CITATION: Royal LePage RCR Realty Brokerage v. Human Rights Tribunal of Ontario, 2025 ONSC 6276
DIVISIONAL COURT FILE NO.: DC-25-00000165-00JR
DATE: 20251128

SUPERIOR COURT OF JUSTICE – ONTARIO – DIVISIONAL COURT

RE: ROYAL LEPAGE RCR REALTY BROKERAGE, Applicant

AND:

HUMAN RIGHTS TRIBUNAL OF ONTARIO and ELECHIA BARRY-SPROULE, Respondents

BEFORE: ACJ McWatt, Sachs, and McKelvey JJ.

COUNSEL: *Daniel Iny and Melanie Anderson*, Counsel for the Applicant, Royal LePage RCR Realty Brokerage

Maija-lisa Robinson, Counsel for the Respondent, Human Rights Tribunal of Ontario

Rachel Davis, Counsel for the Respondent, Elechia Barry-Sproule

HEARD at Toronto: October 21, 2025 - Virtually

ENDORSEMENT

MCKELVEY J.:

[1] This is an application brought by Royal LePage RCR Realty Brokerage ("Royal LePage") to quash a decision of the Human Rights Tribunal which dismissed a request for reconsideration of the decision of the Human Rights Tribunal. It raises the issue as to when the sins of a lawyer should be visited upon a client.

[2] In June 2018 Ms. Barry-Sproule brought an application to the Human Rights Tribunal of Ontario (the "Tribunal"). She alleged that she had been discriminated against in her employment contrary to the Human Rights Code.

[3] On August 17, 2018, Royal LePage filed its response to Ms. Barry-Sproule's application. This response was prepared by a lawyer, Heather Weir, at Ormston List Frawley LLP. On September 12, 2018, Ms. Barry-Sproule filed a response to Royal LePage's defence.

[4] In December, 2018, Ms. Weir left Ormston List Frawley LLP. She advised Royal LePage that her associate, Lindsay Moffatt, would take carriage of the matter with the assistance of her partner John Ormston, as needed. She further advised that she would submit a notice of change of lawyer to the Tribunal.

[5] Counsel for Ms. Barry-Sproule was advised that Ms. Moffatt was taking over carriage of the matter. However, no one filed a notice of change of lawyer with the Tribunal and as a result, Ms. Weir was left as the lawyer of record.

[6] On April 18, 2019, the Tribunal held a mediation with Ms. Moffatt attending on behalf of Royal LePage.

[7] In June, 2021, Ms. Moffatt left the law firm of Ormston List Frawley LLP. Neither counsel for Ms. Barry-Sproule, nor the Tribunal were advised of this. Ms. Weir remained as the solicitor of record.

[8] On September 26, 2022, Royal LePage did receive an email from the Tribunal with the subject line "Opportunity for mediation and status check – response required", but a few hours later Royal LePage received a further email stating that the earlier email had been sent in error and instructing them to disregard it.

[9] On September 27, 2022, the Tribunal again sent an email with the letter entitled "Opportunity for mediation and status check letter", in which the Tribunal offered to conduct mediation and directed the parties to respond in writing, within 30 days, even if they did not wish to participate in the mediation. This letter was directed to Ms. Weir's email address. The letter was not delivered to Royal LePage.

[10] On November 10, 2022, the Tribunal sent a failure to respond to the mediation offer letter again requesting a response within 30 days and advising, "if a respondent does not respond to this letter by the deadline noted above, the HRTO may proceed without further notice to a respondent and may take any or all of the steps set out in rule 5.5" of the Tribunal's Rules of Procedure. This letter was again sent to Ms. Weir, but not to Royal LePage.

[11] On September 22, 2023, given Royal LePage's failure to respond, the Tribunal issued a decision pursuant to which the Tribunal determined it would:

i. proceed without participation;

ii. deem Royal LePage to have waived their rights to notice and to participate pursuant to Rules 5.5(b) and (c);

iii. deem Royal LePage to have accepted all of the allegations set out in the application pursuant to Rule 5.5(a); and

iv. schedule a default hearing.

[12] Royal LePage was not sent a copy of this decision.

[13] On April 23, 2024, the Tribunal held a default hearing without notice to and without the participation of Royal LePage.

[14] The Tribunal released its decision on October 21, 2024, awarding Ms. Barry-Sproule $30,000 as monetary compensation for injury to her dignity, feelings and self-respect and $34,906.25 less statutory deductions in wages, plus pre-judgment and post-judgement interest (the "Default Decision").

