

**CITATION:** John v. Swedcan Lumican Plastics Inc., 2025 ONSC 3022  
**DIVISIONAL COURT FILE NO.:** 697/24-JR  
**DATE:** 20250530

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Sachs, Lococo and A.D. Kurke JJ.**

<b>BETWEEN:</b>	)	
	)	
PETER PAUL JOHN	)	<i>Osborne G. Barnwell</i> , for the Applicant
Applicant	)	
<b>– and –</b>	)	
	)	
SWEDCAN LUMICAN PLASTICS INC.,	)	<i>Kevin L. MacDonald and Brendan</i>
DESMOND KENDALL and XANDRA	)	<i>MacDonald</i> , for the Respondents Swedcan
KENDALL and HUMAN RIGHTS	)	Lumican Plastics Inc., Desmond Kendall and
TRIBUNAL OF ONTARIO	)	Xandra Kendall
Respondents	)	
	)	<i>Mindy Noble</i> , for the Respondent Human
	)	Rights Tribunal of Ontario
	)	
	)	<b>HEARD at Toronto by videoconference:</b>
	)	April 29, 2025

**REASONS FOR DECISION ON REVIEW**

**A.D. KURKE J.**

**Overview**

[1] The applicant seeks judicial review of the October 31, 2024, decision of Vice-Chair Tascona of the Human Rights Tribunal of Ontario (“HRTO” or the “tribunal”) after a summary hearing, at which the names of the individual respondents Desmond and Xandra Kendall (the “Kendalls”) were struck and the application was dismissed after a finding that it had no chance of success: see *John v. Swedcan Lumican Plastics Inc.*, 2024 HRTO 1546 (“*Swedcan (HRTO)*”).

[2] The applicant argues the following grounds of review:

- a. The HRTO unreasonably decided that the Kendalls should be struck as respondents in the circumstances of the case;

- b. He was denied natural justice when the HRTO overruled its own earlier decision not to subject the case to a summary hearing, ignored that a hearing had begun before a different member, and proceeded to hold a summary hearing over the objections of the applicant, without any explanation or justification;
- c. The HRTO unreasonably held that the applicant's case should be dismissed as having no reasonable chance of success after ignoring evidence of the respondents' *Human Rights Code*, R.S.O. 1990, c. H.19 (the "*Code*") violations; and
- d. There was a reasonable apprehension of bias on the part of the Vice-Chair who dismissed the application.

[3] For the following reasons, I would grant the review and find that the decision to dismiss the application was unreasonable and the applicant was denied natural justice by the manner in which his application was dealt with in 2024. However, I find that the decision to strike the Kendalls from the case was a reasonable one, and that there was no reasonable apprehension of bias.

### **Background**

[4] Desmond Kendall ("Desmond") was the President and Xandra Kendall the Vice President of Swedcan Lumican Plastics Inc. ("SLPI"), a small plastic sheet distributor that carried on business between 1980 and December 15, 2019. Together the Kendalls and SLPI are the "workplace respondents" in the application.

[5] The applicant was employed as a Customer Service Manager by SLPI from March 1, 2017, to November 27, 2017. Desmond had convinced him to come to SLPI from his prior employment. From the applicant's viewpoint, the position for which he had been hired did not involve physical labour.

[6] However, in August 2017, the applicant was required to perform physical labour in the SLPI warehouse, which aggravated pre-existing injuries that he had suffered in his shoulder and knees. In his materials, the applicant claimed to have advised SLPI's Financial Controller, Rajah Dura, and Unit Manager, Chandu U. Kumarevelu, that the physical aspect of his work was hurting his knees and shoulder and he asserted that he was either ignored or told to tell the boss (Desmond) that he could not do the job. The applicant kept silent out of fear of losing his job because he felt intimidated and embarrassed by Desmond's abusive conduct towards him.

[7] The applicant was terminated on November 27, 2017, while on a sick leave ordered by his physician, as a result of what the respondents stated in the applicant's termination letter was a shortage of work.

[8] In November 2018, the applicant made an application to the HRTO, alleging that the respondents discriminated against him and harassed him in the area of employment because of disability and failed to accommodate his disability, contrary to ss. 5(1), 5(2) and 17(2) of the *Code*. The respondents submitted their response in January 2019.

