HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Oleksandr Lyakhovetskyy

Applicant

-and-

Inkas Security Services Ltd. and 2000007 Ontario Inc.

Respondents

RECONSIDERATION DECISION

Adjudicator:	Cyndee Todgham Cherniak
Date:	March 4, 2024
File Number:	2018-33348-I
Citation:	2024 HRTO 336
Indexed as:	**Lyakhovetskyy v. Inkas Security Services Ltd.**

WRITTEN SUBMISSIONS

Oleksandr Lyakhovetskyy, Applicant	)	Self-represented

[1] On January 11, 2024, the Tribunal issued its Decision in this Application, 2024 HRTO 27 (the "Decision"), dismissing the Application because the applicant failed to attend a Case Management Conference Call ("CMCC") scheduled to take place on January 8, 2024 at 1:30 pm.

[2] On February 9, 2024, the Tribunal received a Form 20 Request for Reconsideration (the "Request") field by the applicant in which they asked the Tribunal to reconsider the Decision. The applicant disagrees with the Decision and would like the Application to proceed to a merits hearing.

[3] For the reasons set out below, the Request is refused.

REQUEST

[4] The Request concerns Rules 26.5(c) and (d) of the Tribunal's Rules of Procedure (the "Tribunal's Rules").

ANALYSIS AND DECISION

Law

[5] Under s. 45.7 of the *Human Rights Code,* R.S.O. 1990, c. H. 19, as amended (the "*Code*"), the Tribunal may, at the request of a party or on its own initiative, reconsider its decisions in accordance with the Tribunal's Rules:

> 45.7(1) Any party to a proceeding before the Tribunal may request that the Tribunal reconsider its decision in accordance with the Tribunal Rules.
>
> (2) Upon request under subsection (1) or on its own motion, the Tribunal may reconsider its decision in accordance with its rules.

[6] Rule 26 of the Tribunal's Rules governs requests for reconsideration and the Tribunal has issued Practice Direction on Reconsideration, January 2008, last amended April 2014, to provide guidance to the public on the Tribunal's exercise of its reconsideration powers.

[7] Rule 26 of the Tribunal's Rules states, in part, as follows:

> 26.5 A Request for Reconsideration will not be granted unless the Tribunal is satisfied that:
>
> (a) there are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier; or
>
> (b) the party seeking reconsideration was entitled to but, through no fault of its own, did not receive notice of the proceeding or a hearing; or
>
> (c) the decision or order which is the subject of the reconsideration request is in conflict with established jurisprudence or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance; or
>
> (d) other factors exist that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.
>
> 26.7 The determination of the Request for Reconsideration shall be conducted by written submissions unless the Tribunal decides otherwise.

[8] Under s. 45.7 of the *Code* and Rule 26 of the Tribunal's Rules, the Tribunal may reconsider its decisions. However, there is no right to have a decision reconsidered. Reconsideration is not an appeal, nor is it an opportunity for a party to present further arguments or change the way a case was presented. See *Landau v. Ontario (Minister of Finance)*, 2012 ONSC 6926 (Div. Ct.), at para. 17, and *Sigrist and Carson v. London District Catholic School Board*, 2008 HRTO 34.

[9] In *James v York University and Ontario Human Rights Tribunal*, 2015 ONSC 2234 at paras. 56-57, the Divisional Court confirmed the importance of not treating the Tribunal's reconsideration process as an appeal or an opportunity to repair deficiencies in the original presentation of a case. The Divisional Court at paragraph 40 also found that it was reasonable for the Tribunal to decline to exercise its discretion to reconsider its original decision in that case as:

> … there were no compelling and extraordinary circumstances for doing so and there were no circumstances which outweighed the public interest in the finality of orders and decisions of the Tribunal.

[10] As is evident from the above, reconsideration is a discretionary remedy. That is, while the Tribunal has the jurisdiction to reconsider its own decisions, it is not obliged to do so. It may decide when reconsideration is advisable, both through the promulgation of rules setting out conditions for the exercise of its discretion, and through the application of its discretion on a case-by-case basis.

Reasons – Rule 26.7 – Decision in Writing

[11] This decision is based on the written submissions of the parties.

Reasons – Rule 26.5() – Is the Decision in conflict with established case law or Tribunal procedure?

[12] The applicant claims that the Decision is in conflict with established case law. However, in their written submissions, the applicant does not point the Tribunal to any case law in support of their claim.

[13] In the Decision, the Tribunal dismissed the Application because the applicant failed to attend a scheduled CMCC. In the Decision, the Tribunal referred to the recent Divisional Court decision in *Abdalla et al. v. Koirala*, 2023 ONSC 7106 in which the court held that if a party is not feeling well enough to participate in a scheduled event, they have an obligation to attend the event and seek an adjournment.

