

**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, KATHERYN L. SHOEMAKER, the HUMAN RIGHTS TRIBUNAL OF
ONTARIO, HARROLD BOVEN, and WARREN ROLES**

Respondents

**FACTUM OF THE RESPONDENT
HUMAN RIGHTS TRIBUNAL OF ONTARIO**

May 8, 2026

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PART I – OVERVIEW

[1] Following a merits hearing, the Human Rights Tribunal of Ontario (“HRTTO”), a specialized expert tribunal, found the Applicants discriminated against Borderland Pride in services, based on gender expression, gender identity, and sexual orientation, contrary to the *Human Rights Code*, R.S.O. 1990, c. H. 19, as amended (the “*Code*”). In reaching the decision, the HRTTO found the corporation Borderland Pride had standing to bring the human rights application, made evidentiary findings, and found the Mayor was not entitled to immunity under section 448(1) of the *Municipal Act, 2001*. Having found the Applicants violated the *Code*, the HRTTO ordered monetary and public interest remedies under the *Code*. The main issue before this Court is whether the HRTTO’s decisions were reasonable.

[2] The HRTTO takes no position on the merits of this judicial review, but takes the following limited positions to assist the Court:

- HRTTO decisions under s. 45.8 of the *Code* are reviewed on the deferential standard of reasonableness.
- In light of the HRTTO’s specialized expertise, the *highest degree of deference* is accorded to the HRTTO’s interpretation and application of human rights law.
- The purpose of remedial orders under the *Code* is to put the person in the position they would have been in had the discriminatory conduct not occurred. Determining an appropriate remedy for discrimination is at the “very heart of the HRTTO’s expertise” and its remedial decisions are owed “an extremely high degree of deference”.
- Absent exceptional circumstances, courts will generally decline to hear an application for judicial review where an applicant has not exhausted all adequate alternative remedies. Although the Applicants did not request reconsideration at the HRTTO, the HRTTO takes no position on whether reconsideration would have been an adequate remedy or whether there are any exceptional circumstances.

- When relevant, administrative tribunals must exercise their discretion consistently with the *Charter*. If *Charter* values are engaged by a decision, a reviewing court determines whether the tribunal proportionally balanced the statutory objectives with *Charter* values.

PART II - STATEMENT OF FACTS

[3] The HRTO takes no position on any facts in dispute between the parties. The following statutory and procedural context is relevant to this judicial review application.

(A) Relevant Statutory Context

[4] Section 1 of the *Code* prohibits discrimination with respect to goods, services and facilities based on the enumerated grounds:

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability

[*Human Rights Code*](#), R.S.O. 1990, c. H. 19, as amended, [s. 1](#)

[5] Under section 34(1) of the *Code*:

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.

[*Human Rights Code*](#), R.S.O. 1990, c. H. 19, as amended, [s. 34\(1\)](#)

[6] Section 34(5) of the *Code* allows a person or organization to bring an application to the HRTO on behalf of another person who would have been entitled to bring an application under section 34(1), if that person consents to the application.

[*Human Rights Code*](#), R.S.O. 1990, c. H. 19, as amended, [s. 34\(5\)](#)

[7] The definition of “person” at section 46 of the *Code* incorporates the definition in the *Legislation Act, 2006* which states that ““person” includes a corporation”.

“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”)

[Human Rights Code](#), R.S.O. 1990, c. H. 19, as amended, [s. 46](#)

[Legislation Act, 2006](#), S.O. 2006, c. 21, Sched. F, [s. 87](#)

[8] The HRTO has the jurisdiction to determine all questions of fact or law that arise in any Application before it.

[Human Rights Code, R.S.O. 1990](#), c. H. 19, as amended, [s. 39](#)

[9] Section 45.2 of the *Code* provides the HRTO with the discretionary authority to order a broad range of remedies if the HRTO determines that a party to an application has discriminated against the other party:

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

Orders under par. 3 of subs. (1)

(2) For greater certainty, an order under paragraph 3 of subsection (1),

- (a) may direct a person to do anything with respect to future practices;
- and

(b) may be made even if no order under that paragraph was requested.

[Human Rights Code](#), R.S.O. 1990, c. H. 19, as amended, [s. 45.2](#)

[10] The *Code* provides that it has primacy over other legislation unless the Act or Regulation specifically provides that it is to apply despite the *Code*.

[Human Rights Code](#), R.S.O. 1990, c. H. 19, as amended, [s. 47\(2\)](#)

(B) Two Privative Clauses

[11] The *Code* provides that decisions made by the HRTO are final, binding and subject only to judicial review on a highly deferential standard of review.

The decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable.

[Human Rights Code, R.S.O. 1990](#), c. H. 19, as amended, [s. 45.8](#)

[12] The *Code* includes a second privative provision specifically applicable to review of the HRTO's decisions under its Rules and the exercise of its discretion.

Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or an exercise of a discretion by the tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of discretion caused a substantial wrong which affected the final disposition of the matter.

[Human Rights Code, R.S.O. 1990](#), c.H.19, as amended, [s. 43\(8\)](#)

(C) HRTO Rules of Procedure

[13] The HRTO has a broad range of powers to permit it to adjudicate and resolve disputes. Section 40 of the *Code* directs the HRTO to adopt practices and procedures in its rules, or otherwise available to it, which offer the best opportunity for a fair, just and expeditious resolution of the merits of the application.

[Human Rights Code, R.S.O. 1990](#), c.H.19, as amended, [s. 40](#)

[14] To further facilitate this goal, section 41 and subsection 43(3) of the *Code* authorizes the HRTO to adopt practices and procedures that are an alternative to traditional adjudicative or adversarial procedures, and which allow the HRTO to control how an application is processed, heard and decided, either on a preliminary basis or following a hearing on the merits.

