

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF EMO and HAROLD MCQUAKER

Applicants

- and -

**BORDERLAND PRIDE, the NORTHERN ONTARIO PRIDE NETWORK, DOUGLAS
W. JUDSON, KATHRYN L. SHOEMAKER, HUMAN RIGHTS TRIBUNAL OF
ONTARIO, HAROLD BOVEN, and WARREN TOLES**

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PART I - OVERVIEW

1. Borderland Pride is a non-profit organization created by members of the 2SLGBQIA+ community to promote the rights and visibility of this community in Northwestern Ontario. As part of its ongoing efforts, for three years in a row Borderland Pride asked the Township of Emo to issue a proclamation naming Pride week in June and encouraging residents to take part in the activities and work together toward equality and inclusion. In 2018, the Township issued the proclamation as requested. In 2019, with new members on council, the Township issued a watered-down version of the proclamation. Then, in 2020, the Township refused to issue the proclamation because, as the Mayor said at the time, there is no equivalent for straight people. The Mayor maintains that position before this court, asserting that he was acting on the interests of people in the community who did not agree with celebrating Pride.

2. Borderland Pride and several others filed an application to the Human Rights Tribunal of Ontario alleging discrimination by the Township, the Mayor, and the two other councillors who voted against the Pride proclamation. After a lengthy hearing on all issues, the Tribunal found the Township and the Mayor discriminated against Borderland Pride, and issued remedial orders accordingly. The remainder of the application was dismissed. The Township and the Mayor seek judicial review of this decision.

3. This Court should refuse to disturb the Tribunal's decision and dismiss the application, with costs. The Tribunal's decision was reasonable and, despite what the Applicants suggest, the Tribunal's decision is unremarkable. It addresses issues that are routinely before the Tribunal, such as standing, the legal test for discrimination, individual liability, the effect of statutory immunity clauses, and the appropriate remedial orders. The decision under review is reasoned, intelligible, rational, and consistent with the Tribunal's own jurisprudence and appellate authority.

PART II - THE FACTS

A. Borderland Pride

4. Borderland Pride was created in 2017 and incorporated in 2019.¹ It advocates for the 2SLGBTQIA+ community in rural Northwestern Ontario, including the Township of Emo (the “Township”). In cloistered and remote communities such as these, homophobia and transphobia can be acutely felt by members of the 2SLGBTQIA+ community, particularly children and youth.²

5. Borderland Pride began as an organization that would host Pride events and normalize the Pride movement in rural areas where there previously was no queer organization or queer-focused community events. It also became a resource for community members looking for medical and personal supports, and a draw to return home for queer northern Ontarians who left the region because they felt unwelcome.³

6. As a rural pride organization, Borderland Pride provides critical year-round support and empowerment for 2SLGBTQIA+ individuals – including working to end discrimination and inequality; promoting community and individual safety and wellbeing; and fostering inclusion acceptance, visibility and representation. As one witnesses before the Tribunal explained: “[v]isibility is a form of education. Naturally, persons are afraid of that which they do not understand, see, or cannot relate to. Ignorance leads to fear, fear leads to disinformation, to persecution, and persecution leads to violence.”⁴

¹ Witness Statement of Douglas W. Judson, dated April 19, 2024 (“Judson Witness Statement”) at para 42 [Applicant’s Record (“AR”) Vol 3, Tab 4K-A, p 306].

² Judson Witness Statement at para 27 [AR Vol 3, Tab 4K-A, p 303].

³ Judson Witness Statement at paras 33, 44-45 [AR Vol 3, Tab 4K-A, pp 304 and 307].

⁴ Witness Statement of Rita Olink, dated April 19, 2024 (“Olink Witness Statement”) at para 28 [AR Vol 3, Tab K-C, p 713].

7. As part of its awareness-raising work, Borderland Pride regularly requests that communities in Northwestern Ontario raise Pride flags and/or issue Pride-related proclamations. It undertakes this work because these acts serve as important signals from municipal leaders that their communities are welcoming, safe, and inclusive places for members of the 2SLGBTQIA+ community to live, grow up in, raise their families, invest, and put down roots.⁵ Such municipal actions can combat stereotypes and improve safety for 2SLGBTQIA+ individuals.⁶

B. Township's Refusal to Issue Pride Proclamation

8. One of the services the Township regularly offers is making resolutions or proclamations in support of various causes. Before Borderland Pride's request in June 2020, the Township had never turned down a request for a proclamation or flag display.⁷

9. Consistent with the Township's practice and Borderland Pride's interests, in 2018, 2019, and 2020, Borderland Pride requested that the Township (and other local governments) display a Pride flag and issue a Pride-related proclamation. In 2018, the Township adopted the requested resolution.⁸ In 2019, following a municipal election that changed the makeup of council including the election of Mayor Harold McQuaker (the "Mayor"), the Township adopted a resolution proclaiming Pride week, but it removed the substantive, 2SLGBTQIA+-affirming language that Borderland Pride had proposed without any explanation.⁹

10. Then, in 2020, the Township refused to issue the requested Pride Proclamation in any form. At the municipal council meeting on May 12, 2020, two councillors in favour of the resolution

⁵ Judson Witness Statement at paras 46-54 [AR Vol 3, Tab 4K-A, pp 307-309].

⁶ Olink Witness Statement at para 28 [AR Vol 3, Tab K-C, p 713].

⁷ *Borderland Pride v. Corporation of the Township of Emo*, [2024 HRTO 1651](#) at para 38; see also Judson Witness Statement para 56 and Exhibit "5" [AR Vol 3, Tab 4K-A, pp 309-310 and 382-415].

⁸ Judson Witness Statement at paras 59-64 [AR Vol 3, Tab 4K-A, pp 310-311].

⁹ Judson Witness Statement at paras 70-76 [AR Vol 3, Tab 4K-A, pp 312-313].

brought it to a vote, which failed 3-2 because the Mayor and other two councillors, Harrold Boven and Warren Toles, voted against. The Mayor and two councillors suggested it was because they were waiting until they had a policy on issuing proclamations and displaying flags (something the Township has still not implemented), this façade was quickly pulled apart when the Mayor said immediately after the vote that he was against the proclamation because: “there’s no flag being flown for the other side of the coin...there’s no flags being flown for the straight people.”¹⁰

C. Application to the Tribunal

11. On June 19, 2020, Borderland Pride, together with another 2SLGBTQIA+ pride organisation and two individual applicants, filed an application to the Human Rights Tribunal of Ontario (the “Tribunal”) under s. 34(1) of the *Code*, against the Township, the Mayor, Councillor Boven, and Councillor Toles (the “Application”). The Application alleged that the Township’s refusal of Borderland Pride’s request for a Pride Proclamation and to display the Pride flag, along with comments made by the Mayor and the councillors during the Township’s council meetings about this request, constituted discrimination in the provision of services on the basis of sexual orientation, gender identity, gender expression and family status, contrary to s. 1 of the *Code*.¹¹

12. Borderland Pride and its co-applicants sought, *inter alia*: human rights damages from the Township and the individual respondents; training for all respondents on diversity, inclusion, and human rights, with a focus on 2SLGBTQIA+ issues; and an order that the Township specifically

¹⁰ [Borderland Pride](#) at para 43.

