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Elkasrawy v. Toronto Metropolitan University, 2026 HRTO 1137

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Tribunals Ontario
Human Rights Tribunal of Ontario

Tribunaux décisionnels Ontario
Tribunal des droits de la personne de l'Ontario

2026 HRTO 1137 (CanLII)

B E T W E E N:

Ayman Elkasrawy

Applicant

-and-

Toronto Metropolitan University,
(previously known as Ryerson University)

Respondent

DECISION

Adjudicator: Cyndee Todgham Cherniak

Date: July 24, 2026

File Number: 2018-31243-I

Citation: 2026 HRTO 1137

Indexed as: **Elkasrawy v. Toronto Metropolitan University**

APPEARANCES

Ayman Elkasrawy, Applicant	)	Faisal Bhabha, Alan McCallum and Nora Chahine, Counsel
Toronto Metropolitan University, Respondent	)	Simon Mortimer and Cosimo Morin, Counsel

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OVERVIEW

[1] This Application arises from events that must be recognized as one of the most difficult and distressing experiences in the life of the applicant, Ayman Elkasrawy. Dr. Elkasrawy is a devout Muslim man who was born in Egypt. At the time of the events that gave rise to this Application, he was a PhD student at the respondent (known at the time as Ryerson University ("Ryerson")) and he was employed by Ryerson under limited-term (single semester) contracts as a graduate teaching assistant and invigilator.

[2] Central to the background of this Application is a viral social media video with an English translation. While studying at Ryerson, Dr. Elkasrawy served as a part-time Assistant Imam at an off-campus mosque, Masjid Toronto. On the Night of Decree during Ramadan in 2016, Dr. Elkasrawy delivered the evening supplemental prayers in classical Arabic that was videotaped by Masjid Toronto and uploaded to their webpage. The video was located online. In early 2017, CIJ News published a video adding an English translation to portions of Dr. Elkasrawy's video-taped prayers. Media outlets subsequently published articles and reports in which they characterized Dr. Elkasrawy's translated words as anti-Semitic. They identified Dr. Elkasrawy by name. They informed the public that Dr. Elkasrawy was employed at Ryerson. Members of the public, students, parents of students, and advocacy groups immediately called for Ryerson to terminate Dr. Elkasrawy's employment. The public reaction in mid-February 2017 was swift, intense, and entirely beyond Dr. Elkasrawy's and Ryerson's control.

[3] Dr. Elkasrawy addressed the public reaction by posting an unreserved apology on Twitter. Masjid Toronto and the Muslim Association of Canada ("MAC") issued a joint statement referring to Dr. Elkasrawy's supplication as an "inappropriate supplication" and stated that the "language is unacceptable and against the values and practices of the (MAC), Masjid Toronto and the Muslim Community at large".

[4] Ryerson called a meeting with Dr. Elkasrawy, terminated his employment, informed B'nai Brith Canada that Dr. Elkasrawy had been terminated, and issued a

public statement acknowledging the public reaction had raised the issue of anti-Semitism with them.

[5] Dr. Elkasrawy filed the Application, in which he alleges discrimination with respect to employment because of creed, race, colour, ancestry, place of origin, and ethnic origin, contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended (the "*Code*"). Dr. Elkasrawy claims that he was the target of Islamophobic attacks.

[6] I confirmed during oral closing argument that Dr. Elkasrawy's allegations of adverse treatment are limited to the following three events:

a. On February 28, 2017, Ryerson terminated Dr. Elkasrawy's student-facing employment relationships;

b. On February 28, 2017, President Mohamed Lachemi sent an email to B'nai Brith Canada informing them that Dr. Elkasrawy was no longer an employee of Ryerson; and

c. On March 1, 2017, Ryerson issued a public statement in which they acknowledged the public reaction had raised the issue of anti-Semitism with them.

During the *de novo* merits hearing, I confirmed that Dr. Elkasrawy alleges that Ryerson's actions breached subsection 5(1) of the *Code* by discriminating against him primarily on the basis of his creed and intersectionally on the basis of his race, colour, ancestry, place of origin, and ethnic origin.

ISSUE

[7] The issue I must decide is whether the evidence presented at the *de novo* merits hearing establishes, on a balance of probabilities, a connection between Dr. Elkasrawy's protected characteristics and the termination of his employment and/or the issuance of the public statements by Ryerson. In determining whether the *Code* was breached, I

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must consider whether Dr. Elkasrawy's protected characteristics were a factor in the alleged adverse treatment.

[8] It is helpful to identify certain matters that are not before the Tribunal. This case is not about the actions of CIJ News, other media outlets, or third parties who called for Ryerson to terminate the employment of Dr. Elkasrawy. This case is also not about global geo-politics, free speech on a university campus, or privacy rights. This case is also not about whether Dr. Elkasrawy was wrongfully dismissed. The Tribunal's authority is governed by the *Code* and I intend to stay focussed on the issues that I must decide.

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RESULT

[9] For the reasons below, I am dismissing part of the Application. I find that Dr. Elkasrawy has not proved on a balance of probabilities that Ryerson breached the *Code* when they terminated his employment positions. I similarly find that Dr. Elkasrawy has not proved on a balance of probabilities that Ryerson breached the *Code* when President Lachemi issued a public statement on March 1, 2017, in which he acknowledged the public controversy as raising anti-Semitism. Dr. Elkasrawy has not proved a connection between a protected characteristic and these actions.

[10] I am upholding part of the Application. I find that Dr. Elkasrawy has proved on a balance of probabilities that Ryerson breached the *Code* when President Lachemi informed B'nai Brith Canada on February 28, 2017, that his employment at Ryerson had been terminated. I am satisfied that Dr. Elkasrawy's creed was a small factor in President Lachemi's decision to breach Ryerson's confidentiality policy and send an email about Dr. Elkasrawy's employment status to B'nai Brith Canada. I award Dr. Elkasrawy a remedy in the sum of $7,000.00 as compensation for injury to dignity, feelings, and self-respect for this *Code* violation.

FINAL INTRODUCTORY NOTES

[11] I recognize that the media controversy and personal attention in February 2017 had a profound effect on Dr. Elkasrawy. I recognize that this Decision may have

consequences for Dr. Elkasrawy because it will bring renewed attention to the words that were are the centre of the original media controversy. These reasons must be transparent and I must include those words in this Decision. The CIJ News' English translation of Dr. Elkasrawy's words may bring out strong emotions. In addition, Dr. Elkasrawy's own translation of his words may also bring out strong emotions. This Decision is not based upon emotions or reactions to emotions. It is based on the evidence before the Tribunal. The Tribunal's role is to consider the evidence before it.

[12] The CIJ News' English translation of Dr. Elkasrawy's words includes the following most controversial excerpt: "Oh Allah! Count their numbers; slay them one by one and spare not one of them. Oh Allah! Purify the Al-Aqsa Mosque from the filth of the Jews!"

[13] Dr. Elkasrawy said at the time that his words had been mistranslated and the video was manipulated. At the time of the events at issue, Dr. Elkasrawy said that the "correct" translation of his words is "Oh Allah; has full cognizance of them, slay them one by one, and don't let one escape your punishment. Oh Allah; cleanse the [occupied] Aqsa Mosque from the desecration by the Jews". Importantly, he apologized "unreservedly for misspeaking during prayer" and said, "I sincerely regret the offense my words must have caused". Based on the oral testimony at the *de novo* merits hearing, I find that Dr. Elkasrawy did not say the word "filth", but did say the words "the Jews". Based on the totality of the evidence before me, I believe him. With humility and grace, I find that Dr. Elkasrawy had a human moment and misspoke. Who amongst us has not, at some point in their lives, said something they wish they could take back and learned a life lesson because of it.

[14] This Decision is lengthy. There were a number of procedural issues that arose that are addressed in this Decision to provide context for rulings made during the *de novo* merits hearing. The issues before the Tribunal are complex and important, requiring thoughtful attention.

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SOCIAL CONTEXT

Islamophobia

[15] This Application raises the social context of Islamophobia in Canada as a critical element. Dr. Elkasrawy argued that he was the target of Islamophobic attacks. He invited me to look at CIJ News' English translation of his supplications as an Islamophobic attack against him. He invited me to look at a poster quoting the translation that was posted on Ryerson campus as actions of "the Islamophobia industry" in Canada, intended to raise strong anti-Muslim feelings and sentiments. He argued that Ryerson "participated in the Islamophobic attack" by terminating him.

[16] Ryerson denied the allegations. They took the position that they did not participate in any Islamophobic attack against Dr. Elkasrawy. During the proceeding, Ryerson's counsel acknowledged that Islamophobia exists in Canada and that "there exists sadly amongst our society groups of organizations that seek to drive wedges amongst us".

[17] Dr. Elkasrawy called Dr. Jasmin Zine as an expert in Islamophobia to provide opinion evidence about the manifestations of Islamophobia in Canada. The Tribunal does not require her opinion evidence to understand the social context of Islamophobia in Canada. The existence of Islamophobia, and its capacity to manifest through stereotypes, prejudice, bias, and differential treatment, have been recognized by this Tribunal, the courts, other human rights tribunals, and the Ontario Human Rights Commission.

[18] The Ontario Human Rights Commission's "Policy and guidelines on racism and racial discrimination" (the "OHRC Policy on Racism"), which subsection 45.5(1) of the *Code* authorizes me to consider even if the policy is not raised by the parties, recognizes that Islamophobia exists and states:

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> A contemporary and emerging form of racism in Canada has been termed "Islamophobia". Islamophobia can be described as stereotypes, bias or acts of hostility towards individual Muslims or followers of Islam in general. In addition to individual acts of intolerance and racial profiling, Islamophobia leads to viewing Muslims as a greater security threat on an institutional, systemic or societal level.
>
> See the OHRC Policy on Racism, page 10.

[19] The courts and the human rights tribunals have recognized that discrimination can take a variety of forms. Some forms of discrimination are easy to identify and others are less obvious, such as those that result from unconscious prejudices and stereotypes. See *Québec (Commission des droits de la personne et des droits de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Centre*), 2015 SCC 39; [2015] 2 SCR 789 ("*Bombardier*") at paragraph 1.

[20] In a recent case, *Muslim Association of Canada v. Attorney General of Canada*, 2023 ONSC 1923 (the "*MAC Decision*"), Justice Centa, commented as follows at paragraph 46:

> …Islamophobia is a cancer in Canadian society. In the recent past, it has led to far too many acts of terrorism and violence against Muslim-Canadians. The horrible violence and pain suffered by Muslim-Canadians cannot be ignored when considering how to address fairly concerns regarding a risk of physical harm to Muslim-Canadians.

While the *MAC Decision* was released after the close of the hearing, I take notice of it and agree with Justice Centa's comments.

[21] However, the issue before me is narrow. Dr. Elkasrawy brought this Application against Ryerson and not media outlets, reporters, advocacy groups and others. It is not for the Tribunal to conduct a general investigation or inquiry into Islamophobia in Canada and/or actions of persons who were not named as respondents in the Application and who were not given an opportunity to be heard.

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[22] I have considered the social context of Islamophobia when determining whether the evidence before me as a whole could support an inference that, on a balance of probabilities, Dr. Elkasrawy's creed was a factor in Ryerson's decision to terminate his employment positions and in issuing the public statements. Social context informs the analysis but does not substitute for the analysis of discrimination.

Anti-Semitism

[23] This case also raises the social context of anti-Semitism. The documentary evidence shows that the public reaction to the viral videos included statements or views that Dr. Elkasrawy's words were anti-Semitic. Dr. Elkasrawy maintains that his words were not anti-Semitic. In addition, the documentary evidence indicates that around the time of the events at issue, Ryerson was called to address other incidents of anti-Semitism on campus. These other incidents were not before the Tribunal and will not be canvassed in detail.

[24] In this case, the Tribunal is attentive to the co-existence of intertwined claims of harm, specifically allegations of anti-Semitism and allegations of Islamophobia.

[25] The OHRC Policy of Racism recognizes anti-Semitism and states:

> Jewish Canadians have been subjected to anti-Semitism and legalized discrimination. "None is too many" was the response given by a high level Canadian government official when asked how many Jews should be accepted as immigrants, at the time of the Nazi persecution of Jews. Signs posted along the Toronto beaches stated "No Dogs or Jews Allowed." Many hotels and resorts had policies prohibiting Jews as guests. There were restrictions on where Jewish persons could live or buy property. In 1951, a Jewish man challenged one such restrictive covenant preventing property from being sold to anyone of "the Jewish, Hebrew, Semitic, Negro or coloured race or blood." The Supreme Court of Canada declared the covenant void on the basis it was overly broad. [original footnotes removed]

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> See the OHRC Policy on Racism, page 10. The OHRC was referring to the Supreme Court of Canada's decision in *Noble v. Alley*, [1951] S.C.R. 64, 1950 CanLII 13 (SCC).

[26] The OHRC Policy on Racism provides a more detailed contemporary articulation of Islamophobia than it does for anti-Semitism, which is primarily described in terms of historic examples. Anti-Semitism is not merely historic. Anti-Semitism is a current and present-day issue. While the OHRC Policy on Racism does not offer a similarly explicit definition of anti-Semitism as it does for Islamophobia, it is a serious and enduring form of discrimination.

[27] In *R. v. Zundel*, 1992 CanLII 75 (SCC), [1992] 2 SCR 731, the Supreme Court of Canada included the following comment in *obiter* when referring to the facts in *Kane v. Church of Jesus Christ Christian – Aryan Nations*, Alta Bd. of Inquiry, [1992] A.W.L.D. No. 302:

> … racism is a current and present evil in our country. It is a cancerous growth that is still alive, growing and thriving on ignorance, suspicion, fear and jealousy.

Mr. Zundel had published a pamphlet entitled "Did Six Million Really Die?" and suggested that the Holocaust was a myth. He was charged with spreading false news and raised Charter challenges. The Supreme Court's decision is a leading case in freedom of expression. The above comment is as much a statement about anti-Semitism as it is about other forms of racism and hate speech.

[28] In the context of this Application, I recognize that anti-Semitism, like Islamophobia, encompasses stereotypes, tropes, prejudice, and hate directed at individuals and communities collectively based on their Jewish identity or faith. It too is a serious form of discrimination that has caused, and continues to cause, profound and lasting harm to affected individuals and communities.

[29] Islamophobia and anti-Semitism are equally unacceptable forms of discrimination. Both can manifest overtly or subtly, including through stereotyping, the

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attribution of collective blame, or the characterization of the entire group as posing a threat. Both can manifest in words and actions. The Tribunal must remain attentive to these dynamics when assessing whether discrimination under the *Code* has occurred.

[30] The existence and harms of both Islamophobia and anti-Semitism in Canada can no longer be questioned. However, as noted, the scope of this Application is limited. Social context assists in understanding the evidence and assessing whether an inference of discrimination may reasonably be drawn, but it does not replace the requirement that the applicant must establish, on a balance of probabilities, a connection between the alleged adverse treatment and his or her protected ground under the *Code*.

[31] Whether the societal context is Islamophobia, anti-Semitism, anti-Black racism, homophobia, transphobia, or other forms of discrimination, the normalization of prejudice can give rise to harmful assumptions and conduct. At the same time, the Tribunal must base its findings on the evidence before it, considered in its full context, and not on generalized concerns alone.

[32] I have remained mindful and alert to the social context of both Islamophobia and anti-Semitism in this case when assessing the evidence in this case.

PROCEDURAL BACKGROUND

De Novo Merits Hearing

[33] The Tribunal previously started a merits hearing on May 28, 2019, and March 10, 2020 (the “Original Merits Hearing”). The continuation dates were cancelled due to COVID-19. The Original Merits Hearing was not completed. The adjudicator who heard the Original Merits Hearing is no longer with the Tribunal and is, therefore, unable to finish the hearing or issue a decision. There is also no record of the oral rulings or decisions made in relation to issues that arose during the Original Merits Hearing. In these circumstances, the Application was assigned to me to conduct a *de novo* merits hearing.

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[34] A *de novo* merits hearing is a legal proceeding where a new hearing is held. The hearing starts over from the beginning and is heard afresh by a new adjudicator as if the previous oral testimony and oral arguments did not occur. The new hearing does not rely on the previous adjudicator's notes, findings, or rulings. Instead, the new adjudicator conducts a new hearing. The parties present their case again, including all oral testimony, and documentary evidence, and oral closing arguments.

[35] Prior to the Original Merits Hearing, Dr. Elkasrawy filed a physical book of documents, a witness list, and short Will-Say Statements for Dr. Jasmin Zine and an Amended Will-Say Statement for Dr. Atiqa Hachimi, together with their curriculum vitae. Dr. Elkasrawy's own witness statement stated only, "I adopt the facts as alleged in my Application and Reply". These documents formed part of the pre-hearing disclosure available to me at the commencement of the *de novo* merits hearing and limited the scope of the evidence that could be considered.

[36] Prior to the Original Merits Hearing, Ryerson filed an electronic book of documents, a witness list, and Will-Say Statements for Dr. Zolfaghari and Dean Duever. These documents also formed part of the pre-hearing disclosure available to me at the commencement of the *de novo* merits hearing and limited the scope of the evidence that could be considered.

[37] The documents before the Tribunal for the *de novo* merits hearing were limited to what was before the adjudicator in the Original Merits Hearing. Subject to rulings below, no new documents are normally permitted in a *de novo* proceeding. The parties were permitted to refer to the previously filed documents and ask for them to be entered into evidence as exhibits during the *de novo* merits hearing.

***De Novo* Merits Hearing – Witnesses and Exhibits**

[38] The Tribunal conducted a four-day *de novo* merits hearing on November 22, 24, and 25, 2022, and April 13, 2023. The hearing included three days of *viva voce*

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evidence and one day for Tribunal questions following the filing of written closing submissions.

[39] Dr. Elkasrawy gave direct testimony before being cross-examined. Notwithstanding Dr. Elkasrawy's failure to file a witness statement and statement that "I adopt the facts as alleged in my Application and Reply", Dr. Elkasrawy was given wide latitude during his examination in chief, which went far beyond the facts plead in his Application and Reply. I heard various objections from Ryerson's counsel and made rulings after hearing submissions from the parties. Where a ruling on a specific objection is relevant to these reasons, I have discussed it in this Decision.

[40] Dr. Elkasrawy called Dr. Zine as an expert in Islamophobia and its manifestations in Canada. She was qualified as an expert. Dr. Zine gave direct testimony on limited scope established by the Tribunal before being cross-examined. As set out in greater detail below in a section entitled "EXCLUDED EVIDENCE", I did not accept Dr. Zine's late-filed expert report as an exhibit. Dr. Zine's updated curriculum vitae was entered as an exhibit. Further, part of Dr. Zine's proposed testimony was determined to be inadmissible prior to the start of her testimony.

[41] Dr. Saeed Zolfaghari was Ryerson's Vice-Provost, Faculty Affairs at the time of the events at issue. In that role, Dr. Zolfaghari was responsible for anything relating to Ryerson faculty, including part-time employees, such as graduate and teaching assistants. Dr. Zolfaghari was also involved in the negotiation of the Collective Agreement and was familiar with its contents. He testified for Ryerson and adopted the contents of his will-say statement and supplemental Will-Say Statement. Dr. Zolfaghari gave direct testimony before being cross-examined. Cross-examination exceeded the time estimates provided by the applicant's counsel at the start of the *de novo* merits hearing, but he was allowed to finish his cross-examination.

[42] Dr. Thomas Duever, P. Eng, FCIC, was the Dean of the Faculty of Engineering and Architectural Science at the time of the events at issue. He was accountable for all the academic and administrative affairs of the faculty at Ryerson, including all the

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employment contracts. He testified for Ryerson and adopted the contents of his Will-Say Statement. Dean Duever gave direct testimony before being cross-examined.

[43] At the *de novo* merits hearing, 22 documents were entered as exhibits, including witness statements. Two videos were entered into evidence.

[44] At the Tribunal's request, a Book of Exhibits was filed after the hearing.

Pre-Hearing Procedural Background - June 8, 2022, Pre-Hearing Case Management Conference Call ("CMCC #1")

[45] After it was determined that a *de novo* merits hearing was necessary, the Tribunal held CMCC #1. At CMCC #1, Ryerson reserved the right to challenge the relevance of Dr. Elkasrawy's expert witnesses, in whole or in part. I informed the parties and set out in a subsequent Case Assessment Direction ("CAD") that I would address the issue of relevance of the experts' proposed evidence at the *de novo* merits hearing.

[46] At CMCC#1, the parties informed me that the previous adjudicator had accepted late-filed documents during the Original Merits Hearing that were entered as exhibits. I did not have those documents in the electronic record and asked the parties to file a Joint Book of Documents and include the documents. They did not do so. Instead, during the week before the *de novo* merits hearing, each party filed their own book of documents. I did not receive objections from either party regarding the other's book of documents.

[47] At CMCC #1, the parties were informed that the Tribunal would schedule a three day *de novo* merits hearing to receive oral testimony and oral closing submissions. The parties agreed to hearing dates. Although the parties were directed to file a proposed hearing schedule to fit within the three days, they did not do so.

[48] At CMCC #1, the parties agreed that many facts were not in dispute. They agreed to prepare an Agreed Statement of Fact. However, in the week before the *de novo*

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merits hearing, the parties informed the Tribunal that they would not be filing an Agreed Statement of Fact.

Pre-Hearing Procedural Background – October 27, 2022, CMCC ("CMCC #2")

[49] On September 8, 2022, Ryerson requested that the Tribunal hold a CMCC prior to the scheduled *de novo* merits hearing to address procedural issues. Ryerson asked for the following:

a. an interim decision on whether the Tribunal would allow Dr. Elkasrawy to amend the Application to add reprisal as a ground; and

b. an interim decision on whether Dr. Elkasrawy's expert, Dr. Atiqa Hachimi, should be permitted to testify at the *de novo* merits hearing. Ryerson took the position that her proposed evidence was inadmissible.

[50] The Tribunal held CMCC #2 to receive oral submissions from the parties on these issues. CMCC #2 also presented an opportunity for the parties to raise other pre-hearing issues. At CMCC#2, Dr. Elkasrawy did not seek permission to file any new or amended documents, with the exception of brief submissions on the issue of the admissibility of Dr. Hachimi's proposed evidence.

Interim Decision

[51] In *Elkasrawy v. Toronto Metropolitan University*, 2022 HRTO 1353 (the "Interim Decision"), I addressed the issues raised at CMCC#2. In the Interim Decision, I ruled that:

a. the Application be amended to add Dr. Elkasrawy's reprisal claim because reprisal had been accepted as an issue at the Original Merits Hearing. Ryerson was permitted to file a supplemental witness statement for Dr. Zolfaghari and an additional witness statement to address the newly added reprisal allegations; and

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b. the scope of Dr. Hachimi's proposed evidence be limited, with portions of her Will-Say Statement and Report ruled inadmissible.

[52] In the Interim Decision, I stated that I had not made a final decision on the relevance and necessity of Dr. Hashimi's evidence.

Reprisal Claims Subsequently Abandoned

[53] Despite the order adding reprisal allegations, Dr. Elkasrawy stated in his written reply closing submissions that he was no longer pursuing claims of reprisal. Accordingly, I will not address the reprisal claims or the testimony presented during the hearing to support the reprisal allegations and as a defence to them.

PROCEDURAL RULINGS AT THE DE NOVO MERITS HEARING

[54] In the week prior to the *de novo* merits hearing, the parties filed a number of documents, giving rise to procedural issues that were addressed at the outset of the hearing.

Agreed Schedule for the *De Novo* Merits Hearing

[55] At the outset of the *de novo* merits hearing, the Tribunal asked the parties to give time estimates for examination in chief, cross-examination and closing arguments. The time allocations exceeded the time allotted for the three-day hearing. The Tribunal developed a schedule based on adjusted time estimates provided by the parties.

Request for Dr. Hachimi to Testify on Day 3 of the *De Novo* Merits Hearing

[56] On the Friday afternoon before the start of the *de novo* merits hearing, Dr. Elkasrawy's counsel informed the Tribunal that Dr. Hachimi was only available to give her testimony on the last scheduled hearing day. This presented a problem because, based on the agreed upon hearing schedule, the hearing could not be completed if the

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Tribunal were to follow the traditional approach of receiving all of the applicant's evidence before the respondent presented their case.

[57] Ryerson strongly objected to Dr. Hachimi being permitted to testify on the last agreed upon hearing date. They argued that the Tribunal should adhere to its traditional approach. They further submitted that allowing Dr. Hachimi to testify during or after Ryerson's witnesses would be unfair and prejudicial to them.

[58] At the hearing, I noted that the parties had agreed at CMCC #1 to the three hearing dates, with the expressed understanding that the hearing, including oral closing submissions, would be completed within those three days. The late request for Dr. Hashimi to testify of the last day represented a significant change to the hearing management plan developed with the parties. I asked Dr. Elkasrawy's counsel why they had not requested a summons to ensure Dr. Hachimi's availability on the first or second scheduled hearing date. Counsel responded that they would not have summoned a cooperative witness. However, the summons process under Rule 3.1 of the Tribunal's Rules of Procedure (the "Tribunal's Rules") serves to inform a witness of the hearing dates and when they are expected to testify, thereby avoiding last minute availability issues.

