CITATION: Bhanji v. Enercare Home and Commercial Services Inc., 2026 ONSC 202
DIVISIONAL COURT FILE NO.: 259/25
DATE: 20260211

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Sachs, Backhouse and O'Brien JJ.

BETWEEN:	
Alkarim Bhanji Applicant	Nadia Halum Arauz, for the Applicant
– and –	
Enercare Home and Commercial Services Inc., Unifor Local 975 and Human Rights Tribunal of Ontario Respondents	Richard J Charney and Josh Hoffman, for the Respondent, Enercare Home and Commercial Services Inc. Michael A. Church, for the Respondent, Unifor, Local 975 Sabrina Fiacco, for the Respondent, Human Rights Tribunal of Ontario
	HEARD at Toronto: January 6, 2006

SACHS J.

Overview

[1] This is an application for judicial review of a decision and reconsideration decision of the Human Rights Tribunal of Ontario (the "Tribunal") where the Tribunal dismissed Mr. Bhanji's request to reactivate his human rights application after it had been deferred pending the conclusion of two grievance arbitrations relating to the termination of his employment with Enercare Home and Commercial Services Inc. ("Enercare"). The grievances were withdrawn in 2018, and Mr. Bhanji filed his request for reactivation over four years later. The Tribunal rejected this request, finding that the application for reactivation was untimely, and declined to extend the time based on the length of the delay, the causes of the delay and the prejudice to Enercare that would result.

[2] Mr. Bhanji argues that the decision is unreasonable, because, among other things, the Tribunal fettered its discretion by failing to consider a number of other relevant factors. He also submitted that the Tribunal insisted on a technical compliance with the rules, when strict compliance is not required.

[3] For the reasons that follow, the application is dismissed.

Factual Background

[4] Mr. Bhanji was an employee of Enercare from October of 2008 until he was terminated in December, 2016. Enercare claims he was terminated for cause.

[5] In response to Mr. Bhanji's termination his union, Unifor, filed two grievances on his behalf. Mr. Bhanji also filed an application with the Tribunal, alleging discrimination.

[6] Enercare filed a request that the Tribunal proceeding be deferred until the grievance arbitrations were concluded. This request was granted on August 7, 2018. The deferral order was made despite the fact that the grievances had been withdrawn on May 18, 2018 due to Mr. Bhanji's failure to communicate with his union and his failure to participate in the grievance process.

[7] Mr. Bhanji was not present when the grievances were withdrawn and neither Unifor nor Enercare advised him that the withdrawal had occurred. However, prior to withdrawing the grievances Unifor had contacted Mr. Bhanji in writing on a number of occasions and advised him that if he failed to respond, the grievances would almost certainly be withdrawn. Mr. Bhanji never responded to Unifor's communications and never contacted Unifor to find out what had happened to his grievances.

[8] In its deferral order of August 7, 2018, the Tribunal advised Mr. Bhanji that if he wished to reactivate his application he had to do so within sixty days of the conclusion of the other proceeding. Mr. Bhanji filed his request for reactivation on July 8, 2022, after he retained counsel and counsel contacted Unifor to request an update on his grievances. Unifor's counsel responded on May 30, 2022 to confirm that the grievances had been withdrawn in May of 2018.

[9] On July 23, 2024, the Tribunal declined to extend the time period for filing a reactivation request, finding that given the length of the delay (over 4 years), the lack of a reasonable explanation for the delay, and the prejudice that would be caused to Enercare if the matter were to proceed, the test for extending the time period had not been met. In discussing this test, the Tribunal referenced this court's decision in *Pereira v. Hamilton Police Services Board*, 2022 ONSC 4150 (Div. Ct.).

[10] Mr. Bhanji requested that the Tribunal reconsider its decision, which request was denied on March 5, 2025.

Standard of Review

[11] The parties agree that the applicable standard of review is reasonableness.

Analysis

Mr. Bhanji's position

[12] Mr. Bhanji submits that the Tribunal unreasonably limited its discretion by considering only three factors – the length of the delay, the cause of the delay and prejudice to Enercare. It failed to consider other, highly relevant factors. In particular:

(a) It failed to consider the fact that Mr. Bhanji, wrote to the Tribunal three times indicating his intent and desire to proceed with his application.

(b) It failed to consider the fact that neither Enercare nor Unifor advised the Tribunal that the grievances had been withdrawn. This was particularly significant since Enercare and Unifor were the ones who knew of the withdrawal, when Mr. Bhanji did not.

(c) It failed to consider the fact that Enercare made a request for the deferral order because of the pending grievances and then failed to advise the Tribunal when the grievances had been withdrawn, rendering the order unnecessary. This was a breach of the duty of candour that lawyers owe to Tribunals.