¹¹ Application Under Section 34 of the *Human Rights Code* (Form 1) received June 19, 2020 (“Application”) [AR Vol 2, Tab 4A].

address harassment and discrimination on the basis of sexual orientation, gender identity, gender expression and family status within its Code of Conduct.¹²

D. Decision under Review

13. The Application was heard before the Tribunal over various dates in 2023-24. The Tribunal received documentary evidence and heard testimony from seven witnesses, including Dr. Elizabeth Saewyc, an expert witness who opined on the link between political figures making discriminatory statements and the resulting significant harms to those targeted by that discrimination.¹³

14. On November 20, 2024, the Tribunal issued its decision (the “Decision”) finding, on a balance of probabilities, that the Township and Mayor had discriminated against Borderland Pride in refusing to issue the Pride Proclamation.¹⁴ The Tribunal made the following findings:

- a. Borderland Pride’s co-applicants did not have standing because they did not have a service relationship with the respondents, but standing for Borderland Pride properly followed from it having authored the proclamation request;¹⁵
- b. The *Code* allows for corporations to bring applications, and with Borderland Pride being identified by the attributes of the sexual minorities it represents and supports through its mandate, it possesses the enumerated grounds required for standing by a corporate applicant;¹⁶
- c. The parties agreed that issuing proclamations was a service the Township had offered for several years, and that the Township had issued proclamations in response to Borderland Pride requests in 2018 and 2019;¹⁷
- d. The Pride Proclamation in 2020 was discussed at a May 12 council meeting, where it was defeated by a 3-2 vote where the Mayor and two named councillors voted against it;¹⁸

¹² Application at p 12 [AR Vol 2, Tab 4A, p 79].

¹³ Witness Statement of Dr. Elizabeth Saewyc dated April 19, 2024 [AR Vol 3, Tab K-D].

¹⁴ [Borderland Pride](#) at paras 50-54.

¹⁵ [Borderland Pride](#) at paras 7-10 and 13-14.

¹⁶ [Borderland Pride](#) at paras 7-10 and 33-34.

¹⁷ [Borderland Pride](#) at paras 37-39.

¹⁸ [Borderland Pride](#) at paras 40-45.

- e. During the May 12 council meeting, after voting down the Pride Proclamation, the Mayor made the discriminatory remark that “there’s no flag being flown for the other side of the coin...there’s no flags being flown for the straight people”;¹⁹
- f. Based on the proximity of this comment to the vote before council, the Tribunal inferred that Borderland Pride’s protected characteristics were at least a factor in the Mayor’s vote against the proclamation, which was also discriminatory, and therefore council’s vote to defeat the resolution similarly constituted discrimination;²⁰
- g. The Mayor was not eligible for statutory immunity under the *Municipal Act, 2001* because he did not act in good faith when voting against the Pride Proclamation, and to hold otherwise would undermine the protections afforded by the *Code* and be contrary to the public interest;²¹ and
- h. Homophobic and hateful social media posts that proliferated following the Township’s refusal to issue the Pride Proclamation constituted direct harm to Borderland Pride, which was further supported by unchallenged expert evidence about the link between public or political figures making discriminatory statements or hate speech, and significant harms among those targeted by that discrimination.²²

15. The Tribunal ordered human rights damages to Borderland Pride, \$10,000 payable by the Township and \$5,000 payable by the Mayor. The Tribunal also deemed it appropriate that the Mayor and the Township’s Chief Administrative Officer (“CAO”) complete the Ontario Human Rights Commission eLearning Module titled “Human Rights 101.”²³ The Tribunal elected against an order that the Township continue to proclaim June as Pride Month in future years on the basis that such a remedy, like apologies, raised potential freedom of expression concerns.²⁴

16. The Township and the Mayor filed the within application for judicial review of the Tribunal’s decision on December 19, 2024.

¹⁹ [Borderland Pride](#) at para 51.

²⁰ [Borderland Pride](#) at paras 52-53.

²¹ [Borderland Pride](#) at para 64.

²² [Borderland Pride](#) at paras 73-75.

²³ [Borderland Pride](#) at paras 78, 82.

²⁴ [Borderland Pride](#) at para 81.

PART III - THE LAW

17. In the Applicants separate factums (which cover much of the same ground), they raise five issues. As set out in detail below, Borderland Pride responds to those issues as follows:

- a. The applicable standard of review is reasonableness, not correctness;
- b. The Tribunal's finding that Borderland Pride had standing to bring the Application under the *Code* was reasonable;
- c. The Tribunal's finding that the Applicants discriminated against Borderland Pride was reasonable;
- d. The Tribunal's finding that the Mayor was not immune from liability under the *Municipal Act, 2001* was reasonable; and
- e. The Tribunal's remedial order was reasonable.

A. The applicable standard of review is reasonableness

18. The standard of review for Tribunal decisions is reasonableness.²⁵ This derives, in part, from the legislative intent reflected in the strong privative clause and legislated standard of review in the *Code*.²⁶ It also derives from the Tribunal's sole and specialized expertise.²⁷ As this Court has commented, "the legislature has clearly signaled its intention to restrict judicial review" of Tribunal decisions,²⁸ which are thus entitled to "the highest degree of deference".²⁹

19. This Court's deference towards the Tribunal's specialized decision-making also extends to its determinations of remedies, as those fall at the very heart of its expertise and the *Code* similarly reflects the legislature's intent to allow the Tribunal a broad remedial discretion towards the

²⁵ *Ontario (Health) v. Association of Ontario Midwives*, [2022 ONCA 458](#) at para [83](#) [*Midwives*]; *Briggs v. Durham (Police Services Board)*, [2022 ONCA 823](#) at paras [37-39](#); *Shaw v. Phipps*, [2010 ONSC 3884](#) at para [103](#); *Papouchine v. Touram LP d.b.a. Air Canada Vacations*, [2022 ONSC 7010](#) at paras [14-16](#).

²⁶ *Abbey v. Ontario (Community and Social Services)*, [2018 ONSC 1899](#) at para [22](#); *Intercounty Tennis Association v. Human Rights Tribunal of Ontario*, [2020 ONSC 1632](#) at para [45](#).

²⁷ *Midwives* at paras [49-50](#).

²⁸ *Nagy v. University of Ottawa*, [2022 ONSC 3399](#) at para [11](#).

²⁹ *Tamming v. Durham District School Board*, [2025 ONSC 3118](#) at para [14](#).

circumstances of particular cases.³⁰ As the Supreme Court affirmed, human rights tribunals exercise flexibility and imagination in crafting remedies.³¹ This Court has, accordingly, declined to disturb the Tribunal's public interest remedies unless an order is overbroad or overreaching, or where there are practical difficulties related to implementation³² – none of which apply here.

20. The Applicants' claim that this Court should depart from the general standard and apply a standard of correctness is not warranted. The Decision does not engage with questions of law of central importance to the legal system. Rather, the Decision deals with issues of standing, the test for discrimination, the interaction between the *Code* and other legislation, and the appropriate remedy where discrimination is established, all of which the Tribunal is well-positioned to address in light of its specialized expertise. The Applicants have not provided any authority where a correctness standard has been applied to decision-making of the Tribunal. That is because the Applicants' generalized claims in this regard are incorrect.³³

21. In reviewing a decision on the reasonableness standard, reasons should be read in light of the record and applicable administrative regime.³⁴ A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker.³⁵ Accordingly, a reviewing court should begin its analysis by developing an understanding of the Tribunal's reasoning process, in order to determine whether its decision as a whole "adds up" or is reasonable³⁶

³⁰ [Midwives](#) at para 183.