[9] On March 26, 2019, the respondents requested that the HRTO conduct a summary hearing and dismiss the application and claimed, among other things, that they had no knowledge of the applicant's disability, and he had not stated any need for accommodation. The applicant made no response to that request. By letter dated April 15, 2019, the Registrar advised that Vice-Chair Doyle had denied the request and ordered the application to be "processed in the normal course". In the Record of Proceedings of the HRTO is a letter scheduling a merits hearing for March 3, 2020 at 9:30 a.m.

[10] There is no dispute that a merits hearing began on March 3, 2020 before Vice-Chair Doyle. There was a preliminary request by the respondents to strike the names of the Kendalls from the case, which the applicant believed to have been dismissed. The applicant gave testimony at the hearing, which was adjourned after one day.

[11] From there, the matter proceeded no further until the HRTO convened a Case Management Conference on April 8, 2024. At that conference, Vice-Chair Tascona (hereafter, the "Vice-Chair") ordered that the matter would be scheduled for a summary hearing. Counsel for the applicant immediately expressed concerns to the Vice-Chair and pointed out that a request by the respondents for a summary hearing had already been dismissed and an adjudication of the matter had commenced in March 2020. Counsel requested that the HRTO direction for a summary hearing be withdrawn. Nevertheless, a summary hearing was scheduled for October 22, 2024.

[12] The Vice-Chair offered no formal ruling on the applicant's submissions. Instead, in a Case Assessment Direction dated October 17, 2024, the Vice-Chair confirmed the summary hearing and directed submissions at that hearing on whether the Kendalls' names should be struck from the complaint. The applicant offered submissions at the hearing, including reference to the decision in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795, on the issue of naming private individuals like the Kendalls in such proceedings.

### **The Vice-Chair's Reasons**

[13] On October 31, 2024, the Vice-Chair of the HRTO issued Reasons in which he concluded that the Kendalls' names should be struck, and that the application should be dismissed as it had no chance of success. In so ruling, the Vice-Chair summarized his conclusions as follows (*Swedcan (HRTO)*, at para. 3):

As explained more fully below, I find that the personal respondents named in the Application should be removed and the Application must be dismissed on the basis that it has no reasonable prospect of success under the *Code*. Even if I accept all the facts alleged by the applicant as true, the applicant has not been able to point to any evidence beyond their own suspicions that the respondents were treating him differently based on *Code* grounds.

[14] Concerning the summary hearing process, the Vice-Chair described the test as, "whether an Application has no reasonable prospect of success": *Swedcan (HRTO)*, at para. 14. This involves "assuming the applicant's version of events is true unless there is some clear evidence to the contrary or the evidence is not disputed by the applicant": *Swedcan HRTO*, at para. 14. The Vice-Chair did not refer to any "evidence to the contrary" in his decision.

[15] The Vice-Chair went on to point out that the applicant's assumptions about discrimination are not determinative. Rather, the applicant must point to "any information which tends to support his belief that he has experienced discrimination under the *Code*": *Swedcan (HRTO)*, at para. 15. There must be evidence "to connect the unfair treatment allegedly experienced by the applicant with the *Code*'s protections": *Swedcan (HRTO)*, at para. 15. The test is adopted from *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389, reconsideration refused, *Forde v. Avon Maitland District School Board*, 2012 HRTO 592.

[16] Tribunal authority gives more detail than did the Vice-Chair. It has noted that in some cases, assuming the allegations to be true, a reasonable prospect of success may be based on a legal analysis of whether the conduct alleged amounts to a *Code* violation. Other cases require the applicant to show that he or she can advance evidence that links an event with a prohibited *Code* ground. This can include a showing that the evidence would be available by cross-examination of witnesses: *Dabic v. Windsor Police Service*, 2010 HRTO 1994, at paras. 8-10.

[17] In his decision, *Swedcan (HRTO)*, the Vice-Chair set out the following circumstances:

- a. The applicant "provided no evidence that he requested accommodation from his supervisor, Desmond Kendall": at para. 21;
- b. Although the applicant claimed that he was off work for a disability commencing on November 22, 2017, his medical evidence described no physical problems involving knees and shoulders, but rather hypertension, acute stress, dizziness, high blood pressure, chest pain, restlessness, lack of sleep, and difficulty with concentration and memory: at para. 22; and
- c. When the applicant was terminated on November 27, 2017, he was told that there was a "shortage of work": at para. 23.

