CITATION: Ahlawat v. Toronto (City), 2025 ONSC 445
DIVISIONAL COURT FILE NO.: 449/23
DATE: 20250211

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Backhouse and Faieta JJ.

BETWEEN:	)	
Amar Ahlawat	)	*Self-Represented* Applicant
Applicant	)	
– and –	)	
City of Toronto and the Human Rights Tribunal of Ontario	)	*Stephanie Moutsatsos and Taryn Wilkie*, for the City of Toronto
Respondents	)	*Mindy Noble*, for the Human Rights Tribunal of Ontario
	)	**HEARD at Toronto:** January 9, 2025

THE COURT

Overview

[1] Mr. Ahlawat (the "Applicant") was a public health nurse with the City of Toronto (the "City"). The City terminated his employment for cause. Mr. Ahlawat filed an application with the Human Rights Tribunal of Ontario (the "Tribunal") alleging that the City had discriminated against him on the basis of disability. On July 26, 2021, the Tribunal dismissed his application as an abuse of process (the "Decision"). Mr. Ahlawat applied for reconsideration of the Decision. On June 28, 2023, his request for reconsideration was dismissed (the "Reconsideration Decision").

[2] This is an application to judicially review the Decision and the Reconsideration Decision. Mr. Ahlawat alleges bias and procedural unfairness, and he argues that the Tribunal's decisions were unreasonable. The City submits that Mr. Ahlawat's application should be dismissed for delay.

[3] For the reasons that follow, we decline to dismiss the application on the basis of delay. However, we find that the allegations of bias have not been made out, that the Tribunal did not breach its duty of procedural fairness and that its decisions were reasonable.

Delay

[4] Mr. Ahlawat's application for judicial review was issued on July 27, 2023. He was initially represented by counsel, who sought to serve the City with the Notice of Application. Subsequently, that counsel advised the City that the court had not confirmed acceptance of the Notice of Application or issued the Notice of Application. Mr. Ahlawat filed a Notice of Intention to Act in Person on October 19, 2023. He then took no further steps with respect to his application until June of 2024, when the court received notice that he intended to proceed with his application. The Application was served on July 18, 2024. A case conference was scheduled and, pursuant to the directions in that case conference, the application was perfected on October 9, 2024.

[5] The City alleges that the fact that this application took over 14 months to perfect and that Mr. Ahlawat did nothing to move the application forward between July of 2023, when it was issued, and July of 2024, when it was served, warrants dismissal on the basis of delay. In this regard, the City highlights that the facts giving rise to the application occurred in 2016. Thus, the delay at issue has caused the City significant prejudice.

[6] We accept that this Court has consistently held that a delay of six months or more in pursuing an application and twelve months or more in perfecting an application is serious enough to warrant dismissal.

[7] In deciding whether or not to dismiss this application for delay we must consider not only the length of the delay, but also whether there is any explanation for the delay, the question of prejudice and whether, weighing all of these factors, the justice of the case warrants dismissal. There is no issue that Mr. Ahlawat demonstrated an intention to apply for judicial review within the requisite time period of 30 days as his counsel issued the application on July 27, 2024, less than 30 days after the Reconsideration Decision.

[8] Mr. Ahlawat filed a letter from his doctor detailing the significant medical issues that Mr. Ahlawat was dealing with from the summer of 2023 to the summer of 2024. We are satisfied that this letter does provide a satisfactory explanation for the delay.

[9] On the issue of prejudice, we agree that this proceeding has taken an inordinate amount of time. However, the delay caused by Mr Ahlawat's actions is far less than the delay caused by the fact that the application before the Tribunal had to be recommenced because the Vice-Chair assigned to the matter had to leave the Tribunal and the fact that it took two years for the Tribunal to issue the Reconsideration Decision.

[10] Weighing all of these factors, we conclude that the justice of the case warrants allowing this application to proceed in spite of the delay at issue.