[59] Section 41 of the *Code* permits the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate the fair, just, and expeditious resolution of the merits of the matters before it. This provision affords the Tribunal significant flexibility where circumstances require or where an alternative procedure is appropriate.

[60] After considering the parties' oral submissions, I exercised my discretion under Rule 1.7(j) of the Tribunal's Rules to determine the order of the proposed witnesses and depart from the Tribunal's usual practice. I granted Dr. Elkasrawy's request and directed that he would testify first, followed by Ryerson's proposed witnesses, Dr. Zolfaghari and Dean Duever. I advised the parties that Dr. Elkasrawy's expert witnesses would testify after Ryerson's witnesses. This order for witness testimony would allow the Tribunal to

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make further determinations regarding the admissibility of the proposed expert evidence, which was a live issue. I also indicated that the Tribunal would benefit from hearing Ryerson's evidence before ruling on admissibility of the proposed evidence of Dr. Elkasrawy's expert witnesses.

[61] Dr. Elkasrawy did not object to both Dr. Hachimi and Dr. Zine being tentatively scheduled to testify on the last scheduled hearing day.

[62] As discussed below in the "EXCLUDED EVIDENCE" section, I ultimately concluded that Dr. Hachimi's proposed expert opinion evidence was not relevant to the issues before the Tribunal and, therefore, was inadmissible. As a result, Dr. Hachimi did not testify in the end.

Filing of New Document at the Hearing

[63] During the *de novo* merits hearing, Dr. Elkasrawy asked me to accept a document that was not on their document list and provided to the Tribunal in accordance with Rule 16.3 of the Tribunal's Rules. The document was the complete email correspondence between President Lachemi and B'nai Brith Canada. At the hearing, I was informed that the document was in Ryerson's disclosure. Counsel for Dr. Elkasrawy wanted to refer Dr. Zolfaghari to this document during cross-examination. I exercised my discretion pursuant to Rules 1.7(w) and 16.4 of the Tribunal's Rules to permit Dr. Elkasrawy to file the document because Ryerson was not surprised by it. After Dr. Zolfaghari identified the document, Ryerson did not object to it being entered as an exhibit.

Written Closing Submissions and Limited Oral Argument

[64] On the evening of the second *de novo* merits hearing date, the parties requested that I accept written closing submissions instead of asking the parties to make oral closing submissions on the third scheduled hearing day. They asked me to adopt a staggered timeline for written submissions whereby the applicant would file his written submissions first, the respondent's written submissions would follow, and the applicant

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would file written reply submissions. I agreed to their request. When issuing directions along the lines the parties requested, I imposed page limits. The parties also agreed to return for a continuation hearing date so that I could ask clarification questions based on the parties' written submissions.

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[65] Dr. Elkasrawy's written submissions did not comply with the page limits. However, during the subsequent closing argument hearing date, I stated even though there was a technical breach by Dr. Elkasrawy of the page limitation for written closing submissions, I would not stop my review at the page limit. I have considered all of Dr. Elkasrawy's written arguments even if I do not refer to every argument directly in this Decision.

[66] That being said, Dr. Elkasrawy's written closing submissions include a long recitation of the facts. I have not considered his recitation of the facts for the following reasons. Firstly, Dr. Elkasrawy's pleadings contained limited facts. Secondly, he was required by Rule 17.2 of the Tribunal's Rules to file a summary of his evidence and chose to adopt the facts set out in his Application and Reply instead. Thirdly, significant portions of Dr. Elkasrawy's oral evidence were not disclosed prior to the *de novo* merits hearing, went beyond the pleadings and documentary evidence, and can best be described as trial by ambush. Fourthly, some of the evidence was contested during the *de novo* merits hearing. As a result, I must make credibility and reliability findings and weigh evidence. I cannot in these circumstances adopt Dr. Elkasrawy's version of the events. Finally, in my view, Dr. Elkasrawy has taken interpretive license in his recitation of the evidence in his written closing submissions and has presented a perfected version of his evidence with the assistance of counsel. I find that certain submissions overstated the evidentiary foundation and do not accurately reflect the evidentiary record before me. Accordingly, I have undertaken my own review of the evidence before me.

Oral Submissions After Written Submissions Filed

[67] During the last *de novo* merits hearing day, I asked clarification questions based on the parties' written submissions and the evidence. After I asked my questions, the parties were permitted to make oral closing submissions arising from my questions.

They did not do so because the format for the Tribunal's clarification questions allowed for input by both parties. I had adopted an interactive questioning model whereby both counsels could go back and forth responding to my questions.

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EVIDENCE AND FINDINGS OF FACT

Introductory Comments

[68] These reasons set out only the facts, evidence, and submissions that I consider necessary to decide the issues properly before me. While portions of the evidence were contested or challenged at the hearing, I do not summarize the full evidentiary record and/or arguments presented. I have considered all the evidence and all the submissions, whether or not they are expressly referred to in these reasons.

[69] In the interests of efficiency, I refer only to the evidence and arguments that are relevant to the issues I must determine and are necessary to explain my conclusions. Evidence relating to matters not before me, not raised in the pleadings, or not material to the outcome, is not discussed. The omission of any evidence or submission from these reasons should not be taken as an indication that it was not considered.

[70] The Tribunal is not required to address all evidence and every submission, provided that its reasons are sufficient to explain the basis for its decision. See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019, SCC 65 ("*Vavilov*") at paragraphs 127-128; *Clifford v. Ontario (Attorney General)*, 2009 ONCA 670 ("*Clifford*") at paragraph 40; and *Senat v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 353 ('*Senat*") at paragraph 34.

Credibility and Reliability

[71] In deciding this Application, I assessed both the credibility and reliability of the witnesses who testified. Each witness's evidence has been considered in light of the entire evidentiary record, including the documentary evidence, internal and external consistency, and whether the testimony accorded with the surrounding circumstances.

[72] Credibility and reliability are different. Credibility is about whether a witness is testifying honestly. Reliability is about whether the witness is testifying accurately. See *R. v. Morrissey*, 1995 CanLII 3498 (ON CA) ("*Morrissey*").

[73] Reliability engages consideration of the witnesses' ability to accurately observe, recall, and recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability. A credible witness may give unreliable evidence. See *R. v. G.F.*, 2021 SCC 20 at paragraph 82. See also *R. v. H.C.*, 2009 ONCA 56 at paragraph 41.

[74] In assessing the credibility of each witness, I applied the traditional test, namely, whether the alleged facts were in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions". See *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 DLR 354 at page 357.

[75] I also followed the Tribunal's practices to assess credibility and reliability of witness testimony. The Tribunal has set out in its case law a number of factors that have been considered in assessing credibility and reliability. These factors include, but are not limited to, the following: the internal consistency or inconsistency of evidence; the witness' ability and/or capacity to recollect; the witness' opportunity and/or inclination to tailor evidence; the witness' opportunity and/or inclination to embellish evidence; the existence of corroborative and/or confirmatory evidence; the motives of the witnesses and/or their relationship with the parties; and the failure to call or produce material evidence. See *Shah v. George Brown College*, 2009 HRTO 920 at paragraphs 12-14, *Staniforth v. C.J. Liquid Waste Haulage*, 2009 HRTO 717 at paragraphs 35-36, and *McKay v. Toronto Police Services Board*, 2011 HRTO 499 at paragraph 11.

[76] As part of the credibility assessment, I considered whether any witness' testimony reflected revisionist history, that is, whether their account was reconstructed after the fact in a manner that departed from contemporaneous evidence or objective

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circumstances. Revisionist testimony undermines credibility. See *Bauer v. Toronto (City)*, 2011 HRTO 1628 at paragraph 4.

[77] Judicial commentary has identified revisionist history as including the *post-hoc* introduction of new incidents or allegations to bolster a position, or the tailoring of evidence to advance legal self-interest. See *Urbanski v. Corporation of the Township of Ramara*, 2016 ONSC 111 at paragraphs 52 and 57; *Sambrook v. Altamira Management Ltd.*, 2001 CanLII 28302 (ON SC) at paragraph 9.

[78] Witness testimony is not considered in isolation, but rather in the context of the evidence as a whole. See *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 SCR 41 ("*FH*").

[79] Depending on the circumstances, some portions of a witness' evidence may be accepted while other portions are rejected. Accordingly, I may accept all, part, or none of a witness's testimony. See *R. v. R.E.M.*, 2008 SCC 51 at paragraph 65.

Inferences

[80] A trier of fact may draw reasonable factual inferences from credible and reliable evidence. Doherty J.A. described the process of drawing inferences in *R. v. Morrissey*, above:

> A trier of fact may draw factual inferences from the evidence. The inferences must, however, be ones which can be reasonably and logically drawn from a fact or group of facts established by the evidence. An inference which does not flow logically and reasonably from established facts cannot be made and is condemned as conjecture and speculation. As Chipman J.A. put it in *R. v. White* (1994), 1994 NSCA 77 (CanLII), 89 C.C.C. (3d) 336 at p.351, 28 C.R. (4th) 160, 3 M.V.R. (3d) 283 (N.S.C.A.):
>
> > These cases establish that there is a distinction between conjecture and speculation on the one hand and rational conclusions from the whole of the evidence on the other.

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[81] Whether an inference is or is not drawn is a matter of weighing evidence.

[82] The Tribunal has recognized that a party's failure to call a witness who has material and direct knowledge of the disputed facts may prompt the Tribunal to draw an adverse inference. That is, in such cases, the Tribunal may infer that the party did not call a particular witness because the witness' testimony would not have supported that party's case. See, for example, *Woolrich v. Royal Lepage Relocation Services*, 2010 HRTO 670 at paragraph 23 and *Smith v. Menzies Chrysler*, 2009 HRTO 1936 ("*Smith*") at paragraph 175.

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The General Facts and Evidence

[83] I will start with a general overview of the facts and evidence and then focus on specific areas of the evidence that requires more focussed attention.

General

[84] Dr. Elkasrawy was born in Egypt, and his first language is Arabic. He received a bachelor's degree in engineering in Cairo and emigrated to Canada in 2008. He received a master's degree from Ryerson University. He was enrolled in the PhD program in Engineering at Ryerson during the Winter Term 2016-2017 when the events at issue in his Application occurred.

[85] Dr. Elkasrawy is a devout Muslim. He was hired as an assistant Imam in October 2015 at Masjid Toronto under the Muslim Association of Canada. Masjid Toronto has two locations in downtown Toronto. Both locations are close to the Ryerson campus. Dr. Elkasrawy worked at both locations.

[86] I confirmed with the parties the relationships between Dr. Elkasrawy and Ryerson. At the relevant time, Dr. Elkasrawy had three relationships with Ryerson:

a. He was a graduate level PhD. student enrolled in courses in the Engineering Department;

b. He received a research funding envelope from Ryerson with the expectation that he would engage in research. He also received graduate student stipends. The research stipend varied per year and could be as high as $18,000 or $20,000 per year; and

c. He was an employee who was covered by the CUPE Collective Agreement. He had two graduate teaching assistant contracts and one invigilator contract for the Winter Term 2016-2017. The graduate teaching assistant salary was approximately $3,500 to $4,000 per semester. The invigilator fee was $40.00/hour.

[87] Dr. Elkasrawy confirmed that he continued to study at Ryerson and was not suspended at the material time. He completed his studies and received his PhD degree in Engineering from Ryerson in 2020.

[88] Dr. Elkasrawy confirmed that the research stipend was not impacted by the events at issue and he continued to receive it. The research stipend was received from his research supervisor.

The Supplications

[89] It is not disputed that in or about June 2016, during the holy period of Ramadan, in his capacity as an associate Imam of the Masjid Toronto mosque, Dr. Elkasrawy led evening supplemental prayers on the Day of Decree. It is not disputed that the Masjid Toronto mosque videotaped Dr. Elkasrawy's supplication and uploaded the video.

[90] The contested evidence with respect to Dr. Elkasrawy's preparation and delivery of his supplications is set out below.

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The Media Translation

[91] It is not disputed that CIJ News found the video of Dr. Elkasrawy's supplications on the Night of Decree that was posted online by Masjid Toronto, translated them into English, and in mid-February 2017 they published the videos with their English translation as subtitles. As previously stated, the most controversial portion of the CIJ News translation is:

> O Allah! Destroy anyone who killed Muslims, O Allah! Destroy anyone who displaced the sons of Muslims, O Allah! Count their number; slay them one by one and spare not one of them, Oh Allah! Purify Al-Aqsa Mosque from the filth of the Jews!

[92] The CIJ News video went viral. Other media outlets replayed the video. News articles were written about the video. Dr. Elkasrawy was alerted to the CIJ News video. Ryerson also became aware of the video.

[93] Dr. Elkasrawy states that the CIJ News English translation is a mistranslation and that it was manipulated. He claims that the video is an Islamophobic attack against him.

Dr. Elkasrawy's Translation

[94] Dr. Elkasrawy testified that since his supplications were delivered in classical or formal Arabic, he prepared his own English translation of his words. He stated at the time that his translation was the "correct" translation. Dr. Elkasrawy asked friends to assist him with his translation, including Imam Mohamed Zahid and Sheikh Naqvi. Dr. Elkasrawy's translation is provided in Schedule A to this Decision. In order to not alter what Dr. Elkasrawy provided to the Tribunal, it has been copied and pasted into Appendix A.

[95] Dr. Elkasrawy's "correct" English translation for the above controversial excerpt of his supplications is as follows:

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> Oh Allah; punish those who killed Muslims. Oh Allah; punish those who displaced the children of Muslims. Oh Allah; has full cognizance of them, slay them one by one, and don't let one escape your punishment.
>
> Oh Allah; cleanse the [occupied] Aqsa Mosque from the desecration by the Jews.

[96] I note that in the Application, Dr. Elkasrawy pleaded that he prepared the translation before delivering his supplication in June 2016. However, during cross-examination, Dr. Elkasrawy confirmed he prepared the translation in the two days prior to the February 28, 2017, meeting with Dean Duever. I am satisfied that he prepared the translation on or about February 26 or 27, 2017.

The Apologies / Statements

[97] Based on the documentary evidence, on or about February 20, 2017, Dr. Elkasrawy issued the following apology on Twitter:

> Neither I, Masjid Toronto or the congregation harbour any form of hate towards Jews. And so I wish to apologize unreservedly for misspeaking during prayer last Ramadan. I firmly believe that all human beings: Muslims, Jews, Christians and people of all and no faith deserve to live a life free of any threat to their safety. In my supplication my intention was to refer to a very specific political situation that is the result of military occupation. I sincerely regret the offence that my words must have caused. [Emphasis added]

[98] I note that the original Tweet was not provided to the Tribunal. Dr. Elkasrawy filed a blank document with what was described in his testimony as the content of the Tweet. Ryerson did not object to the Tribunal entering into evidence the substitute version of the Tweet as evidence even though it was not the original Tweet.

[99] Based on the documentary evidence, on February 20, 2017, Masjid Toronto and the MAC issued the following joint statement online in response to the public outcry arising from the video:

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> It has come to our attention that an inappropriate supplication that was offensive to those of Jewish faith, was made in our downtown mosque, Masjid Toronto. Such language is unacceptable and against the values and practices of the Muslim Association of Canada (MAC), Masjid Toronto and the Muslim Community at large. Masjid Toronto condemns all forms of hate and racism towards any faith group or others and is committed to offering a safe spiritual space for all congregants. [Emphasis added]

[100] On February 21, 2017, the MAC said that "a junior employee" at Masjid Toronto had added inappropriate supplications, in Arabic without authorization, and in contravention of their code of conduct.

[101] Dr. Elkasrawy testified that Masjid Toronto did not tell him they were going to issue the statement before publishing it on their website. He further testified that Masjid Toronto suspended him. He testified that he chose to not go to Masjid Toronto during his suspension, which lasted past Ramadan 2017.

The Poster

[102] It is not disputed that a poster was prepared calling for the firing of Dr. Elkasrawy. The poster includes the following excerpt from the CIJ News translation:

> Count their number, slay them one by one and spare not one of them, Oh Allah! Purify Al-Aqsa Mosque from the filth of the Jews!

The poster also states:

> Ayman Elkasrawy is a teaching assistant at Ryerson University. In 2016, he publicly made extremely hateful statements about Jews. Yet he continues to teach at Ryerson. Fire him now.
>
> RyersonAgainstRacism.com
>
> RACISM HAS NO PLACE AT RYERSON.

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[103] The documentary evidence before me includes multiple copies of the poster. In addition to the above words, the poster has a photograph of Dr. Elkasrawy. In the photograph, Dr. Elkasrawy is smiling. The documentary evidence shows that the photograph is from Dr. Elkasrawy's LinkedIn profile.

[104] The documentary evidence includes an internal Ryerson email dated February 24, 2017, that attaches a photograph of the poster and states "… these posters were found in some stairwells of POD. [Person's name] is ensuring our custodial people take them down if found, and security has been notified".

[105] Dr. Elkasrawy testified that Ryerson security removed the posters on the same day they were posted. He also testified that Ryerson security offered to walk with him on campus to ensure his safety.

[106] Dr. Elkasrawy testified that he could not remember who made the poster.

The Termination Meetings

[107] There were two meetings to discuss the termination of Dr. Elkasrawy's employment at Ryerson. It is not disputed that one meeting took place in the early morning of February 28, 2017, and involved Dr. Zolfaghari. The second meeting took place on February 28, 2017, at 4:30 pm, which Dr. Elkasrawy and Dean Duever attended. I discuss the oral testimony concerning these meetings in a separate section.

Termination Letter

[108] Based on the documentary evidence, Dean Duever wrote a termination letter to Dr. Elkasrawy. It is not disputed that Dean Duever delivered the termination letter to him during their meeting on February 28, 2017. The termination letter stated:

> On February 21, 2017, it came to the University's attention that in June 2016 while you were leading prayers at the Masjid Toronto near Ryerson University, you stated "O Allah! Destroy anyone who killed Muslims, O Allah! Destroy anyone

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who displaced the sons of Muslims. O Allah, Count their number, slay them one by one and spare not one of them. O Allah! Purify Al-Aqsa Mosque from the filth of the Jews!".

Masjid Toronto released a statement on February 17, 2017, as follows:

[Quote removed - See quoted statement above]

On February 20, 2017, you posted an apology on Twitter stating the following:

[Quote removed - See above]

At our meeting today with Melissa Rotundo (Human Resources) and Linda Barnett (CUPE Local 3904) you explained that you issued an apology because you recognized your words must have hurt friends and colleagues, however, you noted that the translation made by some media was not accurate and that two different supplications were merged, One supplication was referring to the situation in Syria and the second was referring to Al-Aqsa Mosque.

The University acknowledges that you have apologized and taken steps to make amends; however, this apology does not justify the comments being made. As a Graduate Assistant and employee of Ryerson, you have an obligation, as outlined in Article 12.06 of the CUPE Local 3904 Unit 3 Collective Agreement, to respect and adhere to the University policies on Human Rights, Harassment Prevention, Occupational Health and Safety, etc.

In your role as a Graduate Assistant, you are required to create an atmosphere of mutual respect on which students learn. One of Ryerson's core values is our commitment to community and inclusion which is the shared responsibility of all community members to foster a welcoming, supportive and respectful learning, teaching, research and work environment. Your comments are in contravention of this core value, do not foster a respectful learning environment and reflect adversely on, and are to the detriment of the University. They are also a violation of the University's Harassment & Discrimination Prevention Policy … and a failure

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> to fulfill your obligations as a Graduate Assistant outlined in Article 12.06 of the Collective Agreement.
>
> We note that you have the following employment contracts this term:
>
> …
>
> Based on the above, the University determines your comments are extremely serious and does not condone them in any manner whatsoever. As a result, it is my decision that, effective today, your employment contracts as noted above are terminated for just cause.
>
> You will receive all monies earned and owing up to today, less any and all deductions required by law. …

Post-Termination Statements by President Lachemi

[109] On February 21, 2017, B'nai Brith Canada sent a letter to Ryerson demanding that they fire Dr. Elkasrawy. On February 28, 2017, President Lachemi sent an email to B'nai Brith Canada responding to the letter stating in part:

> Upon learning of this deplorable incident, my office immediately referred the matter to Ryerson Human Rights Services, to our Human Resources department, and to our Legal team. I asked them to thoroughly examine the matter and to provide counsel on the appropriate follow-up actions and possible resolutions.
>
> As a result of this review, Mr. Elkasrawy is no longer employed by Ryerson University.
>
> I want to add that we are very aware of how something of this nature can impact the climate for our Jewish students and our Jewish community. That is why we continue to be committed to broadening education and awareness of anti-Semitism and we remain actively engaged in addressing any anti-Semitism in our community.

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> In closing, I want to reiterate that what was shared in our meeting still holds true, that Ryerson University strongly believes it is the shared responsibility of all of our community members to foster a welcoming, supportive and respectful learning, teaching, research and work environment for all members of our richly diverse community.

[110] On March 1, 2017, the Office of President Lachemi issued a public statement entitled “Statement in response to anti-Semitic incident”. The press release does not include the applicant’s name, but it is clear that the statement relates to him. The press release states as follows:

> A week ago, it was brought to the university’s attention that a teaching assistant had made disturbing, anti-Semitic comments off-campus in the summer of 2016. Upon learning of this incident, my office immediately referred the matter to Ryerson’s Human Rights Services, to our Human Resources department, and to our Legal team. I asked them to thoroughly examine the matter and to provide counsel on the appropriate follow-up actions and possible resolutions.
>
> As a result of this review, the university has taken appropriate action. As with all human resources issues at Ryerson, they are addressed as confidential matters requiring involvement of the appropriate university departments and union representatives.
>
> Independent of this review, Ryerson engaged with numerous organizations, students, faculty and staff about this situation – we understand how something of this nature can impact the climate of our Jewish students and our Jewish community. We continue to be committed to broadening education and awareness of anti-Semitism, and we remain actively engaged in addressing anti-Semitism in our community. We do not, and will not, condone any actions that are counter to our core values of equity, diversity and inclusion.
>
> I want to re-affirm that Ryerson values the equitable, intentional and ongoing engagement of diversity within every facet of university life. We strongly believe it is the shared responsibility of all of our community members to foster a

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welcoming, supportive and respectful learning, teaching, research and work environment for all in our richly diverse community.

[111] After President Lachemi sent his email to B'nai Brith Canada, on February 28, 2017, Aidan Fishman authored an article entitled "Teaching Assistant Who Led Antisemitic Prayer Fired by Ryerson University". The article was short. Dr. Elkasrawy did not lead any evidence to suggest that the article resulted in further harm.

[112] Based on the evidence presented at the *de novo* merits hearing, the public outcry ended and Dr. Elkasrawy was able to return to and complete his studies quietly.

Grievance

[113] Dr. Elkasrawy testified that he discussed with his CUPE representative filing a grievance. After the representative had discussions with Ryerson, Ryerson offered to pay Dr. Elkasrawy the full amount owing under the terminated employment contracts. He rejected the offer. He also did not pursue the grievance further. In addition, he did not pursue a wrongful dismissal claim or reinstatement before the contracts' terms ended.

Reference Letter

[114] On March 2, 2017, Dean Duever wrote a reference letter for Dr. Elkasrawy. He did not refer to the events in this Application in the reference letter. The reference letter was positive in its discussion of Dr. Elkasrawy's employment activities.

Specific Evidence

[115] In this section, I will discuss the following two aspects of the evidence in greater detail:

a. Dr. Elkasrawy's evidence relating to the preparation for his supplications and delivery of the supplications; and

b. The termination meetings.

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Dr. Elkasrawy's Evidence Relating to the Preparation for his Supplications and Delivery

Introductory Comments

[116] In Ryerson's written closing submissions, they raise numerous concerns about the credibility and reliability of Dr. Elkasrawy's testimony. In his written reply closing submissions, Dr. Elkasrawy responded that the inconsistency in his testimony was minor and can be explained by the passage of time.

[117] I have reflected carefully on Dr. Elkasrawy's evidence relating to his supplications. It is clear from his evidence that it is important to Dr. Elkasrawy for me to understand he did not intend to speak words in his supplication that are anti-Semitic and he desperately wants the Tribunal to remove this label from him. The words spoken as part of the supplications given by Dr. Elkasrawy during Ramadan in 2016 are at the heart of the controversy, the viral videos on social media, and the public outcry.

[118] His evidence was received by me years after the events in question, including months between giving the supplications and the viral videos/public outcry, Dr. Elkasrawy's personal distress during the public outcry, his termination, discussions with media, discussions with Mr. Bernie Farber as part of a program Dr. Elkasrawy took at the Mosaic Institute, discussions by Dr. Elkasrawy with Ms. Jennifer Yang (a reporter), discussions with Dr. Hachimi (in connection with an article to be written by Ms. Yang), and participating in the Original Merits Hearing. It is understandable that what occurred after the delivery of the supplications has impacted Dr. Elkasrawy's ability to accurately recall and recount the events themselves. I find that while not intentional, Dr. Elkasrawy's testimony demonstrated that his memories relating to the preparation and delivery of the supplications have evolved and changed over time. The result is that some of Dr. Elkasrawy's testimony is not reliable. While the passage of time may affect reliability of memory, it does not by itself explain all of the concerns that arose in Dr. Elkasrawy's testimony. In some instances, as discussed below, I find that the issue is not merely a faulty recollection but credibility.