[18] The Vice-Chair made the following categorical findings in the course of dismissing the Application:

- a. "[T]he applicant has not pointed to any evidence of a link between the respondents and the alleged unfair treatment and a *Code*-enumerated ground": at para. 24;
- b. "[T]here is no evidence the applicant has or can point to that the applicant's *Code* ground was a factor in the actions of the respondents": at para. 25;
- c. "[T]he applicant could not point to any evidence to make the connection between the alleged discriminatory behaviour and his *Code*-enumerated ground": at para. 26;
- d. "[F]or an Application to advance to a full hearing on the merits, an applicant must be able to point to some evidence beyond his own suspicions, that could make out a link to the *Code*": at para. 29;

- e. “[T]he applicant has not pointed to any evidence that he has or has reasonably available to him that could establish a connection between these respondents’ actions and his *Code*-enumerated ground ... [c]onsequently, the Application has no reasonable prospect of success”: at para. 30.

[19] The Vice-Chair’s reasons did not mention that Vice-Chair Doyle had denied the respondent’s request for a summary hearing and had ordered the application to be “processed in the normal course” on April 15, 2019, evidently by way of a merits hearing. The reasons made no mention that a merits hearing had been scheduled by the HRTO and had begun on March 3, 2020, and had been adjourned after a single day of hearing the applicant’s evidence. The reasons did not acknowledge that the applicant, through counsel, had objected to the April 2024 Case Management Conference decision to proceed to a summary hearing, and did not offer any explanation for countermanding a decision by another Vice-Chair of the tribunal and taking away the applicant’s right to have his merits hearing, which had already commenced, carried through to conclusion.

### **Summary Hearings**

[20] As stated by the Vice-Chair, a summary hearing before the HRTO looks to whether an application has no reasonable prospect of success. In making this determination, the applicant’s version of events is presumed to be true. The applicant must point to information that tends to support his belief that he has experienced discrimination under the *Code*. The question to be answered is whether there is evidence to connect the alleged unfair treatment with the *Code*’s protections. For a merits hearing to be permitted, there must be a basis beyond mere speculation and accusations to believe that an applicant could show a breach of the *Code*: *Xia v. Board of Governors of Lakehead University*, 2020 ONSC 6150 (Div. Ct.).

### **Reasonableness Review**

[21] Two powerful privative clauses in the *Code* limit judicial intervention in *Code* decisions. Section 45.8 provides that, “a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable.” Section 43(8) further limits court intervention to set aside a decision of the HRTO if the HRTO failed to comply with its required practices and procedures, “unless the failure or the exercise of discretion caused a substantial wrong which affected the final disposition of the matter.”

[22] The standard of review of HRTO decisions under s. 45.8 of the *Code* is reasonableness for determinations of fact, the interpretation and application of human rights law, and remedial decisions: *Ontario (Minister of Health and Long-Term Care) v. Association of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 561, at para. 47.

[23] A court conducting a reasonableness review must be deferential and focus on the decision that was made and on its justification: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 15, 83 and 87; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at para. 58. A reasonable decision is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov*, at para. 85. Perfection in reasons is not

required, and flaws must be “sufficiently central or significant to render [a] decision unreasonable”: *Vavilov*, at paras. 85, 91-92 and 100-102.

[24] The purpose of reasons for a tribunal’s decision is to demonstrate justification, transparency and intelligibility, and communicate the rationale for the decision to those to whom the decision applies. A reviewing court must seek to understand the reasoning process by which the tribunal arrived at its conclusion: *Vavilov*, at paras. 81-86. A decision may be unreasonable when a decision-maker “has fundamentally misapprehended or failed to account for the evidence before it”, but reviewing courts must refrain from reweighing and reassessing the evidence considered by administrative decision-makers: *Vavilov*, at paras. 125-126.

[25] Likewise, a decision-maker must meaningfully demonstrate in reasons that he or she has engaged with the submissions of the parties. A failure to do so may undercut the reasonableness of the decision. However, an administrative decision-maker need not include all arguments that the reviewing court would have preferred to see, and a failure to do so is not on its own a basis to set the decision aside: *Vavilov*, at paras. 91 and 127-128.