Bias

[11] Mr. Ahlawat submits that the Tribunal's decision gave rise to a reasonable apprehension of bias. He argues that the Associate Chair who rendered the Decision had conflicts of interest with the City. In particular:

(a) she was a member of the board of Toronto Hydro of which Toronto is the sole shareholder:

(b) she sat on the Toronto Hydro Board with an individual who sat on the Toronto Board of Health where Mr. Ahlawat was employed;

(c) she had a lengthy relationship with the Mayor of Toronto, John Tory, who was City Mayor at the time of Mr. Ahlawat's hearings; she had been his election campaign "Director of Operations" in 2014, and had earlier worked for his family law firm;

(d) The Associate Chair was a candidate in a federal election in British Columbia when she released the Decision in this case;

(e) Mr. Ahlawat discovered information that suggested that an email from the City's counsel enclosing his request for Reconsideration was opened in Nanaimo, where the Associate Chair was running for political office. Mr. Ahlawat was not copied on this email. According to Mr. Ahlawat, these facts suggest some association between the City and the Associate Chair.

[12] The Associate Chair who wrote the Decision did not make a ruling on the issue of bias. However, she does deal with it at para. 33 of the Decision as follows:

> At one point when I tried to bring the applicant back to the Application, the applicant started asking me questions and making statements about my background. It was clear from the questions and statements made that the applicant had spent some time researching my personal background, employment, and volunteer history. The applicant did not make a specific allegation of bias in connection with those questions and statements but used a belligerent tone that implied some kind of unspecified bias on my part as motivation for not allowing him to speak to the statements he was determined to make about CSIS, his privacy rights and the other topics he was focused on that were all unrelated to the Application….

[13] The Reconsideration Decision correctly set out the test for reasonable apprehension of bias in *Committee for Justice and Liberty et al v. National Energy Board et al* (1976), [1978] 1 S.C.R. 369, at p. 394:

> The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically–and having thought the matter through–conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[14] The Reconsideration Decision also recognized that there is a strong presumption of judicial or quasi-judicial impartiality: see *Bailey v. Barbour*, 2012 ONCA 325, 110 O.R. (3d) 161. It has been held that, to overcome the presumption, the party alleging a reasonable apprehension of bias must establish the presence of serious grounds.

[15] The Reconsideration Decision found that Mr. Ahlawat's assertions about the Associate Chair's past and subsequent activities, her past and ongoing involvement with the Toronto Hydro Board of Directors as well as her ongoing political involvement after leaving the Tribunal, did not support the allegation of a reasonable apprehension of bias being made by the Applicant.

[16] We agree. Toronto Hydro is a separate corporation from the City of Toronto. Sitting on a board with someone who may also sit on another board, without more, is not enough to raise a concern about bias in the mind of a reasonable person. The same is true of the Associate Chair's connection with John Tory. As mayor, John Tory was the head of City Council. The City of Toronto's public service operates separately from City Council. With respect to the Associate Chair's election activities in British Columbia, contrary to the assertion of Mr. Ahlawat, we do not accept that *The Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Sched. A prohibited those activities. In fact, s. 88(d) of that Act appears to provide an exemption for the activities. It is also significant that the Associate Chair had resigned from the Tribunal in July 2021 (before releasing the decision). In spite of this resignation, she was permitted to write the Decision by virtue of s. 4(3) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. There was no evidence as to how the Associate Chair's run for political office in British Columbia in any way raised a concern about her impartiality when it came to Mr. Ahlawat's case. Finally, there is no serious basis for a concern about the email from the City solicitor being opened in Nanaimo. Apart from anything else, it is pure speculation that the email was opened by the Associate Chair. Apparently, the solicitor who was acting for the City at the time also had connections with Nanaimo.

[17] For these reasons, we find that the Tribunal correctly found that Mr. Ahlawat's allegations did not meet the high threshold necessary to rebut the presumption of impartiality. Therefore, there was no merit to Mr. Ahlawat's assertions of bias.

Procedural Fairness and Reasonableness

Background

[18] There were six preliminary proceedings heard in this application by the Associate Chair, Tamara Kronis.