³¹ *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30 at para 26.

³² *Ontario (Minister of Children, Community and Social Services) v. Robinson-Cooke*, 2024 ONSC 3556 at para 107.

³³ [Tamming](#) at paras 12-14.

³⁴ [Midwives](#) at para 82; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 103.

³⁵ [Vavilov](#) at para 85.

³⁶ [Midwives](#) at para 82; [Vavilov](#) at para 104; *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364 at para 43.

B. The Tribunal's finding that Borderland Pride had standing to bring the Application was reasonable

22. The Tribunal found that Borderland Pride was a “person” that could bring the Application under s. 34(1) of the *Code*. The Tribunal found it was bound by the definition of person under the *Code* (which includes corporations) as well as this Court’s holding in *Brockie v Brillinger* (which affirmed that interpretation).

23. The Tribunal’s decision regarding Borderland Pride’s standing was reasonable in light of the clear statutory language and governing authority. Borderland Pride brought the Application under s. 34(1), which provides that “If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2”.³⁷ The definition of “person” under the *Code* includes corporations,³⁸ meaning that corporations such as Borderland Pride can make applications under s. 34(1).

24. This Court’s decision in *Brockie* confirms this interpretation and was binding on the Tribunal. In *Brockie*, the Court upheld the Tribunal’s finding that an organization representing gay and lesbian community members can have rights under the *Code*, explaining:³⁹

The appellants argue that all the grounds of discrimination in s. 1 are characteristics which can only attach to human beings, and cannot attach to corporations. Accordingly, they suggest that the context requires that the definition of person be limited to humans and that Archives could have no rights under s. 1 of the Code. We disagree. The definition of "person" in s. 46 of the Code specifically refers to "the extended meaning given it by the Interpretation Act" and goes on to include other kinds of organizations of human beings, including some which could be incorporated, either with or without share capital or under special statutes. The word "person" is used many times in the Act without limitation when referring to the object of the discrimination as opposed to the discriminator. In addition,

³⁷ *Human Rights Code*, [RSO 1990, c H.19, s. 34\(1\)](#) (emphasis added) [*Code*].

³⁸ *Code*, [s. 46](#), definition of “person” has the extended meaning under Part VI of the *Legislation Act, 2006*, [SO 2006, c 21, Sch F](#). Section 87 of the *Legislation Act, 2006* provides that “in every act and regulation... “person” includes a corporation” Further, s. 62(1) provides and that “an Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.”

³⁹ *Brockie v. Brillinger* (No. 2), [2002 CanLII 63866](#) at paras [26](#) and [30-32](#).

the social purposes of the Code expressed in its terms and its preamble dictate a purposive as opposed to a restrictive definition of "person".

[...] Section 1 of the Code addresses the problem of discrimination or denial of equal treatment because of the specified characteristics, not because of the legal character of the bearer of the characteristics.

[...] A liberal and purposive approach should be used in interpreting and applying human rights legislation in order to advance the broad policy considerations underlying it: [...]. It is for these reasons that efforts to promote an understanding and respect for those possessing any specified characteristic should not be regarded as separate from the characteristic itself.

The preamble to the Code proclaims public policy in Ontario that the Code should, to a reasonable extent not inconsistent with the rights of others in the community, be given an interpretation which allows remediation of discrimination. This remediation should not be limited to that by the Commission and the Board contemplated under the Code. It should extend to reasonable efforts by persons possessing those characteristics and to the organizations they form to help them achieve the Code's objectives.

25. This Court's decision supports the conclusion that the *Code* allows a corporation identifiable by protected grounds and associated with the interests of individuals possessing those protected grounds to bring an application on its own behalf where it has experienced adverse treatment due to those protected grounds.

26. Applying the governing law from *Brockie*, the Tribunal reasonably concluded Borderland Pride had standing to bring this Application. Significantly, the Tribunal found Borderland Pride is identified by the sexual orientation, gender identity and gender expression of the sexual minorities it represents and supports (as was the case with the organization at issue in *Brockie*), was the "person" that made the request for the Pride Proclamation, and had presented sufficient evidence of the injury it suffered arising from the Applicants' discriminatory conduct.⁴⁰

⁴⁰ [*Borderland Pride*](#) at paras [34](#) and [72-75](#).

27. The Township argued before the Tribunal, as it does here, that *Brockie* no longer governs and that amendments to the *Code* changed the meaning of “person” under s. 34(1). However, the Tribunal reasonably found those amendments did not disturb this Court’s holding in *Brockie* because the definition of “person” under the *Code* remained intact. Indeed, the legislature has not made any amendments to the relevant sections (ss. 1, 34(1), and 46) that affect the interpretation of “person” undertaken in *Brockie* or by the Tribunal in this case. The most significant changes came about in 2006, when the legislature introduced direct access to the Tribunal and expanded its remedial powers.⁴¹ Although these amendments included specifying circumstances where a person or organization could file an application on behalf of another person,⁴² the legislature did not make any changes to who can bring an application under s. 34(1).⁴³ *Brockie* remains good law which the Tribunal reasonably determined it was bound by.⁴⁴

28. The Tribunal’s decision to allow Borderland Pride standing as a non-profit corporate applicant is all the more reasonable as understood through the lens of the broad and liberal interpretation the *Code* must be given. The *Code* is an extraordinary piece of legislation that aims to eradicate discrimination to bolster the human dignity and equal participation of all Ontarians. It authorizes the Tribunal, as a specialized body, to adopt practices that will result in fair, just, and expeditious resolutions of the merits before it.⁴⁵ The SCC has recognized that the *Code* is the law of the people and must be given both an expansive meaning and accessible application; it is to be “interpreted in a liberal and purposive manner, with a view towards broadly protecting the human

⁴¹ *Human Rights Code Amendment Act*, [2006 SO 2006 c 30](#) [HRCAA]

⁴² HRCAA, [s. 34\(5\)](#).

⁴³ The only amendments to the definition of “person” were to replace “Interpretation Act” with “Part VI (Interpretation) of the Legislation Act, 2006” (*Access to Justice Act, 2006*, [SO 2006, c. 21](#), Sched. F, s. 136 (2)) and to update the applicable legislation defining “police services board” (*Safer Ontario Act, 2018*, [SO 2018, c 3](#), Sched. 5, s. 27; *Comprehensive Ontario Police Services Act, 2019*, [SO 2019, c 1](#), Sched. 4, s. 25).

⁴⁴ *Borderland Pride* at para [10](#).

⁴⁵ *Code*, [s. 41](#).

rights of those to whom it applies”⁴⁶ and in a way that will “advance the broad policy considerations underlying it.”⁴⁷ Exceptions are to be interpreted narrowly.⁴⁸

29. The Tribunal’s decision on standing is not out of the ordinary, it is an issue that has arisen and which the Tribunal has addressed repeatedly.⁴⁹

30. The Township argues that the Tribunal’s determination of standing for Borderland Pride was procedurally unfair due to purported delay in allowing the parties to make submissions on this issue. There is no veracity to this position. The Township had the opportunity to make submissions on the issue of standing, and did so, before a final decision was rendered.⁵⁰

31. Relatedly, the Mayor says the Tribunal erred in refusing to dismiss the Application on a preliminary basis when it found Borderland Pride published Tribunal materials on its website. This argument should be summarily rejected. The Tribunal found that Borderland Pride mistakenly believed the materials were public once filed with the Tribunal, that the breach was swiftly corrected, and that dismissing the Application on this basis would be disproportionate.⁵¹ This decision is reasonable.⁵² The Mayor has failed to discharge his burden to establish otherwise.

