on the screen to braille.

[60] When questioned further, the expert conceded that tech can be complex and that braille display would sometimes require drivers that would be specific to the software, for example for AT&T, but that it can be coded to work together. She also confirmed that these programs were regularly used in 2017, although it was not as mature as it is in 2023. The expert clarified that VPAD is a tool that is sometimes used to troubleshoot systems, to identify barriers that exist and workarounds – almost akin to a user guide.

[61] Ms. D'Intino also clarified that she was retained by the applicant's counsel in 2023 and confirmed that she does not have any specific knowledge of the computer systems that were being used by the respondents at the Welland call centre in 2017. She was not provided any details about the job at Covergys, and the proprietary use of AT&T applications in the customer service job. She conceded that certain confidentiality requirements could possibly complicate user requirements.

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[62] However, Ms. D'Intino also testified that there were a variety of possible accommodation options that were not considered by the respondents. For example, refreshable braille display, technical scripts, and flexible work arrangements. She explained that testing of appropriate assistive technology requires a combination of automated testing and user experience testing with someone that is familiar with the technology. In general, I accept Ms. D'Intino's evidence about what is needed to thoroughly test software accessibility as well options available to employers looking to accommodate blind employees.

[63] However, despite these challenges, I am unable to find based on all of the evidence that the respondents met their substantive duty to accommodate the applicant, because they did not explore alternatives and costs of any programs that could have been adapted to meet the needs of their client and accommodate the worker. They failed to pursue any accommodation options with their client who also had obligations under the *Code* and may have had some solutions, and did not consult with any external accommodation experts such as the CNIB or any other organization. There simply was little evidence advanced that could satisfy the onus on the respondents to establish that they had fulfilled their duty to accommodate the applicant on a substantive basis.

[64] The respondents submit that the workplace rule or standard was the ability to effectively and independently navigate and toggle within the third-party client's proprietary software while speaking with customers of the third-party client. They argue that this was a *bona fide* requirement of the job, and that they adopted this standard in an honest and good faith belief, aiming to effectively fulfill the service demands of its third-party client which was their sole business operation.

[65] I am not convinced by this argument. Despite the standard adopted by the respondents, I find that they did not provide sufficient evidence to show, on a balance of probabilities, that the standard could not be met by a blind person, given the appropriate tools to independently navigate and toggle within the client's software. I acknowledge the preliminary steps that the respondent did take to look into adaptive technologies but the fact that a suitable technology was not identified by the respondents is insufficient to

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establish that the applicant could not be accommodated without undue hardship. I note that the applicant testified that he has successfully found and maintained employment in a tech position, providing similar customer service supports and he is clearly able to do that with adaptive technologies to accommodate his blindness.

[66] For all of the above reasons, I find that the respondents have not met the onus to show that it would have been an undue hardship on the respondents to accommodate the applicant on a balance of probabilities. The evidence on the whole shows that the respondents failed in both their procedural and substantive duty to accommodate. Accordingly, the respondents' decision not to hire the applicant as a result of his blindness is discriminatory under the *Code*.

REMEDY

[67] The Tribunal's remedial powers are set out in s. 45.2 of the *Code*.

> (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:
>
> 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings, and self-respect.
>
> 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings, and self-respect.
>
> 3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.
>
> (2) For greater certainty, an order under paragraph 3 of subsection (1),
>
> (a) may direct a person to do anything with respect to future practices; and

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(b) may be made even if no order under that paragraph was requested.

[68] The purpose of compensation under the *Code* is to restore an individual as far as is reasonably possible to the position that they would have been in had the discriminatory act not occurred. See, *Piazza v. Airport Taxicab (Malton) Assn. (1989)*, 1989 CanLII 4071 (ON CA).

