HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

O.K. as represented by his litigation guardian J.K.

Applicant

-and-

Southern Ontario Secondary Schools Association

Respondent

RECONSIDERATION DECISION

Adjudicator:	Will McNair
Date:	October 30, 2025
File Number:	2019-38515-I
Citation:	2025 HRTO 2715
Indexed as:	**O.K. v. Southern Ontario Secondary Schools Association**

WRITTEN SUBMISSIONS

O.K. as represented by his litigation guardian J.K., Applicant	)	Lisa Triano, Counsel

[1] The applicant sought a declaration that the respondent, a volunteer-run organization that administers track-and-field competitions for high school students, discriminated against him because of disability, contrary to the *Human Rights Code*, R.S.O. 1990, c H.19, as amended ("the *Code*"), in the following respects:

> 1. The respondent's constitution, as it read in 2019, included no provision for disabled athletes, and more particularly, it omitted "unique qualifying factors" for athletes with intellectual disabilities; and
>
> 2. The respondent engaged in constructive discrimination when it applied its rules in a manner that denied the applicant an opportunity to attend the Special Olympics Ontario Invitational Youth Games (the "Youth Games"), an opportunity exclusive to youth athletes with disabilities.

[2] In *O.K. v. Southern Ontario Secondary Schools Association*, 2025 HRTO 2142 ("the Decision"), I dismissed the Application for the following reasons:

> 1. Although omissions from the respondent's 2019 constitution may have adversely affected student athletes with disabilities, I was unable to conclude that they adversely affected the applicant personally; and
>
> 2. Although the respondent had a duty to accommodate the applicant's disability-related needs, it did not have a duty to accommodate his schedule to enable him to attend the Youth Games.

[3] The applicant has filed a Request for Reconsideration of the Decision pursuant to section 45.7 of the *Code* and Rule 26 of the Tribunal's Rules of Procedure.

[4] Reconsideration is a discretionary remedy. It is not an appeal, or an opportunity to re-argue or repair deficiencies in a case: see *Sigrist and Carson v. London District Catholic School Board et al*, 2008 HRTO 34, at paras. 55 and 56; *Paul James v. York University and Ontario Human Rights Tribunal*, 2015 ONSC 2234, at paras. 56 and 57. There is no automatic right to have a decision reconsidered: see *Landau v. Ontario (Minister of Finance)*, 2012 ONSC 6926, at para. 17.

[5] The Tribunal may grant reconsideration in four circumstances, prescribed at Rule 26.5 of the Rules. The applicant submits, pursuant to Rules 26.5 (c) and (d), that:

(i) the Decision conflicts with established jurisprudence, and its reconsideration involves a matter of general or public importance; and

(ii) other factors outweigh the public interest in the finality of Tribunal decisions.

[6] Respectfully, I am not persuaded that reconsideration is justified on either basis.

ANONYMIZATION

[7] In the Decision, I stated that the applicant's name was anonymized because he was a minor child at the time the Application was filed. I was mistaken: the applicant was 19 when the Application was filed. He was represented by his litigation guardian and their names were anonymized in accordance with the Tribunal's Rules because the applicant is a person with an intellectual disability. This misapprehension did not affect the conclusions set out in the Decision, or those below.

RULE 26.5 (C) – CONFLICT WITH ESTABLISHED JURISPRUDENCE

[8] The applicant submits that the Decision conflicts with the following case law:

a. *Lane v. ADGA Group Consultants Inc.*, 2007 HRTO 34;

b. *Moore v. British Columbia (Education)*, 2012 SCC 61;

c. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624;

d. *Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202;

e. *Re Blainey and Ontario Hockey Association*, 1986 CanLII 145 (ON CA);

f. *Youth Bowling Council of Ontario v. McLeod*, 1989 CanLII 9018 (ON SCDC);

g. *Youth Bowling Council of Ontario v. McLeod*, 1994 CanLII 8714 (ON CA); and

h. *Saskatchewan High Schools Athletic Assn. (Re)*, 1994 CanLII 10757.