⁴⁶ *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14](#) at para [33](#).

⁴⁷ *B. v. Ontario (Human Rights Commission)*, [2002 SCC 66](#) at para [44](#).

⁴⁸ *Landau v. Ontario (Finance)*, [2011 HRTO 1521](#) at para [12](#).

⁴⁹ See, e.g., *Pride Hamilton v. Hamilton Police Services Board*, [2022 HRTO 1427](#) at paras [7-12](#); *African Canadian Legal Clinic v. Legal Aid Ontario*, [2010 HRTO 1255](#); *Lawyer Wellness Association v. Law Society of Ontario*, [2025 HRTO 2144](#) at para [19](#); *Sutherland v. Timmins and District Hospital*, [2025 HRTO 1178](#) at paras [11-12](#).

⁵⁰ *Borderland Pride* at paras [5](#), [8-11](#).

⁵¹ *Borderland Pride* at paras [20-25](#).

⁵² Additionally, there was no harm to the Applicants by the temporary publication as these were adjudicative records subject to the open court principle: see, e.g., *Toronto Star v. AG Ontario*, [2018 ONSC 2586](#) at para [55](#).

C. The Tribunal's finding that the Applicants discriminated against Borderland Pride was reasonable

32. Discriminated is established where an applicant proves, on a balance of probabilities, that (i) they have a protected characteristic, (ii) they experienced an adverse impact within a social area protected under the *Code*, and (iii) the protected characteristic was a factor in the adverse impact. The protected characteristic need not be the only, or predominant, reason for the adverse treatment: if there is a connection between a prohibited ground of discrimination and the adverse treatment, the test for discrimination is met.⁵³ The Tribunal accurately set out this legal test.⁵⁴

33. Once discrimination has been established on a *prima facie* basis, the evidentiary burden shifts to the respondent to rebut that a prohibited ground of discrimination was a factor in the impugned conduct. This burden is not discharged by showing there is also a non-discriminatory reason for the adverse treatment; rather, to avoid liability under human rights law, the respondent must show that the only reason for the adverse treatment was non-discriminatory.⁵⁵

34. Here, The Tribunal found Borderland Pride has protected characteristics as it is identified by the sexual orientation, gender identity, and gender expression of the sexual minorities it represents. The Tribunal also found that there was adverse treatment in a social area under the *Code*, as all parties agreed the Township offered proclamations as a service, and that the Township refused to provide this service to Borderland Pride. The Tribunal further found that Borderland Pride's protected characteristics were a factor in the Mayor's and the Township's vote to defeat

⁵³ *Peel Law Association v. Pieters*, [2013 ONCA 396](#); *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#); *Imperial Oil* at paras [50-51](#).

⁵⁴ *Borderland Pride* at paras [46-47](#).

⁵⁵ *Imperial Oil* at paras [53-54](#).

the Pride Proclamation resolution.⁵⁶ These findings, and the ultimate Decision, are reasonable – they are clear, intelligible, and follow logically from the record before the Tribunal.

35. The Applicants advance three reasons why they say the Tribunal erred, all of which should be rejected.

36. First, the Mayor argues at paragraph 46 that he was trying to “safeguard human rights, not discriminating based on sexual orientation, by ensuring equal treatment for all people.” However, the Tribunal found that the Mayor’s comment:

was on its face dismissive of Borderland Pride’s flag request and demonstrated a lack of understanding of the importance to Borderland Pride and other members of the LGBTQ2 community of the Pride flag. I find this remark was demeaning and disparaging of the LGBTQ2 community of which Borderland Pride is a member[...].⁵⁷

37. This finding is reasonable. The Mayor’s comment demonstrates that he voted against the Pride Proclamation, at least in part, because it involved recognizing and supporting the 2SLGBTQIA+ community. Even if the Mayor *intended* to promote a concept of equality (which the Tribunal did not accept, and neither does Borderland Pride), his statement had the *impact* of demeaning and disparaging members of the 2SLGBTQIA+ community, including Borderland Pride. It is noteworthy that the Mayor’s concept of equality is contrary to the very foundation of human rights law, wherein substantive equality for protected groups is the constitutionally-guaranteed vehicle through which all people can live with dignity and respect.

38. Second, the Mayor argues that the Township should not have been found to have engaged in discrimination against Borderland Pride because this reasoning permits the conduct and

⁵⁶ [Borderland Pride](#) at paras [34](#), [38](#), [51-53](#).

⁵⁷ [Borderland Pride](#) at para [51](#).

comments of a single councillor to poison the debate of the entire council. This ignores the Tribunal's finding, based on submissions from the Township regarding the *Municipal Act, 2001*, that a municipal corporation acts through its bylaws and resolutions of council, and the Tribunal's further finding that councillors must act in compliance with the *Code*.⁵⁸ Such responsibilities arise from the text of the *Code* and from its primacy over other legislation as set out in section 47(2).

39. The Tribunal further explained that if councillors are voting against a resolution for a discriminatory reason, when such vote determines the outcome at council, then the outcome itself is discriminatory. This is reasonable given the governing test whereby if the prohibited characteristic was a factor, even one among many factors, in the adverse treatment, then the adverse treatment was discriminatory. In other words, even if the Tribunal did not find the other councillors who voted against the Pride Proclamation had discriminatory reasons for doing so, the Tribunal found the Mayor did and the Mayor's vote was a factor in the Township's adverse treatment of Borderland Pride. Therefore, the Township's refusal was discriminatory.

40. Third, and related to the second point, the Mayor argues that his vote was not determinative of the outcome of the Pride Proclamation because, under s. 245 of the *Municipal Act, 2001*, any municipal council question on which there is a tie vote is deemed to be a lost vote. Therefore, he argues, even if he had not voted the resolution would have failed. This position is belied by the fact that he *did* vote against the resolution, that the Tribunal found that he did so for discriminatory reasons, and that the resolution failed. Even if we imagine an alternative world where the Mayor did not vote on the resolution, the outcome would be the same: his decision not to vote would be based in part on Borderland Pride's protected characteristics and the resolution would have failed

⁵⁸ [Borderland Pride](#) at para [49](#).

because he decided not to vote. His discriminatory vote was a factor in the adverse treatment and therefore renders the Township's entire decision discriminatory.

41. Moreover, regardless of the outcome of the vote, the Mayor's discriminatory remark made during deliberations regarding the service requested by Borderland Pride is sufficient to establish discrimination "with respect to services" as protected under the *Code*. The Tribunal found that the Mayor's remark was demeaning and disparaging of the 2SLGBTQIA+ community and that this discriminatory statement, made as it was by a public figure in the community, caused harm to Borderland Pride.⁵⁹ Therefore, the Mayor and the Township discriminated against Borderland Pride.