[19] On December 11, 2020, the first case management conference call ("First CMCC") was held. The Applicant submitted that there were a number of issues that needed to be determined prior to the hearing on the merits of the application. The Associate Chair found that the Applicant's behaviour was aggressive, discourteous and disrespectful to both the City's counsel and the Tribunal as the Applicant called the City's counsel a "white supremacist" more than once and was argumentative when the Associate Chair directed that he cease to do so, having advised him that name calling is contrary to the Tribunal's Rule A7.1 regarding "courteous and respectful" behaviour.

[20] On January 14, 2021, the second case management conference call ("Second CMCC") was held to define and narrow the preliminary issues to be addressed. Once again, the Tribunal found that the Applicant was discourteous and disrespectful to both the City's counsel and the Tribunal as the Applicant persistently interrupted to make submissions regarding the Tribunal's alleged wrongful actions and the City's alleged wrongful withholding of evidence. He also made denigrating comments about his former counsel. Again, the Applicant called the City's counsel a "white supremacist" more than once, and again took issue with the Associate Chair's explanation that his behaviour was inconsistent with the Tribunal's Rule A7.1. The Applicant also shouted and made disrespectful remarks about the former Vice-Chair who presided over the earlier hearing. The Applicant also shouted at the Associate Chair that she was inappropriately unresponsive to his needs as a self-represented applicant by refusing to permit him to immediately amend his application to include an allegation of discrimination on the basis of race when that ground was not enumerated in his Application. As a result, the Associate Chair granted the Applicant the opportunity to make requests for additional orders.

[21] Four preliminary hearings were held on January 30, 2021, February 12, 2021, February 19, 2021, and March 4, 2021, for the purpose of considering the Applicant's request for orders. The Applicant's request for the anonymization of his name and those of his witnesses as well as his request to amend his Application to add the grounds of race, creed, and place of origin as additional grounds of discrimination were dismissed: See *Ahlawat v. Toronto (City*), 2021 HRTO 140. Further, the Applicant's request for an order that the City be estopped from disputing that the Applicant has a disability or from alleging he misused sick time was dismissed. The Applicant's request for the Respondent to produce additional documents was granted only in respect of his employee health file: See *Ahlawat v. Toronto (City*), 2021 HRTO 250.

[22] The Associate Chair notes in the Decision that the during all the above proceedings, the Applicant sometimes sent in voluminous, off-topic materials prior to proceedings and got angry with the Associate Chair if she did not acknowledge or address them immediately. The Applicant also frequently accused the City and the City's counsel of deliberately withholding documents from him in order to sabotage his Application.

[23] The first day of the hearing was held by videoconference on April 9, 2021, and lasted about one hour before it was adjourned. The Associate Chair explained the hearing process and reminded the parties that Rule A7.1 requires that the parties conduct themselves in a courteous and respectful manner. The Applicant indicated that he would try to follow the Rules. Three matters arose:

> (a) The Applicant asked the Associate Chair to address the allegation in his email dated April 4, 2021, that the City had breached the *Personal Health Information Protection Act,* S.O. 2004, c. 3, Sched. A ("*PHIPA*"), by sending his medical record by unencrypted email. The Associate Chair ruled that the Tribunal did not have the authority to determine whether there had been a breach of the *PHIPA* and that any such complaint was within the authority of the Information and Privacy Commissioner of Ontario to determine. The Applicant refused to accept that answer and refused to allow the Associate Chair to move the hearing forward. In a disrespectful and discourteous tone and language, he repeatedly asked the Associate Chair whether the City had breached the *PHIPA* and berated the Associate Chair and the Tribunal for refusing to take a position. He insisted that the Associate Chair answer these questions with a "yes" or "no."
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> (b) The Applicant then commenced to read a statement which expressed his belief that he was being monitored by the Canadian Security and Intelligence Service ("CSIS") in contravention of the *Canadian Charter of Rights and Freedoms*. The Applicant refused to explain the relevance of this statement to his Application, refused to stop reading his statement and then recommenced reading the statement loudly. The Associate Chair had to shout "STOP" repeatedly to get the Applicant to stop.
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> (c) The Applicant went on to state that the Tribunal was a "Kangaroo Court," "was operating above the law" and that his "case had taken a turn to become a criminal case."The Applicant stated that he was going to the press with an account of his mistreatment and was going to take this matter to the RCMP. The Applicant started shouting that he wanted an adjournment, which was granted.

