

CITATION: 2469695 Ontario Inc. v. Matharu, 2025 ONSC 5237
DIVISIONAL COURT FILE NO.: 278/24
DATE: 20250917

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: 2469695 Ontario Inc. o/a Ultramar, Applicant

AND:

Gursharn Matharu, Manpreet Matharu, Harjot Matharu, Director of Employment Standards and Ontario Labour Relations Board, Respondents

BEFORE: Backhouse, Nakatsuru, and O’Brien JJ

COUNSEL: *Tahir Majeed*, Counsel for the Applicant

Judith Parker and Evan Schiller, Counsel for the Respondent, Director of Employment Standards

Gursharn Matharu, Harjot Matharu, and Manpreet Matharu, Self-Represented

Aaron Hart, Counsel for Respondent, Ontario Labour Relations Board

HEARD: September 11, 2025 by videoconference in Toronto

ENDORSEMENT

[1] The applicant numbered company operates as a gas station and convenience store called Ultramar. The three individual respondents allege they were employees of Ultramar and that they were not paid for a substantial period. They filed claims with the Ministry of Labour for unpaid wages. An employment standards officer (ESO) found that unpaid wages were owed to each of them. Ultramar sought review of the ESO orders by the Ontario Labour Relations Board.

[2] The Board declined to rescind the ESO’s orders. While the Board Vice-Chair had concerns about the evidence of the parties on both sides, he ultimately concluded the applicant had not discharged its onus of proving the orders were incorrect. The backdrop to this dispute is that two directors of Ultramar, Vishav Bhandari and Ramesh Matharu, are involved in civil litigation over the proceeds of the sale of the business. Vishav¹ initiated the sale arising from his allegations of

¹ First names are used because many parties and witnesses have the same last name.

financial misconduct against Ramesh and the individual respondents, who are Ramesh's family members.

[3] In reaching his decision to dismiss the review, the Vice-Chair noted that the applicant took an "all or nothing" approach. Its position before the Board was that individual respondents were never employed by Ultramar and therefore were owed no wages whatsoever. According to the applicant, the business was staffed by international students who were paid entirely in cash. The Vice-Chair relied on T4 slips and records of employment for the individual respondents to conclude it was more probable than not they were employees of Ultramar. The Board Vice-Chair also emphasized that Ultramar did not put forward an alternative position to the claim that the individual respondents did not work there, for example by suggesting the quantum of the ESO's orders were too high because the respondents had not worked all the hours they claimed. Therefore, the application was dismissed in its entirety.

[4] Ultramar seeks judicial review of the Board's decision. It submits: (1) Ramesh, who was a witness, was improperly permitted to stay during the hearing and was involved in coaching the other witnesses; (2) the Board erred in its factual finding that the individual respondents were employees of Ultramar; and (3) the Board erred in failing to consider whether the wages the ESO ordered were correct or should be reduced.

[5] The application is dismissed for the following reasons.

[6] The standard of review for the Board's decision is reasonableness: *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v Bricklayers Masons Independent Union of Canada, Local 1*, 2022 ONCA 2022 at para 53. On matters of procedural fairness, the court must determine whether the Board afforded the required level of procedural fairness in light of all the circumstances, applying the criteria set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[7] There was no error with respect to Ramesh's participation. First, the respondents deny Ramesh was present during the evidence of the other witnesses. The Vice Chair did not indicate in his decision that Ramesh was present and Ultramar has provided no evidence to this effect. In any event, the Vice Chair accepted there was coaching of the witnesses. At para. 81 of his Reasons for Decision dated April 11, 2024, he stated, for example, that "[t]here were audible attempts [by the Matharus] from time to time to coach one another while they were giving their evidence, notwithstanding my warnings to desist." However, the Vice-Chair also found the applicant acted in a similar way. He stated both sides "engaged in shenanigans to gain the upper hand." The applicant's legal representatives and witnesses shared the same computer screen and were in close proximity to each other. The Vice-Chair stated: "At times during the examination of the Applicant's witnesses the Applicant's legal representative would mute the computer's microphone between questions, which prompted me to rebuke him on several occasions."

[8] Because both parties had engaged in "shenanigans," the Vice-Chair relied primarily on documents, such as the T4s and records of employment, and not witness testimony, to reach his

decision. There was no unfairness and no basis to interfere in the question of whether Ramesh was present during the testimony of the other witnesses.

[9] We also do not find a basis to interfere in the Board's factual findings. The applicant has pointed to various pieces of the evidence it submits supports the position that the individual respondents were not employees. It raises questions, for example, about the attendance sheets showing hours worked the day before Ultramar says it took over the business. Ultramar also questions how the individual respondents could have worked for so long without pay and still manage their own household expenses.

[10] There are at least two problems with the argument attacking the Board's factual findings: First, the Vice-Chair recognized there were frailties in the respondents' evidence. For example, he declined to give substantial weight to the employee attendance sheets because of concerns about their veracity. However, he also raised concerns about the evidence of the applicant, stating, for example, that there were inconsistencies in the applicant's witnesses' testimony and almost no evidence of the existence of the alleged international students employed by Ultramar.

[11] Second, because of the problems with the evidence on both sides, the Vice-Chair reached his decision on narrow grounds that rejected much of the evidence. He accepted some of the respondents' documents, such as the T4s and records of employment, provided evidence of the individual respondents' employment at Ultramar. He also ultimately concluded that it was not the respondents' onus to prove they were employees but the applicant's onus to prove they were not. It failed to meet that onus.

[12] It is the role of the Board and not this court to assess credibility and weigh competing evidence. Unless there are exceptional circumstances, a reviewing court should not interfere in an administrative decision-maker's factual findings: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 126. There are no exceptional circumstances to justify the court's intervention in this case.

[13] Finally, we find no error in the Board's failure to address an alternative argument not put to it. The applicant now says that despite its "all or nothing" position, the Board should have, in the alternative, reduced the amount of the orders to pay. But the applicant did not advance this alternative argument before the Board. It did not suggest the Board should engage in the exercise of reducing the ESO's calculations, nor provide any calculation of what the applicant says would have been the correct quantum of unpaid wages. We also note that the amounts ordered by the EOS were not obviously inaccurate. The orders to pay award unpaid wages to Gursharn Matharu for up to 46.5 hours per week, with some weeks totaling less than 35 hours. For Manpreet Matharu, the award was for 23 hours per week or less.

[14] The Board was not required to address an argument that was never put before it: *Liquor Control Board of Ontario v. Ontario (Information and Privacy Commissioner)*, 2024 ONCA 803, at para. 21. Its failure to do so was reasonable.

[15] The application therefore is dismissed. As agreed by the parties, no costs are ordered.

Backhouse J.

Nakatsuru J.

O'Brien J.

Released: September 17, 2025