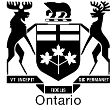

HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Michael Jack

Applicant

-and-

Her Majesty the Queen in right of Ontario, as represented by the Ministry of Community Safety and Correctional Services operating as the Ontario Provincial Police

Respondent

DECISION

Adjudicator: Keith Brennenstuhl

Date: April 12, 2018

File Number: 2010-07633-I

Citation: 2018 HRTO 470

Indexed as: **Jack v. Ontario (Community Safety and Correctional Services)**

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[1] This Decision addresses a request for reconsideration by the applicant in relation to the Tribunal's Decision 2010-07633-I dated February 5, 2018 which dismissed the Application.

[2] Section 45.7 of the Ontario *Human Rights Code*, R.S.O. 1990, c.H. 19 as amended, (the "*Code*") provides as follows:

> 45.7 (1) Any party to a proceeding before the Tribunal may request that the Tribunal consider 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.

[3] Under section 45.7 of the *Code*, the Tribunal may, at the request of a party or on its own initiative, reconsider a final decision in accordance with the Tribunal's Rules. The Tribunal has issued rules governing such requests as well as a Practice direction on Reconsideration to provide guidance to the community on the Tribunal's exercise of its reconsideration powers.

[4] The Tribunal's Practice Direction on Reconsideration begins with the following statements:

> Decisions of the Tribunal are generally considered final and are not subject to appeal. However, parties may request that he Tribunal reconsider a final decision it has made. Reconsideration is a discretionary remedy; there is no right to have a decision reconsidered by the Tribunal. Generally, the Tribunal will only reconsider a decision where it finds that there are compelling and extraordinary circumstances for doing so and where these circumstances outweigh the public interest in finality or orders and decisions.
>
> Reconsideration is not an appeal or an opportunity for a party to repair deficiencies in the presentation of its case.

[5] As is evident from the above, reconsideration is a discretionary remedy. That is, while the Tribunal has jurisdiction to re-open and 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 it discretion, and through the application of its discretion on a case-by-case basis.

[6] In *Sigrist and Carson v. London District Catholic School Board,* 2008 HRTO 34 ("*Sigrist*"), the Tribunal stated that reconsideration is not an opportunity to re-argue a case. Once the parties to the Application have had the opportunity to present their evidence and arguments to the Tribunal, and the Tribunal has made a decision, parties are entitled to treat the matter as closed, subject to limited exceptions.

[7] The Tribunal's Rules of Procedure for Transitional Applications provide that any party may request reconsideration of a final decision in accordance with the Rules. Rule 26.5 of the Rules provides:

> 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.

[8] As a result, I need to determine whether the material filed by the applicant in support of his Request for Reconsideration satisfies the criteria set out in Rule 26.5 relied upon in the Request. The applicant relies upon the criteria identified in Rule 26.5(c) and (d).

[9] I have carefully reviewed and considered the extensive submissions filed by the applicant in support of his Request for Reconsideration. The material essentially repeats

the evidence given by the parties and considered by the Tribunal. As indicated above, a request for reconsideration is not an opportunity to re-sate or re-argue evidence advanced at the hearing.

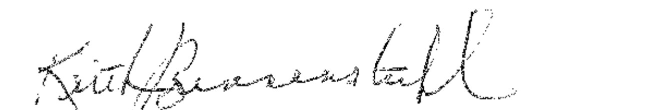
[10] Specifically, with regard to Rule 26.5(c), the applicant has not raised any basis in his reconsideration request to indicate that any findings made in the Decision are in conflict with established jurisprudence. As stated by the Tribunal in *Sigrist, supra,* a "conflict with established jurisprudence or procedure" requires (at a minimum) that there be a settled understanding about the legal rules that apply, and a clear and surprising departure from those rules". While the applicant clearly disagrees with the conclusions of the Tribunal, I am satisfied that his submissions on this Request for Reconsideration do not establish that the Tribunal's Decision conflicts with established jurisprudence.

[11] Finally, with regard to Rule 26.5(d), there are no factors raised in the Request for Reconsideration that, in my opinion, outweigh the public interest in the finality of the Tribunal decisions.

[12] Accordingly, I find that the applicant has not met the burden of establishing any of the threshold criteria justifying reconsideration under Rule 26.5(c) and (d).

[13] The Request for Reconsideration is denied.

Dated at Toronto, this 12th day of April, 2018.



Keith Brennenstuhl
Vice-chair