D. The Tribunal's finding that the Mayor was not immune from liability was reasonable

42. The Tribunal reasonably rejected the Mayor's argument that he is statutorily immune from liability pursuant to s. 448(1) of the *Municipal Act, 2001*. The Tribunal found that the Mayor was performing a duty or authority under the *Act*, such that the question of whether he could claim the immunity turned on whether he acted in "good faith" or with an "absence of bath faith."⁶⁰ The Tribunal found in the circumstances of this case and based on the Mayor's actions, he did not act in good faith in voting against the Pride Proclamation.⁶¹ The Tribunal expressly recognised that there may be circumstances where a breach of the *Code* by municipal actors could attract the immunity of s. 448(1), but that it could not so find on the facts before it.⁶²

⁵⁹ [Borderland Pride](#) at paras [51](#) and [73-75](#).

⁶⁰ [Borderland Pride](#) at para [60](#).

⁶¹ [Borderland Pride](#) at para [64](#).

⁶² [Borderland Pride](#) at para [65](#).

(a) There is no Reason to Depart from the Reasonableness Standard of Review

43. Contrary to the Applicants' position, this aspect of the Decision is also subject to the standard of review of reasonableness. Although the Applicants suggest the Tribunal is not positioned to interpret s. 448(1) of the *Municipal Act, 2001*, that position gives short shrift to the Tribunal's special expertise and the primacy of the *Code* over all other legislation in Ontario.⁶³ The legislature intended that the Tribunal would be in a specialized position to interpret the *Code*, which includes assessing conflicts between the *Code* and other legislation in light of the *Code*'s primacy clause. There is no reason to depart from the standard of reasonableness where the Tribunal is considering the application of statutory immunity.

44. The Applicants' position also disregards the Tribunal's experience interpreting statutory immunity provisions and rendering reasonable decisions accordingly. The Tribunal has considered similar good faith immunity clauses in other legislation, such as the *Child and Family Services Act* and the *Long-Term Care Homes Act, 2007*, and held that those did not operate to categorically protect the relevant officers and employees from human rights proceedings.⁶⁴

(b) The Decision Regarding Statutory Immunity was Reasonable

45. The Tribunal's decision regarding the inapplicability of the statutory immunity claimed by the Mayor was reasonable.

46. First, the Mayor argues, incorrectly, that the Tribunal categorically equated bad faith with discrimination contrary to the *Code*. However, the Tribunal did not draw an absolute connection between discrimination and bad faith, noting instead that "there may well be circumstances in

⁶³ *Code*, s. 47(2); [Tranchemontagne](#) at para 34; *Prieur v. Ontario (Transportation)*, [2023 HRTO 1318](#) at para 18.

⁶⁴ See, e.g., *D.F. v. Children's Aid Society of Hamilton*, [2009 HRTO 1485](#) at paras 15, 21-23; *Haugen v. Ontario (Health and Long-Term Care)*, [2021 HRTO 389](#) at paras 15-16.

which a breach of the *Code* may have occurred in “good faith,” but this is not one of those cases.”⁶⁵

The evidence and circumstances of the specific case before the Tribunal allowed it to conclude that the Mayor’s particular conduct constituted bad faith under the *Municipal Act, 2001*.

47. Second, the Township argues at paragraph 32 of its factum that s. 448(1) has served as a complete bar to human rights liability for municipal councillors in the past. However, the authorities cited by the Township do not stand for this proposition and are not inconsistent with the Tribunal’s decision in the present case. In the cases cited, the Tribunal considered whether there was any foundation in a complainant’s allegations as set out in their application, or, alternately, any evidence of bad faith by municipal employees. The adjudicators determined, on a preliminary basis, that the applications could not proceed without evidence of bad faith.⁶⁶ In doing so, they inherently accepted that the statutory immunity set out in s. 448(1) does not encompass municipal conduct undertaken in bad faith. Here, the Tribunal accepted that proposition, but found that the statutory immunity clause did not apply because the Mayor had acted in bad faith.

48. It is noteworthy that in other decisions the Tribunal has found that the primacy of the *Code* precludes reliance on statutory immunity clauses unless they explicitly exempt proceedings under the *Code*. This is consistent with the SCC’s interpretation of s. 47(2) of the *Code*:

This section provides not simply that the Code takes primacy over other legislative enactments, but that this primacy applies “unless the [other] Act or regulation specifically provides that it is to apply despite this Act [the Code]”. Thus the legislature put its mind to conflicts between the Code and other enactments, declared that the Code will prevail as a general rule and also developed instructions for how it is to avoid application of Code primacy. Given that the legislature did not follow the procedure it declared mandatory for overruling the primacy of the Code, this Court is in no position to deduce that it meant to do so or that it came

⁶⁵ [Borderland Pride](#) at para 65.

⁶⁶ *Saxon v. Amherstburg (Town)*, [2011 HRTO 960](#) at paras 6-7; *Compagnion v. Misk-Evans*, [2019 HRTO 521](#) at para 9.

close enough. This is especially so given that the consequence of this deduction would be that the application of human rights law is curtailed.⁶⁷

Accordingly, unless legislation states that it operates despite the provisions of the *Code*, the *Code* prevails. Conversely, where legislation expressly carves out the application of the *Code*, the Tribunal will be without jurisdiction.⁶⁸ The statutory immunity clause at issue does not explicitly state that it operates despite the *Code*. Although the Tribunal did not rely on this reasoning, this adds further credence to the reasonableness of outcome in the Decision.

49. Third, the Applicants argue that the Tribunal's decision will have dire democratic consequences for municipal governments because elected members of council will fear liability for human rights abuses. But the *Municipal Act, 2001* was not meant to give *carte blanche* to the Mayor and the Township – from their position of leadership and authority over the residents they represent – to violate the *Code* in bad faith. The purpose of statutory immunity provisions, which are meant to protect individuals acting on behalf of public bodies from being personally named as parties to a proceeding where they were acting in legitimate pursuit of their responsibilities as government actors and in good faith.⁶⁹ It must be open to the Tribunal to find that, in certain circumstances, discriminatory behaviour can amount to bad faith such that a statutory immunity clause does not shield the municipal actor.

50. Such an interpretation of the *Code* is not contrary to the *Municipal Act, 2001* but, rather, consistent with it. Under statute, the Mayor's role is to, among other things, “uphold and promote the purposes of the municipality”, “participate in and foster activities that enhance the economic,

⁶⁷ [Tranchemontagne](#) at para 38.

⁶⁸ [Prieur](#); [Haugen](#) at para 15.

⁶⁹ *J. B. v. Catholic Children's Aid Society of Toronto*, [2009 HRTO 2098](#) at paras 46-49; *Nelson (City) v. Marchi*, [2021 SCC 41](#) at para 41.

social and environmental well-being of the municipality and its residents”, “provide leadership to the council”, and “provide information and recommendations to the council with respect to the role of council”.⁷⁰ Council’s statutory role includes representing the public and considering “the well-being and interests of the municipality”.⁷¹ The mayor and council are not promoting the well-being of the municipality and its residents if they are infringing their rights under the *Code*.