[*Human Rights Code*, R.S.O. 1990, c. H. 19, as amended, s. 41, s. 43\(3\)](#)

(C) Reconsideration at the HRTO

[15] The HRTO may reconsider its decisions pursuant to its authority in s. 45.7 of the *Code* and the process set out in Rule 26 of its Rules of Procedure. Although the applicant did not request reconsideration in this case, his failure to do so has been raised as a possible discretionary bar to judicial review.

[*Human Rights Code*, R.S.O. 1990, c. H. 19, s. 45.7](#)

[*HRTO Rules of Procedure*, Rule 26](#)

[16] Pursuant to Rule 26.1, a request for reconsideration must be made within 30 days from the date of the HRTO's final decision. Pursuant to Rule 26.5.1, the HRTO will not grant a reconsideration that is filed late, unless the HRTO determines that "the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay."

[*HRTO Rules of Procedure*, Rule 26](#)

[17] To ensure finality in the decision-making process, the HRTO will not grant a request for reconsideration unless satisfied that one of the following criteria is met:

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.

[HRTO Rules of Procedure, Rule 26](#)

[18] The HRTO's Practice Direction on Reconsideration highlights the extraordinary nature of reconsideration.

Reconsideration is a discretionary remedy; there is no right to have a decision reconsidered by the HRTO. Reconsideration is not an appeal or an opportunity for a party to change the way it presented its case.

The rules for reconsideration are found in Rule 26 of the Rules of Procedure. A request for reconsideration will only be granted if the request meets one of the requirements in Rule 26.5.

[HRTO Practice Direction on Reconsideration](#)

PART III – ISSUES AND LAW

(A) Standard of Review is Deferential Standard of Reasonableness

[19] None of the exceptional situations warranting the application of a correctness standard arise in this matter.

[Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), 2019 SCC 65 at [paras. 23, 33, 53-54, 58-62](#)

[20] Five categories of questions warrant a derogation from the presumption of reasonableness review, either because the legislature intended a different standard of review to apply or because the rule of law requires correctness review. General questions of law of central importance to the legal system as a whole require correctness review as they engage the rule of law. Such questions are of fundamental importance to the administration of justice; have broad applicability and potential implications for statutes

other than the one under which the decision was made; fall outside the expertise of the administrative decision-maker; and must be answered uniformly and consistently to safeguard a basic consistency in the fundamental legal order of our country. An example of a general question courts have found to be of central importance to the legal system as a whole is the scope of solicitor-client privilege.

[Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), 2019 SCC 65 at [paras. 59, 69](#)

[Canada \(Canadian Human Rights Commission\) v. Canada \(Attorney General\)](#), 2011 SCC 53 at [para. 22-23](#)

[Alberta \(Information and Privacy Commissioner\) v. University of Calgary](#), 2016 SCC 53 at [para. 20](#)

[21] The Court of Appeal for Ontario decision in *Ontario (Health) v. Association of Midwives* held that the standard of review of HRTO decisions under s.45.8 of the *Code* is reasonableness. The Court of Appeal further endorsed this Court's approach to review of the HRTO's decisions and affirmed that the *highest* degree of deference is owed to the HRTO's determinations of fact, its interpretation and application of human rights law, and the exercise of its discretion, including the determination of appropriate remedies, in recognition of the HRTO's specialized expertise.

[Ontario \(Health\) v. Association of Ontario Midwives](#), 2022 ONCA 458

[Shaw v. Phipps](#), 2012 ONCA 155 at [para.10](#)

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

[22] This Court has found the standard of reasonableness applies to the issue of standing, statutory immunity and judicial/adjudicative immunity.

[Intercounty Tennis Association v. Human Rights Tribunal of Ontario](#), 2020 ONSC 1632 at [para 46](#)

The Estate of Marie Helen Agnes Sutherland Inishinapay v. Timmins and District Hospital, 2026 ONSC 2434 at para 39.

[*Jeyaranjan v. Health Professions Appeal and Review Board*](#), 2025 ONSC 6152

[*Stepanova v. Human Rights Tribunal of Ontario*](#), 2017 ONSC 2386 at [para 24](#)

[*Yan v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*](#), 2022 ONSC 6842 at [para 30](#)

[23] The HRTO is frequently called upon to interpret and apply various types of statutory or common law immunity and applies its specialized expertise in doing so.

[*Saxon v. Amherstburg \(Town\)*](#), 2011 HRTO 960

[*Compagnion v. Misek-Evans*](#), 2019 HRTO 521

[*J. B. v. Catholic Children's Aid Society of Toronto*](#), 2009 HRTO 2098 at paras [46-50](#)

[*D.F. v. Children's Aid Society of Hamilton*](#), 2009 HRTO 1485 at paras [21-23](#)

[*Babineau v. Ontario \(Municipal Affairs and Housing\)*](#), 2010 HRTO 1777 at paras [42-67](#)

[*Dixon v. Morrison*](#), 2010 HRTO 2156 at para [17](#)

[*Ornelas v. Casamici Restaurant*](#), 2010 HRTO 1078 at paras [98-99](#)

[*Cartier v. Nairn*](#), 2009 HRTO 2208

[*Hazel v. Ainsworth Engineered*](#), 2009 HRTO 2180 at paras [86](#) and [93-98](#)

[24] Reasonableness review is meant to “ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process.” Reasonableness review “finds its starting point in judicial restraint” and respect for the distinct role of administrative decision-makers.