(d) It failed to consider the fact that Mr. Bhanji was an unsophisticated litigant who was unable to hire a lawyer to represent him at the Tribunal until 2022.

(e) It failed to read his correspondence to the Tribunal as a request that his application be reactivated. In doing so, it took a technical, as opposed to a remedial and purposive approach to the time requirements in the Tribunal's rules.

(f) It failed to consider the prejudice to Mr. Bhanji if his application was not reactivated and allowed to proceed on the merits. The rights at stake for him were semi-constitutional in nature.

The Tribunal's decisions were reasonable

[13] There is no merit to the submission that the Tribunal failed to consider the factors outlined by Mr. Bhanji. The Tribunal considered all of them, but did not give them the weight that Mr. Bhanji asserts it should have. It requires an exceptional circumstance for a reviewing court to interfere with a Tribunal's fact finding and weighing: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 125.

[14] It is a matter of concern that the Tribunal issued the deferral order after the grievance proceedings had been withdrawn. The Tribunal considered the question of whether Enercare's lawyers breached their duty of candour in failing to advise the Tribunal of that withdrawal in its Reconsideration Decision (Mr. Bhanji raised the issue for the first time in his request for reconsideration). The Tribunal found as follows:

> [12] Bhanji raises for the first time that counsel for the respondent had a duty of candour to advise the Tribunal of the status of his grievances on an ongoing basis. The respondent submits that the Tribunal never requested the respondent's counsel to do so, nor did the respondent instruct its counsel to do so. In fact, on January 10, 2020, the Tribunal wrote to Bhanji, copying the respondent and intervenor, stating that "the Applicant is required to advise the HRTO whether the other proceeding is still ongoing…" Bhanji ignored the Tribunal's request and instead asked the Tribunal for an extension due to an alleged "vehicle accident case", and failed to copy the other parties, in contravention of the Tribunal's Rules. The respondent had no knowledge at this time that Bhanji intended to re-activate his Application. I accept the respondent's position that there is no basis in law in support of Bhanji's assertion that its counsel had a duty of candour to advise the Tribunal of the ongoing status of the grievance arbitrations. Bhanji did not provide any court decisions in support of this position or that a lawyer is responsible for ensuring that opposing parties adhere to legal deadlines.

[15] Enercare and Unifor submit the Tribunal's conclusion that the duty of candour was not breached is not unreasonable, especially when considered in the context of the following additional facts. First, while Enercare made the request for the deferral order, these requests are routine when there are outstanding proceedings dealing with the same subject matter. Second, by the time the proceedings were withdrawn, Mr. Bhanji was not responding or communicating with his union, in spite of numerous requests that he do so. He did communicate to the Tribunal both before and after the withdrawal in 2018, but he never forwarded a copy of that communication to Enercare or Unifor. Thus, it was reasonable for Enercare to believe that Mr. Bhanji had no interest in proceeding with his Tribunal application. Enercarealso had a duty not to act contrary to the interests of its client and bringing the withdrawal to the attention of the Tribunal could cause a dormant application to be reactivated

[16] I have some difficulty with this reasoning. In my view, while I can understand that Enercare's counsel may have been paying less attention to the file given the apparent lack of interest displayed by Mr. Bhanji and made a judgment call that his duty to his client meant that he should "let sleeping dogs lie", it is my view that Enercare, having made the request for a deferral, did have a duty to advise the Tribunal when it became clear that there was no longer any need for the deferral. In addition, when it received the order, it should have advised the Tribunal that the order was no longer necessary. Having said this I am not

prepared to find that the Tribunal's conclusion on this issue was unreasonable. This is an issue about which reasonable people can disagree.

[17] In any event, even if it could be argued that Enercare's conduct breached the duty of candour, this does not detract from the main rationale for the Tribunal's decision not to extend the time limit. It was Mr. Bhanji's application, and he had an obligation to pursue his application in a reasonable manner. This included taking steps to reactivate his application The Tribunal reasonably rejected Mr. Bhanji's argument that he could not take those steps because he did not know of the withdrawal until May of 2022. As the Tribunal found, Mr. Bhanji had the onus to take the steps to reactivate his application and he did know that if he did not communicate with his union or appear at the arbitrations, it was almost certain that Unifor would withdraw his grievances. In the face of this knowledge, he did nothing. He did not even contact his union to see if the grievances had in fact been withdrawn. Therefore, the Tribunal reasonably found that Mr. Bhanji could not rely on his lack of knowledge as an explanation for his delay. There is nothing irrational about the Tribunal's reasoning or its conclusion on this issue.

