



Tribunals Ontario

Human Rights Tribunal
of Ontario

Tribunaux décisionnels Ontario

Tribunal des droits de la personne
de l'Ontario

B E T W E E N:

**Borderland Pride, Douglas Judson,
Kathryn Shoemaker and Northern Ontario Pride Network**

Applicants

-and-

**Corporation of the Township of Emo,
Harold McQuaker, Harrold Boven and Warren Toles**

Respondents

RECONSIDERATION DECISION

Adjudicator: Joseph Tascona

Date: August 14, 2026

File Number: 2020-41858-I

Citation: 2026 HRT0 1243

Indexed as: **Borderland Pride v. Emo (Township)**

WRITTEN SUBMISSIONS

Borderland Pride, Northern Ontario	)	
Pride Network and Douglas W. Judson,	)	Timothy J. L. Phelan Counsel
Applicants	)	
	)	
	)	
Harold McQuaker, Respondent	)	J. Paul R. Cassan, Counsel
	)	
	)	
Corporation of the Township of Emo,	)	Alan D. McKitrick, Counsel
Respondent	)	
	)	

INTRODUCTION

[1] On July 9, 2026, the respondents filed a Form 20, Request for Reconsideration (“Request”) of the Tribunal’s Final Decision (“Merits Hearing Decision”) in this Application, 2024 HRTO 1651 issued on November 20, 2024, finding in favour of the applicant, Borderland Pride.

[2] The applicants’ oppose the Request and submit: (a) the Request was filed late failing to comply with the 30-day period as required by Rule 26.1 of the the Tribunals Rules of Procedure and the delay was not incurred in good faith and should be dismissed on this basis; (b) alternatively, the applicants’ oppose the Request because the respondents’ have not met the burden of establishing any of the threshold criteria justifying reconsideration in Rule 26.5 of the Tribunal’s Rules.

BACKGROUND

[3] On November 20, 2024, the Tribunal issued a Merits Hearing Decision in this Application, 2024 HRTO 1651, finding in favour of the applicant, Borderland Pride.

[4] On December 19, 2024, respondents commenced an application for judicial review without first seeking reconsideration at the Tribunal of the Merits Hearing Decision.

[5] On June 25, 2026, the Divisional Court, in *Corporation of the Township of Emo v. Borderland Pride*, 2026 ONSC 3515, exercised its discretion to impose a stay with terms that would permit an attempted reconsideration which included:

1. Within 30 days from [the date of release of the oral decision], the applicants shall seek a reconsideration at the HRTO, which includes the request for an extension of time, and all parties participating shall promptly take the steps needed to complete the process at the HRTO;

2. This Court requests that the HRTO take the past delay into account and the late raising of the issue in its scheduling of all upcoming steps at the HRTO, along with this decision and its reasons for decision, to minimize further delays;

[6] The Divisional Court also stated, at para. 22, that the “outcome reflects the particular history of this case and all the other factors relevant to whether reconsideration is an adequate and effective alternative recourse”.

[7] On July 9, 2026, the respondents filed a Form 20 Request of the Merits Hearing Decision in this Application which was issued on November 20, 2024. The respondents’ request among other things is that (a) the Tribunal grant an extension of time to make the Request; and (b) the Merits Hearing Decision be rescinded.

THE REQUEST IS UNTIMELY

[8] Section 45.7 of the *Code* provides the Tribunal with the authority to reconsider its decisions. Most relevant to this Reconsideration Decision is Rule 26.1 which states:

26.1 Any party may request reconsideration of a final decision of the Tribunal within 30 days of the date of the decision.

[9] Under Rule 26.1, only “final” decisions qualify for a reconsideration request. In *Sigrist and Carson v. London District Catholic School Board*, 2008 HRTO 34 (“Sigrist”), the Tribunal determined that even an interim decision may be “final” where it disposes of some or all of the central issues in the application.