[69] In his Application, the applicant sought the following remedies:

- an award for general damages in the amount of $20,000.00,
- public interest remedies including: an order that the Respondent make its interview process and workplace accessible to the blind; and an order that the Respondent develop human rights and accommodation policies in hiring that specifically apply to blind persons and train its human resources staff in the same,
- lost wages from the date that he received the call that he was not selected for the Sales Associate Role, to the date that he was able to secure employment on May 1, 2018, with a new employer.

Compensation for Injury to Dignity, Feelings and Self-respect

[70] An award of monetary compensation for injury to dignity, feelings and self-respect includes recognition of the inherent value of the right to be free from discrimination and in recognition of the experience of victimization, the vulnerability of the individual, and the seriousness of the offensive treatment. An intention to discriminate is not required. See *ADGA Group Consultants Inc. v. Lane*, 2008 CanLII 39605 (Div. Ct.), at para. 149 and 154.

[71] The Court of Appeal for Ontario considered the factors to take into consideration in determining the appropriate compensation for discrimination in *Strudwick v. Applied Consumer & Clinical Evaluations Inc*, 2016 ONCA 520 ("*Strudwick*"), at paras. 52-77, adopting the principles set out by the Tribunal in *Arunachalam v. Best Buy Canada,* 2010

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HRTO 1880 ("*Arunachalam*") at paras. 52-54. *Strudwick* set out, at para. 62, some of the relevant factors in assessing the amount of damages in a case such as this, including

- the immediate impact of the discrimination and/or harassment on the complainant's emotional and/or physical health.
- the complainant's vulnerability.
- the degree of anxiety the conduct caused; and
- the frequency and intensity of the conduct.

[72] *Strudwick* cited with approval the principle from *Arunachalam* that there are two main criteria in determining damages for injury to dignity, feelings and self-respect, namely (1) "the objective seriousness of the conduct" and (2) "the effect on the particular applicant who experienced discrimination." With respect to the first criterion, the Court notes that losing long-term employment is typically more harmful than losing a new job.

[73] The applicant relies on *Wesley v. 2252466 Ontario Inc. o/a The Grounds Guys*, 2014 HRTO 1591 and *Valiquette v. BPM Enterprises Ltd. (Tim Horton's)*, 2023 HRTO 53 in support of their request for $20,000 in compensation for injury to dignity, feelings and self-respect. In *Wesley*, the Tribunal awarded $25,500 because it found that the Respondent had breached its procedural duty to accommodate, in part, by failing to "seriously consider" options other than an ASL interpreter in the accommodation process.

[74] I note that in *Wesley*, the award of $25,500 was for a combination of the termination due to disability and being subject to harassment and a poisoned work environment. The amount for injury to dignity, feelings and self-respect as a result of the discriminatory termination was $18,000. The Tribunal noted at para. 43, that "undue hardship cannot be established by relying on impressionistic or anecdotal evidence, or after-the-fact justifications", and the Tribunal also noted at para. 67, that disability-related discrimination awards in the context of termination of employment range generally from $10,000 to $45,000. However, in this case, we are dealing with a discriminatory failure to hire rather than a disability related termination.

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[75] Similarly, in the more recent case *Valiquette*, the Tribunal found that the respondent did not obtain all readily available information about the applicant's disability and did not take adequate steps to explore accommodation solutions, and awarded $20,000 in compensation for injury to dignity, feelings and self-respect.

[76] The respondents argue that there is no evidence of multiple breaches or breaches occurring over a longer period of time, or any objective evidence of significant psychological or emotional consequences on the applicant. They argue that there are several factors that favour a lower award of "general damages".

[77] The respondents rely on a number of cases in support of their argument. In *O'Brien v. Organic Bakery Works Inc*., 2012 HRTO 457, the Tribunal awarded $13,000 in "general damages" when it found that the respondent laid off the worker under the guise of there being a shortage of work, and did not rehire him due to his disability. In *Wappler v. Geo Holiday Services,* 2010 HRTO 146 the Tribunal awarded $10,000 in compensation for injury to dignity, feelings and self-respect when it found that the applicant's employment was terminated without evidence of any procedural efforts taken to accommodate her disability. In *Norrena v. Primary Response Inc*., 2013 HRTO 1175 the Tribunal awarded $10,000 when it found discrimination because the applicant attended a pre-screening orientation for candidates, was not provided accommodations during a written examination, and dismissed from further consideration of employment.