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[119] There is one additional comment that I must make. Dr. Elkasrawy did not prepare and file a full summary of his proposed evidence as required by Rule 17.2 of the Tribunal's Rules. Instead, he adopted facts set out in the Application and Reply. Those documents do not contain limited factual pleadings. Dr. Elkasrawy's in-chief testimony expanded beyond his leadings and include important and material details that emerged at the *de novo* merits hearing.

[120] As a result, the Tribunal was required to rely primarily on contemporaneous handwritten notes taken during the proceeding. Unlike courts, the Tribunal does not have the benefit of a verbatim transcript.

[121] Rule 5.6 of the Tribunal's Rules provides that where a party fails to deliver material as required by the Tribunal's Rules, the Tribunal may refuse to consider the material or may take any other action it considers appropriate. I have not refused to consider Dr. Elkasrawy's oral testimony. In my view, when a detailed witness statements has not been filed as required, it is appropriate for me to rely upon the documentary exhibits, the factual pleadings, and my notes and memory of the evidence in order to make findings of fact.

Dr. Elkasrawy's Evidence

[122] Dr. Elkasrawy testified that the supplications at issue were delivered by him during the supplemental evening Taraweeh prayers on the Night of Decree (Night of Power) during Ramadan. He could not recall the specific date.

[123] Dr. Elkasrawy testified that it is a great honour to lead the prayers. He testified that he was one of three people leading the prayers. It is not contested that the supplications were delivered by Dr. Elkasrawy in classical or formal Arabic. The video shows that Dr. Elkasrawy spoke the supplications from memory and did not have written notes to read or remind him of the words to say.

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[124] Dr. Elkasrawy explained that supplications are part of the prayer. He testified that supplications call to God to praise him and to ask for benefits in this life or in the hereafter.

[125] Dr. Elkasrawy testified that he prepared his supplications prior to delivering them. He testified that he alone chose the words he spoke during his supplication. During cross-examination, he confirmed that he did not get approval from Masjid Toronto approval for the selected supplications and did not review them with anyone before delivering them. I believe him.

[126] Dr. Elkasrawy testified generally about the method he uses to prepare and organize his supplications so that he remembers them. He testified that he organizes his supplications into 4 parts. The first two parts are not at issue before the Tribunal. He testified that the third part of the supplication, which is at issue, usually is for Muslims around the World who are suffering. He then said the last part of the supplication is brief and is contemplations for sacred holy places, like Al-Aqsa Mosque.

[127] On cross-examination, Dr. Elkasrawy confirmed that the following supplication was for Muslims in Syria:

> Oh Allah; punish those who killed Muslims. Oh Allah; punish those who displaced the children of Muslims. Oh Allah; has full cognizance of them, slay them one by one, and don't let one escape your punishment.

[128] He also confirmed that the following supplication was in the last part, which was for the sacred holy places:

> Oh Allah; cleanse the [occupied] Aqsa Mosque from the desecration by the Jews.

[129] Dr. Elkasrawy testified that he included in the third part a supplication for Muslims in Syria because they were oppressed under the Assad regime who "committed torture against Muslims, including women and children". He explained that the situation in Syria was "very touching for me" and that he was seeking help for the "people to get out of that tyranny".

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[130] Dr. Elkasrawy testified that he added a supplication for the Al-Aqsa Mosque because in the days before his supplication, events had transpired there during Ramadan 2016. He testified that he was upset by the events and located a prayer to add to his supplications. He testified that "Some acts of desecration that was happening at the mosque at the time. So it was very contemporary…" When asked during examination in chief what he meant by "desecration" he stated:

> What I mean by desecration is to treat this sacred or holy site with disrespect. Of course it differs from one place to another. … The acts of the people in Al-Aqsa in Jerusalem who were actually trying to go into the mosque while people were praying there during the month of Ramadan. Or even preventing the people from doing their prayers. One practice that we usually do in the month of Ramadan that we call [sic] means to stay in the mosque in the night for a period .. of the last 10 days of the month to do your prayers, eat, do all things in the mosque. And people in Al-Aqsa were prevented from doing that because the forces or police or army were actually taking them out, forcing them out through different ways. Beatings, gas, bombs, and other things".

[131] I find from Dr. Elkasrawy's testimony that contemporary events relating to Al-Aqsa Mosque are what led to him adding the controversial words "cleanse the [occupied] Aqsa Mosque from the desecration by the Jews".

[132] Dr. Elkasrawy testified that he did not use the word "filth" and that the CIJ News English translation is not accurate. He states the word he used means "desecration". Dr. Duever accepted this and I do as well.

[133] Dr. Elkasrawy testified that according to the rules of Islam, supplications "should not contain any aggression or aggressive language against anyone even if someone is promoting hatred against you". However, on cross-examination, he admitted that when he said "punish", "punishment is to kill". During cross-examination, Dr. Elkasrawy also admitted that when he used the word "destroy" in his correct translation, his intended meaning was "kill".

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[134] Dr. Elkasrawy attempted to explain that the part of the supplication for Muslims in Syria was from the Qur'an. I do not doubt that portions of the supplication concerning Syria were derived from Islamic sources, although Dr. Elkasrawy did not provide copies of the specific original sources in his documents to be relied upon.

[135] Dr. Elkasrawy was not clear in his testimony on where exactly the supplication for the Al-Aqsa Mosque is from. He testified in generalities and said that certain words are passed down through scholars. He did not provide what he used as a source when preparing the supplication and memorizing it ahead of time.

[136] During cross-examination, Dr. Elkasrawy testified that with respect to his supplication in regard to Al-Aqsa Mosque, he "misspoke" and agreed that "it would be a better thing to make it a more detailed supplication". He explained that it is normal to be concise in the supplications about sacred holy sites. He admitted that if he knew the words would be mistranslated, "I would have used more words to be as specific as possible".

[137] Dr. Elkasrawy admitted during cross-examination that he did not refer to the "occupying Jews" in his supplication and did not refer to Israel. He agreed that the words he used referred to "the Jews". When asked whether, on its face, the phrase referred to Jewish people generally, he answered "yes".

[138] He said he would change the phrase "the Jews" to "the occupying Jews". I believe him that he would choose to say different words or add words to clarify that he was not referring to "all Jews" or all members of the Jewish faith collectively. Based on his testimony that he would add clarifying words, I find that the words in Dr. Elkasrawy's supplications themselves could be changed and delivered differently.

[139] Dr. Elkasrawy explained that in Arabic there can be a general term that may be referring to a subgroup. While I accept that Dr. Elkasrawy was attempting to explain his intended meaning, I do not find his explanation reliable. I find that it reflects an

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interpretation developed after the controversy arose rather than an explanation that is apparent from the words he says in his translation that he spoke.

[140] Dr. Elkasrawy testified that the verses he selected were “intended” for the situation in Syria at the time and at the Al-Aqsa Mosque in Jerusalem. I accept that Dr. Elkasrawy had a context in mind and this is supported by his translation where he added the context.

[141] Throughout his testimony, Dr. Elkasrawy frequently focussed on what he intended to communicate rather than what he actually said and what he said that he said at the material time. While intention is relevant, it does not answer the separate question of how the words spoken were delivered and understood. To that extent, this aspect of his testimony was of little assistance.

[142] This was particularly apparent when Dr. Elkasrawy testified about what he said. His original words were in classical or formal Arabic. His testimony was in English. The controversy involved the English translations of his words. Dr. Elkasrawy’s evidence concerning whether the words he actually spoke conveyed the context he now asserts was, at times, evasive and internally inconsistent.

[143] Dr. Elkasrawy testified during cross-examination that he could not recall whether he said the words “Syria” or “Levant”. I do not accept this evidence. The supplications were recorded. Dr. Elkasrawy acknowledged that he was familiar with the videos and viewed them. In these circumstances, I find it implausible that he could not recall whether those specific words were used. I therefore find that this answer was not truthful.

[144] During re-examination, he testified that he used the words “Syria” or “Levant”. This directly contradicted his earlier evidence. For the same reasons, I do not accept this evidence and find it was not truthful.

[145] I note that Ryerson’s counsel argued in their written and oral closing submissions that this testimony was not credible. During oral closing submissions, Dr. Elkasrawy’s

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counsel argued that Dr. Hachimi should be permitted to testify to address the issue of credibility. Dr. Elkasrawy's counsel argued that she could tell the Tribunal whether Dr. Elkasrawy said the words "Syria" or Levant".

[146] I do not require Dr. Hachimi's testimony to tell me what credibility finding I should make. Dr. Elkasrawy's translation in Appendix A holds the answer. The translation of the words spoken does not include the words "Syria" or "Levant". The word "Syria" is only in a context column.

[147] Dr. Elkasrawy testified that he gave two separate supplications one for the situation in "Syria" and the other relating to the Al-Aqsa Mosque in Jerusalem. I do not doubt that there were two separate supplications. However, after considering the evidence, I find that the two supplications were spoken one after the other without a stated context for each. As a result, when the words were spoken, the two supplications ran together and became one. Consequently, viewed through the English translation, the intended context is not reflected in the words actually spoken. This was the point at which the communication failed. Whatever Dr. Elkasrawy intended to convey, the contextual limitations he now describes were not articulated in the supplications themselves at the time they were delivered.

Witness Evidence Regarding Termination Meetings

[148] On February 28, 2017, there were two meetings. In the early morning, there was a meeting that Dr. Zolfaghari attended, along with others. Dr. Elkasrawy and Dean Duever were not at that meeting.

[149] In the afternoon, there was a meeting at 4:30 pm that Dr. Elkasrawy and Dean Duever attended, along with others.

[150] Since Dr. Elkasrawy is claiming that his termination was discriminatory, I will set out the evidence relating to these meetings.

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Early Morning Meeting attended by Dr. Zolfaghari

[151] Dr. Zolfaghari's testimony almost entirely relates to the early morning meeting on February 28, 2017. I find that Dr. Zolfaghari's testimony about the meeting he attended and what he considered in making a recommendation to terminate Dr. Elkasrawy's student-facing employment roles is credible and reliable. His answers during examination in chief and cross-examination were straightforward and responsive to the questions asked. I am confident that he accurately recalled what occurred and what information was considered.

[152] Dr. Zolfaghari testified that there was a preliminary meeting. The meeting was organized by the Office of the Provost. The meeting attendees included representatives from the Provost's office, the director of the President's Office, and representatives from Human Resources, the legal office, and the communications team. Dean Duever, President Lachimi, and Dr. Elkasrawy did not attend this meeting.

[153] Dr. Zolfaghari testified that the purpose of the meeting was to discuss the information available at the time and next steps in response to the public controversy surrounding Dr. Elkasrawy's words. He testified the focus was primarily on the employment relationship and not the political environment. He testified that the attendees considered Dr. Elkasrawy's apology on Twitter, the statement of Masjid Toronto and MAC, and certain complaints that had been lodged by students, parents of students and others, the Collective Agreement and Ryerson's Harassment and Discrimination Policy.

[154] Dr. Zolfaghari testified that he viewed Dr. Elkasrawy's Twitter apology and the Masjid Toronto statement as positive acknowledgements that the words spoken by Dr. Elkasrawy were not appropriate. He further testified that Dr. Elkasrawy had apologized "unreservedly for misspeaking during a prayer" and said, "I sincerely regret the offense my words must have caused". To Dr. Zolfaghari, this was an acknowledgement by Dr. Elkasrawy that the supplication was not appropriate. In his view, the apology was an acknowledgment that "what he said was not appropriate, was harmful or was not right".

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Dr. Zolfaghari testified that he formulated the view that Dr. Elkasrawy "acknowledged that his words were offensive".

[155] Dr. Zolfaghari acknowledged that the attendees did not discuss or consider the content of Dr. Elkasrawy's supplication and/or the accuracy of the media translations of it. He also confirmed that:

a. They did not consider Dr. Elkasrawy's faith or religion;

b. They were not influenced by the B'nai Brith Canada letter, but were aware of it; and

c. They were aware of the poster but did not consider it in making their recommendation.

[156] During cross-examination, Dr. Zolfaghari was referred to a number of communications, including communications from Amanda Hohmann at B'nai Brith Canada. Dr. Zolfaghari admitted that he read this letter at the time it was received and further admitted that Amanda Hohmann stated in the letter that Dr. Elkasrawy's words are being spoken "under the guise of pious religious expression". Dr. Zolfaghari stated that the attendees were not pressured by this letter.

[157] During cross-examination, Dr. Zolfaghari confirmed that at the time of the meeting he was unaware of the "pattern of anti-Semitic behaviour" and other incidents that Amanda Holman had referred to in her letter to Ryerson. Dr. Zolfaghari confirmed that he only looked at the materials available at the time of their meeting.

[158] During cross-examination, Dr. Zolfaghari was referred to other communications and asked about their contents. Many communications were received by Ryerson after the meeting. He testified that he had not seen most of the communications. He said that if a communication was not attached to his Will-Say Statement, he may not have seen it.

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[159] Dr. Zolfaghari further testified that he believed they had “all the information that [they] needed” and that the investigation was “satisfactory to us” in light of the Twitter apology and Masjid Toronto statement.

[160] At that meeting, the meeting attendees determined that the appropriate course of action was to terminate Dr. Elkasrawy’s student-facing employment roles under three separate contracts. The meeting attendees determined that Dr. Elkasrawy had violated the CUPE 3 Collective Agreement. Dr. Zolfaghari testified that they determined that Dr. Elkasrawy could not be in a position of power as a graduate teaching assistant grading or working with Ryerson students.

[161] The meeting attendees did not terminate Mr. Elkasrawy’s employment. They arrived at a recommendation. Dr. Zolfaghari testified that making a recommendation was the normal process, which he had followed in the past when similar issues arose.

[162] Dr. Zolfaghari testified unequivocally that their recommendation was not based on Dr. Elkasrawy’s religion or faith. He testified that they did not recommend termination for his religious conduct. Dr. Zolfaghari also testified that the recommendation to terminate his employment was not because of the poster. He testified that the poster represented “concern from community members”, but “was not the deciding factor” in the recommendation.

[163] Dr. Zolfaghari testified that after the meeting the recommendation to terminate Dr. Elkasrawy’s employment contracts for cause was communicated to Dean Duever. Dr. Zolfaghari said he was not present when the recommendation was communicated to Dean Duever and he could not provide details.

[164] Dr. Zolfaghari testified that Dean Duever was the ultimate decision-maker on the course of action that would be taken. He testified that Dean Duever was not obligated to act on the recommendation. He testified that the Dean is permitted to ask for more information or say that he or she does not agree with the recommendation. In this case, Dean Duever did not request more information.

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[165] Dr. Zolfaghari testified during direct examination that Ryerson does not comment to the media about termination decisions. He said:

> "[i]t has always been our approach. We do not discuss confidential HR matters in media. I cannot recall any case where we engaged in a discussion in the media … I have not had any cases where we discussed confidential HR matters no matter how interesting the subject may have been for the media or for the community … if it is employment, we do not comment publicly".

Termination Meeting Attended by Dr. Elkasrawy and Dean Duever

[166] There is little conflict between the evidence of Dr. Elkasrawy and Dean Duever regarding the termination meeting that took place in the afternoon of February 28, 2017.

[167] I find that Dr. Elkasrawy's evidence regarding the meeting he attended with Dean Duever on February 28, 2017, was credible. However, his testimony provided a very cursory overview of the meeting and was evasive. He could not remember who was at the meeting other than Dean Duever and "Linda" who he described as his "CUPE rep". At one point he said" Sorry if it takes me time to remember because it was almost 5 years ago". Given the lack of detail in his testimony and Dr. Elkasrawy's admission that he was having difficulty remembering the details of the meeting, I find some of his testimony to be unreliable.

[168] I also note that some of Dr. Elkasrawy's evidence was his interpretation of events rather than statements of fact about the underlying events. I have given little weight to Dr. Elkasrawy's interpretations of what occurred.

[169] I find that Dean Duever's testimony about the meeting and what he considered in deciding to terminate Dr. Elkasrawy's student-facing employment roles is credible and reliable. His answers during examination in chief and cross-examination were straightforward and responsive to the questions asked. I am confident that he accurately recalled what occurred and what information was considered. I accept the sincerity of

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Dean Duever's testimony that the words gave rise to concerns among students, parents of students, and colleagues.

[170] I prefer the detailed testimony of Dean Duever concerning the meeting and what Dr. Elkasrawy said at the meeting and what he said at the meeting.

Dr. Elkasrawy's Evidence

[171] Dr. Elkasrawy testified that he was contacted by email on February 28, 2017, at around 2:30 p.m. and was asked to attend a meeting with Dean Duever at 4:30 p.m. that day. The meeting was in Conference Room ENG-375. While I have a document that was entered as Exhibit 5, it is not an authentic true copy of that email. Instead, it is a document that copies the sender's email address, included "Feb 28" as the date, and inserts body of the email. No one objected to this version of the email being accepted into evidence.

[172] Dr. Elkasrawy testified that he brought to that meeting a copy of his "correct" English translation of his words on the viral video. I accept this evidence. Dr. Elkasrawy also testified that he gave Dean Duever a copy of the translation and the attendees at the meeting reviewed it. This evidence is contradicted by Dean Duever. I prefer Dean Duever's evidence.

[173] Dr. Elkasrawy provided limited testimony about what he said to the attendees at the meeting. He has argued that he was not given an opportunity to explain. However, I did not receive any testimony whatsoever that he was prevented from explaining himself or tried and was cut off.

[174] I note that Dr. Elkasrawy's examination in chief focussed on other evidence and that his counsel cross-examined Dean Duever almost exclusively about what happened at the meeting and his decision to terminate Dr. Elkasrawy.

[175] To the extent that Dr. Elkasrawy provided any testimony about what he said at the meeting, his testimony was vague and significantly less clear than Dean Duever's

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recollection about what Dr. Elkasrawy said and the documentary evidence before me. I will set out in Dean Duever's evidence what he recalled because I find that the dispute between the parties does not revolve around what was said, but rather whether what was said was properly considered.

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[176] Importantly, Dr. Elkasrawy did not present oral testimony about what Dean Duever and/or other meeting attendees said to him during the meeting. He did not testify as to any specific words said that could link the termination to his protected characteristics.

[177] Dr. Elkasrawy testified that his CUPE representative at the meeting and he was given the opportunity to speak with her after he was given the termination letter.

[178] Dr. Elkasrawy also testified that after he was terminated by Ryerson, he took steps to engage positively with the Jewish Community and sought guidance from Mr. Bernie Farber.

Dean Duever's Evidence

[179] Dean Duever's testimony almost entirely relates to the afternoon meeting on February 28, 2017.

[180] Dean Duever testified that he received the recommendation to terminate the employment of Dr. Elkasrawy. Based on that recommendation, Dean Duever and Ms. Rotundo (the HR consultant) prepared a draft termination letter in advance of the meeting with Dr. Elkasrawy.

[181] Dean Duever testified that those in attendance at the meeting included himself, Ms. Rotundo, Linda Barnett (the CUPE representative), and Dr. Elkasrawy.

[182] Dean Duever testified that at the meeting, he informed that the purpose of the meeting was to discuss Dr. Elkasrawy's student-facing employment contracts in light of the public controversy. He said that Dr. Elkasrawy was given an opportunity to provide

an explanation. During cross-examination, he confirmed that he was sincere in offering an opportunity to explain and he was willing to hear the explanation.

[183] Dean Duever testified that Dr. Elkasrawy explained that:

a. The media translation was not exact, and certain words had been mistranslated. For example, he did not say the word “filth”;

b. The media video combined different supplications to give a more negative impression about what he had said;

c. Masjid Toronto suspended him on February 21, 2017, pending an investigation and that no one from Masjid Toronto met with him before the suspension;

d. He made the Twitter apology because the words must have hurt friends and colleagues of the Jewish faith; and

e. He had taken steps to register for cultural/sensitivity training.

[184] Minutes of the meeting were prepared, which were entered as an exhibit as part of Dean Duever’s Will-Say Statement. The minutes reflect Dr. Elkasrawy’s explanation and that they discussed Dr. Elkasrawy’s apology on Twitter and the statement by Masjid Toronto and the MAC at the meeting.

[185] Dean Duever testified that Dr. Elkasrawy provided his “correct” translation to the attendees at the meeting. During his direct examination, Dean Duever said that Dr. Elkasrawy did not hand the translation to him but had a copy with him. During cross-examination, Dr. Elkasrawy’s counsel put to Dean Duever that the translation was put on the table by Dr. Elkasrawy and Dean Duever confirmed counsel was accurate. Dean Duever also confirmed that he left the translation on the table and did not take it with him when he left to consider what Dr. Elkasrawy had said and the next steps to take. However, in his direct testimony, Dean Duever stated that even though he did not look at Dr. Elkasrawy’s translation, he listened to Dr. Elkasrawy’s explanation.

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[186] During cross-examination, Dean Duever acknowledged that the words spoken by Dr. Elkasrawy in classical or formal Arabic as translated into English caused a commotion. However, Dean Duever testified that he "did not get from what he was telling me that he had been completely misquoted" and "he took responsibility for the words".

[187] Dean Duever testified that he accepted that some of the words reported in the media were not in fact said. For example, based on Dr. Elkasrawy's explanation in the meeting, he accepted that Dr. Elkasrawy did not say the word "filth".

[188] During cross-examination, Dean Duever testified that he recalled that Dr. Elkasrawy did not say that the words "the Jews" were not part of the supplication. He further testified he was concerned about the way that Dr. Elkasrawy referred to "the Jews" and that he explained that he had found this reference to be problematic because it was a reference to an entire religious faith holding them accountable for the actions "the entire group … for the actions of a few".

[189] Dean Duever also recalled that the English translation of Dr. Elkasrawy's words said something about "slaying people one by one" and that was "a little disturbing".

[190] Dean Duever testified that Dr. Elkasrawy explained the context for the supplications at the centre of the controversy. Dr. Elkasrawy had explained that the first supplication refers to the situation in Syria and the second supplication refers to the situation with the Al-Aqsa Mosque. During cross-examination, Dean Duever agreed that Dr. Elkasrawy explained to him that the two supplications were merged.

[191] Dean Duever confirmed that after listening to Dr. Elkasrawy's explanation, the Ryerson and CUPE attendees left the room to discuss Dr. Elkasrawy's explanation. Dean Duever testified that they discussed whether anything that Dr. Elkasrawy had told them would change the course of action to be taken and decided it would not. Dean Duever explained during direct examination that the information provided by Dr.

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Elkasrawy was seriously considered by him and did not change his mind for the following reasons:

a. Dr. Elkasrawy acknowledged in the Twitter apology that he misspoke and that his words must have offended people;

b. Dr. Elkasrawy acknowledged that his words must have hurt people;

c. In acknowledging that his words must have hurt people, he was taking responsibility for what he referred to as “my words” in the apology;

d. Masjid Toronto and the MAC had issued a joint statement that used strong words in which they said his supplication went against the values of the Muslim community at large and was “inappropriate” and “offensive”;

e. Masjid Toronto had suspended Dr. Elkasrawy;

f. Dean Duever was worried about the students in Dr. Elkasrawy’s classes. He felt it would be very uncomfortable for students to have him as a teaching assistant and that the learning environment would be negatively impacted;

g. Dr. Elkasrawy’s words were inconsistent with Ryerson’s core values and did not foster a respectful learning environment;

h. Dr. Elkasrawy’s words reflect adversely on and are to the detriment of Ryerson. Ryerson’s reputation and the Faculty of Engineering and Architectural Sciences reputation were potentially being damaged; and

i. Based on the information he had at the time, removing him from the class and laboratories was the best course of action.

[192] During cross-examination, Dean Duever stated the reason for the termination in the following exchange with Dr. Elkasrawy’s counsel:

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Dr. Elkasrawy's counsel: You are aware that ultimately what you effected was a dismissal on the basis of religious text, you fired him for a prayer?

Dean Duever: No, I fired him because there was so much commotion that had been created through all of this that I was worried about the learning environment of our students.

Dr. Elkasrawy's counsel: But you concluded that he breached the Collective Agreement and Ryerson's Discrimination and Harassment Policy, its policy on civility and respect?

Dean Duever: That's right.

Dr. Elkasrawy's counsel: Based on a prayer.

Dean Duever: No, based on words that had been spoken and the public outcry.

…

I was dealing with a situation where there was a lot of commotion and complaints and so forth that were in my opinion negatively impacting the learning environment. That was the basis of my decision to terminate.

[193] When Dr. Elkasrawy's counsel pressed Dean Duever to explain his decision to terminate, Dean Duever repeated that he was "worried about the impact that all this commotion was having on the learning environment of my students. That was the reason for the termination and getting him out of the classroom". He went on to state that "there was a lot of commotion going. Parents… were writing to the University, students were complaining, I had to undertake something to re-establish the integrity of the learning environment".

[194] Dean Duever testified that he was of the view that Dr. Elkasrawy's words were in violation of Ryerson's Harassment and Discrimination Policy and obligations under Article 12.06 of the Collective Agreement. He testified that while he understood that Dr.

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Elkasrawy had issued an apology, that apology did not in the end justify the words that were said.

[195] Dean Duever and Ms. Rotundo amended the draft letter to reflect Dr. Elkasrawy's explanation and their decision to terminate his employment contracts. When they returned to the conference room, they provided Dr. Elkasrawy with the termination letter.