[*Canada \(Minister of Citizenship and Immigration\) v. Vavilov*](#), 2019 SCC 65 at [para. 13](#)

[25] The Supreme Court in *Vavilov* provided the following guidance in conducting reasonableness review:

- The burden is on the party challenging the decision to show why it is unreasonable ([para. 100](#));
- The focus is not on the conclusion that the reviewing court itself would have reached in the decision maker's place. Rather, the reviewing court must focus on the decision actually made and, in particular, its justification ([paras. 15, 83](#));
- A reasonable decision is "one that is based on an internally consistent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision" ([paras. 85, 101](#));
- "That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside" ([paras. 91, 128](#)).
- Reasons are not to be assessed against a standard of perfection. Not every minor flaw in the decision will result in a finding of unreasonableness. Rather the shortcoming or flaw must be "sufficiently central or significant to render the decision unreasonable" ([paras. 91-92, 100](#));
- The reasons must be read in light of history and context of the proceeding in which they were rendered, including the parties' evidence and submissions, which may explain the decision-maker's reasoning ([para. 94](#));
- Absent exceptional circumstances, a reviewing court will not interfere with a decision maker's factual findings. Reviewing courts must refrain from reweighing and reassessing the evidence considered by administrative decision-makers ([para. 125](#)).

See also: [Mason v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 21 at paras. [57-58](#); and [Ontario \(Health\) v. Association of Ontario Midwives](#), 2022 ONCA 458 at paras. [85](#) and [89](#)

[26] This approach set out in *Vavilov* is consistent with previous court decisions on the content of reasonableness review and HRTO decisions.

The only issue on judicial review was whether the Vice-Chair's decision fell within the range of reasonable outcomes. On judicial review it is not enough that the reviewing court be persuaded that one could arrive at a different decision based on the same evidentiary record. To succeed on judicial review in this case, it was necessary to show the tribunal could not reasonably arrive at the decision it did.

[Peel Law Association v. Pieters](#), 2013 ONCA 396 at para. [132](#)

[27] *Vavilov* does not alter the approach to assessing the adequacy of reasons provided by a statutory decision-maker set out in the Supreme Court's decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* ("*Newfoundland Nurses*"). In that decision, the Court reiterated the need for reviewing courts to pay "respectful attention" to the decision maker's reasons, and "be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful."

[Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), 2019 SCC 65 at paras. [91-94](#)

[Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador \(Treasury Board\)](#), 2011 SCC 62, at paras. [17](#), [19 - 22](#)

[28] The Supreme Court in *Newfoundland Nurses* also held that a decision is not required to deal with every issue and every argument raised by the parties, nor is perfection the standard. The reasons must adequately explain the basis of its decision. However, the reasons cannot be looked at in isolation. The reasons must be read in light of the evidence, the submissions of the parties and the nature of its statutory task.

Reasons may not include all arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.* [1975] 1 S.C.R. 382 at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes.

[*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador \(Treasury Board\)*, 2011 SCC 62](#), at paras. [16- 18](#)

[29] Discretionary findings with respect to discrimination and general interpretation and application of the *Code* are areas of expertise unique to the HRTO, which is the adjudicative tribunal mandated to adjudicate claims of discrimination under the *Code*. In emphasising the need for deference in reasonableness review, the Supreme Court of Canada recognized the importance of respecting the decision-making process of adjudicative bodies and their institutional expertise, experience and specialized knowledge regarding the complexities, nuances and imperatives of the legislative regime.

(B) Content of Duty of Procedural Fairness is Contextual

[30] When an applicant is alleging a breach of procedural fairness, there is no need to assess the appropriate standard of review. The question is simply whether the decision-making process was fair having regard to all of the circumstances.

[*Afolabi v. Law Society of Ontario*](#), 2025 ONCA 257, at para. [60](#)

[*Graham v. New Horizon System Solutions*](#), 2023 ONSC 310, at [para. 9](#)

[31] In *Baker v. Canada (Minister of Citizenship and Immigration)* the Supreme Court of Canada confirmed that the content of the duty of fairness is not uniform and is contextual:

Although the duty of procedural fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected...the purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker.

[Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817, at [para. 22](#)

[32] The Court in *Baker* identified several factors as relevant to determining the content of the duty of fairness, including: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or the individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the agency itself. The Court held that this was not an exhaustive list of factors.

[Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817, at paras. [23 - 27](#)

[33] The Court in *Baker* described the fifth factor, the choices of procedure made by the agency itself, in the following manner:

Fifth, the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedures made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances: Brown and Evans, *supra*, at pp. 7-60 to 7-70. While this of course is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints: *I.W.A. v Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282 per Gonthier J.”

[Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817, at [para. 27](#)

[34] Therefore, when assessing a claim of breach of procedural fairness, the Court must have regard to the history of the proceeding, the context of the case and the HRTO’s procedures for the fair, just and expeditious resolution of applications.

(C) Remedial Authority is Broad

[35] Remedial awards under the *Code* are both compensatory and restorative. The recognition of the quasi-constitutional right must be accompanied by a closely linked remedy. The focus of the analysis is on whether the remedy is consistent with the goal of enforcing and restoring fundamental rights.

[*Quebec \(Commission des droits de la personne et des droits de la jeunesse\) v. Communauté urbaine de Montréal*](#), 2004 SCC 30 at para. 27

[*Robichaud v. Canada \(Treasury Board\)*](#), [1987] 2 SCR 84 at para. 13

[*Ontario \(Minister of Children, Community and Social Services\) v. Robinson-Cooke*](#), 2024 ONSC 3556, at paras. 107-115, [Leave to Appeal dismissed February 28, 2025, Court of Appeal for Ontario File No: COA-24-OM-0263]

[36] The HRTO's very broad remedial power is not measured against awards made in the context of wrongful dismissal or tort claims. As the Court of Appeal for Ontario stated succinctly in *Piazza v. Airport Taxi*: "The purpose of the compensation is to restore a complainant as far as is reasonably possible to the position that the complainant would have been in had the discriminatory act not occurred." *Piazza* has been applied consistently by both Ontario Courts and tribunals and adopted by other Canadian jurisdictions.