[78] In this case, I accept the applicant's testimony that he was significantly impacted by the respondent's refusal to hire him, particularly given they communicated that he had passed the screening stage and the interview and was essentially qualified for the job, but for his disability. I note that this is similar to para. 71 of *Wesley*, where the applicant "testified that the termination had a negative impact on his emotional state and mental health, but did not present any medical documentation about the impact of the termination on him."

[79] At the time that the applicant was informed he would not be hired, he testified that he had been job hunting for about two years and was essentially couch surfing and

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financially stressed, and that the refusal to hire him caused him significant anxiety because he became cynical and questioned his abilities as a blind person in his field of work and future career. As an example of his financial stress, he testified that he was not receiving disability benefits at the time, and was couch surfing. Although he was accepted into a college program, he testified that he didn't even have the money to pay the registration fee.

[80] I find that the discrimination the applicant experienced had a substantial impact on him because he clearly would have been hired into the position having passed the screening and interview and been otherwise qualified for it, but for his disability.

[81] I note that the awards described in the above cases range from $10,000 to $25,000. However, most of the cases relied on by the respondents are dated much earlier, and that this Tribunal's more recent awards have increased since then.

[82] Although there were no repeated incidents or ongoing discrimination and there was no lengthy period of employment in this case, I find that the objective seriousness of the conduct and the effect on the applicant was substantial in this case. I find that the applicant was particularly vulnerable in this case given his disability as a blind person, and that the impact on him is significant because of the emotional effects he testified to and his vulnerability as a blind person.

[83] I accept that this is a case that is more in line with *Wesley* and *Valiquette*, where the respondents failed to "seriously consider" options and did not take adequate steps to explore accommodation solutions.

[84] For all of these reasons, I find it appropriate to award $20,000 in compensation for injury to dignity feelings and self worth, in this case, given the objective seriousness of the conduct and the effect of the discrimination on the applicant.

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Lost Wages and Mitigation

[85] The purpose of compensation under the *Code* is to restore an individual as far as is reasonably possible to the position that he or she would have been in had the discriminatory act not occurred. Compensation for lost wages as a result of a discriminatory termination is not limited to what would be payable in contract law for wrongful dismissal. See *Piazza v. Airport Taxicab (Malton) Assn.*, 69 O.R. (2d) 281, 1989 CanLII 4071 (Ont. C.A.), *Ontario Human Rights Commission v. Impact Interiors Inc.*, 1998 CanLII 17685 (Ont. C.A.), at para 2, and *Smith v. Ontario (Human Rights Commission)*, 2005 CanLII 2811 (ON SCDC) at para. 28.

[86] With respect to the applicant's claim for lost wages, the applicant seeks a total of $16,944 gross wages based on the following:

- From September 9, 2017 to January 1, 2018, the Ontario minimum wage was $11.60/hour: $11.60 x 40 hours x 16 weeks = $7,424

- From January 1, 2018 to May 1, 2018 the Ontario minimum wage was $14.00/hour: $14.00 x 40 hours x 17 weeks = $9,520

[87] The applicant testified that he felt extremely disappointed, but that he was not surprised because he had become cynical and anxious after experiencing systemic denial while applying for a number of customer service jobs for over a year and a half. He had applied to College to do a diploma as a computer programmer analyst at the same time as his application to Convergys, because he was looking for ways to advance his life.

[88] When questioned further, the applicant confirmed that he had applied to College in March 2017 and was accepted in March 2017. He also confirmed that he applied to Convergys in August 2017, and that he understood from the recruiter during the interview that part-time work during study was an option for the job, even though it was advertised as a full-time position.

