

**CITATION:** Thorne v. Good Health Walk-In Clinic, 2026 ONSC 453  
**DIVISIONAL COURT FILE NO.:** 191/25  
**DATE:** 2026/01/28

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**Sachs, Backhouse and Matheson JJ.**

**BETWEEN:** )  
 )  
Jordan Renae Thorne ) *Demar Kemar Hewitt and Amar-Kareem*  
 ) *Guimba*, for the Applicant  
Applicant )  
 )  
– and – )  
 )  
Good Health Walk-In Clinic and Human ) *Azin Samani and Jared Greenspan*, for the  
Rights Tribunal of Ontario ) Respondent Good Health Walk-In Clinic  
 )  
Respondents ) *Maija-lisa Robinson*, for the Human Rights  
 ) Tribunal of Ontario  
 )  
 )  
 )  
 )  
 ) **HEARD in Toronto:** January 13, 2026

**H. SACHS J.**

**Sealing Order and Publication Ban Request**

[1] The applicant has requested a sealing order and publication ban regarding their medical records and identity and has complied with the court’s practice direction before making this request. There is no objection.

[2] We agree that the medical records should be sealed, as they meet the test in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, at para. 38. That part of the court record shall form a sealed record. The remaining portion of the court documents shall remain in the public record. The anonymity order is not granted. The applicant did not seek that order at the HRTO. The HRTO decision that we are reviewing, including the applicant’s name and a discussion about the nature of the issues, has long been public through the publication of the HRTO decision on CanLII.

## Overview

[3] This is an application for judicial review of a decision of the Human Rights Tribunal of Ontario (the “Tribunal”) dated October 18, 2024 (the “Decision”) in which the Tribunal dismissed Mr. Thorne’s claim that he was discriminated against by Good Health Walk-in-Clinic (the “Clinic”). Mr. Thorne applied to have the Decision reconsidered. The Tribunal denied his request for reconsideration on February 10, 2025 (the “Reconsideration Decision”). The Tribunal found that *prima facie* discrimination had not been established.

[4] Mr. Thorne is a Black trans-male. Mr. Thorne’s application made several allegations. First, he alleged that the receptionist at the Clinic and the doctor whom he saw at the Clinic misgendered him after they were aware of his preferred name and pronouns. Second, he alleges that the doctor at the Clinic discriminated against him on the basis of his gender identity and gender expression when the doctor refused to examine his chest scars from his recent gender affirming double mastectomy surgery. Third, he alleged that the Clinic discriminated against him on the basis of his race and colour by treating him as a drug seeking Black person.

[5] The Clinic denied the allegations. With respect to the misgendering allegations, the receptionist at the Clinic admitted to misgendering Mr. Thorne, but only because she relied on the records from OHIP for his gender. With respect to the allegation that Mr. Thorne was denied treatment because of his gender identity, the Clinic doctor denied that Mr. Thorne ever sought to have his chest examined; the only treatment he sought was to have the Clinic give him a prescription for narcotics. This treatment was denied because the Clinic has a clear policy not to give narcotic prescriptions to walk in patients attending the Clinic for the first time.

[6] The Tribunal made findings of credibility and believed the Clinic witnesses when it came to the question of what treatment Mr. Thorne sought from the Clinic and the reason why he was denied this treatment. In other words, it accepted that Mr. Thorne never asked to have his chest scars examined; he only sought a prescription for narcotics. It also found that neither race nor colour played any role in the Clinic’s refusal to give Mr. Thorne a prescription. The service was denied because of the Clinic’s policy on this issue. With respect to the allegation of misgendering, it found that “[t]o the extent there was misuse of names and/or pronouns after [Mr. Thorne] advised of his preferences, the respondent submitted that this was inadvertent, and not intentional. The respondent apologized for this oversight.”

[7] Mr. Thorne alleges that the Tribunal’s decisions are unreasonable for two reasons. First, they failed to adequately deal with his allegations of misgendering. Second, they unreasonably failed to consider his allegation of discrimination on the basis of race and colour.