51. Moreover, any consideration of democratic implications arising from the Tribunal’s decision must take into account the democratic goals of equality, human dignity, and respect for minorities. The SCC has repeatedly held that the constitutional principle of democracy requires the protection of minority voices and, similarly, must be attentive to the democratic values of equality and human dignity.⁷² Indeed, these same principles animate the preamble to the *Code*, which states its aim is “the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community.” Inasmuch as the Applicants reiterate their concerns about municipal governance, they ignore the quasi-constitutional nature of the *Code* and the compelling rationale for its legislative primacy. There is no air of reality to the Applicants’ gloomy admonitions that the failure to extend statutory immunity to the Mayor in the specific circumstances of this case will be the death knell of municipal democracy.

E. The Tribunal’s remedial order was reasonable

52. The Tribunal has the authority to fashion fair, effective and responsive remedies, as reflected in the broad language of s. 45(2) of the *Code*, wherein it is authorized to, *inter alia*, direct

⁷⁰ *Municipal Act, 2001*, [SO 2001, c 25](#), [ss 225](#) and [226.1](#) [*Municipal Act*].

⁷¹ [Municipal Act](#), [s 224](#).

⁷² See, e.g., *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68](#) at para [41](#); *Hansman v Neufeld*, [2023 SCC 14](#) at para [9](#); *Vriend v. Alberta*, [1998 CanLII 816](#) at [paras 140-142](#).

any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the *Code*.⁷³ Where the Tribunal finds discrimination, it must craft remedies to address the discrimination that are dependent on the specific issues and evidence in each individual case.⁷⁴

53. Here, the Tribunal did just that. The Tribunal ordered the Township and the Mayor to pay monetary damages to Borderland Pride and to undertake mandatory human rights training. These are standard remedies well within the Tribunal's statutory authority. These remedies were also consistent with the Tribunal's findings, in that they were only awarded in favour of Borderland Pride (not the other co-applicants), they were only issued against the Township and Mayor (not the other two councillor respondents), and they were commensurate with the discriminatory incident and harm caused. The Tribunal refused other remedies Borderland Pride requested.

54. The Applicants take issue with three aspects of the remedy imposed by the Tribunal: (i) the requirement for the Township's CAO to undergo human rights training; (ii) the award of human rights damages to Borderland Pride as a corporate entity; and (iii) the award of \$5,000 in human damages as against the Mayor in personally. Borderland Pride asserts that none of these disclose any errors in the Tribunal's decision and responds to each below.

(a) Order for Township's CAO to undergo training

55. The Applicants say the requirement for the Township's CAO to undergo human rights training was unreasonable because the CAO was not given notice of the potential for this remedy and she was not the CAO at the time the discriminatory incident took place. Neither point is

⁷³ *Midwives* at para 183.

⁷⁴ *University of Waterloo v. Roch Longueépée*, 2025 ONSC 3653 at para 61 [*Roch Longueépée*].

material to the question of whether the remedy was reasonable because the order is against the Township through the holder of the position CAO, regardless of who currently holds that position.

56. Where a corporation, such as the Township, is found to have violated the *Code*, the Tribunal needs to be able to issue systemic remedies aimed at preventing the corporation from engaging in further or future harm. To that end, the Tribunal often orders that members of a corporation undergo training, even if the Tribunal did not find that the individuals currently holding those positions took part in the discrimination. These awards are sometimes aimed at an entire organization, or sometimes toward particular management roles. For instance, the Tribunal has ordered training for all staff of a municipal body,⁷⁵ for all employees of an organizational respondent,⁷⁶ and for all senior management of a school board.⁷⁷ The Tribunal's order that the Township's CAO undergo human rights training is thus not a departure from ordinary practice.

57. In the circumstances of this case, it was reasonable for the Tribunal to order that the training would be undertaken by the person in the position of CAO. Under the *Municipal Act, 2001*, the CAO is responsible for implementing council's decisions, establishing administrative practices and procedures to carry those out, and undertaking research and providing advice to council.⁷⁸ The Applicants' evidence before the Tribunal showed that the CAO is the management position among the four employees of the Township⁷⁹ and the CAO is responsible to train and advise whoever is elected mayor on their duties and responsibilities.⁸⁰ Although the current CAO was not in the position at the time of the discriminatory incident, the Township put the CAO forward as its only

⁷⁵ *Nakogee v. The Corporation of the City of North Bay o/a North Bay Transit*, [2024 HRTO 1838](#).

⁷⁶ *A.B. v. Mad Wax Windsor Inc.*, [2024 HRTO 721](#).

⁷⁷ *Kenney v. Thames Valley District School Board*, [2023 HRTO 1795](#).

⁷⁸ *Municipal Act*, s 227.

⁷⁹ Witness Statement of Crystal Gray, dated April 19, 2024, at para 17 [AR Vol 4, Tab 4L1, p 919].

⁸⁰ Witness Statement of Harold McQuaker, undated, at para 9 [AR Vol 4, Tab 4M-B, p 1252].

witness in the proceeding. Given the CAO's role within this small municipal body, it was entirely reasonable to order that the training would be undertaken by the person holding that position.

58. There was no issue of lack of notice. The Township was involved in the proceeding throughout. Borderland Pride (and its co-applicants) requested systemic remedies, including training, from the outset in the Application.⁸¹

59. Finally, and importantly, an order requiring human rights training is not a punishment. It is remedial in nature. It is a prospective remedy aimed at preventing further or future discrimination. The Tribunal must be able to order such a remedy to be undertaken by the head of administration of an organization found to have engaged in discrimination. Otherwise, the Tribunal would be significantly hampered in its ability to craft meaningful remedies.

(b) Human rights damages awarded to Borderland Pride

60. The Applicants take issue with the Tribunal's decision to award human rights damages to Borderland Pride. However, the Tribunal's decision in this regard is reasonable as it is consistent with the statute, properly aligned with the *Code*'s broad and purposive approach to remedies, and consistent with the unchallenged expert evidence before the Tribunal.

61. Having found Borderland Pride was subjected to discrimination by the Township and the Mayor, Borderland Pride was a party capable of receiving monetary damages as a remedial award. Pursuant to s. 45(2) of the *Code*, the Tribunal can order monetary compensation either from "the party who infringed the right to ... the party whose right was infringed for loss arising out of the

⁸¹ Application at p 12 [AR Vol 2, Tab 4A, p 79].

infringement” or as part of its broad authority to direct “any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with” the *Code*.

62. This is consistent with the Tribunal’s original decision in *Brockie*, where a printing house refused to provide its services to members of the lesbian and gay community. The Tribunal ordered that both the individual and corporate respondents pay \$5,000 in damages to the individual and corporate applicants, writing “it is only through an award of damages of this magnitude that I am able to indicate the seriousness of the breach that occurred here.”⁸²

63. Even where there is no corporate applicant, the Tribunal has ordered public interest remedies aimed at the well-being of a wider equality-seeking community. For example, the Tribunal has ordered that a respondent donate to organizations that advance the objectives of the *Code*.⁸³ As with the Tribunal’s other remedial powers, public interest remedies must be “tailored to the specific facts in a case”, be remedial rather than punitive, and must flow from the actual breach of the *Code*.⁸⁴ In recognising that harm arising from discrimination can be tempered by a donation to a representative organization, the Tribunal’s jurisprudence makes the important

⁸² *Brillinger v. Imaging Excellence*, [2000 CanLII 20856](#) at para 51. Although this Court found the Tribunal erred procedurally in allowing an amendment during the proceedings to add the corporate applicant, the Court accepted that corporations could be applicants and made no comment on the Tribunal’s damages award.