[*Piazza v. Airport Taxi \(Malton\) Assn.*](#), 69 O.R. (2d) 281 (OCA)

[*Ontario \(Minister of Children, Community and Social Services\) v. Robinson-Cooke*](#), 2024 ONSC 3556, at para. 109, [Leave to Appeal dismissed February 28, 2025, Court of Appeal for Ontario File No: COA-24-OM-0263]

[*Ontario Human Rights Commission v. Impact Interiors*](#), 1998 CanLII 17685 ON CA

[*Campbell v. Revera Retirement LP*](#), 2014 ONSC 3233 at paras. 18-19 (Div Ct)

[*Systemgroup Consulting v. McConaghie*](#), 2015 ONSC 2215 at paras. 7-8 (Div Ct)

[*Walsh v. Mobil Oil*](#), 2013 ABCA 238 at para. 35

[*Ayangma v. Eastern School Board*](#), 2008 PESCAD 10 at para. 43 (PEI CA)

[Vanton v. BC Council of Human Rights](#), 1994 CanLII 911 at p. 29 (BC SC)

[37] The Court of Appeal for Ontario has affirmed that the “Code provides the Tribunal with broad remedial authority to do what is necessary to ensure compliance with the Code” and this Court has found “the HRTO’s remedial decisions fall at the very heart of its expertise and are entitled to an “extremely high degree of deference””.

[Hamilton-Wentworth District School Board v. Fair](#), 2016 ONCA 421 at [paras. 91-93](#)

[Ontario \(Minister of Children, Community and Social Services\) v. Robinson-Cooke](#), 2024 ONSC 3556, at [para. 110](#), [Leave to Appeal dismissed February 28, 2025, Court of Appeal for Ontario File No: COA-24-OM-0263]

[University of Waterloo v. Roch Longue  p  e](#), 2025 ONSC 3653 at [para 73](#)

[1147335 Ontario Inc., o/a Weston Property Management v. Torrejon](#), 2012 ONSC 1978 at [para. 10 -12](#)

[Guild Automotive v. Pilkey](#), 2013 ONSC 3129, at [paras. 22-25](#)

[38] The Supreme Court of Canada has “stressed the need for flexibility and imagination in crafting remedies for infringements of fundamental human rights” and this Court has declined to disturb the Tribunal’s public interest remedies, unless an order is overbroad or overreaching, or where there are practical difficulties related to implementation.

[Quebec \(Commission des droits de la personne et des droits de la jeunesse\) v. Communaute urbaine de Montreal](#), 2004 SCC 30 at [para. 26](#)

[University of Waterloo v. Roch Longue  p  e](#), 2025 ONSC 3653 at [para 73](#)

[Ontario \(Minister of Children, Community and Social Services\) v. Robinson-Cooke](#), 2024 ONSC 3556 at [para. 107](#), [Leave to Appeal dismissed February 28, 2025, Court of Appeal for Ontario File No: COA-24-OM-0263]

[Adga Group Consultants Inc. v. Lane](#) , 2008 CanLII 39605 (ON SCDC) at [paras. 166-168](#)

[Ontario Human Rights Commission v. Christian Horizons](#), 2010 ONSC 2105 at [paras. 117-120](#)

See also: [Abbey v. Ontario \(Community and Social Services\)](#), 2016 HRTO 787 at [para. 195](#)

(D) Charter Values

[39] The Applicants and Intervenor the Canadian Constitution Foundation argue that the HRTO decision engages freedom of expression rights under s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

[Canadian Charter of Rights and Freedoms, s. 2](#), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11

[40] To the extent that the Applicants assert that the HRTO's decision-making was not consistent with the *Charter*, that appears to be in essence a submission regarding consistency with *Charter* values. In accordance with *Doré v. Barreau du Québec*, tribunals discharging their statutory mandates must ensure that their discretionary decisions are consistent with relevant *Charter* values, in cases where the administrative decision engages the *Charter*.

[Doré v. Barreau du Québec](#), 2012 SCC 12 at [paras. 24, 54-58](#)

[Loyola High School v. Quebec \(Attorney General\)](#), 2015 SCC 12 at [para. 39](#)

[41] An administrative decision's compliance with relevant *Charter* values is to be reviewed on the standard of reasonableness. There may be more than one proportionate outcome that protects the relevant *Charter* values. As long as the outcome falls within a range of possible, acceptable outcomes, the court owes deference to the decision maker.

[Doré v. Barreau du Québec](#), 2012 SCC 12 at [paras. 43-54, 56](#)

[Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories \(Education, Culture and Employment\)](#), 2023 SCC 31 at [para. 60](#)

[Loyola High School v. Quebec \(Attorney General\)](#), 2015 SCC 12, at [paras 40-41](#)

[42] If a *Charter* value is engaged, the key question for the reviewing court is:

whether, in assessing the impact of the relevant *Charter* protection and given the nature of the decision and the statutory and factual contexts, the decision reflects a proportionate balancing of the *Charter* protections at play. The extent

of the impact on the *Charter* protection must be proportionate in light of the statutory objectives. [Citations omitted.]

[Law Society of British Columbia v. Trinity Western University](#), 2018 SCC 32 at [paras 58-59](#)

[43] An administrative decision maker is only required to consider *Charter* values that are relevant, as a “decision cannot be unreasonable because the decision maker failed to consider a *Charter* value that was not relevant for the purposes of its decision”.

[Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories \(Education, Culture and Employment\)](#), 2023 SCC 31 at [para. 66](#)

(E) Discretion to Decline Judicial Review for Failure to Exhaust Adequate Alternative Remedies

[44] The Respondent Douglas W. Judson argues that the judicial review application is premature because the Applicants did not request that the HRTO reconsider its decision.

[45] Absent exceptional circumstances, reviewing courts will generally decline to engage in a judicial review if the applicant has failed to exhaust all adequate alternative remedies within the administrative scheme. In this case, the Applicants did not request reconsideration at the HRTO. Depending on the circumstances, an internal reconsideration process may be an adequate alternative remedy. The HRTO takes no position on whether reconsideration is an adequate alternative remedy in this case and, if so, whether there are nevertheless exceptional circumstances justifying judicial review.