### **The issues**

#### *Striking the Kendalls from the Application*

[26] Although the applicant argues that Vice-Chair Doyle had made a ruling relating to the respondents’ request to remove the Kendalls from the case, there is no indication in the HRTO’s Record of Proceedings that Vice-Chair Doyle had ever ruled on that request. In my view, as no decision had been taken, the issue was open for consideration by the Vice-Chair in 2024.

[27] The applicant further argues that the HRTO decision to remove the Kendalls was unreasonable because it did not take into account the decision of the Supreme Court of Canada in *Schrenk*, on which the applicant had relied in submissions. In that decision, the Supreme Court held, according to the applicant, that individual respondents such as the Kendalls “should be held accountable and should therefore be named.”

[28] Concerning this issue, the Vice-Chair offered considered reasons for striking the Kendalls from the application. His focus was on SLPI’s vicarious liability for conduct attributed to the Kendalls, and the absence of any prejudice that would flow from their removal from the case. For the Vice-Chair, the fact that SLPI had agreed that it would be vicariously liable for the conduct of the Kendalls, and that SLPI’s liability would continue after its 2019 amalgamation with another company, were determinative of the naming issue (*Swedcan (HRTO)*, at para. 8):

There is no compelling juridical reason to keep the SLPI personal respondents as personal respondents in this Application given that there is no issue as to deemed or vicarious liability.

[29] The Vice-Chair held that no prejudice would be caused by the removal from the case of the personal respondents, and their absence would not prevent a fair, just and expeditious resolution on the merits: *Swedcan (HRTO)*, at para. 10.

[30] In such circumstances, although it was open to the HRTO to require the personal respondents to continue as parties to ensure that they could be held personally accountable, the decision made by the Vice-Chair in this regard was justified in his reasons and within the range of reasonable outcomes. A decision does not become unreasonable merely by reason of failing to refer to all authorities argued by a party.

[31] The ground of review that the HRTO's decision to remove the Kendalls from the application was unreasonable is dismissed.

#### *The Decision dismissing the Application*

[32] The applicant asserts that the HRTO's decision to dismiss his application at a summary hearing was unreasonable in that it ignored significant relevant evidence. The applicant submits that the Vice-Chair's conclusions that the applicant had provided "no evidence" that a *Code* ground was a factor in his termination, and that he had failed to provide "any evidence" linking the respondents and their unfair treatment of the applicant and a *Code* ground were unjustified as unexplained.

[33] In this case, the Vice-Chair was aware that the applicant alleged discriminatory comments, treatment and attitudes contrary to the *Code*. In his ruling, the Vice-Chair found that "there is no evidence that the applicant has or can point to that the applicant's *Code* ground was a factor in the actions of the respondents": *Swedcan (HRTO)*, at para. 25. And again, what was missing, according to the Vice-Chair, was "any evidence of any link between the respondents and the alleged unfair treatment and a *Code*-enumerated ground": *Swedcan (HRTO)*, at para. 24.

[34] In stating these conclusions, the Vice-Chair offered no explanation why the following evidence that the applicant had put forward did not constitute some evidence:

- a. The applicant advised the Financial Controller of SLPI and the Unit Manager about how the work in the warehouse was affecting his knees and shoulder. They directed the applicant to tell "the boss" (Desmond) that the applicant "can't do this job". The applicant kept silent, out of fear of losing his job. Although the respondents speak of the applicant "only complain[ing] of his alleged disability" to these persons, it remains unclear why these persons with executive corporate titles should not be considered capable of addressing the applicant's physical complaints or of fixing SLPI with knowledge of the applicant's physical disability;
- b. The applicant described the SLPI Controller refusing to help him with respect to his disability when the applicant complained of knee pain. The Controller merely told the applicant to go talk to Desmond about his issues, even though the applicant described to the Controller his fear of Desmond. It is unclear, in the face of the applicant's expression of fear to the Controller, why the Controller had no responsibility to advise Desmond of it or take steps to ameliorate the situation;

