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Court Finds University Erred in Placing Too Much Weight on Marks in Assessing Application by Person with Disabilities

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The Ontario Divisional Court has held that a university should not have placed as significant weight on previous grades during its admissions process when considering an application submitted by a person with disabilities. Noting the “unusual” circumstances of this case, the Court remitted the consideration of the applicant’s application to the university’s Admissions Committee “for consideration by way of an accommodated admissions process that is consistent with these reasons.” The Court stated, however, that “this does not mean that every student who presents with a disability must be assessed without recourse to prior marks.”

In [*Longuepée v. University of Waterloo*](#), the applicant was seeking to be admitted to the Faculty of Arts as a transfer student. The applicant had experienced institutional child abuse and was diagnosed with a moderate traumatic brain injury as well as post-traumatic stress syndrome (PTSD). He completed his high school equivalency and a first year of university at another institution in the early 2000s, but at the time he was unaware of his disabilities because they were not yet diagnosed.

The applicant did not pursue further education following his first year courses and became a volunteer in the field of child abuse. In 2013, he applied as a transfer student to the University of Waterloo (University). The applicant’s admission package was considered by the University’s Arts Admissions Committee, which is tasked with reviewing applications from individuals with identified extenuating circumstances.

The applicant’s prior university grades were given a percentage value of 55%. The University’s admission criteria is 65%. The applicant informed the Associate Registrar of his disabilities and that they had been undiagnosed at the time of his high school equivalency and his year at the other university. The University’s Admissions Committee then found that the applicant’s prior grades fell too far below its admission criteria and that he had not “demonstrated potential for academic success.” The Admissions Committee suggested that the applicant seek recourse for his grades at the prior university if he felt that they were not an accurate reflection of his potential for academic achievement. In the alternative, the applicant was advised to take additional courses to upgrade his marks.

The applicant brought an application to the Human Rights Tribunal of Ontario (HRTO) where he asserted that the University had discriminated against him on the basis of disability. The HRTO

found that the Admissions Committee had procedurally accommodated the student by “considering the applicant’s application outside of the normal admissions process because he presented extenuating circumstances.” It stated that it could not be expected that the University “presume the applicant would be successful in university merely because his grades were unaccommodated by another university. Unaccommodated grades and academic success are two separate issues.” It also held that the Admissions Committee did not breach its substantive duty to accommodate. A reconsideration application was dismissed by the HRTO.

The applicant sought judicial review of the HRTO’s decisions before the Divisional Court, which set them aside. The Court stated that since the Admissions Committee acknowledged the applicant’s “previous grades were achieved at a time when those disabilities were unknown and unaccommodated, it surely follows that those grades were not reflective of his academic abilities at the time.”

The record disclosed “the marks which the applicant received while unaccommodated discriminated against him on the basis of disability.” Because the University “acknowledged that it could not interpret those marks free from their discriminatory effect,” it was incumbent on the Admissions Committee to assess the applicant without recourse to his marks, or to otherwise establish undue hardship.

In arriving at this conclusion, the Court specifically stated that “[t]o be clear, this does not mean that every student who presents with a disability must be assessed without recourse to prior marks.” It also noted the unusual circumstances of this case as the applicant was unaware of his disabilities during his earlier studies and therefore did not seek accommodation at that time. The University’s suggestion that the applicant seek accommodation from his previous university would have been reasonable had so much time not passed. The Court stated that this case is “very different, for example, from the student who suffers a medical event during an examination, who should raise this event as soon as reasonably possible thereafter and seek accommodation immediately (in the form of writing the examination over, for example).”

The Court remitted the matter to the Admissions Committee for “consideration by way of an accommodated admissions process that is consistent with these reasons.” The Court also commented that its finding is “by no means a “free pass” into university for [the applicant] and would not undermine the integrity of the overall admissions process, which is substantially marks-based.”

Please contact [Kathryn Bird](#) at 416.864.7353 or your regular Hicks Morley lawyer if you would like more information about this decision.

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