[9] None of these decisions were furnished at the merits hearing; they were cited for the first time in the Request for Reconsideration. Although the Tribunal has stated many times that reconsideration is not an opportunity to repair deficiencies in one's case, I have reviewed the decisions to determine if the Decision is inconsistent with them.

***Moore v. British Columbia (Education)*, 2012 SCC 61 and related cases**

[10] It was not disputed that the respondent's 2019 constitution contained no provision for students with disabilities and lacked unique qualifying factors for students with intellectual disabilities; however, as indicated at paras. 26 to 29 of the Decision, I was unable to conclude, from the evidence at the hearing, that these omissions resulted in disadvantage to the applicant.

[11] The applicant submits that this determination is inconsistent with the principles set out in *Moore v. British Columbia (Education)*, 2012 SCC 61 ("*Moore*"), in which the Supreme Court held that the appellant, a student with dyslexia, was denied "meaningful access to education" when his special needs program was cancelled. The applicant submits that by omitting unique qualifying factors for athletes with intellectual disabilities from its constitution, the respondent denied him "meaningful access to school sport."

[12] In *Moore*, the appellant was treated adversely when he was denied the opportunity to obtain an education, a service to which he was entitled under British Columbia's *School Act*, S.B.C. 1989, c. 61 and *Human Rights Code*, R.S.B.C. 1996, c. 210. While I agree that the applicant has an equivalent right to "meaningful access to school sport" pursuant to section 1 of the *Code*, I was unable to conclude, based on the evidence before me at the hearing, that the respondent denied him that right.

[13] Per the terms of the 2019 constitution, students over age 19 were ineligible to compete. The applicant was over the age of 19. At the hearing, and again in his Request for Reconsideration, the applicant submits that "[o]n the face of the constitution, his age would have rendered him ineligible to compete." I agree: had the age restriction prevented

the applicant from competing, I could have concluded that he was denied meaningful access to sport and therefore suffered discrimination.

[14] I could not draw this conclusion because, despite his age, the applicant did compete. Since the age restriction did not operate as a barrier to his participation, I could not conclude that it affected him adversely.

[15] I accept that deficiencies in the 2019 constitution *could have* had an adverse effect on athletes with intellectual disabilities, but the Application was not brought on behalf of a class of persons with intellectual disabilities, and the applicant has not clarified how the 2019 constitution's deficiencies adversely affected him personally. My conclusion on this point does not, in my view, conflict with the principles set out in *Moore*.

[16] In the same vein, the applicant submits that the Decision runs afoul of the principle that neutral rules can still be discriminatory if they disproportionately exclude a protected group, as confirmed in *Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202; *Re Blainey and Ontario Hockey Association*, 1986 CanLII 145 (ON CA); *Youth Bowling Council of Ontario v. McLeod*, 1989 CanLII 9018 (ON SCDC); *Youth Bowling Council of Ontario v. McLeod*, 1994 CanLII 8714 (ON CA); and *Saskatchewan High Schools Athletic Assn. (Re)*, 1994 CanLII 10757 ("*Re Saskatchewan High Schools Athletic Assn*."). In each of these cases, an applicant with a *Code*-protected characteristic was adversely affected by operation of an ostensibly neutral rule. In *Re Saskatchewan High Schools Athletic Assn.*, a high school athlete with an intellectual disability was prevented from competing in high school sports because of an "under 19" rule. The applicant observes that the case is "exactly on point" with the present case.

[17] *Re Saskatchewan High Schools Athletic Assn.* can be distinguished from the present case in one crucial respect: in that case, the offending rule actually prevented the athlete from competing.

[18] Again, no one disputes that the 2019 constitution excluded athletes with intellectual disabilities. If an athlete with an intellectual disability alleged, before this Tribunal, that he

or she was barred from competition by operation of the respondent's age restriction, I would have no difficulty declaring that the athlete experienced discrimination. The applicant is not such an individual. He did not satisfy the Tribunal that the offending "neutral rules" operated to exclude him as a person with a disability. He was not barred from competition or otherwise adversely affected, and he did not appear before the Tribunal on behalf of all athletes with intellectual disabilities. The Decision is not in conflict with the principles and cases canvassed above.