- c. Desmond yelled at the applicant repeatedly in front of other staff. He stated to the applicant, “if you can’t handle your job, you can take your bag and leave.” He also told the applicant, “You think you are too smart? You can go home! I don’t need you! I can fire you! I can send you home now!” On their face, Desmond’s words appear capable of showing an awareness of and a cold indifference to the applicant’s physical ailments. While the Vice-Chair, at para. 19, dismissed this kind of abuse merely as a “management style” and spoke, at para. 27, of “general allegations of unfairness unrelated to the *Code*”, he nowhere appears to consider that conduct in the context of the applicant’s alleged disability, Desmond’s awareness of it, or whether the *Code* should tolerate an employee being intimidated by management into making no complaint about a disability;
- d. The Vice-Chair dismissed the applicant’s medical leave as not related to the applicant’s physical issues with knees or shoulder, but there was evidence that the applicant felt that Desmond’s conduct caused the applicant to experience fear of attending work, humiliation, shame, intimidation, depression, anxiety, sleeplessness, high blood pressure, loss of self-confidence, hurt feelings, loss of dignity, loss of self-respect, low morale and productivity, lack of concentration, and loss of appetite. This evidence, though not focused on physical pain, could have supported the applicant’s claims that he feared reporting his physical distress to Desmond;
- e. In a “will say” produced to the HRTO by the applicant, the Unit Manager at SLPI, Kumarevelu, described his awareness of the applicant’s three knee surgeries, which the applicant had mentioned to “all of us at” SLPI when the applicant started working there on March 1, 2017. It is unclear how, in the face of this evidence that must be presumed true for a summary hearing, Desmond could deny knowledge of the crippling knee issues about which the applicant complained. Kumarevelu also knew of the applicant’s knee brace, and of the applicant’s knees buckling when working in the warehouse, and of his loss of balance and falls. It is unclear, but worthy of discussion, why Kumarevelu’s knowledge was not sufficient to fix SLPI with knowledge of the applicant’s alleged disability; and
- f. It was just after the applicant had gone on medical leave that he was terminated because of what was described by Desmond as a shortage of work. Even if medical evidence suggested that the applicant’s leave was due to emotional issues, rather than physical, it is unclear why this dismissal did not merit consideration in the Vice-Chair’s decision as possible retaliation and a carrying through of Desmond’s threat to fire the applicant made in the context of his physical disability.

[35] It is not for this court to state what conclusions it might draw from this body of evidence, and this review requires no positive findings on the facts. The Vice-Chair’s dismissive finding of “no evidence” offered no clarification of any of the issues that arise on the evidence. There may well be explanations for the Vice-Chair’s finding that this evidence was completely insufficient, but those explanations are entirely lacking. In the context of this application, the failure to confront and account for so much evidence that is central to the applicant’s case can only be seen as a failure in justification.

[36] The workplace respondents rely on the Vice-Chair’s comment in his decision, at para. 26, that when given the opportunity, the applicant was unable to point out evidence connecting the allegedly discriminatory behaviour and his *Code*-enumerated ground. I cannot agree. A tribunal has an independent duty to address the evidence before it and to answer the obvious questions raised by it before rejecting it as “no evidence” at all.

[37] The dismissal of the application at a summary hearing in my view was unreasonable because no sufficient justification was offered for it. On that basis alone, the matter must be sent back for a new hearing. But what form should that hearing take?

#### *Procedural fairness and change in procedure*

[38] The applicant alleges that the process engaged in by the HRTO denied him procedural fairness because a summary hearing was ordered by the Vice-Chair in 2024 after such a hearing had already been denied by Vice-Chair Doyle in April 2019, and a merits hearing commenced in 2020. No justification was offered by the HRTO for this change in procedure. There is no declaration in evidence that the 2020 merits hearing had been quashed or acknowledgement even that it had begun. Submissions by counsel for the applicant that expressed concern about the change in procedure were never formally acknowledged or addressed by the HRTO

[39] This court has held that applicants do not have a right to a full merits hearing on every HRTO application. Summary hearings permit applications with no hope of success to be weeded out. “Fairness, effectiveness and efficiency for this high-volume tribunal” require an allocation of limited resources to applications that deserve a merits hearing: *Xia*, at para. 22. There is no denial of procedural fairness “by first holding a ... summary hearing rather than proceeding to a full merits hearing” (emphasis added): *Xia*, at para. 23.