Opinion Evidence of Dr. Jasmin Zine

[196] Dr. Zine is a professor of sociology, religion, and culture at Wilfred Laurier University. She specializes in "Muslim studies" with a focus on "Islamophobia studies". She testified that her work focusses on the issue of Islamophobia, critical Muslim studies, and anti-racism. Her updated CV was entered as an exhibit.

[197] Ryerson did not challenge Dr. Zine's qualifications and did not challenge her independence. I accepted Dr. Zine's qualifications as an expert on "Islamophobia studies".

[198] Ryerson objected to any expert opinion evidence on matters within the Tribunal's expertise. I exercised the Tribunal's gate-keeping role and excluded much of Dr. Zine's proposed testimony. See "EXCLUDED EVIDENCE" below.

[199] Prior to swearing in Dr. Zine as an expert witness, I informed the parties and Dr. Zine that I was "prepared to accept her opinion evidence conditionally on a limited scope" discussed with counsel the previous evening. I informed the parties and Dr. Zine that I will disregard any evidence that falls outside the scope of my instructions or does not meet the test for admissibility, relevance, necessity and/or expert evidence. I further stated that I would determine weight when assessing all of the evidence received during the *de novo* merits hearing.

[200] I further reminded counsel of my decision to permit Dr. Zine to testify based upon her Will-Say Statement and informed the parties and Dr. Zine that the evidence must remain within the confines of the Will-Say Statement. I reminded counsel of my previous

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ruling that paragraphs 28 (all but the first sentence), 29 and 30 of Dr. Zine's Will-Say Statement had been determined to be inadmissible.

[201] I further reminded the parties that I would not give weight to any evidence given regarding specific individuals and organizations who have not been given notice or an opportunity to respond because I am unable to make findings of fact based on lack of notice.

[202] During cross-examination, Dr. Zine was asked whether she agreed that labeling or stereotyping and entire group for the actions of a few or on behalf of the acts of some extremists is a partial description of Islamophobia. She agreed and stated:

> Having stereotypes that are indiscriminately applied to Muslims … are definitely how Islamophobia narratives … become attached to … 1.5 billion people around the World as opposed to … any smaller subset that might have relevance to those…

[203] Dr. Zine opined that holding Muslims collectively responsible for the real and imagined wrongs committed by one Muslim or a group of Muslims is Islamophobic. She further opined that "[i]t is Islamophobic to hold … all Muslims accountable for the actions of a few … to [accentualize] any negative stereotypes tied with an entire group of people".

[204] During cross-examination, Dr. Zine agreed it would be wrong to hold members of a faith responsible for the actions of a small group within that faith. In my view, this is not controversial and the proposition applies equally to people of Muslim faith and people of Jewish faith and adherents of other religions. Collective blame based on the conduct of a few is a form of unacceptable stereotyping and can be discriminatory under the *Code* depending on the specific facts.

[205] Dr. Zine opined about the "weaponization" of Islamic religious speech and text. She explained that Islamic text and statements can be mistranslated or taken out of context in ways that unfairly portray Muslims as supporting terrorism or being anti-

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Semitic or anti-Jewish. I have considered this opinion evidence carefully. While I accept it as a general description of a phenomenon that can occur and remain mindful of that possibility when assessing the evidence, I ultimately give it little weight in this case because it does not assist me in determining whether Ryerson violated the *Code*.

[206] I also note that Dr. Elkasrawy claimed that some of his words were mistranslated. Dr. Zine's evidence provides helpful context for understanding the claim, and I accept that some of his words may have been mistranslated or misunderstood. However, there is no evidence before me that Ryerson engaged in any "weaponization" of Dr. Elkasrawy's words. Nor does Dr. Zine's evidence assist in establishing that Ryerson breached the *Code*.

[207] Dr. Zine's opinion evidence about the Islamophobia industry and how it operates in Canada was not necessary in light of Ryerson's counsel's acknowledgement that Islamophobia exists and "there are segments in Canadian society that seek to divide" in general. Further, the opinion evidence does not address the core issue before the Tribunal because it was generalized and the link to the events at issue, and in particular Ryerson's actions, was not established. I have given this opinion evidence little weight.

[208] Dr. Zine opined about concepts and dynamics of Islamophobia, including how Islamophobia manifests in society (ranging from hate crimes, attacks against Muslim communities, vandalism at Muslim institutions and mosques, physical and sexual harassment, to micro-aggressions, ideologies that support negative stereotypes and narratives, and conspiracy theories, etc.). These concepts and dynamics are found in the OHRC Policy on Racism and Court and Tribunal case law. The majority of her testimony is within the Tribunal's sphere of knowledge and was of no assistance to me as a trier of fact. I have given this opinion evidence no weight.

[209] Dr. Zine testified that Islamophobia manifests in portrayals of Muslims "wanting to take over institutions" in Canada, and as "violent", "deceptive" and "intentionally covert" and "subversive" (she used the term "Taqiyya"). However, there is no direct or circumstantial evidence before me that Dr. Elkasrawy was being portrayed as violent,

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deceptive, intentionally covert, subversive, or of questionable moral character. This case is about the words he was said to have said and not his actions. Therefore, I am not persuaded that Dr. Zine's evidence is relevant to the issues before me and I give it no weight.

[210] During examination in chief, Dr. Zine was asked to provide an opinion on the specific events at issue. Counsel for Dr. Elkasrawy asked her to comment on his central claim that "his words in a religious supplication made in 2016 were mistranslated, twisted, to make them appear inappropriate, violent and anti-Semitic" and whether "there is any connection between that mistranslation … and the Islamophobia industry".

[211] In responding, Dr. Zine moved beyond the proper scope of expert opinion. She described general tactics and strategies and expressed opinions that effectively addressed the ultimate issues before the Tribunal being whether to accept the applicant's claims. The question posed to her incorporated a selective summary of Dr. Elkasrawy's version of the events, and her response proceeded on assumptions that were not established by the evidence before me. In my view, her opinion lacked sufficient evidentiary foundation and, in substance, encroached on the role of the Tribunal as the trier of fact. It is for the Tribunal, and not a witness, to assess Dr. Elkasrawy's claim on the basis of the totality of the relevant and admissible evidence adduced at the hearing. Accordingly, I assign no weight to this part of Dr. Zine's opinion evidence.

[212] Dr. Elkasrawy's counsel pointed to Dr. Elkasrawy's use of the words "the Jews" and asked Dr. Zine to opine on whether "there was any specific connection between Muslim stereotypes and Judaism"? In responding, Dr. Zine said that "there is a notion that Muslims are, as a group, portrayed fundamentally as "anti-Semitic" and provided generalizations, including in relation to the Palestine-Israel conflict. I have disregarded this testimony in its entirety because it is not necessary to decide the issues before me. The Tribunal has experience and knowledge and does not require assistance from Dr. Zine regarding how to review and assess the evidence. Further, the Tribunal must also ensure that its processes are not used to advance or legitimize discriminatory narratives.

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[213] Dr. Zine also gave opinion evidence about the poster that had been circulated on Ryerson campus and, in particular, the photograph of Dr. Elkasrawy on the poster. Dr. Elkasrawy is smiling in the photograph. Dr. Zine opined that the poster is an example of "Taqiyya". She opined that the use on the poster of a photograph of Dr. Elkasrawy smiling was an Islamophobic tactic. She opined that the use of a friendly photograph while the speech bubble says particular words are a trope to show that Muslims are "deceptive" and there is "a nefarious intent behind them".

[214] I have given no weight to this opinion evidence about what inferences I should draw by the photograph in the poster because it does not make logical sense in relation to the documentary evidence and direct evidence I received from the other witnesses regarding the poster. In my view, Dr. Zine presented merely a bald opinion based solely on generalized actions of actors in the "Islamophobia industry".

[215] The documentary evidence before me shows that Dr. Elkasrawy told a reporter on March 1, 2017, that the photograph on the poster was taken from his LinkedIn profile. Dr. Zine did not investigate where the photograph of Dr. Elkasrawy was taken from and whether other photographs were available. The Tribunal cannot accept opinion evidence where there is an insufficient supporting foundation for it or a lack of a supporting evidentiary bridge from facts on the record to the conclusion.

EXCLUDED EVIDENCE

[216] At the *de novo* merits hearing, issues arose as to what evidence should be before me. I made three significant rulings on issues that I must address before I analyze the documentary and testimonial evidence before me.

[217] The three most significant evidentiary issues are:

a. The admissibility of a late filed report written by Dr. Jasmin Zine and updated curriculum vitae;

b. The admissibility of Dr. Zine's opinion evidence; and

c. The admissibility of Dr. Hachimi's opinion evidence.

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[218] I also made rulings on objections relating to relevancy during the witnesses' testimony.

Dr. Zine's Late Filed Report

[219] At 3:28 p.m. on the Friday before the start of the *de novo* merits hearing, Dr. Elkasrawy's counsel filed a Supplemental Book of Documents containing an updated curriculum vitae of Dr. Jasmin Zine and a "new academic report" entitled "The Canadian Islamophobia Industry: Mapping Islamophobia's Ecosystem in the Great White North". These documents were not before the Tribunal during the Original Merits Hearing. In the cover email Dr. Elkasrawy's counsel stated that they intended to seek leave to file the two new documents.

[220] These documents were a surprise because leave was not sought at CMCC #1 or CMCC #2 to file them.

[221] The issue for the Tribunal was whether to exercise discretion pursuant to Rules 1.7(a) and (w), 16.4, and 17.4 of the Tribunal's Rules to grant permission to file the documents late. The secondary issue is whether the new academic report is a document/article or an expert report.

[222] If it is an expert report, the relevant part of Rule 17.4 of the Tribunal's Rules states in part as follows:

> No party may … present an expert witness if material has not been delivered and filed in accordance with Rule 17.3, except with permission of the Tribunal.

Rule 17.3 (read in conjunction with Rule 17.1) of the Tribunal's Rules requires that a party file a copy of the expert witness' report or a "full summary of proposed evidence" at the same time as their witness list, which is normally due no later than 45 days prior to the first day of the scheduled hearing.

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[223] If the new academic report is an article, Rule 16.3 of the Tribunal's Rules requires that a party file with the Tribunal their document list and copies of documents to be relied upon no later than 45 days prior to the first day of the scheduled hearing.

[224] With respect to late filed documents, the relevant rule is Rule 16.4 of the Tribunal's Rules and states in part as follows:

> No party may rely on or present any document not included on a document list and provided to other parties in accordance with Rule 16.1 and 16.2, and filed with the Tribunal under Rule 16.3, except with the permission of the Tribunal.

[225] Rule 1.7(a) of the Tribunal's Rules grants me broad discretion to shorten or lengthen a time limit in the Tribunal's Rules in order to provide for the fair, just, and expeditious resolution of any matter before me.

[226] Rule 1.7(w) of the Tribunal's Rules grants me broad discretion to take any action that I consider appropriate in order to provide for the fair, just, and expeditious resolution of any matter before me.

[227] In the present case, Dr. Elkasrawy included Dr. Zine on his witness list and filed a brief Will-Say Statement for Dr. Zine prior to the Original Merits Hearing. The Will-Say Statement consisted of 33 paragraphs. Paragraphs 1-24 related to her qualifications and background. Paragraphs 25-33 set out her limited proposed evidence.

[228] The "new academic report" is 126 pages in length and has the logos for the "Islamophobia Research & Documentation Project' and "Islamophobia Studies Centre, Berkeley California" on the front page. The "new academic report" includes an acknowledgement that several individuals provided feedback and comments on draft versions of the report, including Dr. Elkasrawy's counsel, Faisal Bhabha. The acknowledgement states as follows:

> Several colleagues offered feedback on the final draft of the report, and I am appreciative of their peer reviews. … Faisal Bhabha … provided important

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> comments and suggestions that strengthened and improved this report. I am thankful for conversations with Bernie Farber about aspects of this report. He did not always agree with the positions taken but nonetheless engaged in productive dialogue with me an offered helpful advice.

[229] The new academic report includes at Chapter 1.5 the "Ayman Elkasrawy Case Study: the Islamophobia Industry in Action". Dr. Elkasrawy is mentioned 34 times in Dr. Zine's new academic report.

[230] At the start of the *de novo* merits hearing, Ryerson strongly objected to the late filing of Dr. Zine's new academic report. Ryerson did not object to Dr. Zine's updated curriculum vitae. Ryerson argued that the Tribunal should not grant leave to file the new academic report and that it was inadmissible.

[231] Dr. Elkasrawy's counsel explained Dr. Zine's new academic report was not a new expert's report. However, during their oral submissions on why the Tribunal should grant leave and regarding the admissibility of Dr. Zine's proposed opinion evidence, they repeatedly referred to the new academic report as "evidence" and "containing Dr. Zine's evidence".

[232] Dr. Elkasrawy's counsel explained the late filing, stating that the new academic "report was only recently released by Dr. Zine this past October" and was a continuation of Dr. Zine's research. They stated that they wanted to file it in order to direct Dr. Zine to her most recent research during the *de novo* merits hearing.

[233] I asked Dr. Elkasrawy's counsel why they could not have informed the Tribunal sooner about the new academic report. Dr. Elkasrawy's counsel (Mr. McCallum) responded:

> In preparing [Dr. Zine], counsel only became aware of the document in the preparation process... To some degree it is also the applicant's counsel learning through the expert witness about the new document and I am coming to understand it over the course of the last few weeks and finding that it was

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> relevant over the course of the past week as well. … So, the last meeting with our expert occurred Wednesday and that was the opportunity for us to go through the report with her and determine that it was relevant. ..
>
> …
>
> The document does not contain anything new. It is the document itself that is new. The contents is the ongoing product of our expert's ongoing work … and constitutes a good summary of her evidence. … The content of the expert's testimony is not affected in any way. It will reflect the content of that report".

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[234] Dr. Elkasrawy's counsel argued that they believed that the new academic report was relevant and would be assistive to the Tribunal.

[235] Ryerson argued that permitting the late filing of the new academic report would amount to trial by ambush. Ryerson further argued counsel's acknowledged involvement in reviewing and commenting on the report undermines the independence of the proposed expert evidence and raises fairness concerns regarding counsel's participation in the development of evidence tendered to the Tribunal. Ryerson also argued that the inclusion of a case study concerning Dr. Elkasrawy was unfairly prejudicial and reflected an impermissible usurpation of the Tribunal's role as a fact finder.

[236] I exercised my authority under Rules 17.4, and 1.7(a) of the Tribunal's Rules to shorten the timeline and accept the late filed updated curriculum vitae of Dr. Zine because Ryerson consented to me accepting the updated CV.

[237] However, I did not grant Dr. Elkasrawy permission to file Dr. Zine's new academic report. At the hearing, I provided brief reasons for not exercising my discretion under Rules 1.7(a) and (w), and Rule 16.4 or 17.4 of the Tribunal's Rules. I explained that I would not allow the late filed document because, in my view, it would not be fair, just, and expeditious to do so. I stated that Ryerson did not have the opportunity to consider whether to call any rebuttal witnesses given the timing of the filing so close to the hearing. I informed the parties that would not adjourn the *de novo* merits hearing to

give Ryerson time to consider potential rebuttal witnesses. I also informed the parties that the new academic report was not before the previous adjudicator at the Original Merits Hearing and that new documents are not normally filed at a *de novo* merits hearing.

[238] I also stated that I was concerned about Dr. Elkasrawy's counsel's personal involvement in the preparation of the new academic report and that I would provide more fulsome reasons in my Decision. These are the more fulsome reasons.

[239] Firstly, based on counsels' oral submissions and my review of the document itself, I find that the new academic report was being tendered substantively as updated opinion evidence rather than merely as academic background material because counsel referred to it in their oral submissions as "evidence".

[240] Secondly, in *de novo* hearings, the hearing are normally based upon the documentary evidence that was before the original adjudicator. Typically, no new documents may be put before the adjudicator of the *de novo* merits hearing.

[241] Thirdly, I reject Dr. Elkasrawy's counsel's submission that the document contained "nothing new" because the 126-page report significantly exceeds the limited subject matter set out in the previously filed Will-Say Statement that included only 8 paragraphs on proposed opinion evidence.

[242] Fourthly, I find that permitting the late report at this stage would result in procedural unfairness to Ryerson amounting to trial by ambush. Rules 16 and 17 of the Tribunal's Rules are intended to ensure timely disclosure of proposed expert evidence so that parties may respond appropriately, potentially call their own expert(s) to rebut the evidence in the expert report or the summary of the expert opinion evidence, and ensure that hearings are fair, just, and expeditious. CMCC #1 and CMCC #2 were specifically conducted to identify and address procedural and evidentiary issues in advance of the *de novo* merits hearing and to avoid and prevent this type of late-emerging expert material.

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[243] In my view, the report demonstrates that Dr. Zine had already formed conclusions regarding the facts and issues that the Tribunal itself must determine. To that extent, the report strays beyond the proper scope of expert opinion evidence and intrudes upon the role of the Tribunal as a trier of fact.

[244] I have significant concerns regarding the circumstances and timing of the filing of the report. The *de novo* merits hearing dates had been scheduled months in advance at CMCC #1. Notwithstanding counsel's acknowledged participation in commenting on the draft version of the report, the Tribunal and Ryerson were not informed of the existence of the report until late Friday afternoon immediately preceding the *de novo* merits hearing. In the circumstances, the late disclosure heightened the procedural unfairness to Ryerson and further undermined the appropriateness of accepting the late-filed report.

[245] I further find that Dr. Elkasrawy's counsel's acknowledged role in reviewing and commenting on draft versions of the report raises serious concerns regarding the independence of the proposed expert evidence in the specific circumstances of this case. This concern is amplified by this being a *de novo* merits hearing, the report addresses the very issues to be determined in this proceeding and includes a case study about Dr. Elkasrawy.

[246] For the above reasons, I refused Dr. Elkasrawy's request for leave to file Dr. Zine's new report and it was not admitted into evidence in the proceeding.

Limitations Placed on the Scope of Dr. Zine's Proposed Opinion Evidence

[247] As previously indicated, Dr. Zine was permitted to testify on a limited scope of her proposed opinion evidence. I listened to oral submissions from the parties before making that ruling and placing limitations on the scope of her oral testimony.

[248] The oral submissions included Ryerson asking the Tribunal to exclude all of Dr. Zine's proposed opinion evidence. Dr. Elkasrawy took issue with Ryerson's request, which was made in the week before the *de novo* merits hearing. Dr. Elkasrawy argued

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that Ryerson was acting in bad faith in challenging the relevancy and necessity of the evidence at such a late stage of the proceeding.

[249] Ryerson argued that Dr. Elkasrawy did not present any legal basis to support their argument that they were precluded from raising the issue of admissibility at the *de novo* merits hearing. They further argued that under Rule 19 of the Tribunal's Rules, a request for an order during proceeding can be raised at any time, including at the hearing when an expert witness is called to give testimony.

[250] I agree with Ryerson that there is no legal basis to preclude them from making the request. Rule 19 of the Tribunal's Rules does not prohibit the request. I also reject Dr. Elkasrawy's position because the CAD issued after CMCC #1 states at paragraph 10 that "[t]he respondent reserved the right to challenge the relevance of the applicant's expert witnesses in whole or in part. I made no decisions on this matter and will address it at the hearing". Based on my previous ruling at CMCC #1, which was given to the parties in writing in the CAD, Dr. Elkasrawy knew or ought to have known that Ryerson might raise the issue of the admissibility of Dr. Zine's proposed opinion evidence. In these circumstances, there is no prejudice to Dr. Elkasrawy for the Tribunal to hear and consider the parties' submissions on whether all, some, or none of Dr. Zine's proposed opinion evidence is inadmissible.

[251] The admission of expert opinion evidence requires that the evidence is (1) relevant, (2) necessary to assist the trier of fact, (3) not subject to an exclusionary rule, and (4) be provided by a properly qualified expert. There is a discretionary element to the admissibility of expert evidence. A trier of fact may exclude admissible expert opinion evidence where its prejudicial effect might outweigh its probative value. See *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9.

[252] The trier of fact has a gate-keeping role that has led to the tightening up of the admissibility requirements for expert evidence. This "second discretionary gatekeeping step" is where "the judge balances the potential risks and benefits of admitting the evidence" and decides "whether the potential benefits justify the risks." See *White*

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Burgess Langille Inman v. Abbott and Haliburton Co., 2015 SCC 23 ("*White Burgess*") at paragraph 20.

[253] Ryerson did not oppose Dr. Zine's academic credentials and qualification as an expert on Islamophobia. They also did not argue that an exclusionary rule applies. Ryerson's oral submissions focussed on whether the proposed expert evidence of Dr. Zine was relevant and/or necessary to assist me in deciding the issues in this case.

[254] Both parties agreed that the relevance of proposed evidence must be assessed in the context of the entire case and the positions taken by the parties. See *R. v. Watson*, 30 OR (3d) 61, 1996 CanLII 4008 (ON CA) ("*Watson*") at pages 15-17. Both parties also agreed that relevance of proposed expert evidence must be decided on a case-by-case basis.

[255] Ryerson argued that the Will-Say Statement of Dr. Zine filed prior to the Original Merits Hearing did not contain opinion evidence in regard to the matters before the Tribunal and focusses on the nature of Islamophobia and its prevalence in Canada. Ryerson took the position that Dr. Zine's proposed testimony was not relevant to the assessment of Ryerson's decision to terminate Dr. Elkasrawy's employment. They further argued that the nature of Islamophobia is within the Tribunal's expertise and, therefore, opinion evidence is not necessary.

[256] Dr. Elkasrawy argued that with regard to the second *Mohan* criteria (necessity), this Tribunal has recognized that there is a lower threshold for showing that the evidence is necessary to assist the trier of fact in discrimination cases as compared to criminal cases, due to the nature of human rights proceedings and the often subtle nature of discrimination. I was referred to *Nassiah v. Peel Regional Police Services Board*, 2006 HRTO 18 ("*Nassiah*") at paragraphs 36 to 37, and *Peart v. Ontario (Community Safety and Correctional Services)*, 2014 HRTO 611 ("*Peart*") at paragraph 237 ("*Peart*").

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[257] Dr. Elkasrawy's counsel made lengthy oral submissions on whether the proposed expert evidence was relevant and necessary. They referred me to *Nassiah*, *Peart*, *Huang v. 1233065 Ontario Senior Chinese Cultural Association)*, 2006 HRTO 1 ("*Huang*"), *McKay v. Toronto Police Services Board*, 2011 HRTO 499 ("*McKay*"), *B.C. v. Durham Catholic District School Board*, 2014 HRTO 42, and *Persaud v. Toronto District School Board*, 2008 HRTO 92 ("*Persaud*"). Dr. Elkasrawy's counsel argued that since the Tribunal ruled in these cases that certain softer methodologies of the social sciences were considered relevant and necessary, I should conclude that Dr. Zine's proposed evidence about Islamophobia and the Islamophobia industry is also relevant and necessary. Their primary argument was that the evidence would provide context for what happened.

[258] I have reviewed Dr. Elkasrawy's case law. In my view, none of the cases are particularly helpful. None of the cases involve social science evidence about Islamophobia. In *Huang*, above, the opinion evidence was on Falun Gong and considered whether an applicant experienced discrimination on the basis of creed. However, this was a default merits hearing and the respondent's position on the issue of relevance and necessity was not thoroughly canvassed.

[259] In *Nassiah*, above, the opinion evidence was on systemic racism, implicit bias, and racial profiling dynamics. It was found to be relevant because it provided a framework of understanding police-civilian interactions. Similarly, in *McKay*, above, the Tribunal found that the opinion evidence on police practices was only relevant where it addressed technical and specialized aspects of policing beyond the Tribunal's ordinary knowledge.

[260] In both *Nassiah* and *McKay*, the opinion evidence was directly and logically connected to the issues before the Tribunal since the respondents were police services boards and the opinion evidence related to racial profiling in policing. The present case can be distinguished because the same logical connection is not present and the issue is not systemic racism in the practices of the respondent. The issues before me engage specific facts involving Dr. Elkasrawy and a viral video.

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[261] In *Peart*, above, there were many proposed experts. Some of the proposed evidence was accepted as relevant. However, the Tribunal excluded or limited proposed evidence that was too generalized (e.g., broad sociological commentary) and that did not link the expert's analysis to the specific interaction at issue. See *Peart* paragraphs 214-221 and 296-301. I find that *Peart* is more on point because Dr. Zine's evidence is similarly generalized about how Islamophobia manifests in Canada.

[262] After considering the oral submissions and case law, I determined that some of Dr. Zine's proposed opinion evidence about Islamophobia could potentially be relevant. I was mindful of the Court of Appeal's guidance in *Watson*. I informed the parties that Dr. Zine would be permitted to testify subject to restrictions.

[263] The restrictions placed on Dr. Zine's testimony were based on my determination of the necessity of certain proposed opinion evidence or lack thereof. I was mindful that there is a lower threshold for showing that opinion evidence is necessary. However, the threshold is not so low that there is no gate. I was mindful of the guidance in *White Burgess* and balanced the potential risks and the potential benefits. I considered whether certain proposed opinion evidence would assist me in deciding the issues before me. I also considered whether the proposed opinion evidence addressed issues that were not before the Tribunal or within the jurisdiction of the Tribunal.