[Volochay v. College of Massage Therapists of Ontario](#), 2012 ONCA 541 at [para. 68](#)

[Gill v. College of Physicians and Surgeons](#), 2021 ONSC 7549 at [para. 31](#) (Div. Ct.)

[46] The rationale for requiring that adequate alternative remedies be exhausted, absent exceptional circumstances, is well established. As stated by the Court of Appeal for Ontario in *Volochay v. College of Massage Therapists of Ontario* at para. 69:

[U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court.

The rationales for this principle are well known. The principle respects administrative decision-making and the legislature's intent that internal review processes be exhausted before the court intervenes. At the same time, the principle preserves the right of the court to intervene in those exceptional circumstances where the justice of the case calls for intervention.

...

In my view, this principle applies even though s. 2(1) of the *Judicial Review Procedure Act* provides that an application for judicial review may be brought "despite any right of appeal" to either an administrative tribunal or to the court. The ability to bring an application for judicial review does not compel the court to undertake judicial review - exceptional circumstances are still required to justify early intervention.

[*Volochay v. College of Massage Therapists of Ontario*](#), 2012 ONCA 541 at [paras. 68-71](#)

See also: [*C.B. Powell Limited v. Canada \(Border Services Agency\)*](#), 2010 FCA 61 at [paras. 31-32](#)

[*Judicial Review Procedure Act*](#), R.S.O. 1990, c. J.1, [s. 2\(1\), \(5\)](#)

[47] It is clear from *Volochay* that the Court may decline to engage in judicial review due to failure to pursue "internal review processes". Similarly, the Supreme Court noted in *Yatar v. TD Insurance Meloche Monnex* that "[a]lternatives do exist where internal review processes have not been exhausted."

[*Volochay v. College of Massage Therapists of Ontario*](#), 2012 ONCA 541 at [para. 69](#)

[*Yatar v. TD Insurance Meloche Monnex*](#), 2024 SCC 8 at [para. 63](#)

[48] However, the question of whether a tribunal's reconsideration process is an "adequate alternative remedy" on a particular application for judicial review is context-

dependent. In *Strickland v. Canada (Attorney General)*, the Supreme Court of Canada held that determining whether an alternative remedy is adequate includes the following considerations:

the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost.

[*Strickland v. Canada \(Attorney General\)*](#), 2015 SCC 37 at [para. 42](#)

See also: [*Ellis-Don Ltd. v. Ontario \(Labour Relations Board\)*](#), 2001 SCC 4 at [para. 57](#)

[49] The alternative remedy need not be identical to the remedies available on judicial review. The “court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate.”

[*Strickland v. Canada \(Attorney General\)*](#), 2015 SCC 37 at [paras. 42-43](#)

[50] In some circumstances, this Court has found that a tribunal’s internal reconsideration process is an adequate alternative remedy such that the judicial review should be dismissed. For example, in *Chief Animal Welfare Inspector v. Timothy Jackson and the Animal Care Review Board*, this Court found that the Animal Care Review Board (“ACRB”) was capable of dealing with the issues raised on judicial review through its reconsideration process, that the ACRB “has the expertise to do so, and it would be a more economical use of judicial resources if these matters were first resolved there.”

[*Chief Animal Welfare Inspector v. Timothy Jackson and the Animal Care Review Board*](#), 2022 ONSC 872 at [paras. 38-46](#) (Div. Ct.)

[51] Similarly, in *Labourers’ International Union of North America, Local 183 v. The Daniels Group Inc.*, this Court found that the issues raised on judicial review from a

decision of the Ontario Labour Relations Board (“OLRB”) involved conflicting jurisprudence and policy issues relating to the OLRB’s home statute, which are among the circumstances where the OLRB may grant reconsideration. As the OLRB, an expert tribunal, would have had the opportunity to address those issues had reconsideration been requested, reconsideration was found to be an adequate alternative remedy and the application for judicial review was dismissed. This Court has found that reconsideration by the OLRB was not an adequate alternative remedy in other cases where the grounds for judicial review did not engage the available grounds for reconsideration. In doing so, the Court held that while requiring OLRB reconsideration prior to judicial review may be appropriate in some cases, there is not a general rule.

[Labourers’ International Union of North America, Local 183 v. The Daniels Group Inc.](#), 2019 ONSC 3164 at [paras. 9-12](#) (Div. Ct.)

[United Brotherhood of Carpenters \(Local 249\) v. Matrix North American Construction Ltd.](#), 2019 ONSC 5647 at [paras. 41-42](#) (Div. Ct.)

See also: [Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario v. Toronto District School Board](#), 2024 ONSC 6839 at [paras. 62-68](#) (Div. Ct.)

[The Society of United Professionals v. New Horizon System Solutions](#), 2020 ONSC 3153 at [para. 22](#) (Div. Ct.)

[52] In *Jones Lang Lasalle Real Estate Services Inc. v. Human Rights Tribunal of Ontario and Brian Graff*, this Court noted in a brief oral endorsement that reconsideration from a decision of the HRTO was not optional despite differences between the grounds for reconsideration and the grounds for judicial review, and that parties must exhaust the reconsideration process before seeking intervention from the Court. The HRTO had not yet issued its decision on remedy, and as such the judicial review was premature for other reasons as well. The HRTO has described the above comment in *Jones* as having been given in *obiter dicta*, and has observed that that “there is little to be gained by bringing a

request for reconsideration only to be told that the grounds for reconsideration are not met.”