***Lane v. ADGA Group Consultants Inc.*, 2007 HRTO 34**

[19] The only specific adverse treatment the applicant experienced was the respondent's refusal to accommodate his schedule so that he could attend both the respondent's event and the Youth Games. At paras. 32 to 38 of the Decision, I rejected the applicant's submission that this was a disability-related need, and I concluded that as such, the respondent did not have a duty to accommodate it.

[20] The applicant submits that this conclusion is "so blatantly riddled with ableism that it misses the entire issue." The applicant reiterates, and it is indisputable, that he was only able to attend both events because he is a disabled athlete; ergo, he argues, the respondent discriminated.

[21] The applicant submits that the respondent's refusal to "even consider" adjusting its schedule violated its procedural duty to accommodate, and that my conclusion to the contrary is inconsistent with the Tribunal's reasoning in *Lane v. ADGA Group Consultants Inc.*, 2007 HRTO 34 ("*Lane*").

[22] *Lane* arose in the employment context. The Tribunal concluded that the respondent employer discriminated by firing the applicant after he disclosed that he had bipolar disorder. The Tribunal stated that employers have a procedural duty to conduct an "individualized assessment" of employees with disabilities and to explore the nature of employees' disability-related needs, to determine whether those needs can be accommodated in the workplace without undue hardship.

[23] Likewise, service providers have a duty to remove barriers to access to their services. If a person's disability impedes his or her access to or meaningful participation in a service, the service provider has a procedural duty to explore, with the disabled person, solutions to enable access and meaningful participation.

[24] I agree that the respondent has a duty to accommodate disabled athletes' disability-related needs, and that this duty has a procedural component; however, in the Decision, I determined that the applicant's circumstances did not engage the respondent's procedural duty to accommodate. The applicant's disability was not a barrier to his participation in the respondent's competition. The barrier to participation was another event for disabled athletes, scheduled at the same time.

[25] Respectfully, the fact that the applicant was only eligible to attend both events because of his disability does not mean that because of his disability, he needed to attend both events. As I noted at para. 37 of the Decision, attending the Youth Games was a valuable opportunity to foster "a climate of understanding and mutual respect for the dignity and worth of each person," as espoused in the preamble to the *Code*. I further noted, "it is a shame that the applicant was forced to choose between two events meant to reflect the dignity and worth of young athletes with disabilities." I maintain, however, that the respondent was not duty-bound to explore ways to accommodate this opportunity.

[26] The applicant chose to participate in the Youth Games instead of the respondent's competition. He was not prevented from participating in the respondent's competition because he had a disability; he was prevented from participating in the respondent's competition because he had a conflicting engagement. I do not agree that the respondent had any duty to explore meaningful solutions to the applicant's scheduling conflict, even if it was in the respondent's power to do so. Accordingly, as stated at para. 38 of the Decision, I am not persuaded that the respondent denied the applicant equal treatment with respect to services because of disability, and I do not agree that this conclusion is inconsistent with the principles of procedural and substantive accommodation canvassed in *Lane*.

***Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624**

[27] In *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, the Supreme Court held that formal equality is insufficient; substantive equality requires positive steps to accommodate disability.

[28] At the hearing, and in his Request for Reconsideration, the applicant took issue with the respondent's declaration that student athletes should be "treated equally in the eyes of the rules." The applicant submits that the respondent's insistence on applying its rules equally to all athletes "effectively entrenched barriers rather than removed them."

[29] At para. 38 of the Decision, I indicated that I was not persuaded that the respondent's inflexibility with respect to accommodating athletes' schedules resulted in disadvantage to the applicant as a person with a disability. This remains my view.

[30] I do not agree that the Decision conflicts with jurisprudence, or that a declaration that the respondent's constitution used to be discriminatory is "a matter of general or public importance." Reconsideration will not be granted on this ground.