[14] The Tribunal also referred to a recent decision of the Tribunal in *Sprague v. Rogers Blue Jays Baseball Partnership dba Toronto Blue Jays Club*, 2023 HRTO 1797 ["*Sprague*"] where the Tribunal dismissed an Application when an applicant did not attend a summary hearing and instead sent his wife to seek an adjournment at the last minute, which was denied. The Tribunal recently refused a request for reconsideration of Sprague on the basis that the applicant had not satisfied Rule 26.5(a) or (d). See *Sprague*

v. Rogers Blue Jays Baseball Partnership dba Toronto Blue Jays Club, 2024 HRTO 226. In refusing the reconsideration request, the Tribunal found that the applicant had not identified any factors that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.

[15] The Decision dismissing the Application followed and is consistent with these two recent decisions.

[16] In the Decision, the Tribunal acknowledged that the applicant's alternate contact had written to the Tribunal the day prior to the CMCC to seek an adjournment on the basis that the applicant had COVID-19. The Tribunal's decision to not grant the applicant's alternate contact's last minute adjournment request is consistent with the Tribunal's established procedure set out in the Tribunal's Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments. With respect to adjournments, the Tribunal states in the Practice Direction the following:

> The HRTO discourages requests for adjournments outside the 14-day period to request rescheduling of a mediation or hearing, described above. Requests for adjournments, particularly at the last minute, are a significant impediment to fair and timely access to justice. Therefore, the HRTO will only grant adjournments in extraordinary circumstances such as illness of a party, witness or representative. Absent exceptional circumstances, the HRTO will not grant adjournments, even when all parties consent.
>
> …
>
> The party making the request should contact the Registrar and provide the exceptional circumstances supporting the request and any alternative agreed upon dates. Where the request is on short notice, the party must contact the Registrar by email or fax.

[17] The applicant had not complied with the Tribunal's Practice Direction when seeking the adjournment as he did not provide alternate dates that had been agreed upon with the respondents.

[18] Since the Tribunal followed the Practice Direction, the applicant has not demonstrated that the Tribunal's decision to not grant the adjournment and the Decision are in conflict with established jurisprudence and/or Tribunal procedure.

[19] The Tribunal understands that many parties that appear before the Tribunal are self-represented litigants. This is why the Tribunal includes in the Notice of Case Management Conference Call information about "Rescheduling" and specifically refers parties to the Tribunal's Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments. In my view, the Tribunal has put parties on notice that last minute adjournments may not be accepted or considered unless that parties comply with the Tribunal's Practice Direction and directions set out in the Notice of CMCC.

[20] Finally, I note that the applicant provided a doctor's note with the Request, but the applicant's alternate contact did not provide a doctor's note with the emailed request for a last-minute adjournment. The doctor's note indicates that the applicant had COVID between January 4, 2024 and January 14, 2024 and "was not supposed to attend public places". The applicant did not seek an adjournment until the morning of the scheduled CMCC (the applicant's alternate contact sent the request on Sunday, January 7, 2024, which is deemed to have been received the next business day).

[21] The CMCC was held on the Zoom platform and the applicant could have participated by videoconference or by telephone. The applicant was not required to go out in public in order to participate in the CMCC. The medical note does not indicate that the applicant was too ill to participate in the CMCC or attend the CMCC to seek an adjournment themselves.

[22] Based on the above reasons, I find the criteria in Rule 26.5(c) has not been satisfied in the present case.

Reasons – Rule 26.5(d) – Do Other Factors Outweigh the Public Interest in Finality?

[23] The applicant also claims that the other factors exist that outweigh the public interest in finality of the Decision. However, in the Request, the applicant does not point to any other factors and/or a public interest. Instead, the applicant discusses the applicant's personal circumstances and interests.

[24] Based on the applicant's lack of submissions in the Request and the circumstances of this case, and I am not persuaded that other factors exist that outweigh the public interest in the finality of the Decision. Accordingly, I find the criteria in Rule 26.5(d) has not been satisfied in the present case.

Conclusion

[25] For the above reasons, after reviewing the file, the law, the jurisprudence, and the details of the Request, I decline to exercise my discretion to reconsider the Decision.

[26] This means that the Decision stands as issued. If the applicant feels that the Decision was wrongly decided, their only remaining recourse is to apply for judicial review with the Divisional Court.

ORDER

[27] The Request is refused.

Dated at Toronto, this 4th day of March, 2024.

Cyndee Todgham Cherniak
Vice-chair