[24] On April 12, 2021, the Applicant delivered an apology for his conduct which stated that he was suffering from an acute mental health crisis induced by stress and pre-existing mental health conditions. The Applicant stated that he was unable to control himself and apologized for his "rude behaviour" toward the City's counsel, the Associate Chair, and the Tribunal. The Applicant indicated that he had sought help and had documentation to substantiate his circumstances.

[25] A Case Assessment Direction dated April 19, 2021, directed the parties to provide the Tribunal with written submissions on two issues:

> (a) should the Application be dismissed for abuse of the Tribunal's processes, for breach of Rule A7, and/or for conducting a hearing in a vexatious manner within the meaning of Rule A8; and
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> (b) whether the Tribunal should declare the Applicant a vexatious litigant.

[26] On May 3, 2021, the Applicant delivered five pages of written submissions. He reiterated his "remorse and contrition" for his "disrespectful and discourteous conduct" and noted that his

physician, Dr. Joe Spano Greco, was in the process of finalizing a letter of support. The Applicant indicated that he was diagnosed with Adjustment Disorder in January 2017. The Applicant stated that he was seen by Dr. Greco on January 18, 2021, February 12, 2021, and March 28, 2021. He was assessed by Dr. Levitan at CAMH on April 6, 2021, who indicated that he would forward his recommendations to Dr. Greco. The Applicant stated that after the hearing on April 9, 2021, he went to the CAMH emergency room, where it was determined that he was having "a negative psychological reaction to a substance I was self medicating with to help my anxiety …." The Applicant stated that due to his condition, "… boundaries are not always self evident to me…." The Applicant stated that he has ceased using that substance and was prescribed a new medication to address the condition that he was in on April 9, 2021. The Applicant further stated that if the Tribunal was amenable, he was prepared to have Dr. Greco join the hearing to speak in support of this submission.

[27] On May 13, 2021, Dr. Greco sent a letter to the Tribunal that confirmed much of the above information.

[28] A videoconference was held on May 14, 2021, to allow the parties to supplement their written submissions with oral submissions. The Applicant was contrite and calm. The Applicant stated that he was under medical care, described his diagnoses and prognosis and explained the causes of his behaviour on April 19, 2021. The Applicant told the Associate Chair that he had a plan to mitigate this mental health challenges and requested another chance to have his Application heard.

[29] The Associate Chair dismissed the Application as it found that the Applicant's behaviour made it impossible for the Tribunal to continue with the hearing of the Application. She declined to declare the Applicant a vexatious litigant.

[30] The Applicant filed a Request for Reconsideration. Amongst other things, the Applicant submitted that: (1) the Associate Chair failed to adequately consider his mental health issues and should have "… requested my doctor to testify so that he could have been asked questions, cross examined, and clarified any of the Tribunal's concerns towards establishing or discounting a causal link between my mental health and my conduct"; and (2) the Associate Chair's decision should be quashed on the basis she displayed a reasonable apprehension of bias.

[31] As already noted, the request for reconsideration was dismissed. The Tribunal found that none of the issues raised met the test for reconsideration. The Tribunal found that the Applicant was attempting to use the reconsideration process to reargue his case and achieve a different outcome. However, as detailed above, the Tribunal did consider the submission that the Associate Chair was biased and found that there was not a reasonable apprehension of bias.

Was the Decision to Dismiss this Application for Abuse of Process Procedurally Fair?

[32] The Applicant submits that:

(a) The Tribunal misapplied the doctrine of abuse of process by failing to permit his doctor to testify at the hearing;

(b) The Tribunal breached the rules of procedural fairness and natural justice by preventing the Applicant from presenting his case on its merits;

(c) The Tribunal failed to accommodate the Applicant's disabilities;

(d) The Tribunal failed to give adequate or any reasons for rejecting the Applicant's concerns about reasonable apprehension of bias.