[40] *Xia* endorses a summary hearing in appropriate cases before a merits hearing is granted. But what if a summary hearing has already been refused and a merits hearing granted and begun? Respectfully, I cannot agree that the applicant was accorded the procedural fairness to which he was entitled in the circumstances of his application.

[41] Regarding allegations of breaches of procedural fairness, a reviewing court must determine whether the appropriate level of procedural fairness was accorded in the decision-making process by reference to all the circumstances of the case, including the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[42] The *Baker* decision set out a non-exhaustive list of factors to consider in determining what procedural fairness is required in a given set of circumstances. The more tribunal processes and the stakes at issue resemble what goes on in courts, the more procedural protections will be expected. Those factors in *Baker*, at paras. 23-27, include:

- a. The nature of the decision being made and the process followed in making it;
- b. The nature of the statutory scheme at issue and the terms by which it operates, including limits on appeal or review of decisions taken;
- c. The importance of the decision to the individual(s) affected by it;

- d. The legitimate expectations of the person challenging the decision, meaning that “[i]f the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness”: at para. 26; and
- e. Taking into account and respecting the choice of procedure by the tribunal itself, particularly when the statute grants to the tribunal that authority.

[43] In this case, the workplace respondents had followed the process of the HRTO in requesting that the application be summarily dealt with and dismissed. Their request was rejected, and the matter was sent on for a merits hearing by Vice-Chair Doyle. The merits hearing proceeded in 2020 before the same Vice-Chair. At that hearing, the applicant testified for a day before the matter was adjourned. The application was dealt with very differently in 2024.

[44] On its face, the procedures engaged in by the HRTO in 2024 were statutorily sanctioned. Section 40 of the *Code* gives the HRTO a broad discretion to adopt procedures and practices that in its opinion offer the best opportunity for a fair, just and expeditious resolution of the merits of the application. Rule 19.1A of the HRTO’s *Rules of Procedure* provides that the HRTO may hold a summary hearing at the request of a party or on its own initiative to determine whether an application should be dismissed on the basis that there is no reasonable prospect of success. And a “Practice Direction on Summary Hearing Requests” (effective as of May 2013), permits the HRTO to call such a hearing “at any time.”

[45] Section 45.8 of the *Code* severely limits appeals and reviews and seeks to constrain the setting aside by courts of HRTO decisions. But the inherent powers granted by legislative provisions, rules, and directions “must not undermine principles of procedural natural justice or fairness”: *Abrams v. Abrams*, 2010 ONSC 2703, 102 O.R. (3d) 645, leave to appeal to Div. Ct. refused, 2010 ONSC 4714, at para. 34. The *Baker* factors offer a lens through which to view and assess the conduct of the HRTO.

[46] The decision in this case was of extreme importance to the applicant, who felt that he had been lured from his prior employment by the respondent Desmond only to find himself unemployed when he went on a medical leave from Desmond’s company. He had provided materials, geared up for a merits hearing, and had begun his testimony. Frailties in his case or adverse evidence could have been addressed in his own evidence and through the examination and cross-examination of other witnesses. So keenly did the applicant value the right to a merits hearing that he argued strenuously against it being taken away and a summary hearing interposed, but the HRTO refused to change or formally justify its decision.

[47] Most important here were the reasonable expectations of the applicant. Vice-Chair Doyle had denied the respondents’ request for a summary hearing and directed the matter to proceed to a merits hearing. That hearing was begun in 2020, and the applicant provided testimony. The case was then adjourned. In 2024, the Vice-Chair, as was his *statutory* prerogative, ordered a summary hearing. He made no acknowledgment that Vice-Chair Doyle had already refused such a hearing and directed a merits hearing, or that a merits hearing had been scheduled and begun, and the applicant had offered evidence. Counsel for the applicant raised concerns about the turn the case was taking in 2024 and sought to have the HRTO withdraw its decision to hold a summary hearing, highlighting the natural justice issue.

[48] In the circumstances of this application, where the applicant had been granted a merits hearing into an issue of central importance to his working life, and that hearing had commenced, procedural fairness dictated that the merits hearing should have continued to conclusion. The decision made by Vice-Chair Doyle and procedures already undertaken up to 2020 had created legitimate expectations in the applicant that could only be satisfied by that hearing continuing to conclusion. Even if Vice-Chair Doyle were no longer available to conclude the hearing, the applicant still had every reason to expect that he would have the merits hearing that he had been granted before another member of the tribunal.