RULE 26.5 (D) –FACTORS THAT OUTWEIGH THE PUBLIC INTEREST IN FINALITY

[31] The applicant submits that allowing the Decision to stand "would entrench systemic barriers and signal that omissions and blanket refusals are permissible." The applicant submits that reconsideration is "essential to vindicate the applicant's dignity, [and] to align the Decision with established jurisprudence as well as with international obligations" – specifically the United Nations Convention on the Rights of Persons with Disabilities.

[32] The applicant cites Article 30(5) of this Convention, which provides that State Parties must "encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels" and must "ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities."

[33] I do not agree that the Decision amounts to an endorsement of "omissions and blanket refusals," and I do not see it as inconsistent with Canada's international obligations. I am not satisfied that any factor exists that outweighs the public interest in the finality of the Tribunal's decisions. In my view, reconsideration is not justified pursuant to Rule 26.5 (d) or on any other basis.

RELIANCE ON A HALLUCINATED CASE

[34] In addition to the decisions noted above, the applicant purported to rely on a decision of the British Columbia Human Rights Tribunal called *Hodges v. Triathlon Canada*. Three paragraphs were devoted to this decision:

> In *Hodges v. Triathlon Canada*, the British Columbia Human Rights Tribunal found that the absence of a para-classification system was itself discriminatory, as it excluded athletes with disabilities from meaningful competition. The Tribunal in *Hodges* rejected the argument that identical rules ensured fairness, holding that "identical treatment is not the measure of equality under the *Code*. Substantive equality requires that the unique needs of persons with disabilities be accommodated." The respondent's reliance on "equal rules" is ill informed. The Decision in the case at hand was required to consider the exact circumstance determined in *Hodges*. The Decision is in conflict with established jurisprudence.
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> The Tribunal in *Hodges* emphasized that the duty to accommodate is both procedural and substantive. The Tribunal reiterated well settled law and expressly confirmed that organizations must actively explore accommodations, not simply apply rules neutrally. The refusal of the respondent to even consider adjustments to its schedule for the disabled student athletes is a procedural violation of its duty to accommodate. See also *Lane v. ADGA Group Consultants Inc.*, 2007 HRTO 34.
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> Notably, *Hodges* recognized that exclusion from competition structures is a form of systemic discrimination, not merely an individual slight. The present case likewise involves systemic exclusion of intellectually disabled athletes from the pathway to OFSAA, which the Decision fails to consider and is therefore in conflict with established jurisprudence.

[35] The Tribunal was unable to locate the *Hodges* decision and directed the applicant to provide a copy. Counsel for the applicant replied that the case was "unknowingly cited

incorrectly" and could not be found. Counsel advised, "Any direct reference to the *Hodges* facts can fairly be removed from the document."

[36] *Hodges* does not appear to exist. Mere inadvertence does not explain how the citation found its way into the applicant's submissions; the applicant included direct quotations and submitted that the case mirrored "the exact circumstance" of this Application. This statement is false.

[37] In *Halton (Regional Municipality) v. Rewa et al.*, 2025 ONSC 4503 at para. 53, Tzimas R.S.J. stated the following after a litigant cited non-existent cases in a factum:

> Every person who submits authorities to the court has an obligation to ensure that those authorities exist and stand for the propositions for which they are advanced. Although increasingly people are using AI applications to assist them with drafting and research, they have an obligation to verify if the tool they are using is reliable. One does not need to be a lawyer to conduct a simple search on CanLII to verify whether the cases identified by the AI-generated factum exist. One also does not need to be a lawyer to read through a case to verify if it stands for the suggested proposition.

[38] In *Zhang v. Chen*, 2024 BCSC 285 at para. 29, Masuhara J. stated the issue in stronger terms: "[c]iting fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice."

[39] These comments apply equally to proceedings before this Tribunal, in my view.

ORDER

[40] The Request for Reconsideration is denied.

Dated at Toronto, this 30th day of October, 2025.

"Signed by"

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Will McNair
Member