[33] A duty of procedural fairness applies to decisions made under the *Code.* The content of the duty of procedural fairness is variable and is informed by "the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision": *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 28.

[34] The Applicant submits that the Associate Chair failed to permit Dr. Greco to testify at the hearing held on May 14, 2021. However, there is no evidence to support that assertion. It was the Applicant's responsibility to provide the Associate Chair with whatever medical evidence he was relying on. The Associate Chair was entitled to presume that all necessary supporting documentation had been submitted.

[35] The Tribunal did not allow the Applicant to present his case on the merits because it dismissed the proceeding for abuse of process. There is no issue that the Tribunal has the authority to control its own process, which includes the authority to dismiss a proceeding for abuse of process. The issue of whether its decision to exercise that authority was reasonable is discussed below.

[36] There is no basis for the Applicant's submission that the Tribunal failed to accommodate his disabilities. During the period in which the proceedings were held before the Associate Chair, many steps were taken to accommodate the Applicant such as facilitating two-hour long lunch breaks for full day proceedings and other breaks as requested by the Applicant during the First CMCC and the Second CMCC, by answering the Applicant's questions, putting things in writing and by making best efforts to make the various support people and other persons who attended the proceedings at the Applicant's request feel welcome.

[37] In respect of the submission that the Associate Chair failed to give adequate or any reasons for rejecting the Applicant's concerns about reasonable apprehension of bias, no such motion was placed before the Associate Chair. This submission was made at the Reconsideration Hearing. As already detailed, the Tribunal gave reasons for its decision on that issue. Thus, if there was a concern about the Associate Chair's failure to rule on the issue of bias (and we do not find that there was), the concern was remedied at the reconsideration stage.

Was it Reasonable to Dismiss this Application for Abuse of Process?

[38] The Applicant submits that:

(a) The Tribunal misapplied the doctrine of abuse of process in that the Tribunal failed to properly weigh the factors that would be necessary to make a finding of abuse of process and instead based its finding on the Applicant's behaviour without proper regard to the context, including the available medical and disability record;

(b) The Tribunal failed to adequately weigh the public interest in the resolution of cases on their merits;

(c) The Tribunal failed to adequately weigh the harm done to the Applicant by a dismissal;

(d) The Tribunal erred in making a finding of abuse of process in the absence of a finding that the City had been unduly prejudiced by the Applicant's behaviour or by any delays that may have been caused by that behaviour;

(e) The Tribunal failed to properly consider whether less drastic measures normally used by the courts to control its process, such as costs sanctions or a reduction in the possible award, contempt findings or warnings concerning them, a requirement that the Applicant act through a representative or be assisted by a McKenzie friend and specific accommodations for his medical and health conditions, combined with a stay of proceedings pending the satisfaction of some of those conditions, would have been adequate to address the problems that they described.

[39] Section 45.8 of the *Human Rights Code,* R.S.O. 1990, c. H.19 (the "*Code*"), provides that a decision of the HRTO may only be altered or set aside if it is "patently unreasonable".

[40] The reasonableness standard applies to decisions made by the Tribunal under the *Code*: *Longueépée v. University of Waterloo*, 2020 ONCA 830, 153 O.R. (3d) 641, at para. 56; *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 56, at paras. 82-83.

[41] In *Ontario (Health)*, Fairburn A.C.J.O. stated that the assessment of reasonableness requires the application of the following principles outlined in *Canada (Minister of Citizenship and Immigration) v. Vavilov***,** 2019 SCC 65, [2019] 4 S.C.R. 653:

▪ "Reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision makers": at para. 75.

▪ Reviewing courts must not apply a standard of perfection when reviewing written reasons: at para. 91.

▪ Reviewing courts should pay respectful attention to the decision maker's demonstrated expertise and application of specialized knowledge. Expertise may help explain an outcome that seems puzzling on its face: at para. 93.

▪ The history and context of the proceedings must inform the reviewing court's reading of the reasons: at para. 94.

▪ To set aside a decision as unreasonable, “any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision.” Instead, they must be “sufficiently central or significant to render the decision unreasonable.” A decision with “sufficiently serious shortcomings” will not “exhibit the requisite degree of justification, intelligibility and transparency”: at para. 100.