⁸³ See: *Giguere v. Popeye Restaurant*, [2008 HRTO 2](#) at para 95, where the Tribunal ordered a donation of \$2,500 to an organization providing services to people living with HIV/AIDS because the employer, Popeye Restaurant, fired an employee when it learned her spouse was HIV positive; *Jakobek v. Toronto Standard Condominium Corporation No. 1626*, [2011 HRTO 1901](#) at para 67, where the Tribunal ordered a donation of \$5,000 to the March of Dimes after a property manager did not allow a resident to park his motorized scooter in his parking space; *Larocque v. Michel’s Tobacco Variety*, [2025 HRTO 1522](#) at para 16, where the Tribunal ordered a donation of \$1,000 to a service animal organization when an employee required a person with a service dog to leave the store; and *Quattroci v. Boz Electric Supply*, [2009 HRTO 1082](#) at para 59 where the Tribunal ordered a donation of \$1,500 to an organization that provides services to persons with disabilities after the employer terminated an employee based on physical disability.

⁸⁴ *Giguere* at para 91; *Heintz v. Christian Horizons*, [2008 HRTO 22](#) at paras 242-243.

acknowledgement that a nexus between the claim and circumstances of the complainant can “pave the way” for others living under similar conditions.⁸⁵

64. On the facts before it, the Tribunal found that the Mayor and the Township infringed the rights of Borderland Pride, as identified with the 2SLGBTQIA+ communities it represents in Northern Ontario. The Tribunal further found that online hate against Borderland Pride and the communities it represents proliferated after the Council meetings addressing the Pride Proclamation. The Tribunal further accepted unchallenged expert evidence about how discrimination and hate targeted at the 2SLGBTQIA+ community proliferates after it is endorsed by public figures. In light of these factual findings, the Tribunal’s order that the Township and Mayor pay a monetary award to Borderland Pride is reasonable. It accords with the Supreme Court’s insistence on human rights remedies being given “expansive meaning” and “accessible application”,⁸⁶ and that there must be flexibility and imagination in the creating of remedies for infringements of fundamental human rights.⁸⁷

(c) Mayor ordered to pay human rights damages

65. The Mayor asserts that it was unfair to order him to pay damages due to his small mayoral salary.

66. The Tribunal has long established that the financial impact of its damage awards on the party responsible for the contravention of the *Code* is not a factor considered by the Tribunal.⁸⁸

⁸⁵ [Roch Longuepée](#) at para 68.

⁸⁶ [Tranchemontagne](#) at para 33.

⁸⁷ [Québec v. Communauté urbaine de Montréal](#) at para. 26; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 103.

⁸⁸ *Hughes v. 1308581 Ontario*, 2009 HRTO 341; *G.G. v. [...] Ontario Limited*, 2012 HRTO 1197 at para 29.

67. As cautioned in the Tribunal's own jurisprudence, it is important not to set the quantum of damages too low, as doing so would trivialize the social importance of the *Code* by effectively creating a 'license fee' to discriminate.⁸⁹ Low damage awards risk minimizing people's rights under the *Code* and thus enfeebling their impact.⁹⁰ There is thus a disincentive or deterrent effect inherent in human rights damages, and the Tribunal has recognised that an order of damages can communicate an important message to respondents.

PART IV - ORDER REQUESTED

68. For all of the reasons set out above, Borderland requests this judicial review application be dismissed with costs in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 30, 2026



GOLDBLATT PARTNERS LLP

Char Wiseman/Karin Galldin/Melanie Anderson

Lawyers for the Respondents, Borderland Pride

⁸⁹ *Sanford v. Koop*, [2005 HRTO 53](#) at para [34](#); *Heintz* at para [243](#).

⁹⁰ *CN v. Canada (Canadian Human Rights Commission)*, [\[1987\] 1 SCR 1114](#) at [1134](#); *Roch Longueépée* at para [75](#).

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

THE CORPORATION OF THE TOWNSHIP OF EMO and HAROLD MCQUAKER

Applicants

- and -

**BORDERLAND PRIDE, the NORTHERN ONTARIO PRIDE NETWORK, DOUGLAS
W. JUDSON, KATHRYN L. SHOEMAKER, HUMAN RIGHTS TRIBUNAL OF
ONTARIO, HAROLD BOVEN, and WARREN TOLES**

Respondents

CERTIFICATE RESPECTING TIME

I, Melanie Anderson, lawyer for the Respondent, Borderland Pride, estimate that 1 hour and 30 minutes will be required for oral argument.



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SCHEDULE “A”**LIST OF AUTHORITIES**

1. *Borderland Pride v. Corporation of the Township of Emo*, [2024 HRTO 1651](#)
2. *Ontario (Health) v. Association of Ontario Midwives*, [2022 ONCA 458](#)
3. *Briggs v. Durham (Police Services Board)*, [2022 ONCA 823](#)
4. *Shaw v. Phipps*, [2010 ONSC 3884](#)
5. *Papouchine v. Touram LP d.b.a. Air Canada Vacations*, [2022 ONSC 7010](#)
6. *Abbey v. Ontario (Community and Social Services)*, [2018 ONSC 1899](#)
7. *Intercounty Tennis Association v. Human Rights Tribunal of Ontario*, [2020 ONSC 1632](#)
8. *Nagy v. University of Ottawa*, [2022 ONSC 3399](#)
9. *Tamming v. Durham District School Board*, [2025 ONSC 3118](#)
10. *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, [2004 SCC 30](#)
11. *Ontario (Minister of Children, Community and Social Services) v. Robinson-Cooke*, [2024 ONSC 3556](#)
12. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#)
13. *Imperial Oil Limited v. Haseeb*, [2023 ONCA 364](#)
14. *Brockie v. Brillinger (No. 2)*, [2002 CanLII 63866](#)
15. *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006 SCC 14](#)
16. *B. v. Ontario (Human Rights Commission)*, [2002 SCC 66](#)
17. *Landau v. Ontario (Finance)*, [2011 HRTO 1521](#)
18. *Pride Hamilton v. Hamilton Police Services Board*, [2022 HRTO 1427](#)
19. *African Canadian Legal Clinic v. Legal Aid Ontario*, [2010 HRTO 1255](#)
20. *Lawyer Wellness Association v. Law Society of Ontario*, [2025 HRTO 2144](#)
21. *Sutherland v. Timmins and District Hospital*, [2025 HRTO 1178](#)
22. *Toronto Star v. AG Ontario*, [2018 ONSC 2586](#)