[264] I had reviewed the new academic report discussed above, which gave rise to concerns that the proposed opinion evidence that Dr. Zine was planning to give at the hearing strayed significantly from the Will-Say Statement into complex tangents. If she were to be allowed to put the contents of the report into evidence by way of testimony, the same concerns about trial by ambush, the contents of the report, and counsel's involvement in the report arose. I was informed by Dr. Elkasrawy's counsel that the report contained the proposed opinion evidence Dr. Zine would be giving if permitted to testify. This report, which was excluded (see discussion above), raised important issues of whether non-parties were going to be targeted by Dr. Zine's testimony without being given notice of the proceedings and/or any chance to respond. I informed the parties

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that I would be unable to make findings of fact based on a lack of notice. I, therefore, insisted that Dr. Zine's testimony remain within the confines of her Will-Say Statement.

[265] Having considered the evidence of Dr. Elkasrawy, Dr. Zolfaghari, and Dean Duever, I formed the view that most of Dr. Zine's proposed expert opinion evidence was generalized in nature, was not relevant to the issues before the Tribunal, and not helpful to me as the trier of fact. I also formed the view that some of the proposed expert opinion evidence may be inflammatory and risked the hearing not focussing on the issues before the Tribunal. For some of the proposed evidence regarding the participants in the Islamophobia industry, I formed the view that allowing the evidence would be prejudicial to Ryerson and the proper conduct of the proceeding itself.

[266] Based on the above findings on relevance, necessity and prejudice, I determined that this would not be an appropriate case to admit much of Dr. Zine's proposed opinion evidence and address the issue of weight. Dr. Zine's Will-Say Statement was not entered into evidence at the *de novo* merits hearing.

[267] I instructed the parties on what evidence may be relevant and, therefore, could be canvassed in Dr. Zine's examination in chief. I provided guidance on what evidence I did not consider to be relevant and should not be canvassed during her examination in chief. The following is a high-level summary of the instructions I gave to the parties:

a. Potentially relevant:

i. General evidence about Islamophobia in Canada;

ii. Islamophobia insofar as it would have been a factor in how the original translation was undertaken; and

iii. Since part of the translation was printed on the poster that was considered by Dr. Zolfaghari in the meeting that resulted in the recommendation to terminate his employment contracts, opinion evidence relating to that poster could be relevant.

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b. Clarifications/Guidance:

i. Focus should be on 2017 (the video was released/published in February 2017) and not current day; and

ii. Focus should be on the translation of the supplication added to the short video that was the subject of the public outcry.

c. Not relevant and, therefore, inadmissible:

i. No evidence has been presented that White supremacist, neo-Nazi or alt-right groups (listed in paragraphs 29 and 30 of Dr. Zine's Will-Say Statement) were involved in the translation of the video and, therefore, opinion evidence about the activities of these groups remain outside the scope of the evidence that is relevant;

ii. No evidence should be on persons who were not respondents in the proceeding because it was not in the Will-Say Statement of Dr. Zine and they were not given an opportunity to defend themselves; and

iii. Opinion evidence concerning B'nai Brith Canada is outside the scope of the evidence that is relevant and necessary for the Tribunal.

[268] I acknowledged that Ryerson may raise objections during Dr. Zine's in chief testimony, and I said I would address objections as they are made. I reminded the parties that I could question relevancy and necessity of Dr. Zine's evidence as Dr. Zine testified.

Expert Witness: Dr. Atiqa Hachimi

[269] Prior to the Original Merits Hearing, Dr. Elkasrawy filed a Will-Say Statement outlining the proposed testimony of Dr. Hachimi and filed, as a proposed expert's report, a document referred to as a "[t]ranslation and analysis of a controversial video by Imam

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Ayman Elkasrawy in Masjid Toronto", which was originally prepared by Dr. Hachimi for Ms. Jennifer Yang of the Toronto Star (the "Report").

[270] In the Interim Decision, I limited the scope of Dr. Hachimi's opinion evidence to Dr. Hachimi's translation of the short version of the video and the methodology she used to select the English words in the translation. See paragraphs 33-38 of the Interim Decision.

[271] I also and indicated I had not made a final decision of relevance and necessity. I further made the following findings at paragraph 22 of the Interim Decision:

> The Report was not prepared for the Tribunal. On the contrary, the Report was prepared for a Toronto Star reporter and contains opinions that in my view are unrelated to the issues before the Tribunal. The Report translates the short version of the video recording of the applicant's supplication in June 2016 and contains other analysis, including opinions about an earlier translation of the video by a third party.

[272] Dr. Elkasrawy was the first witness called to testify at the *de novo* merits hearing. He testified that he prepared a "correct translation" of the relevant portions of his supplication. As previously stated, Dr. Elkasrawy testified that he received assistance from two other persons, including Imam Mohamed Zahid and Mr. Naqvi, when preparing his translation. He also testified that the translation was provided to Dean Duever during the termination meeting on February 28, 2017.

[273] Further, at the *de novo* merits hearing, he testified that Dr. Hachimi was brought in after he completed a sensitivity program at the Mosaic Institute run by Mr. Bernie Farber. He testified that Mr. Farber suggested finding an expert to provide a translation for Jennifer Yang and for an article. The purpose of the article was "to get the truth out to the public or my part or what I believe I said".

[274] At the time of the Interim Decision, I did not have the benefit of Dr. Elkasrawy's oral testimony. I did not appreciate that Dr. Elkasrawy had prepared a "correct"

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translation. I also did not appreciate how Dr. Hachimi's involvement in the case started. Importantly, I did not have Dr. Elkasrawy's Book of Documents even though I had indicated at CMCC #1 that the hard copy previously filed was not available to me and directed that it be refiled. The applicant's book of documents was refiled after CMCC#2 and in the week before the start of the *de novo* merits hearing. In the refiled book of documents, Dr. Elkasrawy's "correct" translation is misdescribed in the Schedule of Documents as "Supplication Analysis by 3rd Party" and not as a translation prepared by Dr. Elkasrawy.

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[275] As a result of this new information that I did not have prior to the Interim Decision, I revisited the Interim Decision on Day 1 of the *de novo* merits hearing after Dr. Elkasrawy had testified. I questioned whether the proposed opinion evidence of Dr. Hachimi was relevant and/or necessary. I informed the parties that I was revisiting the Interim Decision. I informed the parties that I would be asking them to provide brief oral submissions on Day 2 of the hearing on whether the proposed expert opinion evidence contained in Dr. Hachimi's Will-Say Statement and Report (as limited by the Interim Decision) remained relevant and necessary in light of Dr. Elkasrawy's testimony.

[276] Dr. Elkasrawy's counsel filed written submissions prior to the start of Day 2 of the *de novo* merits hearing even though the parties were not requested to do so. Ryerson did not file written submissions.

[277] At the end of the second day of the *de novo* merits hearing, I invited the parties to make oral submissions. Dr. Elkasrawy took the position that Dr. Hachimi's proposed testimony, and in particular her translation of his supplication, remained relevant and satisfied the low bar for relevance in human rights cases. Counsel referred me to the *Mohan* principles, *above*, and *Watson*, *above*. Counsel argued that:

> The Court of Appeal [in *Watson*] held that relevance requires the decision-maker to determine, as a matter of human experience and logic, whether proposed evidence makes the existence or non-existence of a material fact (a fact central to a legal issue in the case) more likely. Relevance must be assessed in the

> context of the entire case and the arguments put forward by the parties. There is no minimum probative value required to deem evidence relevant for the first portion of the *Mohan* test …. In short, the threshold for establishing relevance is low.

[278] During a lengthy oral argument, Dr. Elkasrawy's counsel provided the following positions for why Dr. Hachimi's proposed evidence was still relevant and/or necessary:

a. Dr. Hachimi was being called to provide her "accurate" translation of the short video to show that Dr. Elkasrawy's words were not anti-Semitic or otherwise inappropriate;

b. Dr. Hachimi's "accurate" translation was better than Dr. Elkasrawy's "correct" translation because he was not an expert in classical or formal Arabic and/or sociolinguistics;

c. The Tribunal required Dr. Hachimi's "accurate" translation because it would "prove his innocence", clear Dr. Elkasrawy's name, and support his argument that Ryerson did not conduct an adequate investigation to understand Dr. Elkasrawy's words before he was terminated;

d. The proposed opinion evidence was "central to establishing the dismissal was discriminatory" and will remove Ryerson's "legitimate and non-discriminatory explanation" and "make it more likely" that they discriminated against Dr. Elkasrawy based on protected grounds; and

e. The proposed opinion evidence would show that the words depicted in the video were mistranslated and inaccurate and were twisted in the form of an Islamophobic attack. Counsel stated that they would show that Ryerson participated in the Islamophobic attack when they terminated Dr. Elkasrawy because they "relied upon" the mistranslation.

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[279] Counsel acknowledged in their oral argument that Dr. Elkasrawy "provided his own translation of what he believes his words would have been in English" and that "he has put forward what he thinks he meant".

[280] With respect to necessity, Dr. Elkasrawy's counsel repeated arguments made at CMCC#2 that the Tribunal is not presumed to be an expert in the translation of classical or formal Arabic to English.

[281] Ryerson objected to the introduction of the evidence of Dr. Hachimi and took the position that her proposed opinion evidence was not relevant or necessary in light of the evidence that had been received by the Tribunal from Dr. Elkasrawy, Dr. Zolfaghari, and Dean Duever. They argued that the evidence received by the Tribunal on Day 1 and Day 2 of the *de novo* merits hearing presented a renewed reason to reconsider whether Dr. Hachimi's evidence is necessary and relevant.

[282] Ryerson argued that Dr. Hachimi's proposed evidence is not relevant to the specific issue before the Tribunal and not necessary because:

a. The Tribunal entered into evidence Dr. Elkasrawy's "correct" translation; and

b. The translation does not factor into Ryerson's decision to terminate Dr. Elkasrawy. They argued that the Tribunal received evidence that Ryerson's decision was based on Dr. Elkasrawy's Twitter apology, the joint statement by Masjid Toronto and MAC, the Collective Agreement, and Ryerson's Harassment & Discrimination Prevention Policy.

[283] Ryerson's counsel pointed out that due to the nature of translations, they cannot be exact.

[284] At the end of Day 2 of the *de novo* merits hearing, the parties came back after the end of the Tribunal's business day in the evening so that I would deliver my oral ruling. The Zoom room was still available because the following day was the final day of the hearing.

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[285] In my oral ruling delivered in the evening of Day 2 of the *de novo* merits hearing, I informed the parties that I had determined that Dr. Hachimi's proposed opinion evidence was not relevant or necessary because I had the benefit of Dr. Elkasrawy's "correct" translation. I issued a new ruling that replaced the ruling in the Interim Decision. My new ruling was that Dr. Hachimi's evidence was inadmissible. I gave the parties reasons for my ruling and indicated that fulsome reasons would be provided later. These are my more fulsome reasons.

[286] In reassessing the admissibility of Dr. Hachimi's proposed opinion evidence, I conclude that the evidence is inadmissible because it is not necessary in light of Dr. Elkasrawy's own testimony and his contemporaneously prepared "correct" translation. In assessing relevancy and necessity, I must remain focussed on the issues before the Tribunal. The central issue is whether the evidence establishes, on a balance of probabilities, a connection between Dr. Elkasrawy's protected characteristics and the termination of his employment. I note that I must also consider whether the post-termination statements by President Mohamed Lachemi breached the *Code*.

[287] I have considered whether Dr. Hachimi's proposed evidence would establish a connection between Dr. Elkasrawy's protected characteristics and the termination of his employment. As previously stated, this case is not about whether Dr. Elkasrawy was wrongfully dismissed. Dr. Elkasrawy did not pursue a grievance to pursue wrongful dismissal. To the extent that Dr. Hachimi's proposed evidence goes to the issue of wrongful dismissal or a failure by Ryerson to conduct their own investigation into the meaning of Dr. Elkasrawy's words, those issues are not ones that I must decide. The translation's accuracy only matters as it relates to a discrimination analysis. Here it does not. Accordingly, Dr. Hachimi's evidence would not be relevant to the extent that it is being proffered to prove wrongful dismissal and/or inadequacy of the post-termination investigation.

[288] I can appreciate that Dr. Elkasrawy wants to "prove his innocence" and "clear his name". However, Dr. Elkasrawy's innocence is not an issue in this human rights case.

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Ryerson accepts that he misspoke. I accept that he misspoke. Dr. Hachimi's evidence is not necessary to prove he misspoke.

[289] It is not contested that Dr. Hachimi's translation was prepared many months after Dr. Elkasrawy's Twitter apology, the joint statement by Masjid Toronto and the MAC, and his termination by Ryerson. It is not contested that Dr. Hachimi's translation was prepared for a Toronto Star article that was written months after the events in question. It did not exist and was not before Ryerson at the time Dr. Elkasrawy was terminated.

[290] I have considered Dr. Elkasrawy's submission that Dr. Hashimi's proposed evidence is relevant to undermine Ryerson's asserted legitimate and non-discriminatory reason for the termination. However, I am not persuaded that the low threshold for relevance is met. Dr. Hachimi's translation did not exist at the time of the termination meeting, and it was not before Dean Duever at the time he decided to terminate Dr. Elkasrawy's student-facing employment roles. Therefore, it cannot assist in establishing a material fact relating to Ryerson's decision-making process. The issue is not whether Dr. Elkasrawy's words could, after the fact, be translated more accurately or favourably, but whether Ryerson's decision to terminate his employment was discriminatory having regard to the information available at the time. As such, the proposed evidence of Dr. Hachimi does not bear on the material issues in dispute and would not impact the outcome in this case.

[291] The Tribunal is cautious about the use of experts when the proposed evidence does not address the core issue and, instead, is to shift the focus to external controversies or public debates. Expert evidence should be excluded if it does not directly assist the Tribunal in deciding the issue of discrimination.

[292] After considering the parties written and oral submissions, I find that Dr. Hachimi's proposed evidence steps into the external controversy and public debate over what Dr. Elkasrawy is said to have said. It does not, in my view, address the core issue before the Tribunal and should be excluded.

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[293] I agree with the respondent that Dr. Hachimi's expert opinion evidence was no longer necessary given Dr. Elkasrawy's "correct" translation was before me. In my view, Dr. Elkasrawy's direct evidence and translation is the best evidence available to the Tribunal because it was prepared by him contemporaneously with the termination events and is evidence of what he says his words meant. Dr. Elkasrawy's intention is already in evidence and Dr. Hachimi's translation does not add materially to what is before the Tribunal and does not assist me in determining the legal issues.

[294] In my view, Dr. Hachimi's translation is *post hoc* reconstruction in light of Dr. Elkasrawy's translation at the time of the core events. Dr. Hachimi's translation does not acknowledge Dr. Elkasrawy's translation and attempts to revise what he said was said and improve Dr. Elkasrawy's version.

[295] In my view, simply put, Dr. Hachimi's proposed opinion evidence is what she says Dr. Elkasrawy should have said that he said. This is re-writing the past through an expert. I have before me Dr. Elkasrawy's translation about what he said. While he may not be an expert in classical or formal Arabic, he testified that his first language is Arabic, and he learned to read formal Arabic at a young age. Further, he chose his words. He spoke his words. He knew what he meant. He interpreted his words based on his knowledge about his intention and intended meaning. His translation, in my view, is the best evidence available and is better evidence than Dr. Hachimi's translation because Dr. Elkasrawy knew what he meant to say. It also was prepared at the time of the events at issue and is not tainted by subsequent events. For these reasons, I am of the view that Dr. Hachimi's evidence is not necessary.

[296] In coming to this conclusion, I seriously considered the Tribunal's gatekeeping role. I assessed the proposed evidence of Dr. Hachimi and balanced the benefit of allowing it (and then determining weight) against the prejudice of doing so. I concluded that admitting it would be prejudicial to the fair, just, and expeditious resolution of the dispute. Dr. Elkasrawy's counsel had indicated they would need 4 hours for examination in chief. Ryerson's counsel requested approximately 2 hours for cross-examination. This meant that Dr. Hachimi's testimony would take the entire third day of the *de novo* merits

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hearing and additional hearing days would be required to complete the evidentiary portion of the hearing.

[297] I would like to be clear that I did not exclude the evidence to avoid another hearing day. I determined it would not be fair, just, and expeditious to spend a hearing day on evidence that was not relevant and necessary. Further, it would not change the outcome because Dr. Hachimi's translation did not address the core issues before the Tribunal.

[298] After listening carefully to Dr. Elkasrawy's counsels' arguments, one argument stands out that I must address. They argued that Dr. Hachimi's translation was necessary to clear his name. I appreciate that Dr. Hachimi's post-termination translation translates Dr. Elkasrawy's words to remove offensive meaning and portray what he said in a better light. I appreciate that there may have been a hope that Dr. Hachimi's evidence would be included in this Decision to give those reading it another translation. However, that is not a valid reason to admit the evidence.

[299] Based on the above findings on relevance and necessity, I determined that this would not be an appropriate case to admit the evidence and address the issue of weight. I find that Dr. Hachimi's proposed opinion evidence is inadmissible. Her Will-Say Statement and Report were not entered into evidence at the *de novo* merits hearing. She did not give oral testimony.

Use of Experts for Credibility Findings

[300] In their written closing submissions, Ryerson's counsel prepared an aid to argument chart and took information from Dr. Hachimi's Report. During oral closing argument, I asked for submissions from the parties because Dr. Hachimi's Report was not before me.

[301] In response to the Tribunal's question, Ryerson invited the Tribunal to review Dr. Hachimi's Report for a limited purpose to assess the credibility of part of Dr. Elkasrawy's testimony. Dr. Elkasrawy's counsel argued that I had ruled that Dr. Hachimi's Report

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was not relevant or necessary, and I cannot use the Report for the limited purpose requested by Ryerson. Dr. Elkasrawy's counsel argued that either the Report is relevant and necessary or it is not. They argued that if it is relevant or necessary for any purpose, including testing the credibility of Dr. Elkasrawy's evidence, the Tribunal should allow the Dr. Elkasrawy to call Dr. Hachimi as a witness and Ryerson may cross-examine her.

[302] I agree with Dr. Elkasrawy. I continue to be of the view that Dr. Hachimi's proposed opinion evidence is not relevant and/or necessary. I do not require her linguistic expertise to decide issues of credibility. Accordingly, I have not considered Dr. Hachimi's Report at all. I have all the information I need in the evidentiary record before me.

Rulings during the *de novo* merits hearing

[303] During the testimony of Dr. Elkasrawy, counsel for Ryerson objected to direct examination questions relating to an October 2017 article written by Ms. Jennifer Yang and an op-ed written by Dr. Elkasrawy. After hearing submissions on relevance, I ruled that the articles were not relevant to the issue of Dr. Elkasrawy's termination because they were written several months after the termination occurred.

[304] Upon later reflection, and with knowing that the reprisal allegations were ultimately not pursued, I appreciate that the Jennifer Yang article was being put to Dr. Elkasrawy in support of those reprisal allegations. The abandonment of the reprisal claim reinforces my conclusion that the article is not relevant to the issues requiring determination.

[305] Counsel for Ryerson also objected to examination questions posed to Dr. Elkasrawy concerning steps he took after February 28, 2017, to become more sensitive to issues of anti-Semitism in Canada. After hearing oral submissions from the parties, I ruled that the events occurring after the termination and public statements on February 28 and March 1, 2017, were not relevant to the matters before me because they occurred much later in time.

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[306] Counsel for Ryerson raised a number of objections during the cross-examination of Dr. Zolfaghari and Dean Duever, including objections concerning the form of questions, the characterization of evidence, and the relevance of proposed lines of inquiry. These objections required rulings from me to manage the hearing, ensure questions were fair to the witnesses, and maintain an accurate evidentiary record. In a number of instances, I directed the questions be rephrased because the factual assumptions embedded in them did not align with the evidentiary record, reflected counsel's interpretation rather than the evidence itself, or were otherwise inconsistent with my understanding of the evidence that had been given. Left uncorrected, such questions had the potential to create an inaccurate evidentiary record.

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ANALYSIS

[307] As previously stated, I have not set out all of the parties' factual and legal submissions in this Decision. I refer only to those facts and submissions necessary to determine the issues before me. While I have considered the parties' submissions in full, I am not required to address every argument but must provide reasons sufficient to explain the basis for my decision. See *Vavilov*, *Clifford*, and *Senat,* above.

Relevant *Code* Provisions and Legal Framework

[308] The relevant provision of the *Code* is:

> Employment
>
> 5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

Onus

[309] The applicant bears the onus of proving, on a balance of probabilities, that a violation of the *Code* has occurred. A balance of probabilities means that it is more likely than not that a violation has occurred. The Tribunal needs the applicant to provide sufficient clear, convincing, and cogent evidence to satisfy the balance of probabilities test. There is no objective standard measure of sufficiency. See *FH*, above, at paragraph 46.

The *Moore* Test and Legal Principles

[310] In order to be successful in proving discrimination, an applicant must meet the traditional three step test for *prima facie* discrimination as set out by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 33. The applicant must show that:

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

2. They experienced a disadvantage or an adverse impact; and

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

(the "*Moore* test")

[311] A *prima facie* case is one "which covers the allegations made and which, if they are believed, is complete and sufficient to justify the verdict in the complainant's favour in the absence of an answer from the respondent". See *Ont. Human Rights Comm. v. Simpsons-Sears,* 1985 CanLII 18 (SCC), [1985] 2 SCR 536 ("*Simpsons-Sears*") at paragraph 28.

[312] The applicant must present sufficient evidence through oral testimony and/or documentary evidence to establish a *prima facie* case of discrimination. This means evidence which, if believed, would be enough to support a finding of discrimination in the

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absence of an explanation from the respondent. The amount of evidence required varies depending on the case. In some cases, the amount of evidence required is minimal, and in other cases more substantial evidence is needed. See *Simpsons-Sears*, above, at paragraph 28.

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[313] Where an applicant satisfies its evidentiary burden to establish a *prima facie* case, the respondent may respond to the claim of discrimination by leading additional evidence to negate or undermine the evidence presented by the applicant for any one of the three elements in the *Moore* test.

[314] The burden shifts to the respondent to establish a statutory defence and/or a credible non-discriminatory explanation for the conduct complained of in the Application. See *Garofalo v. Cavalier Hair Stylists Shop Inc.*, 2013 HRTO 170 ("*Garofalo*"), at paragraph 155. See also *Moore*, above, at paragraph 33 and *Simpsons-Sears*, above, paragraph 28.

[315] Where the respondent does not call evidence, the Tribunal may determine the case based on whether the applicant has established a *prima facie* case. Where the respondent calls evidence, the Tribunal must assess all of the evidence to determine whether discrimination has been proven on a balance of probabilities. See *Peel Law Association v. Pieters*, 2013 ONCA 396 ("*Pieters*").

[316] Where the respondent calls evidence to show that their actions were not discriminatory, it is only an evidentiary burden that shifts to the respondent as opposed to the burden of proof. Relatively "little affirmative evidence" is required before the inference of discrimination is permitted. The standard of proof requires only that the inference be more probable than not. Once there is evidence to support a *prima facie* case, the respondent faces the tactical choice: explain or risk losing. See *Pieters*, at paragraph 73.

[317] If the respondent presents evidence to rebut the applicant's *prima facie* case of discrimination, the evidentiary burden returns to the applicant to establish, on a balance

of probabilities, that the respondent's explanation is erroneous or a pretext for discrimination. See *Pieters*, above, at paragraph 74, *Wedley v. Northview Co-operative Homes Inc.*, 2008 HRTO 13 at paragraph 52 and *Garofalo*, above, at paragraph 155.

[318] The ultimate issue is whether the applicant has proven, on a balance of probabilities, that a violation of the *Code* has occurred. Although an evidentiary burden may shift to the respondent to establish a statutory defence and/or a credible non-discriminatory explanation, the onus of proving discrimination remains on the applicant throughout. See *Ontario (Director, Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 at paragraphs 112 and 119.

[319] It is well established that the protected characteristic does not need to be the only factor in the adverse treatment. It is sufficient that the protected characteristic was "a factor" in the adverse treatment. All that is required is that there be a connection between the adverse treatment and the ground(s) of discrimination. See *Pieters*, above, at paragraph 59.

[320] Intent is not relevant to a finding of discrimination. See *Abdosh v. North York General Hospital*, 2021 HRTO 872 at paragraph 85.

[321] I will apply the *Moore* test analysis to Dr. Elkasrawy's three claims of adverse treatment/discrimination. The issues I will decide are:

> Issue 1: Has Dr. Elkasrawy established that he experienced discrimination when he was terminated?
>
> Issue 2: Has Dr. Elkasrawy established that President Lachemi's February 28, 2017 email to B'nai Brith Canada violated his *Code* rights?
>
> Issue 3: Has Dr. Elkasrawy established that the March 1, 2017, press release violated his *Code* rights?

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Issue 1: Has Dr. Elkasrawy established that he experienced discrimination when he was terminated?

[322] As previously stated, I find that Dr. Elkasrawy has not proved on a balance of probabilities that Ryerson breached subsection 5(1) of the *Code* when they terminated his employment contracts.

Issue 1a: Has Dr. Elkasrawy established that he has *Code*-based rights?

[323] Dr. Elkasrawy claimed discrimination on multiple *Code* grounds, including creed, race, colour, ancestry, place of origin, and ethnic origin. In oral closing submissions, his counsel clarified that creed is the central protected characteristic at issue. They clarified that the remaining grounds were advanced in support of an intersectional discrimination argument, particularly in relation to Islamophobia.