▪ The reasoning must be rational and logical for the decision to be reasonable, but the analysis is not a “line-by-line treasure hunt for error”: at para. 102.

▪ Reasons should be read in light of the record and administrative regime in which they are given. Read holistically, reasons must reveal a rational chain of analysis to be reasonable. The conclusion must flow from the analysis undertaken and the record: at para. 103.

▪ Reviewing courts must not reweigh and reassess evidence; absent exceptional circumstances, the reviewing court should not interfere with factual findings of the decision maker: at para. 125.

▪ A decision maker’s failure to address key issues or central arguments may reflect a potential gap or flaw in the reasons. However, decision makers need not respond to every argument or make an explicit finding on every element leading to a conclusion. Reviewing courts cannot expect that they will: at para. 128.

[42] In *De Rose v. Windsor-Essex Catholic District School Board*, 2022 ONSC 6909, at para. 55, this Court stated:

> The HRTO has a statutory power to stay an application that it considers to be an abuse of process: *Statutory Powers Procedure Act*, s. 23(1). As this court noted in *Nagy v. University of Ottawa*, 2022 ONSC 3399 (CanLII) at para. 13, applying the doctrine of abuse of process engages the HRTO’s power to control its own process. It is context-based and fact-driven and involves the exercise of discretion. Therefore, a decision as to whether to stay proceedings as an abuse of process should be reviewed on a deferential standard.

[43] In *Nagy v. University of Ottawa*, 2022 ONSC 3399, this Court stated, at para. 12:

> The definition of abuse of process is set out by the Supreme Court in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63; [2003] 3 S.C.R. 77. In that case, Arbour J. said, at 101:
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> > 35 Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007:

> ... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of [page102] oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.

36 The doctrine of abuse of process is used in a variety of legal contexts. The unfair or oppressive treatment of an accused may disentitle the Crown to carry on with the prosecution of a charge: Conway, supra, at p. 1667. In *Blencoe v. British Columbia* (*Human Rights Commission*), [2000] 2 S.C.R. 307, 2000 SCC 44 (S.C.C.), this Court held that unreasonable delay causing serious prejudice could amount to an abuse of process. When the *Canadian Charter of Rights and Freedoms* applies, the common law doctrine of abuse of process is subsumed into the principles of the *Charter* such that there is often overlap between abuse of process and constitutional remedies (*R. v. O'Connor*, [1995] 4 S.C.R. 411 (S.C.C.)). The doctrine nonetheless continues to have application as a non-*Charter* remedy: *United States v. Shulman*, [2001] 1 S.C.R. 616, 2001 SCC 21 (S.C.C.), at para. 33.

37 In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would ...bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.) at para. 55, per Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63 (S.C.C.)). Goudge J.A. expanded on that concept in the following terms, at paras. 55-56:

> The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).

> One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added by Arbour J.]

[44] The Associate Chair's Decision was rational and logical. It addressed the law related to the Tribunal's authority to prevent an abuse of its process resulting from the failure of a party to behave with courtesy and respect. It also referenced other similar cases such as *Conway v. St. Joseph's Healthcare Hamilton*, 2015 HRTO 1232. Finally, it considered in great detail the Applicant's conduct in the various proceedings held before her along with the Applicant's submissions and the medical evidence.

[45] The Applicant submits that the Associate Chair failed to weigh the harm done to him by the failure to decide this application on its merits. The Associate Chair was alive to this issue and noted that the dismissal of this application for abuse of process is an extraordinary remedy that is infrequently imposed and usually only in situations where "… the behaviour of the party in question makes the fair, just and expeditious hearing of an application impossible": at para. 53.