[49] In oral submissions, counsel for the respondent argued forcefully that such a result would be a waste of time and resources, as the respondents would produce evidence contradicting and subverting the applicant's claims. But that submission, even if accurate, cannot be determinative. Procedural fairness requires that an individual litigant have the right to their day in court when that day has been granted to them, even on a claim that may not succeed, and that a decision granting that right may not simply be ignored and silently overruled by another adjudicator at the same level as the adjudicator who made the original decision.

[50] The case of *Park v. Lee*, 2009 ONCA 651, 98 O.R. (3d) 520 offers a compelling parallel, albeit in a civil case, with respect to the imperative duty to give effect to a party's expectations. The plaintiff (appellant), representing himself in the trial court, was described by the Court of Appeal as "ill-prepared" at trial: *Park*, at para. 2. He nevertheless began to offer evidence, secure in the knowledge that the defendant had undertaken to testify. The trial judge found the plaintiff's evidence "incoherent and incapable of proving the case", and that the plaintiff's case was wasting "valuable resources": *Park*, at para. 3. He dismissed it after only two hours of the plaintiff's evidence-in-chief.

[51] The Court of Appeal held that the trial judge should have let the plaintiff finish his evidence and be cross-examined and should have required the defendant to present its promised case. In ordering a new trial, the Court stated, at para. 6:

Failure to take this course amounted to a denial of the appellant's right to a fair trial. A trial court has the inherent jurisdiction to control its own process, but that jurisdiction does not extend to dismissing cases without hearing the available evidence and submissions. However hopeless the plaintiff's case may have seemed after two hours, the trial judge erred by interrupting the appellant before he had completed his evidence, before he had been given the full opportunity to present his case and before the respondents had honoured their undertaking to call the defendant....

[52] In the circumstances of this application, the HRTO decision to proceed with a summary hearing in 2024 was a breach of natural justice. The applicant is entitled to a merits hearing.

#### *Reasonable apprehension of bias*

[53] Given that this matter must have a new hearing, I do not find it necessary to address at any length the applicant's argument that the Vice-Chair's conduct and decisions give rise to a reasonable apprehension of bias. There is a strong presumption of judicial impartiality and

integrity that extends also to members of administrative tribunals: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] 2. S.C.R. 282, at para. 25; *Chainauskas Estate v. Reed*, 2009 ONCA 572, 251 O.A.C. 209, at paras. 11-12. The threshold to displace that presumption is high: *Hazelton Lanes Inc. v. 1707590 Ontario Limited*, 2014 ONCA 793, 326 O.A.C. 301, at para. 64. A ruling adverse to a party is not, by itself, a basis for such a finding: *Turner v. Northview Apartment Reit*, 2019 ONSC 2204 (Div. Ct.), at paras. 19-20.

[54] I see no basis in the evidence for a reasonable apprehension of bias in the circumstances of this case, and this ground of review is dismissed. Nevertheless, the issue highlights the practical need for a decision-maker to offer reasons that are sufficient to permit a losing party to understand that their arguments have been heard, even if they have not been accepted: see *R. v. Sheppard*, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 24.

### Conclusion

[55] For these reasons, this application is granted, the decision dismissing the application is set aside, and the application is remanded to the HRTO for a merits hearing before a different Vice-Chair.

[56] As agreed by the parties, SLPI shall pay the applicant his costs of this application as the successful party, fixed in the amount of \$15,000. The HRTO sought no costs and will pay none.

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A.D. Kurke J.

I agree

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Sachs J.

I agree

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Lococo J.

**Released:** May 30, 2025

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**Sachs, Lococo and A.D. Kurke JJ.**

2025 ONSC 3022 (CanLII)

**BETWEEN:**

PETER PAUL JOHN

Applicant

– and –

SWEDCAN LUMICAN PLASTICS INC., DESMOND  
KENDALL and XANDRA KENDALL and HUMAN  
RIGHTS TRIBUNAL OF ONTARIO

Respondents

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**REASONS FOR DECISION ON REVIEW**

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A.D. Kurke J.

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