23. *Peel Law Association v. Pieters*, [2013 ONCA 396](#)
24. *Ontario (Disability Support Program) v. Tranchemontagne*, [2010 ONCA 593](#)
25. *Prieur v. Ontario (Transportation)*, [2023 HRTO 1318](#)
26. *D.F. v. Children's Aid Society of Hamilton*, [2009 HRTO 1485](#)
27. *Haugen v. Ontario (Health and Long-Term Care)*, [2021 HRTO 389](#)
28. *Saxon v. Amherstburg (Town)*, [2011 HRTO 960](#)
29. *Compagnion v. Misek-Evans*, [2019 HRTO 521](#)
30. *J. B. v. Catholic Children's Aid Society of Toronto*, [2009 HRTO 2098](#)
31. *Nelson (City) v. Marchi*, [2021 SCC 41](#)
32. *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68](#)
33. *Hansman v Neufeld*, [2023 SCC 14](#)
34. *Vriend v. Alberta*, [1998 CanLII 816](#)
35. *University of Waterloo v. Roch Longueépée*, [2025 ONSC 3653](#)
36. *Nakogee v. The Corporation of the City of North Bay o/a North Bay Transit*, [2024 HRTO 1838](#)
37. *A.B. v. Mad Wax Windsor Inc.*, [2024 HRTO 721](#)
38. *Kenney v. Thames Valley District School Board*, [2023 HRTO 1795](#)
39. *Brillinger v. Imaging Excellence*, [2000 CanLII 20856](#)
40. *Giguere v. Popeye Restaurant*, [2008 HRTO 2](#)
41. *Jakobek v. Toronto Standard Condominium Corporation No. 1626*, [2011 HRTO 1901](#)
42. *Larocque v. Michel's Tobacco Variety*, [2025 HRTO 1522](#)
43. *Quattroci v. Boz Electric Supply*, [2009 HRTO 1082](#)
44. *Heintz v. Christian Horizons*, [2008 HRTO 22](#)
45. *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, [2015 SCC 39](#)
46. *Hughes v. 1308581 Ontario*, [2009 HRTO 341](#)

47. *G.G. v. [...] Ontario Limited*, [2012 HRT0 1197](#)
48. *Sanford v. Koop*, [2005 HRT0 53](#)
49. *CN v. Canada (Canadian Human Rights Commission)*, [1987 CanLII 109](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: April 30, 2026



Char Wiseman/Karin Galldin/Melanie Anderson

SCHEDULE “B”

LIST OF RELEVANT STATUTES

Human Rights Code, [RSO 1990, c H19](#)

...

Application by person

34 (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under [section 45.2](#),

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series. [2006, c. 30, s. 5](#).

...

Interpretation of Part and rules

41 This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. [2006, c. 30, s. 5](#).

41.1 Repealed: 1995, c. 4, s. 3 (3).

...

Definitions, general

46 In this Act,

“Commission” means the Ontario Human Rights Commission; (“Commission”)

“Minister” means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council; (“ministre”)

“person” in addition to the extended meaning given it by Part VI (Interpretation) of the [Legislation Act, 2006](#), includes an employment agency, an employers’ organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police service board established under the [Community Safety and Policing Act, 2019](#); (“personne”)

“regulations” means the regulations made under this Act; (“règlements”)

“Tribunal” means the Human Rights Tribunal of Ontario continued under [section 32](#); (“Tribunal”)

“Tribunal rules” means the rules governing practice and procedure that are made by the Tribunal under [section 43](#). (“règles du Tribunal”) R.S.O. 1990, c. H.19, s. 46; 1994, c. 27, s. 65 (24); [2002, c. 18](#), Sched. C, s. 7; [2006, c. 21](#), Sched. F, s. 136 (2); [2006, c. 30, s. 7](#); [2019, c. 1](#), Sched. 4, s. 25.

...

Act binds Crown

47 (1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47 (2).

...

Legislation Act, 2006, [SO 2006, c 21, Sch F](#)

...

Incorporation of documents by reference

62 (1) The power to make a regulation may be exercised by incorporating an existing document by reference, in whole or in part. [2006, c. 21](#), Sched. F, s. 62 (1).
s. 87

...

Municipal Act, 2001, [SO 2001, c 25](#)

...

Role of council

224 It is the role of council,

- (a) to represent the public and to consider the well-being and interests of the municipality;
- (b) to develop and evaluate the policies and programs of the municipality;
- (c) to determine which services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act. 2001, c. 25, s. 224; [2006, c. 32](#), Sched. A, s. 99.

Role of head of council

225 It is the role of the head of council,

- (a) to act as chief executive officer of the municipality;
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;

- (c) to provide leadership to the council;
- (c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in [clauses 224](#) (d) and (d.1);
- (d) to represent the municipality at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act. 2001, c. 25, s. 225; [2006, c. 32](#), Sched. A, s. 100.

...

Head of council as chief executive officer

226.1 As chief executive officer of a municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality's activities;
- (c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents. [2006, c. 32](#), Sched. A, s. 101.

Municipal administration

227 It is the role of the officers and employees of the municipality,

- (a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) to carry out other duties required under this or any Act and other duties assigned by the municipality. 2001, c. 25, s. 227.

...

Human Rights Code Amendment Act, [2006 SO 2006 c 30](#)

...

Application by person

34. (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

- (a) within one year after the incident to which the application relates; or
- (b) if there was a series of incidents, within one year after the last incident in the series.

Late applications

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

Form

(3) An application under subsection (1) shall be in a form approved by the Tribunal.

Two or more persons

(4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding.

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

- (a) would have been entitled to bring an application under subsection (1); and
- (b) consents to the application.

...

Access to Justice Act, 2006, [SO 2006, c. 21](#), Sched. F

...

Table 1

136. (1) The provisions referred to in Table 1 to this Part are amended by striking out “the *Regulations Act*” wherever it appears and substituting in each case “Part III (Regulations) of the [Legislation Act, 2006](#)”.

Table 2

(2) The provisions referred to in Table 2 to this Part are amended by striking out “the *Interpretation Act*” wherever it appears and substituting in each case “Part VI (Interpretation) of the [Legislation Act, 2006](#)”.

...

Safer Ontario Act, 2018, [SO 2018, c 3](#), Sched. 5

...

Agreement with First Nation to provide policing

27 (1) A municipality may, with the Minister’s approval, enter into a written agreement with a band council of a First Nation to assign policing responsibility for a First Nation reserve that is not within a First Nation board’s area of policing responsibility to the municipal board.

Required contents

(2) An agreement under subsection (1) shall address the policing and other services to be provided, the area in which they will be provided and the level at which they will be provided.

Effect on area of policing responsibility

(3) When the agreement comes into effect,

- (a) the First Nation reserve shall become part of the municipal board’s area of policing responsibility, if it was not already part of that area; and

- (b) any other entity that previously had policing responsibility for the area no longer has that responsibility.

...

Comprehensive Ontario Police Services Act, 2019, [SO 2019, c 1](#), Sched. 4

...

Other municipal boards

Application

25 (1) This section applies to any municipality, as defined in [subsection 1 \(1\)](#) of the *Municipal Act, 2001*, that is not listed in the definition of a municipality in subsection 2 (3) of this Act.

Ability to constitute municipal board

(2) A municipality described in subsection (1) may, with the Minister's approval, constitute a municipal board to have policing responsibility for the municipality.

Criteria for Minister's approval

(3) The Minister may approve the new municipal board under subsection (2) if he or she is satisfied that the new board will provide adequate and effective policing for the foreseeable future.

Same

(4) Without restricting the matters the Minister may consider when deciding whether to approve a municipal board under subsection (3), the Minister shall consider the effect of the approval on the entity that would otherwise have policing responsibility for the area and on any other municipalities that might be affected by the decision.

...

THE CORPORATION OF THE TOWNSHIP OF EMO, et al.

Applicants

and

BORDERLAND PRIDE, et al.

Respondents

Court File No.: DC-24-00000016-00JR

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at **THUNDER BAY**

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