

**CITATION:** Burland v. Precise ParkLink Inc., 2026 ONSC 1587  
**COURT FILE NO.:** DC-25-00002983-0000  
**DATE:** 2026/03/17

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Backhouse, Fregeau and Schreck JJ.**

**BETWEEN:** )  
 )  
TIMOTHY BURLAND )  
 ) *A. Vey and P. Willets, for the Applicant*  
Applicant )  
 )  
- and - )  
 )  
PRECISE PARKLINK INC. and HUMAN ) *C. Butler and M. Falco, for the Respondent*  
RIGHTS TRIBUNAL OF ONTARIO ) *Precise ParkLink Inc.*  
 )  
Respondents ) *M. Robinson, for the Human Rights Tribunal*  
 ) *of Ontario*  
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 )  
 )  
 )  
 ) **HEARD:** February 25, 2026

**FREGEAU J.**

**Overview**

[1] The Applicant, Timothy Burland (“Burland” or the “Applicant”), seeks judicial review of a decision of the Human Rights Tribunal of Ontario (the “HRTO” or the “Tribunal”), dated February 5, 2025 (the “Decision”). In the Decision, the adjudicator, Ashley Deathe (the “Adjudicator”), dismissed the Applicant’s HRTO Application pursuant to s. 34(11) of the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “Code”), because of a related civil action in the Ontario Superior Court of Justice (the “Action”).

**Background**

[2] The Respondent, Precise Parklink Inc. (“Precise”) is an Ontario Corporation that carries on business in Toronto. Burland is a former employee of Precise who worked for the company from July 2014 to December 2022. As of March 2020, Burland was employed in Ottawa as the Branch Manager-Services for Precise.

[3] Burland suffers from a suppressed immune system which increases his risk of complications from viral infections. At the onset of the COVID-19 pandemic in March 2020, Burland provided Precise with a medical note from his family doctor who recommended that he work from home. This accommodation request was rejected by Precise and Burland was instead placed on unpaid sick leave effective March 17, 2020.

[4] Burland's family doctor cleared him to return to work without restrictions on May 12, 2020. However, Precise declined to recall Burland to work in May 2020, choosing instead to convert Burland's unpaid sick leave to a deemed unpaid Infectious Disease Emergency Leave ("IDEL"), in accordance with the *Employment Standards Act*, 2000, S.O. 2000, c. 41.

[5] Burland filed an application with the Tribunal on November 3, 2020 (the "HRTO Application"). The HRTO Application seeks general damages for injury to dignity, feelings and self-respect, and special damages for lost wages in an amount to be particularized prior to the hearing.

[6] In the HRTO Application, Burland alleges that:

1. For the period March 17, 2020, to May 12, 2020, he was ready and able to work subject to reasonable accommodation and Precise failed to accommodate his disability; and
2. Precise's refusal to return him to work in May 2020, was an act of reprisal for his request for accommodation.

[7] Burland remained on deemed IDEL until July 30, 2022, following which he sought clarification of his employment status with Precise. Precise dismissed Burland without cause effective December 30, 2022.

[8] Burland commenced the Action on March 17, 2023, seeking damages for wrongful dismissal and breach of contract during a nine-month reasonable notice period. He further claimed aggravated and punitive damages due to the manner in which he was terminated.

[9] On June 9, 2023, Precise sought a deferral of the HRTO Application until after the Action had resolved. The Tribunal was tasked with determining whether the HRTO Application should be dismissed pursuant to s. 34(11) of the *Code* which states:

34(11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,

- (a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or
- (b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled.

[10] On February 5, 2025, the Tribunal issued the Decision, which concluded as follows, at paras. 15 and 19:

[15] I find that in both proceedings the decision maker will have to determine the applicant's entitlement to lost wages, the applicant's mitigation efforts, as well as the reasonableness of the respondent's treatment of the applicant which includes the respondent's decision to place the applicant on unpaid leave. The facts underlying those issues are contested. Therefore, I find that the two proceedings are sufficiently related such that the remedy sought in the Action is with respect to the alleged *Code* infringement.

[...]

[19] Section 34(11) is engaged because the applicant is seeking compensation from a court for remedies with respect to the alleged *Code* infringement, and that civil proceeding has not been finally determined or withdrawn. Therefore, the Tribunal has no discretion and must dismiss this application.

### **Issue**

[11] The sole issue on this application is whether the Decision was reasonable.

### **Court's Jurisdiction and Standard of Review**

[12] This court has jurisdiction to hear this application pursuant to ss. 2 and 6(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1.

[13] Section 45.8 of the *Code* provides that a decision of the HRTO may only be altered or set aside if it is "patently unreasonable". However, it is not in issue that the applicable standard of review is reasonableness: *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 561, at para. 83.

### **Was the Decision Reasonable?**

[14] Burland submits that a s. 34(11) analysis requires an assessment of the factual allegations and issues at the core of the two proceedings to determine the substance of each and the potential for overlap. Burland contends that the Tribunal correctly identified the test to be applied but failed to properly apply the test to the facts and issues before it.

[15] Burland acknowledges that the reasonableness standard does not require perfection. Burland suggests, however, that the Tribunal's failure to identify the core disputes in the HRTO Application and in the Action make it impossible to identify a rational chain of analysis justifying the Tribunal's decision.

[16] Burland submits that the Tribunal's application of the test for s. 34(11) is contained entirely within para. 15 of the Decision. Burland contends that this analysis fails to identify the factual underpinnings and core issues in each proceeding and thus fails to address whether the two

proceedings, in substance and not form, concerned substantially similar facts, analogous legal issues and a request for similar remedies.