[*Jones Lang Lasalle Real Estate Services Inc. v. Human Rights Tribunal of Ontario and Brian Graff*](#), 2015 ONSC 4005 at [para. 4](#)

[*De Rose v. Windsor-Essex Catholic District School Board*](#), 2020 HRTO 629 at paras. [14-15](#)

[53] Even where the issues on judicial review could have been addressed on reconsideration, other case-specific factors may weigh against finding reconsideration to be an adequate alternative remedy. This Court has declined to dismiss applications for judicial review, despite the applicant’s failure to request reconsideration, where proceeding with the judicial review would be in the interests of justice due to the protracted nature of the litigation and the impact of further delay on interested parties and on related proceedings. In *Windrift Adventures Inc. v. Chief Animal Welfare Inspector*, the Court nevertheless cautioned the applicant that it was not endorsing a general practice of not requesting reconsideration:

The decision to proceed with Windrift’s application in these circumstances, is very fact specific. It should not be taken to deviate from the general principle that a party should exhaust internal review processes before coming to the court. It should also not be taken by Windrift as permission to continue its practice of not applying for reconsideration before commencing a judicial review application.

[*Windrift Adventures Inc. v. Chief Animal Welfare Inspector*](#), 2023 ONSC 4501 at [para. 31](#) (Div. Ct.)

See also: [*Pryde v. Chief Animal Welfare Inspector*](#), 2022 ONSC 6632 at [paras. 10-16](#) (Div. Ct.)

[54] In determining whether reconsideration is an adequate alternative remedy to the present application for judicial review, the relevant considerations – based on the *Strickland* factors – include the nature of the issues on this judicial review, the scope of the HRTO’s reconsideration powers under Rule 26, the HRTO’s expertise in adjudicating

disputes under the *Code*, and whether judicial review would be an appropriate use of judicial resources.

[HRTO Rules of Procedure, Rule 26.5](#)

[Strickland v. Canada \(Attorney General\)](#), 2015 SCC 37 at [paras. 42-43](#)

[55] An alternative remedy may still be considered adequate even if the time limit for pursuing it has passed.

[Stentsiotis v. Social Benefits Tribunal](#), 2011 ONSC 5948 at [paras. 2-4](#) (Div. Ct.)

(F) Summary

[56] It is respectfully submitted that all of the above supports deference in the judicial review of HRTO decisions. The HRTO is protected by the strongest of privative clauses. This Court has acknowledged that HRTO members have expertise in the substance, the appropriate legal analysis, and procedure of statutory human rights law, both through their backgrounds and experience hearing applications and mediating in a high volume, direct-access system. The HRTO's statutory mandate is to resolve, in a fair, just and expeditious manner, the applications made to it. Such disputes, including the dispute at issue in the present case, and the procedures for resolving them, are highly contextual, fact-based and require finality.

PART IV - ORDER REQUESTED

[57] The HRTTO takes no position with respect to the orders sought by the Applicants other than if the application for judicial review is allowed, the HRTTO asks that the application be remitted to it.

[58] The HRTTO does not seek its costs of this proceeding and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 8, 2026



Maija-lisa Robinson

Lawyer for the Respondent
Human Rights Tribunal of Ontario

**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, KATHERYN L. SHOEMAKER, the HUMAN RIGHTS TRIBUNAL OF
ONTARIO, HARROLD BOVEN, and WARREN ROLES**

Respondents

LAWYER'S CERTIFICATE

I, Maija-lisa Robinson, lawyer for the Human Rights Tribunal of Ontario, certify the following.

- 10 minutes will be required for oral argument.
- I am satisfied as to the authenticity of every authority cited in this factum.

May 8, 2026



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SCHEDULE A – LIST OF AUTHORITIES

1. [Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#), 2019 SCC 65
2. [Canada \(Canadian Human Rights Commission\) v. Canada \(Attorney General\)](#), 2011 SCC 53
3. [Alberta \(Information and Privacy Commissioner\) v. University of Calgary](#), 2016 SCC 53
4. [Ontario \(Health\) v. Association of Ontario Midwives](#), 2022 ONCA 458
5. [Shaw v. Phipps](#), 2012 ONCA 155
6. [Intercounty Tennis Association v. Human Rights Tribunal of Ontario](#), 2020 ONSC 1632
7. [Tamming v. Durham District School Board](#), 2025 ONSC 3118
8. *The Estate of Marie Helen Agnes Sutherland Inishinapay v. Timmins and District Hospital*, 2026 ONSC 2434
9. [Jeyaranjan v. Health Professions Appeal and Review Board](#), 2025 ONSC 6152
10. [Stepanova v. Human Rights Tribunal of Ontario](#), 2017 ONSC 2386
11. [Yan v. College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario](#), 2022 ONSC 6842
12. [Saxon v. Amherstburg \(Town\)](#), 2011 HRTD 960
13. [Compagnion v. Misek-Evans](#), 2019 HRTD 521
14. [J. B. v. Catholic Children's Aid Society of Toronto](#), 2009 HRTD 2098
15. [D.F. v. Children's Aid Society of Hamilton](#), 2009 HRTD 1485
16. [Babineau v. Ontario \(Municipal Affairs and Housing\)](#), 2010 HRTD 1777
17. [Dixon v. Morrison](#), 2010 HRTD 2156
18. [Ornelas v. Casamici Restaurant](#), 2010 HRTD 1078
19. [Cartier v. Nairn](#), 2009 HRTD 2208
20. [Hazel v. Ainsworth Engineered](#), 2009 HRTD 2180
21. [Ontario \(Minister of Children, Community and Social Services\) v. Robinson-Cooke](#), 2024 ONSC 3556
22. [Mason v. Canada \(Citizenship and Immigration\)](#), 2023 SCC 21
23. [Peel Law Association v. Pieters](#), 2013 ONCA 396