[15] Royal LePage became aware of the Default Decision when it received a notice from Ms. Barry-Sproule's lawyer demanding payment. This letter was dated October 31, 2024.

[16] On November 7, 2024, Royal LePage filed a request for reconsideration of the Default Decision on the basis that it had no knowledge of its lawyers' conduct that led to them losing their rights to receive notice of or participate in a hearing of the matter.

[17] On February 4, 2025, the Tribunal issued a decision refusing Royal LePage's request for reconsideration. The Tribunal made reference to Rule 1.22(d) of the Tribunal's Rules which provide that a respondent's counsel is deemed to have received the Tribunal's communications. The Tribunal stated that because Rule 1.22(d) is a deeming provision, it creates a legal fiction by declaring something to have happened regardless of the truth of the matter. It notes that "when "deems" is used to create a legal fiction, the fiction cannot be contradicted." In their decision the Tribunal stated,

> Since Rule 1.22(d) is a deeming rule, the respondent cannot contradict that their authorized legal counsel received the Tribunal's correspondence. As a result of this deemed result, the respondent does not meet the criteria in Rule 26.5(b) of the Tribunal's Rules.
>
> I understand that the respondent may take the position that they, the respondent themselves, did not receive the Tribunal's notices of correspondence and, for that reason, the Tribunal should grant their request.
>
> However, this argument fails. Rule 1.21.1 of the Tribunal's Rules provides that when a party has a representative, documents must be delivered to the representative.
>
> On August 17, 2018, the respondent's counsel submitted a letter to the Tribunal confirming that they act for the respondent with respect to this matter. Also, they completed the section of the response (Form 2) for indicating the respondent's counsel's contact information.

[18] The Tribunal held that the Respondent did not meet the high threshold of a "no fault of their own" qualifier which was necessary for the reconsideration because the Respondent checked the box in the application asking the Tribunal to send communications to their counsel. In its reconsideration decision the Tribunal stated,

> In the Tribunal's view, the respondent bears some responsibility for the instruction to communicate with their counsel. The respondent should

> have carefully reviewed the Application and the Respondent's Guide and been aware that communications would be sent to their counsel.
>
> If the counsel changed, which was not claimed, the respondent would have been responsible for providing the Tribunal with updated contact information. For these reasons, it cannot be said that the respondent has no fault or no responsibility.

[19] As a result of the failure of the lawyer of record to respond to the correspondence from the Tribunal, the request for reconsideration was refused on February 4, 2025 ("Reconsideration Decision"). Royal LePage seeks to judicially review the Reconsideration Decision and to set aside the Default Decision. For the following reasons I have concluded that the application should be granted.

Analysis

[20] The standard of review in this case is one of reasonableness (see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII)). A reasonableness standard applies in the human rights context, despite s. 45.8 of the Human Rights Code, c H.19, which provides that HRTO decisions stand unless they are patently unreasonable (see *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458 (CanLII), at para. 47.) It is apparent, however, that deference is generally owed on a high level to decisions of the Human Rights Tribunal.

[21] In the Divisional Court decision of *Ramirez v. Rockwell Automation Canada Ltd.*, 2025 ONSC 1408 (CanLII), the Court considered a decision of the Human Rights Tribunal where an applicant's claim was dismissed after the applicant did not respond to an inquiry from the Tribunal about the status of certain WSIB proceedings. The applicant sought reconsideration of the dismissal order, claiming that he had not received the Tribunal's email of inquiry. The Tribunal was satisfied that the email of inquiry was sent to and delivered to the applicant's email address and therefore refused to set aside the dismissal order by decision dated April 15, 2024.

[22] On review, Justice Corbett of Divisional Court explained that the question for the Tribunal was not whether the email of inquiry was delivered to the applicant's address. That point was but one fact going to the question of whether the applicant had abandoned the proceeding. That fact had to be placed within the context of other pertinent facts which included:

> 1. The Applicant had not failed to meet his obligations as a party before the Tribunal previously. There was no history of delay or non-responsiveness by any party and holding the proceeding in abeyance had been approved by the Tribunal.
>
> 2. The Applicant had a record of diligent response to Tribunal communications in respect to another proceeding before the Tribunal.

3. The Tribunal had no information as to whether or when the WSIB proceedings had been resolved. Both parties agree that those WSIB proceedings are still ongoing as of today.

4. The reconsideration decision did not encompass a contextual analysis of whether the Applicant had abandoned the proceeding but rather focused on whether the Applicant had "received" the e-mail.

[23] The Divisional Court concluded that failing to respond to one email, in all of the circumstances, could not justify an inference that the applicant had abandoned the proceeding. The inference that he had done so was unreasonable and was not allowed to stand.