[17] Burland submits that the Tribunal's application of the test in para. 15 of the Decision is essentially a peremptory conclusion which fails to exhibit justification, transparency and intelligibility and which renders the Decision unreasonable.

[18] Precise submits that the Applicant has the burden of establishing that the Decision is unreasonable and that he has not done so. Precise notes that the standard of reasonableness is founded on an attitude of deference to the administrative decision maker. According to Precise, a court conducting a reasonableness review must focus on the decision that was made by the administrative decision maker and the justification for it, not the conclusion the court would have reached if it had made the decision.

[19] Precise submits that the Decision, read as a whole, sets out the factual matrix underlying both the HRTO Application and the Action, reviews s. 34(11) of the *Code*, the policy rationale underlying it and the leading case law. Precise contends that the Adjudicator reviewed the Applicant's argument that the HRTO Application and Action are distinct because they involve different time periods, different facts and legal issues and seek different remedies, and then explained why the Applicant's position was rejected.

[20] Precise submits that the Decision is thorough and well-reasoned, meets the hallmarks of a justified, transparent analysis and is reasonable. Precise contends that the Applicant is, in essence, incorrectly applying a standard of perfection to the Decision.

[21] For the reasons that follow, I have concluded that the Decision is unreasonable.

[22] The purpose of s. 34(11) of the *Code* is to eliminate duplicative civil and Tribunal proceedings which allege human rights violations and seek remedies for the same alleged wrongs. An applicant's ability to bring an application at the Tribunal is removed where there is an ongoing action in which he or she has claimed remedies based upon the same alleged infringement of the *Code*: *Beaver v. Dr. Hans Epp Dentistry Professional Corporation*, 2008 HRTO 282, at para. 10.

[23] It is not in issue that the application of s. 34(11) does not require an explicit reference to s. 46.1 of the *Code* in the civil claim. The issue is whether the facts and issues in the two proceedings are the same. An assessment of the substance of the claim should be the determining factor. Such an analysis addresses the root of the dispute and eliminates the risk of contradictory rulings involving the same factual matrix: *Ingram v. Human Rights Tribunal of Ontario*, 2022 ONSC 3737, at paras. 42, 46.

[24] The application of this test requires an analysis of the facts and issues in each proceeding to identify the substance of each claim and to determine if any material duplication exists.

[25] The HRTO Application was initiated in November 2020. At paras. 39-41 of the HRTO Application, Burland alleges that he has been subjected to disability discrimination and reprisal contrary to the *Code* during the period March 17, 2020, to May 12, 2020. Burland seeks general

damages for injury to dignity, feelings and self-respect and special damages for lost wages for these alleged *Code* violations.

[26] The Action was issued on March 17, 2023. At paras. 21-24 of the claim, Burland alleges that he was contractually entitled to reasonable notice of dismissal from employment, or pay in lieu thereof, for a period of nine months. At paras. 27, 28, 34, and 35 of the claim, Burland further alleges that Precise breached the duty to act in good faith in the termination of his employment. Burland claims damages for a nine-month reasonable notice period together with aggravated and punitive damages for the manner in which he was terminated. The action does not reference any *Code* violations, explicitly or implicitly.

[27] The substance of the HRTO Application is alleged *Code* violations between March and May 2020. The substance of the Action is a claim of wrongful dismissal and bad faith in the manner of dismissal in relation to his December 30, 2022, termination. The factual underpinnings of the two proceedings are distinct and separated by more than two years.

[28] The Tribunal's conclusion, at para. 15 of the Decision, that both proceedings will require a decision maker to determine Burland's entitlement to lost wages, his mitigation efforts and the reasonableness of Precise's treatment of him fails to address the fact that the distinct time periods pled in each of the proceedings creates a distinct factual basis requiring analysis to determine liability and damages in each proceeding. Further, the claim for remedies in the Action is not based upon the alleged *Code* infringement in the HRTO Application, as found by the Adjudicator in para. 15 of the Decision.

[29] With respect, the Adjudicator failed to conduct an analysis of the facts and issues in each proceeding and thus failed to identify the substance of each claim before concluding they were duplicative.

[30] A court conducting a reasonableness review must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 99.

[31] Before a decision can be set aside as unreasonable, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. The reviewing court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para. 100.

[32] Reasons that simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will rarely assist a reviewing court in understanding the rationale

underlying a decision and are no substitute for statements of fact, analysis, inference and judgment: *Vavilov*, at para. 102.

[33] The identification of the substance of each proceeding is fundamental to the application of the test to be applied when s. 34(11) is invoked. In my view, the Adjudicator's failure to identify the substance of each claim before coming to the peremptory conclusion that "the two proceedings are sufficiently related such that the remedy sought in the Action is with respect to the alleged *Code* infringement" is a serious flaw going to the merits of the Decision and rendering it unreasonable.

[34] The application for judicial review is granted. The HRTO Application shall be remitted to the Tribunal for adjudication in accordance with these reasons.

**Costs**

[35] In accordance with the agreement of the parties, Precise shall pay to Burland costs in the all-inclusive amount of \$10,000.00.

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Fregeau J.

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Backhouse J.

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Schreck J.

**Released:** March 17, 2026

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3275153TIMOTHY BURLAND

Applicant

– and –

PRECISE PARKLINK INC. and HUMAN RIGHTS  
TRIBUNAL OF ONTARIO

Respondents

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**REASONS FOR JUDGMENT**

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Fregeau J.

**Released:** March 17, 2026