

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

**RE:** ROBERT PAQUETTE, *Applicant*

and

HUMAN RIGHTS TRIBUNAL OF ONTARIO, CANADIAN UNION OF  
PUBLIC EMPLOYEES and WEST NIPISSING GENERAL HOSPITAL,  
*Respondents*

**BEFORE:** Raikes, Sutherland and Schreck JJ.

**COUNSEL:** *R. Paquette*, applicant, self-represented

*M. Robinson*, for the respondent, Human Rights Tribunal of Ontario

*H. Myles*, for the respondent, Canadian Union of Public Employees

*S. Muscolino*, for the respondent, West Nipissing General Hospital

**HEARD:** April 7, 2026

**ENDORSEMENT**

[1] Robert Paquette’s application to the Human Rights Tribunal of Ontario (“the Tribunal”) was dismissed as abandoned based on his failure to follow a direction to resubmit documents which an adjudicator concluded were “faint and blurry and cannot be read.” While the documents are faint, they can be read, as counsel for the respondents acknowledge. The decision was therefore unreasonable and must be set aside.

***Facts***

[2] In 2019, the applicant filed an application with the Tribunal alleging discrimination by his employer, the West Nipissing General Hospital (“WNGH”). WNGH filed a response, after which the applicant filed a reply. The Canadian Union of Public Employees (“CUPE”), which is the bargaining agent for WNGH’s employees, was an intervenor in the proceedings and now a respondent on this application.

[3] On September 25, 2023, the Tribunal issued a Case Assessment Direction requiring the parties to serve and file all documents on which they intended to rely by November 6, 2023. The applicant filed his documents six days late, on November 12, 2023.

[4] About five months later, on April 29, 2024, the Tribunal sent the applicant an e-mail with two of the documents he had submitted attached and which read as follows:

By May 13, 2024, the Tribunal is requesting the Applicant to resubmit these two attachments in a clear readable text.

Currently the Text (in these two attachments) is faint and blurry and it cannot be read.

[5] The applicant responded to this direction by filing additional documents on May 15, 2024, although what he filed is a matter in dispute. He maintains in his affidavit filed in this court that he re-filed the documents in a different format. However, the Tribunal, *per* Vice-Chair Dawson, issued an endorsement on June 25, 2023 stating:

Instead of providing new copies of the documents, the applicant responded by resubmitting the same faint and blurry copies.

The Tribunal is still unable to read the two documents as submitted and is therefore unable to assess the applicant's submissions or move the Application forward.

Accordingly, the applicant is directed to file, with proof of delivery, new readable copies of these two documents within 14 days of the date of this Endorsement.

If the applicant does not file the required documents by the deadline noted, the Tribunal may dismiss the Application as abandoned.

The applicant sent a response by e-mail on July 10, 2023, but apparently mistakenly attached the wrong files.

[6] On July 17, 2023, counsel for WNGH (not Ms. Muscolino) wrote a letter to the Tribunal requesting that the applicant's application be dismissed as abandoned because the "continuing disregard for the Tribunal's directives imposes unwarranted legal expenses and consumes valuable time for the Respondent, while also undermining the integrity of the proceedings." Upon receiving this letter, the applicant realized that he had sent the wrong documents on July 10, 2023. He then sent the correct ones.

[7] On August 8, 2024, the Tribunal issued a decision dismissing the applicant's application as abandoned for the following reasons:

...[B]y failing to follow the Tribunal's directions an applicant prevents the Tribunal from moving their application forward just as surely as if they had stopped communicating, and either way has effectively abandoned their application.

In support of this, I note that in *Eisenberg v. Seneca College of Applied Arts and Technology*, 2012 ONSC 4802, the Divisional Court held that if an applicant is not prepared to cooperate with the Tribunal in its process, the Tribunal is entirely within its rights to dismiss the application.

[8] A request for a reconsideration was refused on October 24, 2024.

### ***Analysis***

[9] 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. Although s. 45.8 of the *Human Rights Code*, R.S.O. 1990, c. H.19 provides that a decision of the Tribunal shall not be set aside unless the decision is “patently unreasonable,” it is now well established that the standard of review is reasonableness: *Ontario (Ministry of Health and Long-Term Care) v. Assn. of Ontario Midwives*, 2022 ONCA 458, 161 O.R. (3d) 561, at paras. 75-84.

[10] The applicant submits that the Tribunal’s dismissal of his application as abandoned was unreasonable. WNGH submits that it was not. Counsel for the Tribunal and CUPE take no position on the issue.

[11] In our view, the Tribunal’s decision to dismiss the application as abandoned because of the applicant’s failure to file legible documents was entirely unreasonable for the simple reason that the documents he filed were legible. Although the letters on them are faint, we had no difficulty reading the documents. Counsel for the WNGH and the Tribunal both acknowledged during the hearing that they could also read the documents.

[12] Counsel for WNGH nonetheless submits that we should defer to the Tribunal’s conclusion that the documents were illegible. We see no basis for deference. We are in as good a position as the Tribunal to assess the legibility of the documents, and the Tribunal’s conclusions were not based on any type of specialized expertise. Insofar as the Tribunal’s conclusion that the documents were illegible is a finding of fact, it is clearly unreasonable, unsupported by the evidence, and reflects palpable and overriding error: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at para. 55.

[13] Counsel for WNGH also submits that the Tribunal’s decision can be upheld on the basis that the applicant initially filed his documents six days late and was two days late in responding to the Tribunal’s April 29, 2024 e-mail requiring him to submit legible copies of the documents by May 13, 2024. We do not accept this submission for three reasons. First, the lateness was not the basis on which the Tribunal dismissed the application. Second, the applicant had already complied with the request, since the initial documents were legible. Finally, even if the applicant was a few days late in responding, he cannot be said to have been deliberately refusing to cooperate, which was the case in *Eisenberg v. Seneca College of Applied Arts and Technology*, 2012 ONSC 4802 (Div. Ct.), on which the Tribunal relied.

[14] We recognize that the proceedings before the Tribunal have been ongoing for some time, as counsel for WNGH points out. However, it was WNGH which requested the Tribunal to dismiss

the application as abandoned based on the applicant's failure to provide new readable copies of documents which its counsel now acknowledges were legible to begin with.

***Disposition***

[15] The application for judicial review is granted. The application is remitted to the Tribunal for a hearing before a different adjudicator.

[16] The applicant does not seek costs and none are awarded.

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Raikes J.

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Sutherland J.

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Schreck J.

**Released:** April 8, 2026