[8] For the reasons that follow, I agree that the Tribunal’s reasons contain a gap in their consideration of the misgendering allegations. To the extent that the decisions attempt to fill that gap, they do so in a way that is contrary to the jurisprudence on the role that intent plays in establishing *prima facie* discrimination. I do not agree that the Tribunal failed to deal with the allegation of discrimination on the basis of race and colour. It correctly found that there were no material facts to support that allegation. In this regard, it is important to note that Mr. Thorne expressly stated that he was not seeking to set aside the Tribunal’s findings of credibility.

## The Misgendering and Gender Expression Issue

### *Relevant Factual Background*

[9] Mr. Thorne had his gender reassignment surgery in November of 2017. He visited the Clinic on December 6, 2017 seeking help for the pain and anxiety he was experiencing as a result of that surgery.

[10] After his arrival at the Clinic, an intake form had to be completed. According to Mr. Thorne, the receptionist asked him to fill out the form and, in doing so, he provided his name as “Portia (Jordan) Thorne” and his gender as male. He was subsequently called in to be examined by the doctor. According to Mr. Thorne, both the doctor and the receptionist repeatedly misgendered him in spite of his explicit and repeated requests to use his correct pronoun and name.

[11] The Tribunal’s Decision contains the following summary of the Clinic witnesses’ testimony, which it accepted. The receptionist filled out the intake form, not Mr. Thorne. Further, as summarized by the Tribunal in its Decision at para. 40, the receptionist testified as follows:

d. When [the receptionist] referred [to] [Mr. Thorne] as “she” when talking to another person, the applicant got upset and said that he is “he” not “she”. **She told him that his OHIP information says that he is a “she”.** She also used “she” on the form because she did not know what the applicant’s gender was. It was not intentional. If she had known his gender, she would have called him what he wanted to be called.

e. [Mr. Thorne] over-reacted to her error in the pronoun. **[The receptionist] told him that she will call the police because he threw files on the floor and swear at her. She got scared.** (emphasis in original).

[12] At para. 39 of the Decision the Tribunal noted that Mr. Thorne did not remember the sentences in which the receptionist used incorrect pronouns. He stated that “[s]he could have used the pronoun in talking to someone else and referring [to] me.”

[13] With respect to the doctor, the only aspect of his testimony that was noted by the Tribunal in its Decision with respect to misgendering is that “[w]hen the patient told me his preferred name, I wrote it down on the form. There was no discussion about preferred use of pronoun”: at para. 41.

[14] The Decision contains the following findings about the misgendering issue.

[48] I find Dr. Stein’s and Ms. Arsenault testimonies both credible and reliable. There is no reason to question the reliability of Dr. Stein’s chart notes either. These notes confirm Dr. Stein’s version of the interaction with the applicant. Dr. Stein’s and Ms. Arsenault’s testimonies compliment each other in terms of accuracy of events and interaction with the applicant.

[49] With respect to the use of preferred name and pronouns, the testimony of Ms. Arsenault and Dr. Stein, combined with the contemporaneous record, makes clear that these providers were not in a reasonable position to know the applicant's preferred name and pronouns at the outset.

[50] To the extent that there was misuse of names and/or pronouns after the applicant advised of his preferences, the respondent submitted that this was inadvertent and not intentional. The respondent apologized for this oversight.

[15] After her interaction with Mr. Thorne, the receptionist, Ms. Arsenault, wrote an incident report, which was also part of the record before the Tribunal. It is dated December 6, 2017, and reads as follows:

Thorne Portia

After patient came to the front I was writing name and number of T.W.H. and St. Joes family practice for her. She asked Jayne a question. I told Jayne that Dr. Stein had already explained things to her, she then got upset with me and said its "he not she". I said that at the ministry of health it says Female, she then got pissed off and threw the files that were on top of the desk at me and called me a fuckin bitch, so I called her a bitch back and told her I was calling the cops.

[16] In Dr. Stein's notes of his encounter with Mr. Thorne, Dr. Stein used the pronouns "she" and "her" when referencing Mr. Thorne.