[18] The conclusion is not undermined by the fact that Mr. Bhanji was unrepresented until 2022. As the Tribunal noted "many applicants before the Tribunal are unrepresented." If lack of legal representation were considered a sufficient excuse for failing to meet time limits, the Tribunal would have a real difficulty enforcing its time limits in a large number of its cases.

[19] The Tribunal also considered Mr. Bhanji's argument that he did indicate in writing on three occasions that he intended to pursue his application, and while he may not have done so in exactly the right way, his intention was clear. He wished to proceed with his application. In failing to find this correspondence sufficient notice that he wished to reactivate his application, the Tribunal ignored the directions in its own rules of procedure to interpret those rules in a liberal and purposive manner as opposed to a technical manner.

[20] The three pieces of correspondence that Mr. Bhanji relied upon were:

(i) A letter dated May 18, 2018 that Mr. Bhanji delivered to the Tribunal with the subject matter "please proceed to hearing" in which he advised that he had rejected a settlement offer from Enercare.

(ii) An email that Mr. Bhanji sent on December 3, 2018 in which he again requested that the Tribunal proceed to a hearing. In that letter he expressed his dissatisfaction with the way his case was being handled.

(iii) An email that Mr. Bhanji sent to the Tribunal on January 22, 2020 in which he advised the Tribunal that his motor vehicle accident case was still ongoing and that he would inform the Tribunal when it was over. He also asked for an extension of time to reactivate his application.

(iv) In its Reconsideration Decision the Tribunal dealt with this submission as follows:

> [14] The Tribunal ruled in its Decision that Bhanji did not initiate the reactivation process following the Interim Decision, dated August 7, 2018, until July 8, 2022. Bhanji argues for the first time that, rather than failing to act, he simply did not adhere to the strict procedural requirements outlined in Rule 19, which mandates that a Form 10 be file to reactivate the proceedings. He claims he informally initiated the re-activation process when he wrote to the Tribunal on December 3, 2018, and again on January 22, 2020.
>
> [15] I do not agree. In order to request a re-activation process under Rule 14.4 the Tribunal needs to be advised as to whether the "original proceeding" (i.e. the grievances) have been concluded. Bhanji did not advise the Tribunal of the status of the grievances on December 3, 2018, nor on January 22, 2020, and he did not copy the other parties as required by the Tribunal's Rules. Therefore, the re-activation process could not legally commence. This is not a matter of "strict compliance" with Tribunal Forms. Bhanji, as a matter of law, was not permitted to commence his re-activation request until the Tribunal became aware that his grievances were withdrawn. As set out in the Decision, Bhanji ought to have known his grievances were withdrawn, and in any event, it was his fault for failing to contact the intervenor union or the respondent to determine the status of his grievances.

[21] Again, there is nothing unreasonable about the Tribunal's analysis or conclusion with respect to this issue. Rule 14.4 of the Tribunal's rules is clear that a request for reactivation "must set out the date the other legal proceeding concluded and include a copy of the decision or order in the other proceeding, if any." Furthermore, Mr. Bhanji was advised of this requirement. He did not comply with the requirement, nor did he advise the Tribunal that the grievances had been withdrawn. His reference to rejecting a settlement offer from Enercare cannot be construed as notice that his grievances had been withdrawn. In fact, in many cases, once a settlement offer is rejected, the grievances proceed to a hearing.

[22] I also reject the suggestion that because the Tribunal in this case failed to explicitly mention the prejudice to Mr. Bhanji if he was not allowed to extend the time for his reactivation request this rendered the decision unreasonable. It is clear from the decision that the Tribunal was aware that if the extension was not granted Mr. Bhanji would not be able to proceed with his application. This is obviously a serious matter for Mr. Bhanji, but the Tribunal reasonably concluded, on the record before it, that Mr. Bhanji was the author of his own misfortune. It was his actions (or inaction) that put the Tribunal in the position where it was being asked to hear an application about events that occurred in 2016, more than seven years before the date that the Tribunal rendered its decision on the reactivation request. The Tribunal found that Enercare was "specifically prejudiced by the delay because a number of potential witnesses who were involved in the applicant's performance issues and termination of employment, are no longer employed by the respondent and may be difficult to reach".

Conclusion

[23] For these reasons the application is dismissed. In accordance with the agreement of the parties, Mr, Bhanji is to pay each of Enercare and Unifor costs fixed in the amount of $7500.00.

_____
Sachs J.

I agree _____
Backhouse J.

I agree _____
O'Brien J.

Released: February 11, 2026

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Respondents

REASONS FOR JUDGMENT

SACHS J.

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