[24] Similarly in this case the Human Rights Tribunal did not take a contextual approach in its reconsideration of its initial decision. It relied solely on the Rules with respect to a deeming provision and the failure of Royal LePage's counsel of record to respond to two emails.

[25] In my view, the Tribunal in the Reconsideration Decision should have considered the contextual factors which included the following:

1. Royal LePage had delivered a response to Ms. Barry-Sproule's application and a reply to that response had been given by Ms. Barry-Sproule;

2. Royal LePage had participated previously in a mediation on the file;

3. There was a significant delay between the time of the mediation and the status request sent by the Tribunal. This raised at least the possibility of a change of counsel; and

4. There was no evidence before them that Royal LePage had any knowledge of its lawyers' failures to respond.

[26] In *Graham v. Vandersloot*, 2012 ONCA 60 (CanLII), the Court of Appeal dealt with the decision by a motion judge to deny an adjournment of trial in a personal injury action because she did not have up-to-date medical reports.

[27] In its decision, Justice Blair of the Court of Appeal, made reference to the principle that "the sins of the lawyer should not be visited upon the client", which he found applicable. He noted that the principle was initiated by the Court of Appeal in *Halton Community Credit Union Ltd. v. ICL Computers Canada Ltd.*, [1985] O.J. No. 101, where the Court had stated,

> Undoubtedly counsel is the agent of the client for many purposes . . . but it is a principle of very long standing that the client is not to be placed irrevocably in jeopardy by reason of the neglect or inattention of his solicitor, if relief to the client can be given on terms that protect his innocent adversary as to costs thrown away and as to the security of the

> legal position he has gained. There may be cases where the plaintiff has so changed his position that this is impossible.

[28] In the *Ramirez* decision, Justice Corbett found that it was clear the Tribunal had inferred abandonment of the claim from the failure to respond to one email. Justice Corbett concluded that the failure to respond to one email, in all of the circumstances of the case, could not possibly justify an inference that the applicant had abandoned the proceeding. That inference was unreasonable and was not allowed to stand. Justice Corbett found no reason to remit the reconsideration of the dismissal decision or the dismissal decision itself to the Tribunal. The dismissal was obviously unfair in all the circumstances. The application was therefore granted. Similarly in this case, I have concluded that the Reconsideration Decision cannot be allowed to stand. The failure of Royal LePage to respond to two emails could not, contextually, support a conclusion that Royal LePage had abandoned its intention to respond to the complaint. In this case, given that Royal LePage had given a clear intention to defend the case, and that the sole responsibility for the error which occurred lay with its counsel, the Reconsideration Decision was unreasonable and cannot be allowed to stand.

[29] In the Reconsideration Decision the Tribunal found that Royal LePage was "at fault" because of a rule that deems that clients who have a lawyer and direct that correspondence be sent to their lawyer are "deemed" to have notice of that correspondence. While the Tribunal is owed considerable deference when it comes to controlling its own process, to rely on this deeming rule to preclude a party from having any rights to participate if their lawyers are negligent, is unreasonable, in the absence of demonstrated non-compensable prejudice to the innocent party.

[30] Ms. Barry-Sproule argues that she has been subjected to further delay and has been prejudiced by the fact that she has exposed her trial strategy in the *ex parte* tribunal hearing which was held to determine her right to claim damages against Royal LePage. Parties are entitled to full disclosure of the other side's case. The fact that Royal LePage now has the particulars of Ms. Barry-Sproule's case is not the kind of prejudice that would prevent Royal LePage from having the right to have a hearing. There were serious consequences to Royal LePage. These consequences go beyond the damage award which was issued and reflect negatively on the reputation of Royal LePage. The level of prejudice suffered by Royal LePage rises to a level where it should take precedence over the right of Ms. Barry-Sproule to rely on the Default Decision. The order of the Tribunal is clearly unfair in all the circumstances. I therefore grant the application. The Tribunal's Default Decision and Reconsideration Decision are quashed and arrangements should be made for a new hearing to be scheduled before the Tribunal on Ms. Barry-Sproule's application for relief under the Human Rights Code.

[31] I would remind counsel that they undertook to make further submissions regarding the costs of this application and the costs of the initial hearing before the Human Rights Tribunal by November 4, 2025. We do not appear to have received these submissions. These submissions should be delivered by December 12, 2025. Otherwise we will assume that the issue of costs is not an issue which needs to be addressed.

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McKelvey J.

I agree

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ACJ McWatt J.

I agree

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Sachs J.

Released: November 28, 2025