[46] The Applicant submits that the Associate Chair erred in making a finding of abuse of process in the absence of a finding that the City had been unduly prejudiced by his behaviour. No such specific finding is necessary. The Associate Chair clearly turned her mind to the impact that the Applicant's behaviour had on the City and others at the hearing of this application. At para. 43, she stated:

> All parties, counsel that appear before the Tribunal and the Tribunal itself are entitled to an environment where they are not called names, belittled, or subjected to improper questions by a party. They are also entitled to a proceeding that is capable of being conducted in accordance with the Rules. Members of the public who attend Tribunal hearings similarly should not be subjected to proceedings where the personal integrity of counsel and adjudicators is challenged through *ad-hominem* attacks. When applicants conduct themselves in a belligerent, vexatious manner in a public hearing, it can discourage others from accessing the institution and undermine public confidence in the administration of justice.

[47] The Applicant further submits that the Associate Chair failed to consider less drastic measures to control its process such as a warning or accommodations for his medical condition. It is clear from the Decision that the Associate Chair reminded the applicant at each of the six preliminary hearings of the need for a party to behave with courtesy and respect at a hearing and in fact during the Second CMCC told the Applicant that his behaviour was inconsistent with Rule A7.1. The Applicant had an obligation to propose less drastic measures for the Tribunal to consider. The only measures advanced were accommodations which the Associate Chair addressed at paras. 55-58:

> The Applicant described the accommodations that he would request if his Application was permitted to proceed to a merits hearing. Specifically:

> …suggestions are considering the length of the hearing and having the ability to adjourn should I not be in condition to proceed, allowing my wife to attend with me for emotional support and having breaks as needed.

The requested accommodations are very similar to those the Tribunal already put in place for the Applicant. As noted above, the proceedings for this Application were already scheduled for shorter amounts of time, with longer and frequent breaks, with support persons and the Applicant's dog attending to make the Applicant as comfortable as possible with the proceedings.

With respect to the Applicant's spouse, the Applicant had intended to call her as a witness and the Respondent requested an exclusion order near the beginning of the February 12, 2021, preliminary hearing day. When the request was made, I explained what an exclusion order is, the reasons parties request exclusion orders, and described in a general way the Tribunal's jurisprudence that frequently makes exceptions allowing spouses to attend despite their status as witnesses when appropriate including for accommodation purposes. However, the Applicant agreed the Applicant's spouse would leave the hearing because the Applicant had other support people present who he considered sufficient to meet his needs. During the March 4, 2021, preliminary hearing day, the parties both narrowed their witness lists and the Applicant removed his wife as a witness. I was clear at that time that the Applicant's spouse was welcome to join the proceedings. Given the Applicant's consistent pattern of behaviour throughout the proceedings related to this Application with multiple support persons and the Applicant's dog present, however, I do not believe that the presence of the Applicant's spouse would be sufficient to allow this Application to proceed without further incident.

The accommodation measures that the Applicant has proposed are the same as the ones already put in place by the Tribunal to accommodate his disability without success. In the context of both the long history and the frequency of the Applicant's behaviour, it is simply not credible that these accommodation measures will be sufficient to change the Applicant's behaviour.

[48] In finding that the Application should be dismissed as an abuse of process, the Associate Chair stated, at para. 65, that:

> After giving careful consideration to the circumstances, I find that the Applicant has consistently behaved in a discourteous, disrespectful way that makes it impossible for the Tribunal to continue with the hearing of this Application.

[49] I note that the circumstances that the Associate Chair considered included the Applicant's medical condition, Dr. Spano's letter and the Applicant's apology: see paras. 51 and 52.

[50] While this court might have made a different decision, deference is mandated in accordance with the terms described above. With that perspective, and in the circumstances, we find that the Associate Chair's Decision was reasonable.

Disposition

[51] For these reasons, the Application is dismissed. The City requested its costs, fixed in the amount of $3,250. In view of the Applicant's financial circumstances, he is to pay the City its costs of this Application, fixed in the amount of $1,000.00.

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Sachs J.

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Backhouse J

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Faieta J.

Released: 20250211

CITATION: Ahlawat v. Toronto (City), 2025 ONSC 445
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ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Backhouse and Faieta JJ.

BETWEEN:

Amar Ahlawat

Applicant

– and –

City of Toronto and the Human Rights Tribunal of Ontario

Respondents

REASONS FOR JUDGMENT

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