24. [Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador \(Treasury Board\)](#), 2011 SCC 62, [2011] 3 SCR 708
25. [Afolabi v. Law Society of Ontario](#), 2025 ONCA 257
26. [Graham v. New Horizon System Solutions](#), 2023 ONSC 310
27. [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 S.C.R. 817
28. [Quebec \(Commission des droits de la personne et des droits de la jeunesse\) v. Communauté urbaine de Montréal](#), 2004 SCC 30
29. [Robichaud v. Canada \(Treasury Board\)](#), [1987] 2 SCR 84
30. [Piazza v. Airport Taxi \(Malton\) Assn.](#), 69 O.R (2d) 281 (OCA)
31. [Ontario Human Rights Commission v. Impact Interiors](#), 1998 CanLII 17685 ON CA
32. [Campbell v. Revera Retirement LP](#), 2014 ONSC 3233 (Div Ct)
33. [Systemgroup Consulting v. McConaghie](#), 2015 ONSC 2215 (Div Ct)
34. [Walsh v. Mobil Oil](#), 2013 ABCA 238
35. [Ayangma v. Eastern School Board](#), 2008 PESCAD 10 (PEI CA)
36. [Vanton v. BC Council of Human Rights](#), 1994 CanLII 911
37. [Hamilton-Wentworth District School Board v. Fair](#), 2016 ONCA 421
38. [University of Waterloo v. Roch Longuepée](#), 2025 ONSC 3653
39. [1147335 Ontario Inc., o/a Weston Property Management v. Torrejon](#), 2012 ONSC 1978
40. [Guild Automotive v. Pilkey](#), 2013 ONSC 3129
41. [Adga Group Consultants Inc. v. Lane](#), 2008 CanLII 39605 (ON SCDC)
42. [Ontario Human Rights Commission v. Christian Horizons](#), 2010 ONSC 2105
43. [Abbey v. Ontario \(Community and Social Services\)](#), 2016 HRTO 787
44. [Doré v. Barreau du Québec](#), 2012 SCC 12
45. [Loyola High School v. Quebec \(Attorney General\)](#), 2015 SCC 12
46. [Law Society of British Columbia v. Trinity Western University](#), 2018 SCC 32
47. [Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories \(Education, Culture and Employment\)](#), 2023 SCC 31

48. [*Volochay v. College of Massage Therapists of Ontario*](#), 2012 ONCA 541 at [para. 68](#)
49. [*Gill v. College of Physicians and Surgeons*](#), 2021 ONSC 7549
50. [*C.B. Powell Limited v. Canada \(Border Services Agency\)*](#), 2010 FCA 61
51. [*Yatar v. TD Insurance Meloche Monnex*](#), 2024 SCC 8
52. [*Strickland v. Canada \(Attorney General\)*](#), 2015 SCC 37
53. [*Ellis-Don Ltd. v. Ontario \(Labour Relations Board\)*](#), 2001 SCC 4
54. [*Chief Animal Welfare Inspector v. Timothy Jackson and the Animal Care Review Board*](#), 2022 ONSC 872
55. [*Labourers' International Union of North America, Local 183 v. The Daniels Group Inc.*](#), 2019 ONSC 3164
56. [*United Brotherhood of Carpenters \(Local 249\) v. Matrix North American Construction Ltd.*](#), 2019 ONSC 5647 (Div. Ct.)
57. [*Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario v. Toronto District School Board*](#), 2024 ONSC 6839
58. [*The Society of United Professionals v. New Horizon System Solutions*](#), 2020 ONSC 3153 (Div. Ct.)
59. [*Jones Lang Lasalle Real Estate Services Inc. v. Human Rights Tribunal of Ontario and Brian Graff*](#), 2015 ONSC 4005
60. [*De Rose v. Windsor-Essex Catholic District School Board*](#), 2020 HRTO 629
61. [*Windrift Adventures Inc. v. Chief Animal Welfare Inspector*](#), 2023 ONSC 4501
62. [*Pryde v. Chief Animal Welfare Inspector*](#), 2022 ONSC 6632
63. [*Stentsiotis v. Social Benefits Tribunal*](#), 2011 ONSC 5948

SCHEDULE B

1. LEGISLATION

Human Rights Code, R.S.O. 1990, c. H.19, as amended

Services

1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

...

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.

...

Application on behalf of another

34 (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.

...

Powers of Tribunal

39. The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it.

40. The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications.

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.

...

Tribunal rules

43(3) Without limiting the generality of subsection (1), the Tribunal rules may,

- a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;

...

43(8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or an exercise of a discretion by the tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of discretion caused a substantial wrong which affected the final disposition of the matter.

...

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

Orders under par. 3 of subs. (1)

(2) For greater certainty, an order under paragraph 3 of subsection (1),

(a) may direct a person to do anything with respect to future practices; and

(b) may be made even if no order under that paragraph was requested.

...

Decisions final

45.8 The decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable.

...

Definitions, general

46 In this Act, [...]

“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”)

...

Act has primacy over other Acts

47 (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.

Legislation Act, 2006, S.O. 2006, c. 21, Sched. F

Definitions

87 In every Act and regulation, [...]

“person” includes a corporation; (“personne”)

Canadian Charter of Rights and Freedoms, s. 2, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

Judicial Review Procedure Act, R.S.O. 1990, c. J.1, s. 2(1), (5)

Applications for judicial review

2 (1) On an application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

...

Power to refuse relief

(5) The court may refuse to grant any relief on an application for judicial review.

2. HRTO RULES OF PROCEDURE

RULE 26 REQUEST FOR RECONSIDERATION

- 26.1 Any party may request reconsideration of a final decision of the Tribunal within 30 days from the date of the decision.
- 26.2 A Request for Reconsideration must be made in Form 20 and be delivered to all parties and filed with the Tribunal.
- 26.3 A Request for Reconsideration must include:
 - a. reasons for the request, including the basis upon which the Tribunal is asked to grant the request for reconsideration;
 - b. submissions in support of the request; and,
 - c. remedy or relief sought.
- 26.4 A party who has been served with a Request for Reconsideration need not file a response with the Tribunal unless the Tribunal directs that a response is required. Where a party is directed to file a response to the request, it must be in Form 21, Response to Request for Reconsideration, and must include complete written submissions in support of its position.