[324] Dr. Elkasrawy's counsel argued that Islamophobia is inherently intersectional, engaging not only creed but also race, colour, ethnicity, place of origin, and ethnic origin. At the same time, his counsel acknowledged that a finding of discrimination could be made on the basis of creed alone, and that the additional grounds primarily assist in contextualizing what Dr. Elkasrawy experienced.

[325] Ryerson does not dispute that Dr. Elkasrawy has personal characteristics protected by the *Code*. They argue that there is insufficient evidence connecting those protected characteristics to the termination of his employment contracts.

[326] During oral closing submissions, I asked both parties to identify the evidentiary basis on the record linking the intersecting *Code* grounds (i.e., race, colour, ancestry, place of origin and ethnic origin) to Dr. Elkasrawy's alleged adverse treatment. Both parties referred to Dr. Zine's new academic report, which was not entered into evidence as an exhibit and is not before me. I was also referred to Dr. Zine's testimony about Islamophobia, which was of a general nature. I was not referred to specific testimony about Dr. Elkasrawy's race, colour, ancestry, place of origin, and ethnic origin.

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[327] Based on the evidentiary record as a whole and the written and oral closing submissions, I am satisfied that creed is the only *Code* ground that is properly engaged. I was not directed to persuasive evidence establishing that Dr. Elkasrawy's race, colour, ancestry, place of origin and/or ethnic origin operated as independent or intersecting factors in his termination, beyond their connection to his identity as a Muslim.

[328] Accordingly, I find that the first branch of the *Moore* test is satisfied. I will focus my analysis under the second and third branches of the *Moore* test on creed. This approach reflects the evidentiary foundation of Dr. Elkasrawy's allegations of discrimination and does not preclude consideration of the broader context of Islamophobia.

Issue 1b: Has Dr. Elkasrawy established that he experienced adverse treatment?

[329] Ryerson does not dispute that the termination of Dr. Elkasrawy's employment contracts constituted adverse treatment. Accordingly, I find that the second branch of the *Moore* test is satisfied.

Issue 1c: Has Dr. Elkasrawy Established that His Creed was a Factor in His Termination?

[330] The parties agreed the focus of my analysis should be on whether Dr. Elkasrawy's creed was a factor in Ryerson's decision to terminate his employment contracts. I agree. For the reasons below, I have found that based on the balance of probabilities, Dr. Elkasrawy has not satisfied the third branch of the *Moore* test.

[331] A fundamental principle in employment cases is that an employer may terminate the employment of an employee with or without cause. It is also a fundamental principle that an employer's decision to terminate an employee does not become a human rights issue unless a *Code*-related ground was a factor in the termination.

[332] Dr. Elkasrawy took the position that the evidence establishes that his creed was a factor in Ryerson's decision to terminate him. He argues that Ryerson participated in an

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Islamophobic attack on him by terminating his employment for a supplication that had been mistranslated and twisted by the Islamophobia industry. He argues that the necessary link was established because he was terminated for what he said in a prayer on the Night of Decree, as an Assistant Imam in a mosque. In his written submissions, he argues that his freedom to undertake practices and harbour beliefs at Masjid Toronto were protected because of his religion.

[333] Dr. Elkasrawy further argues that when Ryerson terminated his employment, they relied on a mistranslated and manipulated video and the poster. He argues that these factors render what might otherwise be considered a "facially neutral" decision to be a discriminatory one. He argues that Ryerson protected their reputation over his protected characteristics.

[334] Ryerson denies that its actions were discriminatory. They took the position that Dr. Elkasrawy failed to meet his evidentiary burden. They took the position that the evidence shows that Dr. Elkasrawy's creed was not a factor in its decision to terminate him. They argue that the evidence demonstrates they have a legitimate non-discriminatory explanation. They argue that the decision to remove Dr. Elkasrawy from student-facing roles was made solely on the basis that he was in breach of his contractual obligations under the Collective Agreement and Ryerson's Harassment and Discrimination Policy.

[335] First, I will address Dr. Elkasrawy's position that Ryerson participated in an Islamophobic attack by terminating him. I do not agree with this position because the facts do not support it.

[336] Dr. Zolfaghari's uncontested oral testimony is that the recommendation to terminate Dr. Elkasrawy was based on the evidence before the attendees at the early morning meeting on February 28, 2017. Summarizing the testimony set out above relating to that meeting, the recommendation to terminate Dr. Elkasrawy was based on his Twitter apology, the Masjid Toronto and the MAC joint statement, certain complaints lodged by students, parents of students and others, the Collective Agreement and

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Ryerson's Harassment and Discrimination Policy. Despite a lengthy and repetitive cross-examination, Dr. Zolfaghari did not waver in his testimony and he expressly testified that Dr. Elkasrawy's creed was neither considered nor a factor in the recommendation.

[337] Dean Duever's uncontested oral testimony is that he made the decision to terminate Dr. Elkasrawy based on his Twitter apology, the Masjid Toronto and the MAC joint statement, certain complaints lodged by students, parents of students and others, concerns about the impact of the public controversy on the learning environment, and his conclusion that the conduct at issue was inconsistent with the Collective Agreement and Ryerson's Harassment and Discrimination Policy. During cross-examination, he testified that Dr. Elkasrawy's creed was not a factor in his decision to terminate the employment contracts. Dean Duever further testified that he considered Dr. Elkasrawy's explanation at the meeting, including his concerns regarding the English translation and context of the words spoken, but concluded that the explanation did not alter his decision.

[338] Dr. Elkasrawy did not present any evidence to contradict what Dr. Zolfaghari said was the basis for the recommendation and what Dean Duever said was the basis for his decision to terminate Dr. Elkasrawy's employment contracts.

[339] I gave Dr. Zine's opinion evidence little weight because it did not assist me as it was general in nature and did not specifically address Ryerson's decision to terminate Dr. Elkasrawy's employment.

[340] I am also satisfied on a balance of probabilities that anti-Muslim stereotypes were not a factor in Ryerson's decision to terminate Dr. Elkasrawy. In reaching this conclusion, I have reviewed Dr. Zine's generalized testimony about Islamophobia, and her opinions that there is no single definition of Islamophobia and that Islamophobia goes beyond fear and hatred of Islam and Muslims. I also considered Dr. Zine's generalized evidence about "taqiyya". I also took into consideration the Tribunal's own understanding of the social context of Islamophobia and anti-Muslim stereotypes.

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[341] Based on the totality of the relevant and admissible evidence concerning the termination of Dr. Elkasrawy's employment contracts, I find that Ryerson's decision was not based on stereotypes or Islamophobia. I find that Ryerson's decision was not based on stereotypes of Muslims and/ or Dr. Elkasrawy being dishonest or of questionable moral character or dangerous. It was not based on stereotypes of Muslims and/or Dr. Elkasrawy being violent or aggressive. I find that Ryerson's decision to terminate Dr. Elkasrawy was based on Dr. Elkasrawy's words and the impact of those words on the university community and learning environment. I have accepted Dean Duever's testimony that he decided to terminate Dr. Elkasrawy's employment contracts because he needed to "undertake something to re-establish the integrity of the learning environment".

[342] Despite Dr. Elkasrawy's argument that the poster is key to the termination decision, I find that Ryerson did not base its decision to terminate his employment contracts because of the poster. The evidence before me is that Dr. Zolfaghari did not consider the poster. The evidence before me is that Ryerson instructed security to remove the poster, the poster was not discussed at the termination meeting, and the poster is not mentioned in the February 28, 2017, termination letter. Dean Duever's termination letter focussed on his determination that Dr. Elkasrawy breached the Collective Agreement and Ryerson's Discrimination and Harassment Policy.

[343] I appreciate that Dr. Elkasrawy's argument concerning the poster depends heavily on Dr. Zine's opinions that the poster has hallmarks of the Islamophobia industry. As previously stated, I have given those opinions little weight because they lacked the necessary evidentiary foundation.

[344] Based on the totality of the evidence before me, I find that both Dr. Elkasrawy and Ryerson had to react to swift and intense media and public reaction that was beyond their control. I find that Ryerson was not directly or indirectly a participant in an Islamophobic attack against Dr. Elkasrawy.

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[345] Second, I have considered whether the evidence establishes that Dr. Elkasrawy was terminated by Ryerson because he is Muslim. Based on the evidence before me, I find that his identity as a Muslim is not the reason he was terminated because there is no evidence to support such a conclusion.

[346] I do not question that Dr. Elkasrawy is a devout Muslim. However, having considered the evidence of Dr. Zolfaghari concerning the pre-meeting (discussed above) and the evidence of Dr. Elkasrawy and Dean Duever concerning the termination meeting (discussed above), I find that no evidence was presented that would support the conclusion that Dr. Elkasrawy was terminated because he is a devout Muslim. Based on the evidence, I also cannot draw an inference from the evidence that Dr. Elkasrawy was terminated because he is a devout Muslim.

[347] Third, I have considered whether Dr. Elkasrawy was terminated for his off-campus role as an Assistant Imam. I find no evidence was presented that he was terminated because he was an Assistant Imam at Masjid Toronto. I also cannot draw an inference from the evidence that he was terminated because he is an Assistant Imam at Masjid Toronto.

[348] Fourth, I have considered the more complex and nuanced argument about whether Dr. Elkasrawy was terminated because of his religious beliefs and whether words spoken represent his beliefs.

[349] During oral closing argument, I asked the parties what evidence they say this case turns on. Dr. Elkasrawy argued the case turns on the poster. He argued that Dr. Zolfaghari admitted that he considered the poster when making the recommendation to terminate him.

[350] During oral closing argument, Ryerson argued that the case turns on the Twitter apology and the Masjid Toronto and the MAC joint statement which place Dr. Elkasrawy squarely on the wrong side of his obligations under the Collective Agreement. They

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argued that the Masjid Toronto and the MAC statement strongly messaged that Dr. Elkasrawy's words were not appropriate.

[351] Dr. Elkasrawy responded during oral closing argument that he was fired for words he said while performing a religious function. He argued "that is beyond the reach of the employer. This kind of speech is beyond the reach of the *Code*. … It was not legitimate for the employer to be reviewing what he was saying in his prayers".

[352] I do not agree with Dr. Elkasrawy that the case turns on the poster. Dr. Zolfaghari's testimony was that the attendees at the morning meeting on February 28, 2017, were aware of the poster but did not consider it in making their recommendation. Further, Dr. Zolfaghari also testified that Dean Duever was the ultimate decision maker. Dean Duever's evidence, including the minutes of the meeting, did not address the poster. The termination letter does not refer to the poster.

[353] I listened carefully to what the parties were saying. Their oral closing arguments focused on Dr. Elkasrawy's words, the words in the supplication, the translations, the poster, the words in the Twitter apology, and the words in the Masjid Toronto and the MAC statements. In their arguments about words, the parties highlighted the core issue. Dr. Elkasrawy's argument is that creed was a factor in the termination because the termination arose from words spoken during a religious supplication. It is therefore necessary to consider whether the evidence establishes that the words at issue represented an expression of his creed or sincerely held religious belief(s).

[354] The jurisprudence is clear that not every personal manifestation of an individual's creed engages the *Code*'s protection and protection depends on context. Rather, the *Code*'s protection against religious discrimination extends only to beliefs and practices that are religious in nature and sincerely held by the individual. See *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551 ("*Amselem*") at paragraph 69.

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[355] Although the Supreme Court of Canada, in *Amselem*, considered protections under the Québec *Charter of Human Rights and Freedoms*, CQLR, c. C-12 and the *Constitution Act, 1982*, Schedule B to the Canada Act, 1982 (UK), c. 11, the Tribunal has accepted that their articulation of religious belief and practice applies equally to claims of discrimination on the basis of creed under the *Code*. Accordingly, an applicant must establish that the practice or belief at issue is sincerely held and that it is:

> a. objectively required by the religion, or
>
> b. that he or she subjectively believes that it is required by the religion, or
>
> c. that he or she sincerely believes that the practice engenders a personal, subjective connection to the divine or to the subject or object of his or her spiritual faith, and as long as that practice has a nexus with religion.
>
> See *Amselem*, above, at paragraph 69, and *Clipperton-Boyer v. RedFlagDeals.com*, 2014 HRTO 1796 at paragraph 16.

[356] The beliefs and practices need not be based on the edicts of an established church, house of worship, or particular denomination. See *Heintz v. Christian Horizons,* 2008 HRTO 22 at paragraph 121.

[357] The term “creed” is not a defined term in the *Code*. However, the Tribunal stated in *Vezina v. Elections Ontario*, 2016 HRTO 994 (“*Vezina*”) at paragraph 9 that:

> “Creed” … includes, but is not limited to, "religious creed" or "religion.” 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*.

[358] The Tribunal considers whether an applicant’s beliefs rise to the level of being a creed that is protected by the *Code*. See *Yeomans v. Superette*, 2021 HRTO 1067, and *Vezina*, above.

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[359] When considering issues of creed, the Tribunal often considers the Ontario Human Rights Commission's "Policy on preventing discrimination based on creed" (2015) (the "OHRC Creed Policy"). In the OHRC Creed Policy, the OHRC states the following characteristics are relevant when determining if a belief system is a creed under the *Code*. A creed:

> (a) Is sincerely, freely and deeply held;
>
> (b) Is integrally linked to a person's identity, self-definition and fulfilment;
>
> (c) Is a particular and comprehensive, overarching system of belief that governs one's conduct and practices;
>
> (d) 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;
>
> (e) Has some nexus or connection to an organization or community that professes a shared system of belief.

[360] The Tribunal is not bound by the policies of the OHRC. However, as required by subsection 45.5(2) of the *Code*, I have considered the OHRC Creed Policy because the parties raised it with me. I will consider the factors in this case.

[361] Based on the existing case law and the OHRC Creed Policy, I must determine whether there is sufficient evidence before me to satisfy me that Dr. Elkasrawy's words represent his sincerely, freely, and deeply held beliefs.

[362] In *Amselem*, above, the Supreme Court stated that "only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion." See *Amselem*, above, at paragraph 39.

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[363] In *Amselem*, above, the Supreme Court explained "not every action will become summarily unassailable and receive automatic protection under the banner of freedom of religion. No right, including freedom of religion, is absolute [...] This is so because we live in a society of individuals in which we must always take the rights of others into account". See *Amselem*, above, at paragraph 61.

[364] The Supreme Court reminded that "[i]t is not the role of this Court to decide what any particular religion believes". See *Amselem* above, paragraph 44.

[365] Importantly, in *Amselem*, the Supreme Court warned against inquiring too deeply into a person's beliefs by stating:

> [50] In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.
>
> [51] That said, while a court is not qualified to rule on the validity or veracity of any given religious practice or belief, or to choose among various interpretations of belief, it is qualified to inquire into the sincerity of a claimant's belief, where sincerity is in fact at issue: see *Jones*, *supra*; *Ross*, *supra*. It is important to emphasize, however, that sincerity of belief simply implies an honesty of belief: see *Thomas v. Review Board of the Indiana Employment Security Division*, *supra*.
>
> [52] According to American constitutional law scholar Professor Laurence Tribe, the jurisprudence in this area evinces that inquiries into a claimant's sincerity must be as limited as possible. He argues that "given the widening understanding of what constitutes religion in our society, the very rights ostensibly protected by the free exercise clause might well be jeopardized by any but the most minimal

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> inquiry into sincerity": L. H. Tribe, *American Constitutional Law* (2nd ed. 1988), at pp. 1245-46. While this was written in the context of the First Amendment to the U.S. Constitution, I believe that it is equally applicable to delimiting the court's role in interpreting religious freedom under the Quebec (or the Canadian *Charter)*. Indeed, the court's role in assessing sincerity is intended only to ensure that a presently asserted religious belief is in good faith, neither fictitious nor capricious, and that it is not an artifice. Otherwise, nothing short of a religious inquisition would be required to decipher the innermost beliefs of human beings.

See *Amselem*, above, at paragraphs 50-52.

[366] Taking into consideration the Supreme Court's guidance, I must look at Dr. Elkasrawy's beliefs but not look too deeply. I am able to walk this fine line because Dr. Elkasrawy made a clear public statement on Twitter that he did not hold the beliefs that followed from his misspoken words. He stated:

> Neither I, Masjid Toronto or the congregation harbour any form of hate towards Jews. And so, I wish to apologize unreservedly for misspeaking during prayer last Ramadan. I firmly believe that all human beings: Muslims, Jews, Christians and people of all and no faith deserve to live a life free of any threat to their safety. In my supplication my intention was to refer to a very specific political situation that is the result of military occupation. I sincerely regret the offence that my words must have caused.

[367] Based on his words in his Tweet, I find that Dr. Elkasrawy acknowledged that he misspoke during his supplication during the Night of Decree. He acknowledged in saying he misspoke that the words as spoken were not a statement of his sincerely held beliefs.

[368] I find that Dr. Elkasrawy communicated his sincerely held beliefs when he said that "all human beings: Muslims, Jews, Christians and people of all and no faith deserve to live a life free of any threat to their safety". I find that he acknowledged that he was referring to "a very specific political situation" and not his creed-based beliefs. He has further, in my view, taken responsibility for the offense that his own words must have

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caused by referring to “my words” in his apology. He was not referring to the words of others, being the CIJ News English translation.

[369] Importantly, I find that Dr. Elkasrawy intended to convey in his Tweet that his sincerely and deeply held beliefs are not reflected in the CIJ News translation.

[370] With respect to the “very specific political situation”, Dr. Elkasrawy added to his “correct” translation the words “Syria Oppression” and “Al Aqsa Occupation” as context. Based on his testimony set out above, I find that the supplications, as spoken, did not contain these contextual references before the stanzas in the supplication. Dr. Elkasrawy testified that his intention was to refer to the political situations. I believe him.

[371] As previously stated above, I find that he said one supplication and then said the other supplication one after the other without stating the political or geo-political context. The words flowed into one another and without the contextual link. His words conveyed in their delivered form a message that Dr. Elkasrawy did not intend and in hindsight understands was offensive and hurtful to his Jewish friends and colleagues. But, importantly, the message, in the manner in which it was delivered, was not his sincerely held beliefs.

[372] In Dr. Elkasrawy’s written reply closing submissions, he wrote as follows about his intention and evidence:

> The evidence bears out that Mr. Elkasrawy’s intent in using the words he spoke was clear when considered in context – he was not threatening Jews as a group but speaking to a specific set of political circumstances involving events in Syria and a political conflict involving the state of Israel and the people living under its military occupation, the Palestinians. To take words he spoke out of that context is to render his true intent (which is knowable) artificially unknowable.

[373] I accept the admission that Dr. Elkasrawy intended to refer to these specific political situations. I also find that Dr. Elkasrawy’s admission concerning what he was talking about undermines his argument that the offending words are founded on his

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creed. In my view, Dr. Elkasrawy admitted to making a political or secular reference rather than a religious beliefs-based prayer.

[374] The Tribunal has stated that political opinions and statements are not protected by the *Code*. See, for example, *SAIA v. Carleton University*, 2013 HRTO 112, *Dennison v. Pride Toronto*, 2014 HRTO 1410.

[375] In my view, speaking about politics, geopolitical conflicts or matters of public conflict from a pulpit, a minbar, a bimah or other platform in a religious setting does not, without more, bring those statements or words within the protection of the *Code* as an expression of beliefs or creed. The protection afforded to creed is directed towards sincerely held religious beliefs, observances, and practices. It does not extend to every statement made by a religious leader, nor every political opinion or concern expressed in a place of worship. The fact the words are spoken in a religious context does not, in itself, transform them into a creed-based belief or practice protected by the *Code*. What must be examined is the nature of the belief being asserted.

[376] In this case, I am not satisfied that the words at issue constituted Dr. Elkasrawy's sincerely held religious belief or practice within the meaning of the *Code*. Rather, based on Dr. Elkasrawy's own evidence and submissions, the words he chose to say were contextualized by specific recent events in Syria and at the Al-Aqsa Mosque in Jerusalem causing them to be political or geo-political in nature. In my view, this demonstrates that the words were not and do not represent his sincerely held religious beliefs.

[377] I have applied the test in *Amselem* and in the OHRC Policy on Creed and find that Dr. Elkasrawy's words in their political or geo-political context are not creed-based words.

[378] In his written and oral closing argument, Dr. Elkasrawy attempted to distance himself from his contemporaneous statements on Twitter. In his written closing

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submissions, Dr. Elkasrawy argued that the *Apology Act*, 2009, S.O. 2009, c. 3 applies and that he urges the Tribunal to place no weight on his public statement on Twitter.

[379] The relevant provisions in the *Apology Act* are as follows:

> Definition
>
> "Apology" means an expression of sympathy or regret, a statement that a person is sorry or any other words or actions indicating contrition, whether or not the words or actions admit fault or imply an admission of fault or liability in connection with the matter to which the words or actions relate.
>
> 2(1) - Effect of apology on liability
>
> An apology made by or on behalf of a person in connection with any matter,
>
> (a) does not, in law, constitute an express or implied admission of fault or liability by the person in connection with that matter;
>
> (b) does not, despite any wording to the contrary in any contract of insurance or indemnity and despite any other Act or law, void or otherwise affect any insurance or indemnity coverage for any person in connection with that matter; and
>
> (c)shall not be taken into account in any determination of fault or liability in connection with that matter.
>
> 2(3) – Evidence of apology not admissible
>
> Despite any other Act or law, evidence of an apology made on or on behalf of a person in connection with any matter is not admissible in any civil proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

[380] Ryerson argues that I should interpret these provisions of the *Apology Act* in their entire context and in their grammatical and ordinary sense harmoniously with the

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scheme of that Act, the object of that Act, and the intention of the Legislature. See *Bell ExpressVu v. Rex*, 2002 SCC 42 at paragraph 26 referring to Driedger, Construction of Statutes (2nd ed. 1983) at page 87.

[381] Ryerson argues that the *Apology Act* does not apply in the circumstances of this case because the Tribunal is not determining "fault or liability". They argue that legal fault or liability is not at issue in the Tribunal's proceedings and Ryerson is not relying on the *Apology Act* as admission of legal fault or liability. They argue they could rely upon Dr. Elkasrawy's public statement on Twitter in its decision to terminate him. They further argue that the Tribunal is not prohibited from accepting Dr. Elkasrawy's Twitter apology as evidence and giving it the weight it deserves.

[382] I have considered whether I should give weight to Dr. Elkasrawy's public apology on Twitter. I have reviewed the *Apology Act* and find that it does not limit my authority to put weight on Dr. Elkasrawy's Twitter statement because I am not determining fault or liability. I am determining whether Ryerson breached the *Code*.

[383] I have given Dr. Elkasrawy's Twitter apology considerable weight because I am of the view it is a credible and reliable statement that he misspoke. As set out above, I am satisfied that the misspoken words are not a statement of Dr. Elkasrawy's sincerely held beliefs.

[384] I put more evidentiary weight on the Tweet than his oral testimony because I have taken into consideration the totality of Dr. Elkasrawy's testimony. Dr. Elkasrawy showed remorse that the words attributed to him hurt or offended his friends and colleagues. Dr. Elkasrawy testified that if he could go back in time, he would choose his words more carefully.

[385] In coming to this conclusion, I have considered Dr. Elkasrawy's testimony that he was under pressure when he wrote the Tweet. I appreciate that the public reaction to the video and the controversy was difficult for him and that he felt he needed to say

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something to clarify his words. However, I am satisfied that he meant what he said in the Tweet.

[386] Another separate element of creed is the belief system of a faith group. In this case, I have considered whether Dr. Elkasrawy's creed is engaged because of his Muslim faith. The *Amselem* test requires an applicant to establish that he or she subjectively believes that the practice or belief is required by the religion or has a nexus with the religion. I have determined Dr. Elkasrawy's words in the supplication at issue do not meet the *Amselem* test because of the public statements by Masjid Toronto and the MAC. They made the following joint public statement relating to the supplications at issue:

> It has come to our attention that an inappropriate supplication that was offensive to those of Jewish faith, was made in our downtown mosque, Masjid Toronto. Such language is unacceptable and against the values and practices of the [MAC], Masjid Toronto and the Muslim Community at large. Masjid Toronto condemns all forms of hate and racism towards any faith group or others and is committed to offering a safe spiritual space for all congregants.

[387] The MAC also separately said that "a junior employee" at Masjid Toronto had added inappropriate supplications, in Arabic without authorization, and in contravention of their code of conduct.

[388] Based on these public statements issued by Masjid Toronto and the MAC, I am satisfied that Dr. Elkasrawy's words at issue do not represent beliefs of the Muslim religion and do not establish a nexus with the Muslim religion.

[389] In reaching this conclusion, I acknowledge Dr. Elkasrawy testified that Masjid Toronto and the MAC made the statements because of public pressure and that they were not genuinely condemning what he said. However, Dr. Elkasrawy did not call anyone from these organizations to provide corroborating oral testimony.

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[390] Ryerson asks me to draw an adverse inference as a result of Dr. Elkasrawy's failure to call witnesses with direct knowledge of the organizations' reasons for issuing their public statements. They argue that I should not put any weight on Dr. Elkasrawy's evidence.

[391] Dr. Elkasrawy argues in his written reply submissions that I should not draw an adverse inference. He argues that it is not his duty to call corroborating evidence when he is able to testify about what he knows. He further argues that Ryerson could have called a witness from Masjid Toronto.