[10] Rule 26.5.1 provides that a request for reconsideration filed beyond the 30-day deadline will not be granted unless the Tribunal determines the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. See *Pereire v. Hamilton Police Services Board*, 2022 ONSC 4150 at para. 32.

[11] For the Merits Hearing Decision, the 30-day period starts when issued on November 20, 2024, then a Request for Reconsideration should have been filed by

December 19, 2024. The Form 20 was filed on July 9, 2026, creating a delay of 597 days.

[12] To satisfy the Tribunal that a delay was incurred in good faith; an applicant must provide the Tribunal with a reasonable explanation as to why he or she did not pursue his or her rights under the *Code* in a timely manner. Moreover, a reasonable explanation must substantiate that the applicant acted with all due diligence and the applicant “must show something more than simply an absence of bad faith”: *Miller v. Prudential Lifestyles Real Estate*, 2009 HRTO 1241 at para. 24. While the statement in *Miller* was made with respect to the late filing of an Application, I find it to be equally apt when considering an untimely Request for Reconsideration.

[13] In the Divisional Court, the respondents argued ‘that seeking a reconsideration was not mandatory and was pointless. They ask us to assume that a reconsideration would not have been of any assistance on the issues now raised in this application for judicial review. We are not persuaded that it is appropriate to make that assumption’. See *Corporation of the Township of Emo* at para. 13.

[14] In the Request, the respondents took the position that the delay in bringing the Request within the 30-day period occurred in good faith, and the decision to proceed directly to Divisional Court was to deal with matters of statutory interpretation respecting municipal statutory immunities, council voting and standing, all of which have implications that go beyond matters of human rights law.

[15] The respondents further submitted that proceeding to the Tribunal by way of reconsideration would unreasonably delay matters and requesting reconsideration on these issues would be a “repeat” of the arguments made at the merits hearing, which, as outlined in the Tribunal’s Practice Direction on Reconsideration is an example of a situation in which the Tribunal generally refuses requests for reconsideration.

[16] The applicants submit that the Merits Hearing Decision was rendered almost 2 years ago and over 4 years after the underlying occurrences. The respondents’ dilatory

request for reconsideration arises from the Township's and the Mayor's failure to exhaust the procedures of the Tribunal before commencing an application for judicial review at the Divisional Court. The Divisional Court directed the matter back to the Tribunal on the basis set out in the reasons cited as *Corporation of the Township of Emo v. Borderland Pride*, 2026 ONSC 3515.

[17] In *Joseph v. Human Rights Tribunal of Ontario*, 2026 ONSC 2832, the Divisional Court upheld a Tribunal finding that a nine-month delay before seeking reconsideration was inexcusable in dismissing the reconsideration request.

[18] In my view, the respondents' have provided no meaningful justification for why this Request was made well beyond the timeline stipulated in Rule 26.1 and therefore have not established a good faith explanation within the meaning of Rule 26.5.1 of the Tribunal's Rules. As such, it simply cannot be said that the respondents' have acted with all due diligence, and the Request for Reconsideration will be denied as untimely.

THE REQUEST FOR RECONSIDERATION

[19] The respondents' Request concerns Rules 26.5 (a), (b), (c) and (d) of the Tribunal's Rules.

THE LAW

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

[21] The Tribunal has issued Rule 26 governing requests for reconsideration and has also issued a Practice Direction on Reconsideration, January 2014, to provide guidance to the community on the Tribunal's exercise of its reconsideration powers.

[22] Most relevant to this Decision is Rule 26 which states, in part:

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.

[23] The Tribunal has found many times that reconsideration is a discretionary remedy, there is no right to have a decision reconsidered by the Tribunal even if the criteria in Rule 26 are met, and a reconsideration is not an appeal or an opportunity to re-argue the case. See, for example, *Sigrist and Carson v. London District Catholic School Board et al.*, 2008 HRTO 34.