### ***The Relevant Jurisprudence***

[17] Tribunal jurisprudence has accepted that a failure to use a person's preferred pronouns or preferred name (as opposed to the person's name prior to transitioning) in the face of express requests, if that misuse is related to a person's trans status, constitutes mis-gendering and adverse treatment: *EN v. Gallagher's Bar and Lounge*, 2021 HRTO 240, at para. 31; *S.R. v. DLPH Hambleton Group Inc. (aka Burger King Franchise 3566)*, 2024 HRTO 1491.

[18] In *Dawson v. Vancouver Police Board (No.2)*, 2015 BCHRT 54, 80 C.H.R.R. 386, at paras. 216, 218, 223, the British Columbia Human Rights Tribunal found that a police officer's reference to a trans female as male in a report of an occurrence amounted to discrimination.

[19] In *Nelson v. Goodberry Restaurant Group Ltd. Db a Buono Osteria and others*, 2021 BCHRT 137, the British Columbia Human Rights Tribunal articulated the obligation as follows:

[80] All employees have the right to a workplace free of discrimination. Trans employees are entitled to recognition of, and respect for their gender identity and expression. This begins with using their names and pronouns correctly. This is not an “accommodation”, it is a basic obligation that every person holds towards people in their employment: *BC Human Rights Tribunal v. Schrenk*, 2017 SCC 62.

...

[82] Like a name, pronouns are a fundamental part of a person’s identity. They are a primary way that people identify each other. Using correct pronouns communicates that we see and respect a person for who they are. Especially for trans, non-binary, or other non-cisgender people, using the correct pronouns validates and affirms they are a person equally deserving of respect and dignity. As Jessie Nelson explained in this hearing, their pronouns are “fundamental to me feeling like I exist.” When people use the right pronouns, they can feel safe and enjoy the moment. When people do not use the right pronouns, that safety is undermined and they are forced to repeat to the world: I exist.

[83] I appreciate, as the respondents point out, that for many people the concept of gender-neutral pronouns is a new one. They are working to undo the “habits of a lifetime” and, despite best intentions, will make mistakes. Unfortunately, this learning is done at the expense of trans and non-binary people, who continue to endure the harm of being misgendered.

[84] Human rights law is concerned not with intentions, but with impacts: *Code*, s. 2; *Schrenk* at para. 88 (per Abella J. concurring). This does not mean, however, that intention is irrelevant. A person’s intention can go a long way towards mitigating or exacerbating the harm caused by misgendering. Where a person is genuinely trying their best, and acknowledges and corrects their mistakes, the harm will be reduced.

[20] A number of Supreme Court of Canada cases have made it clear that discriminatory intent is not required to establish a case of *prima facie* discrimination: *Stewart v. Elk Valley Coal*, 2017 SCC 30, [2017] 1 S.C.R. 591, at para. 24; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39, [2015] 2 S.C.R. 789, at para. 40; *British Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 S.C.R. 795, at para. 88.

## *Analysis*

[21] In *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 561 the Court of Appeal confirmed that the standard of review that is to be applied to the Tribunal’s decisions is reasonableness. It also confirmed that “the application of the reasonableness standard is now informed by the guidance provided in *Vavilov*”: at para. 83.

[22] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, the Supreme Court of Canada makes it clear that reasonableness review requires a court to pay attention not only to the outcomes of a decision, but also to the decision maker’s reasons for those decisions. The task is not to rate those reasons to see if they comply with some standard of perfection or to go through them with a fine-tooth comb in a search for errors, but to see if those reasons are “internally coherent” and contain “a rational chain of analysis that is justified in relation to the facts and the law that constrain the decision maker.”: *Vavilov*, at para. 83. Further:

[96] Where, even if the reasons given by the administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision.

[23] In this case the Tribunal’s reasons contain a gap when it comes to the issue of misgendering such that it is not possible for me to discern the chain of analysis that led to the finding that a *prima facie* case of discrimination had not been made out.