[392] I have reviewed the Application and Reply and there is a procedural issue with Dr. Elkasrawy's position. The material facts pleaded in the Application do not include anything about the Masjid Toronto and the MAC statements. The statements are not included in the answer to Question 16 relating to important documents the applicant has. In his Reply, Dr. Elkasrawy discussed what happened at Masjid Toronto, but does not include that Masjid Toronto and the MAC did not mean what they said in the statements. Rule 9.1 of the Tribunal's Rules requires that an applicant set out facts if they intend to prove a version of the facts different than those set out in the Response.

[393] In my view, Dr. Elkasrawy did not alert Ryerson in the Application and Reply to this surprise evidence he gave at the hearing. Accordingly, he cannot reasonably argue that Ryerson should have called or summoned a witness from Masjid Toronto and/or the MAC because Ryerson could not have reasonably anticipated his testimony.

[394] The Tribunal has previously stated that it may draw an adverse inference from the failure of a party to tender relevant evidence. However, the Tribunal is not required to do so. The Tribunal must consider the specific circumstances of each case, including such factors as whether or not the evidence was so material to the case that absence calls for a negative inference, whether the evidence was uniquely available to the party, whether other evidence (oral or documentary) contraindicates the adverse inference, and whether the omission has been adequately explained. See *Smith,* above, at paragraph 175.

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[395] I agree with Ryerson. I have drawn an adverse inference from Dr. Elkasrawy's failure to call any witness from Masjid Toronto and the MAC to corroborate his testimony because whether the statements mean what they said is material. Whether the statements should and can be taken at face value is important in this case because the statements were discussed at the termination meeting and the joint Masjid Toronto and the MAC statement was included verbatim in the termination letter. I am of the view that Dr. Elkasrawy cannot merely state he has knowledge that the authors of the statements did not mean to rebuke his words in the supplication.

[396] Further, I note that Dr. Elkasrawy's position is inconsistent with his testimony that Masjid Toronto and the MAC did not speak with him before issuing their statements. He was not party to what they were thinking at the time they wrote the statements.

[397] Further, I am alert to the revisionist nature of the evidence and must exercise caution. I find Dr. Elkasrawy's evidence is not reliable because it bolsters his position or tailors' evidence to advance a self-interest.

[398] For the above reasons, I have given the Masjid Toronto and the MAC statements significant weight. I remain satisfied that Dr. Elkasrawy's words at issue do not represent beliefs of the Muslim religion and do not establish a nexus with the Muslim religion.

[399] I have also considered Dr. Elkasrawy's submission that Ryerson failed to accommodate him. However, that issue was not pleaded in the Application or the Reply and was raised for the first time in closing submissions. In the circumstances, I decline to consider it. In any event, the evidence and submissions in this case do not raise a genuine accommodation issue.

[400] I have also considered Dr. Elkasrawy's submission that Ryerson should have conducted a more extensive investigation, including obtaining its own translation of the words at issue. The question before me, however, is not whether Ryerson conducted the most thorough investigation possible, but whether Dr. Elkasrawy's creed was a factor in the termination decision. Dr. Zolfaghari testified that the decision-makers

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believed they had sufficient information available to make a recommendation. I accept that evidence. In any event, even if a more extensive investigation could have been conducted, that would not establish that his creed was a factor in the decision to terminate his employment contracts.

[401] Based on the foregoing, considering the evidence as a whole, and in particular Dr. Elkasrawy's Twitter apology and the Masjid Toronto and the MAC statements, I find that he has not established on a balance of probabilities, that there is a link between the termination of his employment contracts and his creed. Therefore, he has not satisfied the third branch of the *Moore* test. For that reason, the Application is dismissed insofar as it alleges discrimination arising from the termination of his employment contracts.

Issue 1d: Are the Actions and/or Conduct of Ryerson Tainted by Acts and/or Conduct of Non-Parties?

[402] I appreciate that Dr. Elkasrawy's arguments are more nuanced. I have not disregarded them or given them short consideration. I would like to address his argument that Ryerson engaged in discrimination because of the mistranslated video and the poster, which involve non-parties.

[403] Dr. Elkasrawy's argument has two components. First, he argues that Ryerson itself participated in Islamophobic conduct, which has been addressed above in Issue 1c. Second, he argues that Ryerson's decision-making process was influenced by the Islamophobic conduct of non-parties. In this regard, Dr. Elkasrawy submits that a respondent may contravene subsection 5(1) of the *Code* where discriminatory pressures, information, or conduct originating from non-parties influence the adverse treatment experienced by an applicant.

[404] Ryerson's counsel argued that Dr. Elkasrawy is putting forward a theory of second-hand discrimination. They took the position that I do not need to assess the merits of the theory because Dr. Elkasrawy had not discharged his burden to prove discrimination by Ryerson on the balance of probabilities.

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[405] I will assess the merits even though I am not required to do so. I would like to set out the basic legal principles (some of which were presented by the parties in their written closing submissions, and some were presented during oral closing argument) before I consider Dr. Elkasrawy's argument:

> a. Discrimination can take a variety of forms. Some forms of discrimination are easy to identify, while other forms of discrimination are less obvious, such as those that result from unconscious prejudices and stereotypes or from standards that are neutral on their face but have adverse effects on certain persons. See *Bombardier*, above, at paragraph 1.
>
> b. Dr. Elkasrawy does not need to prove that Ryerson intended to or was motivated to discriminate against him. The focus must be on Ryerson's actions and/or conduct. See *Bombardier*, above, at paragraph 40. See also *Andrews v. Law Society of British Columbia,* 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143*,* at page 173, and *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at paragraph 88.
>
> c. The Tribunal may infer that discrimination is more probable than not based on all of the circumstantial evidence, including a respondent's explanation for their conduct. See *Pieters*, above. See also *Pieters v. Peel Law Association*, 2010 HRTO 2411 at paragraph 85.

[406] Dr. Elkasrawy argued that if Islamophobia was as little as 1% a factor in his termination, I must find that Ryerson breached the *Code*. Counsel asked me to find Islamophobia was a factor because I should find that the CIJ News translation was Islamophobic and that the poster on campus were both Islamophobic and a product of the Islamophobia industry.

[407] As previously stated, Dr. Elkasrawy argued that this case turns on the poster, which demanded that Ryerson terminate his employment. The poster repeats a part of the CIJ News translation that was most offensive and had gone viral.

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[408] I do not have evidence before me regarding who made the poster. Dr. Elkasrawy testified that he could not remember the person's name. While there is a name in the Application, an application is not evidence and, therefore, I do not have evidence before me about who made the poster. In any event, the person who made the poster is a non-party, was not on a parties' witness list and was not summoned to testify. In these circumstances, I do not have evidence about their true intentions. Any evidence before me regarding the intentions of this unknown person is speculation.

[409] Based on Dr. Elkasrawy's testimony, which is the evidence before me, the poster was posted on Ryerson campus before the February 28, 2017, meeting and Ryerson security removed the posters shortly after they were posted.

[410] Dr. Elkasrawy asked me to consider Dr. Zolfaghari's testimony that he had considered the poster in making the recommendation. As I understand Dr. Elkasrawy's argument, if I find that the poster was Islamophobic (and I was invited to do so), then Ryerson's decision to terminate him is based on the Islamophobia of others (in particular the unknown person who made the poster and CIJ News whose translation was used on the poster). As previously stated, I accept Dr. Zolfaghari's testimony that the attendees at the meeting were aware of the poster but did not consider it.

[411] Dr. Elkasrawy asked me to find that the poster was Islamophobic based on the expert evidence of Dr. Zine. However, as stated above, I have given Dr. Zine's evidence about the poster no weight because it was not grounded in the evidence. In my view, she has drawn conclusions about the use of the photograph without undertaking a rigorous review of the evidence.

[412] Dr. Elkasrawy also asked me to find the poster was Islamophobic because it repeated parts of the CIJ News translation.

[413] Ryerson argued that Dr. Zine did not provide clear, cogent, and convincing evidence upon which the Tribunal could make a finding that Ryerson engaged in discrimination. In their written closing submissions, Ryerson argued:

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> …Dr. Zine's evidence merely provided social context evidence of discrimination against Muslims. While her evidence comments on the weaponization of mistranslation and stereotypes, this evidence is general and lacks the necessary tangible connection to the facts at issue before the Tribunal. Segments of our community hold and act on Islamophobic beliefs just as some hold and act on anti-Semitic beliefs. There beliefs are often overt but they are much more often held unconsciously. While the Applicant asks you to find otherwise, the existence of these beliefs more broadly does not provide clear and cogent evidence that any of the Applicant's *Code* protected characteristics were a factor in his termination.

[414] Ryerson's written closing submissions referred the Tribunal to the Supreme Court of Canada decision in *Bombardier*, above, and argued that it has some similarities to the case before me. *Bombardier* involved a pilot, Javed Latif, who was born in Pakistan. He held both a U.S. pilot's license and a Canadian pilot's license. He required U.S. security clearance to take a training course offered by Bombardier. The U.S. Department of Justice refused the security clearance, which meant he could not receive the training from Bombardier. He filed a complaint with Québec's Human Rights Commission (the Commission") who initiated proceedings in Québec's Human Rights Tribunal alleging discrimination on the basis of ethnic origin and/or national origin.

[415] The Commission relied upon an expert report of Ms. Bahdi, who was qualified for the purposes of the *Bombardier* case as an expert in racial profiling, more specifically in the context of the application of anti-terrorism measures and programs related to national security in the United States after September 11, 2001. The Québec Human Rights Tribunal relied on that expert report to conclude, by way of presumption, that Bombardier's decision to deny Mr. Latif's training request had been based on his ethnic or national origin. See *Bombardier*, paragraph 85.

[416] The Québec Court of Appeal overturned the Québec Human Rights Tribunal decision because the expert report did not refer to the only U.S. program at issue in the dispute. They found that the expert evidence was not sufficiently related to the facts of the case to establish the requisite connection. See *Bombardier*, paragraphs 87 and 89.

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[417] Importantly, at paragraph 65 of *Bombardier*, the Supreme Court reminds that:

> …the use of the expression "*prima facie* discrimination" must not be regarded as a relaxation of the plaintiff's obligation to satisfy the tribunal in accordance with the standard of proof on a balance of probabilities, which he or she must still meet. ... the case must be "complete and sufficient", that is, it must correspond to the degree of proof required in the civil law.

[418] At paragraph 88, the Supreme Court states:

> It cannot be presumed solely on the basis of a social context of discrimination against a group that a specific decision against a member of that group is necessarily based on a prohibited ground under the Charter. In practice, this would amount to reversing the burden of proof in discrimination matters. Evidence of discrimination, even if it is circumstantial, must nonetheless be tangibly related to the impugned decision or conduct.

[419] At paragraph 98 of *Bombardier*, the Supreme Court bases its conclusion on the evidence available to the Québec Human Rights Tribunal and states that it could not reasonably hold that there was a connection between the *Code*-protected characteristics and the adverse treatment where there was an absence of evidence.

[420] I am guided by the Supreme Court of Canada's comments in *Bombardier* about the sufficiency of evidence. I must determine whether Dr. Zine's oral testimony is sufficiently related to the facts of the case or whether it was too general.

[421] Dr. Zine provided social-context opinion evidence regarding Islamophobia. However, consistent with the Supreme Court's reasoning in *Bombardier*, I find that her evidence was too general and insufficiently connected to the specific facts surrounding Ryerson's decision-making process to establish that Islamophobia played a role in the termination decision.

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[422] Specifically, Dr. Zine baldly concluded that the poster was based on typical Islamophobia without delving into the critical evidence to reach that conclusion. She did not inquire about where the photograph in the poster came from. In my view, she jumps to a conclusion that the use of the photograph in the poster is stereotypical Islamophobia, which is something I cannot do. I cannot accept her conclusion as substitution for the need for sufficient credible and reliable, relevant, and admissible evidence.

[423] Accordingly, I find that Dr. Elkasrawy has not presented clear, cogent and convincing evidence that the poster was made by the Islamophobia industry or is Islamophobic on its face. At best, Dr. Elkasrawy and Dr. Zine have engaged in speculation.

[424] Based on the foregoing, even accepting Dr. Elkasrawy's theory at its highest, the poster alone is insufficient to establish that his protected characteristics were a factor in Ryerson's decision or that Ryerson acted because of Islamophobia. In coming to this conclusion, I have considered whether the poster reflects Muslim stereotypes based in the Tribunal's own expertise. I have reviewed the words on the poster and find that they merely reflect the maker of the poster repeating words in the media and asking for the termination of Dr. Elkasrawy. In my view, the poster is not Islamophobic. Accordingly, the existence of the poster does not support an inference that Ryerson acted because of Islamophobia.

[425] The same conclusion applies to the CIJ News English translation and the public reaction that followed. The evidence does not establish that Ryerson adopted any discriminatory views that may have been held by others. Rather, the evidence establishes that Ryerson based its decision on its own assessment of the information before it, including Dr. Elkasrawy's apology, the Masjid Toronto and MAC statements, and concerns regarding the learning environment.

[426] Accordingly, even if I were to assume, without deciding, that a respondent could in some circumstances contravene subsection 5(1) of the *Code* by acting on

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discriminatory pressures, demands, or information originating from non-parties, Dr. Elkasrawy has not established the factual foundation necessary to support such a claim. The evidence before me does not establish, on a balance of probabilities, that the poster was motivated by Islamophobia, that the CIJ News translation was adopted by Ryerson, or that Ryerson's decision-making process was tainted by discriminatory attitudes held by others. Nor does the evidence establish that any alleged discriminatory attitudes of third parties and/or non-parties influenced the recommendation made by Dr. Zolfaghari or the decision made by Dean Duever. Accordingly, this alternative theory of discrimination fails.

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Issue 1e: Did Ryerson Present a Reasonable Justification for Terminating Dr. Elkasrawy?

[427] I have made a finding that Dr. Elkasrawy has not established a connection between his termination and his protected characteristics under the *Code*. As a result, the evidentiary burden does not shift to Ryerson to establish that the termination was justified. I am not required to assess Ryerson's explanation for the termination.

[428] It is important to emphasize that this is not a labour arbitration where the burden would be on the respondent to show that it had just cause to terminate the applicant's employment. As stated above, the burden in this case is on Dr. Elkasrawy to prove that his creed was a factor in the termination. He did not do so.

[429] Although it is unnecessary to do so given my finding that Dr. Elkasrawy has not established a *prima facie* case of discrimination, I will briefly address Ryerson's explanation. Even if I were wrong in concluding that Dr. Elkasrawy failed to establish the third branch of the *Moore* test, I would nevertheless find that the evidence supports Ryerson's explanation that the decision was based on concerns regarding Dr. Elkasrawy's compliance with his obligations under the Collective Agreement and applicable university policies.

[430] Ryerson argued that they were justified terminating Dr. Elkasrawy because he breached his obligations under Article 12.06 of the CUPE Local 3904 Unit 3 Collective Agreement. Article 12.06 states in part as follows:

> The obligations of an Assistant shall be to:
>
> A. Contribute positively to the learning experiences of Ryerson students.
>
> B. …
>
> C. Make every attempt to create an atmosphere of mutual respect in which students learn. Assistants shall make every effort to stimulate intellectual curiosity and enthusiasm for learning.
>
> D. Refrain from expressing or condoning views or adopting attitudes and behaviours, which might damage or violate the self-respect, dignity and human rights of students.
>
> E. Respect the dignity, integrity and human rights of their students and Faculty Supervising Instructor and shall sustain a climate in which students may function as responsible students.
>
> …
>
> I. Respect and adhere to the University policies on Human Rights, Harassment Prevention and Safety among other policies and standards.

[431] Dr. Zolfaghari testified that Dr. Elkasrawy's comments were considered to be contrary to Ryerson's Discrimination and Harassment Prevention Policy, Workplace Civility and Respect Policy, and Ryerson's commitment to Equity and Community Inclusion.

[432] Dean Duever's February 28, 2017, termination letter specifically refers to Article 12.06 and Ryerson's policies on Human Rights, Harassment Prevention and Safety among other policies and standards, including the Harassment & Discrimination Policy.

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The stated reason for terminating the three employment contracts was because Dr. Elkasrawy's off-campus comments contravened Ryerson's core values and violated the Collective Agreement and policies.

[433] I accept Dr. Zolfaghari's evidence and Dr. Duever's evidence. If I am wrong in my finding that Dr. Elkasrawy failed to establish a *prima facie* case of discrimination, I would find that Ryerson met their evidentiary burden to establish a reasonable and non-discriminatory explanation for the termination.

[434] In those circumstances, the evidentiary burden would return to Dr. Elkasrawy to establish that the explanation was erroneous or a pretext for discrimination. Dr. Elkasrawy argued that Ryerson put the protection of their reputation over the protection of his personal characteristics. He did not point me to any case law where the Tribunal accepted protection of the employer's reputation has been considered to be a pretext for discrimination.

[435] Even if that evidentiary burden had shifted back to Dr. Elkasrawy to rebut Ryerson's explanation, I find that Dr. Elkasrawy failed to discharge it. Neither his testimony, nor Dr. Zine's admissible opinion evidence, persuaded me that Ryerson's explanation was false or a pretext for discrimination.

[436] Dr. Elkasrawy's evidence and written and oral closing submissions frequently focussed on the fairness and correctness of the termination decision rather than whether the termination was connected to a *Code*-protected ground. Dr. Elkasrawy argued that the decision to dismiss him was a rush to judgment without a proper investigation. Wrongful dismissal is not a *Code* issue unless a connection is established to the *Code*.

[437] Taking the evidence as a whole, I find that Dr. Elkasrawy has not established on a balance of probabilities that Ryerson breached the *Code* when it terminated his employment contracts. While Dr. Elkasrawy established that he possessed a protected characteristic and experienced adverse treatment, he did not establish that his creed was a factor in the recommendation or decision to terminate his employment contracts.

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The evidence instead establishes that Ryerson's decision was based on its assessment of the words spoken by Dr. Elkasrawy, the Twitter apology, the Masjid Toronto and the MAC statements, the resulting impact on the university community, concerns regarding the learning environment, and its view that the conduct was inconsistent with the Collective Agreement and applicable university policies. Accordingly, the allegation of discriminatory termination is dismissed.

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Issue 2: Has Dr. Elkasrawy Established that President Lachemi's February 28, 2017, Email to B'nai Brith Canada Violated His *Code* Rights?

[438] The answer is yes because Dr. Elkasrawy met his evidentiary burden and Ryerson did not offer rebuttal evidence. This issue was not a priority of the parties, and my finding is based on the evidence before me. For the reasons below, I find that Dr. Elkasrawy has established on a balance of probabilities that Ryerson violated subsection 5(1) of the *Code* when President Lachemi sent an email to B'nai Brith Canada informing them that Dr. Elkasrawy's employment had been terminated.

[439] Dr. Elkasrawy alleges that his protected characteristics were a factor in President Lachimi's decision to send an email to B'nai Brith Canada on February 28, 2017, to notify them that his employment had been terminated. Specifically, he argues that his identity as a Muslim religious leader was a factor in President Lachimi's decision to send the email to notify B'nai Brith Canada that he had been fired, which was in violation of Ryerson's policy on not commenting on human resources matters.

[440] Ryerson denies the allegation. Ryerson's written submissions do not address this claim directly. However, in oral closing submissions, Ryerson argued that Dr. Elkasrawy had not met his burden of proof and the email was merely a normal follow-up to a concerned group.

[441] A respondent's post-termination conduct can be considered to be discrimination or reprisal. Since Dr. Elkasrawy is not pursuing reprisal claims, I will only consider whether the email violated subsection 5(1) of the *Code*. As stated above, Dr.

Elkasrawy's creed need only be a factor for me to find that he experienced discrimination. I will apply the *Moore* test.

Issue 2a: Has Dr. Elkasrawy Established that He has Protected *Code* Characteristics?

[442] The answer is yes because Ryerson did not contest that Dr. Elkasrawy is Muslim, which in respect of this issue, engages his creed.

[443] While Dr. Elkasrawy raised intersectional *Code* grounds of race, colour, ancestry, place of origin, and ethnic origin, I received almost no evidence linking these *Code* grounds to President Lachemi's February 28, 2017, email. I appreciate that Dr. Elkasrawy argued that he experienced intersectional discrimination. I find that there is insufficient evidence to establish that the other intersectional *Code* grounds of race, colour, ancestry, place of origin and/or ethnic origin played any factor in President Lachemi's decision to email B'nai Brith Canada after Dr. Elkasrawy was terminated.

[444] I find that Dr. Elkasrawy has established that he has a protected ground and, therefore, satisfies the first branch of the *Moore* test.

Issue 2b: Has Dr. Elkasrawy Established that He Experienced Adverse Treatment?

[445] The answer is yes because the uncontested evidence of Dr. Zolfaghari is that it is Ryerson's policy to not provide public comments on human resources matters. There is no dispute that the February 28, 2017, email was sent by President Lachemi at 6:07 pm. It is not contested that President Lachemi's email was sent after Dr. Elkasrawy received the termination letter from Dean Duever.

[446] The documentary evidence shows that the email was sent by President Lachemi directly to B'nai Brith Canada before a press release was issued the following day. The email to B'nai Brith Canada was an advance notice and specific information was in the email that was not in the March 1, 2017, press release. In particular, the email to B'nai Brith Canada stated that "Mr. Elkasrawy is no longer employed at Ryerson" while the

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press release says that “the university has taken appropriate action” and that “all human resources matters … are addressed as confidential matters”.

[447] Based on the evidence before me, I find that President Lachemi departed from Ryerson's usual practice regarding confidential human resources matters by informing B'nai Brith Canada that Dr. Elkasrawy's employment had been terminated. The disclosure of confidential employment information to an external organization, in circumstances where such information would not ordinarily be disclosed, constitutes adverse treatment. Accordingly, I find that Dr. Elkasrawy has satisfied the second branch of the *Moore* test.

Issue 2c: Has Dr. Elkasrawy Established that He Experienced Adverse Treatment Because He is Muslim?

[448] I must determine whether Dr. Elkasrawy’s creed was a factor in President Lachemi’s decision to write to B’nai Brith Canada on February 28, 2017, informing them about Dr. Elkasrawy’s employment status in violation of Ryerson’s own policy. In particular, whether he has established on a balance of probabilities a link between the adverse treatment and his identity as a Muslim.

[449] On this issue, I have received little evidence from the parties. Ryerson did not include President Lachemi on their witness list prior to the Original Merits Hearing. Dr. Elkasrawy did not bring a Request for Order During Proceedings before the Original Merits Hearing to add President Lachemi to their witness list. Dr. Elkasrawy did not ask at any time for an order for President Lachemi to be compelled to testify at the *de novo* merits hearing or seek a summons. Consequently, I must base my assessment on the evidence before me, which does not include direct evidence from President Lachemi to explain why he sent the email.

[450] The Tribunal has recognized that certain types of discrimination (e.g., race and creed) will often be the result of subtle unconscious beliefs, biases, and prejudices. In most race-based cases, there is no direct evidence of discrimination and, therefore, discrimination will most often be established by circumstantial evidence. See, for

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example, *Phipps v. Toronto Police Services Board*, 2009 HRTO 877 (aff'd *Shaw v. Phipps*, 2010 ONSC 3884; 2012 ONCA 155).

[451] I must consider circumstantial evidence. Circumstantial evidence is evidence arising from the circumstances surrounding the alleged discriminatory treatment that might lead the Tribunal to infer that the alleged disadvantageous treatment was linked to a prohibited ground.

[452] Dr. Elkasrawy testified that he did not know President Lachemi personally but had seen him at Masjid Toronto "a few times for Friday prayers" and when he gave talks. This testimony was not challenged by Ryerson during cross-examination. I accept the testimony as credible and reliable, but it does not materially affect my analysis.

[453] The documentary evidence on the record includes a letter from B'nai Brith Canada to Ryerson dated February 21, 2017. In the letter, the author describes B'nai Brith as a "leading Jewish advocacy organization and opponent of antisemitism".

[454] The letter also includes the following paragraphs:

> Over the past week, you have likely heard the controversy surrounding Masjid Toronto at [address], near Ryerson. In particular, an individual leading prayers at the mosque in June 2016 called on G-d to "Purify the al-Aqsa Mosque from the filth of the Jews," and said of the "enemies of the Muslims", that G-d should "Slay them one by one and spare not one of them".
>
> Upon further investigation, B'nai Brith has determined that the person filmed making these remarks is Ayman Elkasrawy, a PhD student and Teaching Assistant at the Faculty of Engineering and Architectural Science at Ryerson University.

[455] The documentary evidence also shows that Ryerson received communications about Dr. Elkasrawy from numerous individuals and organizations. During the *de novo* merits hearing, I did not receive any documentary evidence to show that Ryerson or

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President Lachemi communicated with any of these other individuals or organizations in the same way that it communicated with B’nai Brith Canada.

[456] The email to B’nai Brith Canada states “[i]n closing, I want to reiterate what was shared in our meeting still holds true”. This sentence indicates there was a meeting between President Lachemi and B’nai Brith Canada but does not indicate whether it was contemporaneous with the viral video and events in this case. No evidence was presented during the *de novo* merits hearing about that meeting. During the cross-examination of Dr. Zolfaghari, Dr. Elkasrawy’s counsel asked him questions about the meeting between President Lachemi and B’nai Brith Canada. He could not answer the questions because he did not have knowledge about the meeting. He testified that he “could not comment on who President Lachemi met with” and did not have access to his calendar during the material time. I am unable to draw any inference because I have insufficient information about the meeting.