[89] The applicant also testified that although he might have had the option of working part-time while attending school, he intended to work full time when he applied to

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Convergys, because he did not have any income whatsoever. He was working a seasonal job for H&R Block to test their software annually and produce a report before tax time, which paid minimally. He testified that although he had been accepted to College, he did not have the money to pay for registration, and was dropped. He eventually managed to register for the program after he was rejected by the respondents, but could not finish the program due to the COVID-19 Pandemic.

[90] The applicant testified that he also worked some seasonal and part time contracts while he was attending school and never worked full time, which suggests that given the option, he preferred working full-time to support himself rather than attending school full time. However, he also testified that he was enrolled in school full-time between September 9, 2017 and May 1, 2018, the period during which he sought lost wages. He returned to school in Fall 2019 but had dropped to part-time studies in January 2020 due to the Pandemic.

[91] The applicant testified that he did not apply for any other jobs because he was in school full time, and that he had no other choice but to go to school because he was refused the job by the respondents. At the time of the hearing, the applicant had two remaining courses to complete the diploma program. He also testified that he started working full time for the Government of Canada as a Tech in Client Services in July 2021, and that he was recently promoted in October 2023 to an Analyst position in Client Services.

[92] Based on the evidence, I am not persuaded that the applicant should be awarded full loss of earnings for the period from September 14, 2017 to May 1, 2018, because he was enrolled as a full-time student during this time. The position that he applied for was a full-time job, and had he been successful, he would not have been able to work in a full-time capacity during that time given he was pursuing full-time studies at the time and worked some seasonal and part-time contracts while he was attending school and never worked full-time. I find that it is more likely that the worker would have pursued part-time work with the respondents, and I accept his evidence that he was told that he could pursue a part-time position at the interview.

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[93] The respondent relies on the *Norrena* decision, where the Tribunal declined to award compensation for lost wages because the applicant was a candidate for employment and not an employee, and what they lost was not employment but an opportunity for future employment. However, this case can be distinguished from that case. In *Norrena* the Tribunal found that there was little possibility that the applicant would have been offered work because he had uttered a racist slur which was a factor in the Tribunal's decision that the possibility of employment was unlikely. In this case, it was clear based on the evidence that the applicant had otherwise qualified for the position, and was simply denied the job because of a failure to accommodate his blindness.

[94] For this reason, I find that the worker is entitled to part-time loss of earnings, representing 20 hours of work per week at minimum wage, which is a reasonable considering his status as a full-time student. I note that the minimum wage from September to December 2017 was $11.60/hour and from January to May 2018 was $14.00/hour. Accordingly, he is entitled to $3,712 for the 16 week period from September 14, 2017 to December 31, 2017, and $4,760 for the period from January 1, 2017 to May 1, 2018.

[95] I also find that it would be appropriate to for the respondents to review their interview process to ensure it is accessible to the blind, and make every effort to ensure accommodations for blind persons are addressed and to develop human rights and accommodation policies in hiring that specifically apply to blind persons to ensure compliance with the *Code*.

ORDER

[96] The Tribunal orders as follows:

> a. The respondents shall pay the applicant $20,000 in compensation for injury to dignity, feelings and self-respect.
>
> b. The respondents shall pay the applicant lost wages in the amounts of $3,712 for the 16 week period from September 14, 2017 to December 31, 2017, and $4,760 for the period from January 1, 2017 to May 1, 2018

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c. Pre-judgment interest is payable on the above amounts, calculated in accordance with the *Courts of Justice Act*, at 2.0% *per annum* from the date of the Application on June 13, 2018 to the date of this Order.

d. Post-judgment interest is payable on the above amounts from 30 days after the date of this Decision at 4.0% *per annum*.

e. The respondents shall develop human rights and accommodation policies in hiring that specifically apply to blind persons, review their interview process to ensure it is accessible to the blind, and make every effort to ensure accommodations for blind persons are addressed.

Dated at Toronto, this 17th day of October, 2025.

"Signed by"

_____

R. Gananathan
Vice-chair

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