[24] As noted by the Divisional Court in *Landau v. Ontario (Minister of Finance)*, 2012 ONSC 6926, at para. 17:

A reconsideration is not an appeal or a hearing *de novo*. More importantly perhaps, there is no right to have a decision reconsidered.

[25] In *Paul 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 also found at para. 58 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.

[26] 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.

ANALYSIS AND DECISION

[27] I find that even if the Request had been made in a timely manner, the grounds for seeking reconsideration do not meet the reconsideration criteria set out in Rule 26 and the Request will be denied.

Rule 26.5(a)

[28] I have considered the Request submitted in this matter. The attachments to the Form 20 include court orders and a factum but no new evidence. The respondents' have not satisfied Rule 26.5 (a) as they have not identified or provided any new facts or evidence that could be potentially determinative of the case and that could not reasonably have been obtained earlier which would alter the conclusion that the Application must be dismissed.

Rule 26.5 (b)

[29] In my view, the respondents were provided notice of the hearing and participated in the merits hearing proceedings and therefore have not met the criteria for granting reconsideration pursuant to Rule 26.5 (b).

Rule 26.5 (c)

[30] The respondents' submitted that the Tribunal incorrectly and unreasonably : (a) determined that the Township, despite finding that none of the other 4 councillors

discriminated against the HRTO applicants when considering or voting on the matter, was also liable for the after-vote remark made by the Mayor , which in the Tribunal's view, was tainted by discrimination, contrary to well -established municipal law principle that council acts as a whole and is not bound by the statements of one councillor; (b) incorrectly interpreted and applied the legal test to determine bad faith and immunity entitlement under section 448 of the Municipal Act ,2001, S.O. 2001, c. 25; and (c) determined that Borderland Pride, a corporation, may bring a human rights application in its own right under the *Code*, based on the reasoning that the adjudicator was bound by the definition of "person" under section 46 of the *Code*, and the Superior Court decision in *Brockie v. Brillinger* (No. 2), 2002 CanLii 63866.

[31] No further law or jurisprudence that was not considered at the Merits Hearing has been referred to by the respondents in their Request. The case law referred to by the respondents was considered in the Merits Hearing Decision by the adjudicator when the respondents first alluded to it in their original submissions. The central submission of the respondents' is that they disagree with the adjudicators legal analysis in the Merits Hearing Decision and that is not a basis for reconsideration.

Rule 26.5 (d)

[32] In the Request, the respondents argue that other factors outweigh the public interest in the Tribunal's Decision. However, the respondents' focused on their own interest and not the public interest. The Request is essentially an appeal of the Decision, and the respondents' do not identify any other factors that, in the opinion of the Tribunal, outweigh the public interest in the finality of Tribunal decisions.

[33] A Request is not an opportunity to restate or re-argue a position already advanced and considered, or raise a new argument that was not made, but could have been made, at the hearing or in written submissions. There was no lack of due process or prejudice to the respondents' because the parties were provided ample opportunity at the hearing to make submissions and respond to the Tribunal's questions. As a result,

the respondents' have not met their onus and I am also not persuaded that there are circumstances in this case that outweigh the public interest in the finality of the Decision.

[34] I have considered all of the respondents' submissions in the Request for Reconsideration, and I am not satisfied that other factors exist that outweigh the public interest in the finality of this Tribunal decision under Rule 26.5 (d).

CONCLUSION

[35] After reviewing the file, the law, the jurisprudence, and the details of the reconsideration request, I have considered all the respondents' arguments and am of the view that the respondents' failed to file their Request in a timely manner and have not established the existence of any of the criteria in Rule 26 that would lead to reconsideration of the Merits Hearing Decision. As a result, I decline to exercise my discretion and refuse the Request. This means that the Merits Hearing Decision stands as issued.

ORDER

[36] For the above reasons, the Request is denied.

Dated at Toronto, August 14, 2026

A handwritten signature in blue ink that reads "Joseph Tascona". The signature is written in a cursive style with a horizontal line underneath the name.

Joseph Tascona
Vice-Chair