[457] While Dr. Elkasrawy argued that there was collusion between Ryerson and B’nai Brith Canada, I find there is no evidence to support the bald claim of collusion.

[458] As previously indicated, Dr. Elkasrawy argued that I need only find that his creed was a factor in the adverse treatment and that creed need not be the sole or primary reason for the adverse treatment. I agree with this legal proposition.

[459] Having regard to the evidence as a whole, I am satisfied that there is circumstantial evidence to support an inference that Dr. Elkasrawy’s creed was a small factor in President Lachemi’s decision to send the email to B’nai Brith Canada to tell them that Dr. Elkasrawy’s employment had been terminated. In reaching this conclusion, I have considered that the communication disclosed information concerning the employment consequences imposed on Dr. Elkasrawy to an external advocacy organization. President Lachemi did so despite evidence suggesting that Ryerson generally did not comment publicly on human resources matters. The evidence establishes that B'nai Brith Canada had specifically raised concerns regarding Dr. Elkasrawy's off-campus conduct as a religious leader at Masjid Toronto. In the absence

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of any explanation from President Lachemi for departing from the institution's usual practice, I infer that Dr. Elkasrawy's creed, as reflected in his role as a Muslim religious leader at the centre of the controversy, was a factor in the decision to communicate directly with B'nai Brith Canada.

[460] Based on the foregoing, I am satisfied that Dr. Elkasrawy has presented sufficient evidence to establish a *prima facie* case of discrimination. While the evidentiary foundation is limited, the evidence is capable of supporting a finding that his creed was a small factor in President Lachemi's decision.

[461] Having found that Dr. Elkasrawy has established a *prima facie* case, I must consider whether Ryerson has provided a credible non-discriminatory explanation for the adverse treatment.

[462] Since Ryerson elected not to call President Lachemi as a witness, there is no direct evidence before me explaining why he departed from Ryerson's usual practice regarding confidential human resources matters. Neither Dr. Zolfaghari, nor Dean Duever, were able to provide any evidence explaining President Lachemi's decision. In these circumstances, the circumstantial evidence supporting an inference of discrimination remains unrebutted.

[463] This Decision does not mean that every communication between a university or college and B’nai Brith Canada would be discriminatory. I have considered specific facts whereby President Lachemi inexplicably breached a Ryerson human resources or confidentiality policy to provide information that is not normally provided to outside persons.

[464] I note that in oral closing submissions, counsel for Ryerson argued that the President of Ryerson is required to respond to complaints. I have no evidence before me to support this statement or that he himself replied to other complaints about Dr. Elkasrawy.

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[465] I emphasize that my finding does not rest solely on the fact that President Lachemi communicated with B'nai Brith Canada. Rather, it rests on the combination of factors established by the evidence, including the direct disclosure of confidential employment information to an external organization, the departure from Ryerson's usual practice concerning human resources matters, the absence of similar communications to other organizations that contacted the university, and the absence of any evidence explaining why this particular disclosure was made.

[466] Based on the forgoing, I find that Dr. Elkasrawy established on a balance of probabilities that Ryerson violated subsection 5(1) of the *Code* relating to the email sent by President Lachemi on February 28, 2017.

Issue 2d: How Does the Tribunal Reconcile Finding that Dr. Elkasrawy's Creed Was Not a Factor in His Termination and Was a Factor in the Issuance of the Email?

[467] I have considered whether there is an internal inconsistency between my finding in relation to Issue 1 that Dr. Elkasrawy's creed was not a factor in his termination and my finding in relation to Issue 2 that his creed was a factor in President Lachemi's decision to communicate with B'nai Brith Canada after the termination. In my view, there is no internal inconsistency for the reasons that follow.

[468] Firstly, Issue 1 and Issue 2 considered different aspects of creed. With respect to Issue 1, the analysis turns on Dr. Elkasrawy's personal beliefs and what Masjid Toronto and the MAC stated were the beliefs of Muslims. With respect to Issue 2, the analysis focusses on Dr. Elkasrawy's identity as a Muslim. I did not consider Dr. Elkasrawy's beliefs or the beliefs of Muslims generally in the analysis of Issue 2.

[469] Secondly, with respect to Issue 1, Dr. Elkasrawy did not present sufficient evidence to establish that his identity as a Muslim was a factor in Dean Duever's decision to terminate his employment. I found that Dr. Elkasrawy was not terminated because he is a Muslim or that he works as an Assistant Imam at Masjid Toronto.

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[470] By contrast, Issue 2 concerned a separate post-termination communication by President Lachemi to B'nai Brith Canada. I found that Dr. Elkasrawy established a *prima facie* case of discrimination in relation to that communication and that Ryerson failed to provide a credible non-discriminatory explanation for the decision to depart from its usual practice regarding confidential human resources matters.

[471] Thirdly, the decisions were made by different representatives of Ryerson exercising different decision-making authority. The termination decision was made by Dean Duever. Based on the evidence that President Lachemi personally sent the email, the decision to communicate with B'nai Brith Canada was made by President Lachemi. There is no evidence before me that President Lachemi personally participated in the termination decision or that Dean Duever participated in the decision to communicate with B'nai Brith Canada.

[472] In the end, the findings are based on the particular evidence relating to each impugned act. Dr. Elkasrawy failed to establish that his creed was a factor in the termination decision but did establish that his creed was a factor in President Lachemi's communication with B'nai Brith Canada. Because the impugned acts involved different conduct, different decision-makers, and different documentary evidence, I am of the view that there is no inconsistency in these conclusions.

Issue 3: Has Dr. Elkasrawy Established that the March 1, 2017, Press Release Violated his *Code* Rights?

[473] The answer is no because Dr. Elkasrawy has not established on a balance of probabilities that the press release constitutes adverse treatment.

Issue 3a: Has Dr. Elkasrawy Established that He has Protected *Code* Characteristics?

[474] The answer is yes for the same reasons as set out above for Issue 2a.

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Issue 3b: Has Dr. Elkasrawy Established that He Experienced Adverse Treatment?

[475] The answer is no because Ryerson did not breach any policy in issuing the press release. This issue is different than Issue 2 because Dr. Elkasrawy has not established on a balance of probabilities that Ryerson did anything wrong when they issued the press release.

[476] Dr. Elkasrawy strongly takes issue with the use of the word “anti-Semitic” in the March 1, 2017, press release. He also took the position that the March 1, 2017, press release confirmed a false narrative, validated Islamophobic stereotypes, and rebuked him. He claims he experienced a separate and stand-alone event of adverse treatment because the press release states in part as follows:

> … It was brought to the university’s attention that a teaching assistant made disturbing, anti-Semitic comments off campus in the summer of 2016 …

I understand that Dr. Elkasrawy is of the view that his words were not anti-Semitic and wants the Tribunal to remove this label from him.

[477] Dr. Elkasrawy further argued there was no justification for referring to “anti-Semitic comments” in the press release and that it contains “fallacies”. His position is that the press release is a blatant attack on his reputation.

[478] During oral closing argument, Ryerson took the position that the reference to “anti-Semitic comments” and “anti-Semitism” in the press release does not constitute adverse treatment and cannot stand alone separately from Issue 1. They argued that if the Tribunal finds that Dr. Elkasrawy has not satisfied his evidentiary burden with respect to Issue 1 above, the Tribunal cannot conclude that Dr. Elkasrawy experienced adverse treatment or discrimination as a result of the press release.

[479] Ryerson further argued that I should find that the press release is a statement that Ryerson had addressed a claim of anti-Semitism that had been brought to their attention by taking action. They argue that this is a true statement and is not and cannot

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be by itself discriminatory. They argue that the reference in the press release to “anti-Semitic comments” is a statement of fact as opposed to a statement of opinion.

[480] Ryerson argues that the press release is about the anti-Semitic comments that had been brought to Ryerson’s attention and not the commentator. They argue that the press release has nothing to do with the characteristics of the individual. They take the position that it has everything to do with the words used and responses by Dr. Elkasrawy himself on Twitter and the public statement by Masjid Toronto and the MAC.

[481] I have reviewed the press release and agree with Ryerson. In my view, the press release, when taken at face value and read in its entirety, contains statements of fact that are true. I further agree that the press release speaks to the off-campus comments and does not label or characterize Dr. Elkasrawy as anti-Semitic. The press release speaks to factual background and not of Dr. Elkasrawy’s character.

[482] The objective evidence before me is that what is said in the press release is a correct statement of factual background. The documentary evidence before me is that individuals and organizations wrote to Ryerson at the time Dr. Elkasrawy’s words became viral. For example, as discussed above, B’nai Brith Canada wrote a letter in which they refer to Dr. Elkasrawy’s off-campus comments as “antisemitic comments” and “vile anti-semitism”.

[483] Other correspondence sent to Ryerson and/or President Lachemi show that the authors referred to Dr. Elkasrawy’s words as “racist”, “anti-Semitic” and “improper”. In my view, there is nothing in the press release that can be inferred as anything other than stating what had occurred and setting the context for the press release.

[484] In addition, the objective evidence before me is that the Masjid Toronto and MAC joint statement said it was “an inappropriate supplication that was offensive to those of the Jewish faith”. Further, Dr. Elkasrawy’s Tweet apologized for the “offence my words must have caused”. Dr. Duever testified that Dr. Elkasrawy explained at the February

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28, 2017, termination meeting that he made the Twitter apology because the words must have hurt friends and colleagues of the Jewish faith.

[485] Based on the evidence before me, the press release has accurately summarized factual background. In my view, the press release does not label Dr. Elkasrawy. There is nothing in the press release that can be inferred as anything other than factual statements that it was reacting to public statements.

[486] I would like to address Dr. Elkasrawy's argument that the press release validated Islamophobic stereotypes and rebuked him. I do not agree with him because the words in the press release do not refer to Islamophobic stereotypes and do not mention his name. I can appreciate that Dr. Elkasrawy went through a very traumatic experience. However, in my view, he is reading into the press release something that is not there.

[487] There is no persuasive evidence before me that the press release itself resulted in any additional adverse consequences for Dr. Elkasrawy. To the contrary, the evidence suggests that the public controversy subsided after the press release was issued and that Dr. Elkasrawy was able to continue and complete his academic studies. This further supports my conclusion that the press release did not constitute a separate incident of adverse treatment within the meaning of the *Code*.

[488] Based on the foregoing, I am not satisfied that the contents or issuance of the March 1, 2016, press release constitutes adverse treatment within the meaning of the *Code*. The press release is informational that Ryerson had been asked to address matters brought to its attention and it had done so. Accordingly, Dr. Elkasrawy has failed to establish the second branch of the *Moore* test and this allegation is dismissed. I am not required to consider the third branch of the *Moore* test.

Issue 4: What is the Appropriate Remedy?

[489] Since Dr. Elkasrawy is partially successful, I must decide the appropriate remedy for the violation of the *Code* based on the circumstances of this case.

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[490] Dr. Elkasrawy requested the Tribunal award the following remedies if all of his claims of discrimination were determined to be valid:

a. Monetary compensation in the amount of $50,000 as general damages for injury to dignity, feelings, and self-respect;

b. Special damages for lost wages and lost benefits;

c. A full public retraction of prior statements naming him directly or indirectly and remove such prior statements in its control;

d. Pre- and post-judgement interest on amounts awarded; and

e. An order for Dean Duever and President Lachemi to undergo human rights training on discrimination experienced by Muslims in Ontario.

[491] Dr. Elkasrawy originally requested reinstatement and did not pursue that remedy in written or oral closing submissions.

[492] In oral closing submissions, I asked the parties for their positions on whether the amount of compensation for injury to dignity, feelings, and self-respect would be the same or different if I do not find discrimination on Issue 1 and find discrimination on one or both of Issue 2 and Issue 3. Dr. Elkasrawy argued that the minimum amount of compensation that I should award is $25,000 if a finding is made on Issue 2 and/or 3 but not Issue 1.

[493] Ryerson argued that the amount of compensation that should be awarded as general damages for Issue 2 and/or Issue 3, without Issue 1, should be a “relatively *de minimis* remedy”. They argued that there was little evidence presented by Dr. Elkasrawy of an adverse impact from the email to B’nai Brith Canada standing alone.

[494] Considering that I have made a finding of discrimination with respect to Issue 2 and not Issue 1 and 3, I find that $7,000.00 as compensation for injury to dignity, feelings, and self respect is an appropriate award in the circumstances of this case.

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Legal Principles

[495] The Tribunal's remedial powers include the power to: order monetary compensation for injury to dignity, feelings, and self-respect; special damages/restitution (e.g., lost wages); and to direct any party to do anything to promote compliance with the *Code*. See subsection 45.2(1) of the *Code.*

[496] Simply put, the Tribunal has the power "to award what may be termed general damages to compensate for … the loss of the right to be free from discrimination and the experience of victimization". See *Adga Group Consultants Inc. v. Lane*, 2008 CanLII 39605 (ON SCDC) ("*Lane*") at paragraph 149.

[497] An award of compensation for injury to dignity, feelings, and self-respect is not intended to be punitive in nature. The Tribunal does not punish respondents for their violations of the *Code*. Instead, the focus is on remediating the harm that the violation has caused. See *Lane*, above.

[498] There is no ceiling on awards of general damages under the *Code*. There is also no floor. That being said, it is important to not trivialize the social importance of the *Code* by effectively creating a "license fee" to discriminate. Awards should not be set too low. See *Lane*, above, paragraph 153.

[499] The Tribunal usually considers the following factors when assessing the quantum of damages for injury to dignity, feelings, and self-respect, including:

- Humiliation experienced by the applicant;
- Hurt feelings experienced by the applicant;
- The applicant's loss of self-respect;
- The applicant's loss of dignity;
- The applicant's loss of self-esteem;

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- The applicant's loss of confidence;
- The applicant's experience of victimization;
- The vulnerability of the applicant; and
- The seriousness, frequency, and duration of the offensive treatment.

See *Sanford v. Koop*, 2005 HRTO 53 ("*Sanford*") at paragraph 38.

[500] The Tribunal will assess general damages for injury to dignity, feelings, and self-respect based on the objective seriousness of the conduct and the effect on the applicant. Damages will be higher where an applicant has experienced particular emotional difficulties, and when their particular circumstances or vulnerability make the effects more serious. See *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880, as adopted by the Ontario Court of Appeal in *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520. See also *Simpson v. Pranajen Group Ltd. o/a Nimigon Retirement Home*, 2019 HRTO 10.

Analysis – General Damages for Injury to Dignity, Feelings, and Self-Respect

[501] I am not aware of a similar human rights case where an applicant was the subject of a media or social media firestorm only to have the respondent breach their own policy of not publicly commenting on human resources matters. The parties did not point me to any such cases in their written closing submissions. I note that Dr. Elkasrawy's written submissions cited *Lane*, above, in support of their request for damages for Issue 1.

[502] I have reviewed awards in cases where the respondent breached a policy and a protected characteristic was a factor, including *Tompkins v. Peninsula Grill*, 2025 HRTO 2783 (award $15,000), *Longueépée v. University of Waterloo*, 2024 HRTO 707 (reconsideration reduced award in 2024 HRTO 1116) (award $20,000) and *Brown v. Trebas Institute Ontario Inc.*, 2008 HRTO 10 (award $12,500). These cases are of

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limited assistance because they involve applicants who have a disability and the remedial award remedied additional breaches of the *Code*.

[503] I will consider the *Sandford* factors to assess the appropriate award. In this case, Dr. Elkasrawy has not presented sufficient evidence to establish that most of the *Sandford* factors apply. With respect to President Lachemi's email specifically, Dr. Elkasrawy did not present evidence of humiliation, hurt feelings, loss of self-respect, loss of dignity, loss of self-esteem, and/or loss of confidence.

[504] There is evidence before me that he was vulnerable at the time the email was sent and that he felt victimized by the experience as a whole. In assessing the appropriate amount of general damages based on the evidence presented by Dr. Elkasrawy and unique circumstances of this case, I have considered the following:

a. Dr. Elkasrawy had been the subject of a serious media event that was very difficult and distressing for him;

b. Dr. Elkasrawy had no control over the contents of President Lachemi's email to B'nai Brith Canada and could not control whether the email would add more fuel to the social media fire; and

c. On February 28, 2017, B'nai Brith Canada published an article that Dr. Elkasrawy had been terminated. This article caused the termination to become public knowledge rather than remain a private matter.

[505] In addition, in my view, a significant factor justifying more than a *de minimis* award is the power imbalance between President Lachemi, the president of an Ontario university, and Dr. Elkasrawy, a vulnerable graduate student who was facing an intense public reaction and scrutiny that was entirely beyond his control. The president of a university is the apex of institutional power. An email sent by the president of a university carries weight similar to a letter on the President's letterhead. Dr. Elkasrawy had no control over what could be written about his termination as a result of this email.

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[506] I have considered the following factors as limiting the amount of the award:

a. Dr. Elkasrawy continued his graduate student relationship with Ryerson, successfully completed his courses, and graduated;

b. Dr. Elkasrawy's research funding and stipends were not affected by the offending conduct;

c. I have no evidence before me that Dr. Elkasrawy experienced new harm from the B'nai Brith Canada article that was published after the email; and

d. The media firestorm was quelled.

[507] Considering the foregoing and as stated above, I have determined that the appropriate compensation for injury to dignity, feelings, and self-respect is $7,000.00.

Lost Wages and Benefits

[508] The purpose of compensation in the form of special damages under the *Code* is to restore an individual as far as reasonably possible to the position they would have been in had the discriminatory acts not occurred. This can include an award of lost wages. See *Smith v. Mardana Ltd., (c.o.b. Mr. Lube)*, 2005 CanLII 2811 (ON SCDC) at paragraph 28.

[509] Neither Dr. Elkasrawy nor Ryerson referred me to any case law to support an award of lost wages and benefits for a breach of a policy.

[510] During oral closing submissions, Ryerson took the position that I could award special damages in respect of lost wages and benefits even if I found that President Lachimi's email was discriminatory and that Ryerson's decision to terminate Dr. Elkasrawy's employment was not discriminatory. Dr. Elkasrawy agreed.

[511] However, as I understand Ryerson's oral submissions, they did not consent to an award of special damages for lost wages and benefits. They did not say I should award special damages. They merely stated that I could award special damages.

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[512] I have decided to not award special damages for lost wages and benefits because President Lachemi's decision to send the email to B'nai Brith Canada occurred after Dr. Elkasrawy had been terminated for non-discriminatory reasons. In these circumstances, I find that there is no basis to award special damages for lost wages and benefits because the loss flows from non-discriminatory actions.

[513] Further, Dr. Elkasrawy did not present sufficient evidence to support a claim for restitution arising from President Lachemi's email to B'nai Brith Canada. He did not present any evidence that the email impacted him financially. Further, the evidence before me is Ryerson offered to pay Dr. Elkasrawy the amounts under the three employment contracts and he decided to reject the offer and not pursue a grievance. Further, he abandoned his reprisal claims relating to employment opportunities at Ryerson in later semesters.

[514] Based on the foregoing, I decline to award special damages for lost wages and benefits because it is not warranted.

Retraction of the Email

[515] In the circumstances and given the passage of time since the email was sent and that an article was written by B'nai Brith Canada, I am not satisfied that an order requiring Ryerson to retract or recall the email would serve a meaningful remedial purpose. Accordingly, I decline to grant this remedy.

Public Interest Remedies

[516] The Tribunal has broad remedial authority under subsection 45.2(1) – (2) of the *Code*, including the ability to direct a person to do anything with respect to future practices. Dr. Elkasrawy asked me to order President Lachemi and Dean Duever to undergo human rights training. I decline to do so.

[517] Public interest remedies should (i) promote compliance with the *Code*; (ii) reflect the facts of the case and the violation of the *Code* that the Tribunal has found; and (iii)

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be remedial, not punitive. See *Pchelkina v. Tomsons*, 2007 HRTO 42 at paragraphs 33 and 34; and *Giguere v. Popeye Restaurant*, 2008 HRTO 2 at paragraph 91.

[518] Based on the evidence before me, Dean Duever did not violate the *Code*. Accordingly, there is no basis for me to order him to undertake any training.

[519] Ryerson participated in the proceedings and demonstrated a good understanding of the *Code*. While I do not have direct evidence from President Lachemi, I do not have evidence before me to suggest that a public interest remedy is warranted. In my view, the issuance of the email is a one-off event that is unlikely to be repeated.

[520] Accordingly, I decline to order public interest remedies because they are not warranted.

ORDER

[521] For the reasons set out above, the Tribunal orders as follows:

a. Within 60 days of this Decision, the respondent shall pay the applicant $7,000.00 as monetary compensation for injury to his dignity, feelings, and self-respect under the *Code*;

b. The respondent shall pay pre-judgement interest pursuant to section 128 of the *Courts of Justice Act*, R.S.O. c. C.43 on the above amount from February 28, 2017, to the date of this Decision; and

c. The respondent shall pay post-judgement interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O. c. C.43, on the above amounts if they are not paid within 60 days from the date of this Decision.

Dated at Toronto, July 24, 2026.

"Signed by"

_____

Cyndee Todgham Cherniak
Vice-Chair

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CORRECTION

The decision released on July 24, 2026, incorrectly listed counsel Alan McCallum on the appearances page as Allan McCallaum. Counsel's correct name is Alan McCallum. This decision also incorrectly identifies an expert, Dr. Jasmin Zine, in paragraphs 17, 35, 217, 219 and a subheading on page 49 as Dr. Jasmine Zine. Her correct name is Dr. Jasmin Zine. These errors are corrected.

Dated at Toronto, July 27, 2026.

"Signed by"

_____
Cyndee Todgham Cherniak
Vice-Chair

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Appendix A

Copy of Dr. Elkasrawy's translation

Translation Comparison

Video #1

Context in Overall Supplication	English – Rebel media	English – Correct Translation	Arabic
Syria Oppression	[O Allah!] Give us victory over the disbelieving people…	"Thou art our Lord Supreme; succour us, then, against people who deny the truth!" [Quranic text]	أنت مولانا فانصرنا على القوم الكافرين"
	O Allah! Give victory to Islam and raise the standing of the Muslims And humiliate the polytheism and polytheists	Oh Allah; succour us, elevate the status of Muslims and lower the status of polytheism and polytheists.	اللهم انصر الإسلام و أعز المسلمين و أذل الشرك و المشركين
	O Allah! Give victory (help) to your slaves who believe in the oneness of Allah, O the Lord of the Worlds! O Allah! Give them victory over the criminal people O Allah! Destroy anyone who killed Muslims O Allah! Destroy anyone who displaced the sons of the Muslims	Allah; help your monotheist slaves, Oh lord of the worlds. Oh Allah; punish those who killed Muslims. Oh Allah; punish those who displaced the children of Muslims.	اللهم انصر عبادك الموحدين يا رب العالمين اللهم عاقب من قتل المسلمين اللهم عاقب من شرد أبناء المسلمين

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	O Allah! Count their number; slay them one by one and spare not one of them	Oh Allah; has full cognizance of them, slay them one by one, and don't let one escapes your punishment.	اللهم أحصهم عددا واقتلهم تبديدا ولا تغادر منهم أحدا
Al Aqsa Occupation	O Allah! Purify Al-Aqsa Mosque from the filth of the Jews!	Oh Allah; cleanse the [occupied] Aqsa Mosque from the desecration by the Jews.	اللهم طهر المسجد الأقصى من دنس اليهود

Video #2

Context in Overall Supplication	English – Rebel media	English – Correct Translation	Arabic
Global oppression of Muslims	O Allah! We ask you... [to give us] victory over the enemies	We ask your succour over the enemies	اللهم نصرك على الأعداء
	O Allah! Raise the standing of Islam and the Muslims	Oh Allah; succour Islam and, elevate the status of Muslims.	اللهم انصر الإسلام واعز المسلمين
	O Allah! Give victory (help) to your oppressed slaves all over the world, east to west	Oh Allah; succour your oppressed slaves in the east and the west of the globe.	اللهم انصر عبادك المستضعفين في مشارق الأرض ومغاربها
	O Allah! Give victory (help) to your slaves who believe in the oneness of Allah, O the Lord of the Worlds!	Oh Allah; succour monotheist slaves. Oh lord of the worlds.	اللهم انصر عبادك الموحدين يا رب العالمين
	O Allah! Destroy the criminals	Oh Allah; punish the criminals	اللهم عذب الكفار المجرمين
	O Allah! Destroy anyone who inflicts injustice on your slaves, O the Lord of the Worlds!	Oh Allah; punish those who inflicted injustice upon your slaves. Oh lord of the worlds.	اللهم عذب من ظلم عبادك يا رب العالمين
	O Allah! Count their number; slay them one by one and spare not one of them. O Allah! Do not defer [it] from them	Oh Allah; has full cognizance of them, slay them one by one, and don't let one escapes your punishment.	اللهم أحصهم عددا واقتلهم تبديدا ولا تغادر منهم أحدا
	O Allah! Seize them with the seizure of One Mighty, Omnipotent [referring to a Quranic verse that deals with the punishment Allah inflicted on Pharaoh and his people]	Oh Allah; take them to task as only the Almighty, who determines all things, can take to task.	اللهم خذهم أخذ عزيز مقتدر

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