- 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.
- 26.5.1 A Request for Reconsideration made more than 30 days following the Decision will not be granted unless the Tribunal determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.
- 26.6 The Tribunal shall not grant a Request for Reconsideration without providing the parties an opportunity to make submissions.
- 26.7 The determination of the Request for Reconsideration shall be conducted by written submissions unless the Tribunal decides otherwise.
- 26.7.1 Where a Request for Reconsideration has been determined, the Tribunal will not consider a subsequent Request for Reconsideration of the same decision, absent exceptional circumstances. The Tribunal need not give reasons for a decision not to consider a subsequent Request.
- Where Reconsideration Request Granted
- 26.8 Where the Tribunal considers it appropriate to reconsider its decision it may:
- a. make a decision on the substance of the Request without further submissions from the parties, or
 - b. determine a procedure for rehearing all or part of the matter.
- c. Reconsideration at the Initiative of the Tribunal
- 26.9 The Tribunal may reconsider a decision on its own initiative where it considers it advisable and appropriate to do so.
- 26.10 Where the Tribunal decides to reconsider a decision on its own initiative, it will determine a procedure for rehearing all or part of the matter, which will include an opportunity for the parties to make submissions.

3. HRTO PRACTICE DIRECTIONS

Practice Direction on Reconsideration (Disponible en français)

The Human Rights Tribunal of Ontario (HRTO) has developed the following approach to requests for reconsideration. The procedure outlined below provides general information only. It is not a rule within the meaning of the HRTO's Rules of Procedure. The HRTO may vary the approach to reconsideration where appropriate.

General

Parties may ask the HRTO to reconsider a final decision. The HRTO may also reconsider a decision on its own initiative where it considers it appropriate.

Reconsideration is a discretionary remedy; there is no right to have a decision reconsidered by the HRTO. Reconsideration is not an appeal or an opportunity for a party to change the way it presented its case.

The rules for reconsideration are found in Rule 26 of the Rules of Procedure. A request for reconsideration will only be granted if the request meets one of the requirements in Rule 26.5.

Examples of situations where the HRTO has refused a request for reconsideration are where:

- the request asks for review of an interim decision which does not finally decide the party's rights or interests;
- the request repeats arguments the party has made at the hearing or in written submissions;
- a party disagrees with and wishes to challenge a finding of fact, including findings made about the credibility of witnesses;
- a party wishes to raise new arguments that were not made, but could have been made at the hearing or in written submissions;
- a party received notice that an application could be dismissed as abandoned if steps were not taken, but did not follow the Tribunal's directions by the deadline.

Examples of situations where the HRTO has reconsidered its decision are:

- where a party, through no fault of its own, did not receive notice of a hearing or request for submissions; or
- where exceptional factors exist that outweigh the public interest in the finality of decisions including inconsistencies in the HRTO's case law.

Procedure

The party seeking reconsideration of a final decision must make a Request for Reconsideration using [Form 20](#), deliver it to all parties and file it with the HRTO. The Request must include: reasons for the request, the basis upon which the HRTO is asked to grant the request; submissions in support of the request; and the remedy or relief sought (Rule 26.3).

A Request for Reconsideration made more than 30 days after the date of the decision will not be granted unless the HRTO determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay (Rule 26.5.1). A Request for Reconsideration filed more than 30 days after the date of the decision must include all information in support of the request that the reconsideration be accepted late. The HRTO does not grant extensions in advance to file Requests for Reconsideration.

The other parties do not need to respond to the Request unless the HRTO sends a letter or case assessment direction directing them to do so.

Who decides the request?

The Associate Chair, or his or her delegate, reviews all requests for reconsideration and assigns the request to an HRTO adjudicator for decision. In most cases, the request will be assigned to the adjudicator who made the decision which is the subject of the request. This practice has been endorsed by the courts because the original decision maker may be in the best position to know whether a reconsideration request raises new issues or submissions.

What procedure is followed?

The HRTO usually does not hold an oral hearing to decide a request for reconsideration, and often dismisses requests without requiring submissions from the other parties if the request does not demonstrate that any of the criteria in Rule 26.5 are met.

The HRTO will issue a decision either dismissing or granting a first request for reconsideration. The HRTO will not consider further requests for reconsideration of the same decision unless there are exceptional circumstances. The HRTO does not have to give reasons for a decision not to consider a subsequent request (Rule 26.7.1).

What happens if the request for reconsideration is granted?

If the reconsideration is granted, the adjudicator will then decide what will happen next. This will depend on the particular situation. It could include a new decision on the issues as part of the reconsideration decision, a re-hearing of the entire application, asking the parties to provide additional evidence or submissions on a particular issue, or providing the parties with the opportunity to make further written submissions on a legal point.

Are there other ways to challenge an HRTO decision?

Decisions of the HRTO can also be challenged through an application for judicial review to the Divisional Court of the Ontario Superior Court. This is a court process governed by the rules of the court: www.ontariocourts.ca/scj/divisional-court.

You may wish to seek legal advice before starting an application for judicial review.

The Human Rights Legal Support Centre has prepared a guide to requesting reconsideration at the HRTO. It is available at www.hrlsc.on.ca.

Effective as of January 2014

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B E T W E E N:		Court File No. DC-24-00000016-00JR	
THE CORPORATION OF THE TOWNSHIP OF EMO and HAROLD MCQUAKER		v.	BORDERLAND PRIDE, et al.
Applicants			Respondents
		Ontario Superior Court of Justice (Divisional Court) Proceeding Commenced at Thunder Bay	
		FACTUM OF THE HUMAN RIGHTS TRIBUNAL OF ONTARIO	
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