[24] First, it is not clear to me what factual finding the Tribunal made on whether either the receptionist or the doctor misgendered Mr. Thorne after they were advised as to his preferred pronouns and name. While the Clinic urged us to accept that the Clinic found that no such misgendering occurred, this is difficult to do given the Tribunal’s finding at para. 50. Since this paragraph is central to my concern with the Tribunal’s reasons I will reproduce it again for ease of reference. It reads:

[50] To the extent that there was misuse of names and/or pronouns after the applicant advised of his preferences, the respondent submitted that this was inadvertent and not intentional. The respondent apologized for this oversight.

[25] This paragraph appears after a finding that the Clinic was not in a position to know of Mr. Thorne’s preferred name and pronouns “at the outset”. Paragraph 50 is the only paragraph that addresses the Clinic’s conduct after they knew of his preferred name and pronouns and it leaves open the possibility that Mr. Thorne was misgendered after he made his preferences clear. As seen in the jurisprudence, this is an essential question of fact in determining whether any misgendering amounted to *prima facie* discrimination. However, the Tribunal does not make any further findings on this question because of its finding that the misgendering was inadvertent and not intentional.

The problem with this is the clear jurisprudence from the Supreme Court of Canada that it is not necessary to prove intention to establish *prima facie* discrimination.

[26] The issue the Tribunal was required to address, that it did not address, was not whether the receptionist or the doctor intended to discriminate against Mr. Thorne when they misgendered him, but whether the misgendering was related to his trans status, what impact their behaviour had on him and whether that impact was adverse. The Tribunal's decision contains no analysis on this issue. This is a fundamental gap.

[27] For these reasons, the decisions of the Tribunal on the misgendering issue must be set aside and the matter referred back to a different member of the Tribunal for a new hearing on the issue in accordance with these reasons.

### **The Allegation of Discrimination on the Basis of Race**

[28] The Reconsideration Decision addresses Mr. Thorne's submission that its Decision did not adequately address the issues of race and colour. First, the Tribunal noted that Mr. Thorne had not checked the box for race and colour in his application to the Tribunal. Second, it noted that Mr. Thorne did not plead any material facts "that link or could reasonably be inferred to link the respondent's alleged actions to the applicant's race or colour." It also found that Mr. Thorne's witness statement filed before the hearing, his documentary evidence filed at the hearing and his oral testimony at the hearing made no mention of race or colour when describing his experience at the Clinic. The first time it was mentioned was in his written submissions filed after the hearing.

[29] Before us Mr. Thorne made it clear that he was alleging discrimination on the basis of race and colour because, according to him, the Clinic treated him as a Black drug-seeking male.

[30] The implication of this assertion is that either Mr. Thorne was denied a narcotics prescription because he was Black or that the Clinic refused to examine his chest scars because they simply saw him as a Black man seeking to find some drugs. The Tribunal made credibility findings that make it impossible for either of these allegations to be sustained. First it found that the Clinic refused to give Mr. Thorne a prescription for drugs because of a clear policy that it had regarding this issue, a policy that had nothing to do with race. Second, it found that Mr. Thorne never asked the doctor to examine his chest scars. Mr. Thorne is not seeking to set aside these findings. Given this, I find that there are no material facts that would support a finding of discrimination on the basis of race or colour.

**Conclusion**

[31] The application is allowed only with respect to the misgendering and gender expression issue, the decisions of the Tribunal with respect to this issue are set aside and a new hearing on the issue of misgendering and gender expression is ordered before a different adjudicator to be conducted in accordance with these reasons. Pursuant to the agreement of the parties there will be no order as to costs.

	_____	Sachs, J.
I agree	_____	Backhouse, J.
I agree	_____	Matheson, J.

**Released:** January 28, 2026

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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**Sachs, Backhouse and Matheson JJ.**

**BETWEEN:**

Jordan Renae Thorne

Applicant

– and –

Good Health Walk-In Clinic and Human Rights  
Tribunal of Ontario

Respondents

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**REASONS FOR JUDGMENT**

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**SACHS, J.**

**Released:** January 28, 2026