

DATE: 2026-01-23

Reasons On Motion

Overview

[1] The Corporation of the Township of Emo (“Emo”) seeks to file an affidavit of Crystal Gray affirmed on January 10, 2025, as fresh evidence on Emo’s application for judicial review of a November 20, 2024, decision of the Human Rights Tribunal of Ontario (“HRTTO”). In the decision, the HRTTO concluded that Emo and its mayor, Harold McQuaker, discriminated against Borderland Pride, an LGBTQ2+ pride organization.

[2] Borderland Pride opposes the application to file the affidavit because the affidavit is not required to supplement the record to address any “exceptional circumstances”.

The Facts

[3] The HRTTO awarded \$15,000 in human rights damages to Borderland Pride and ordered that Mayor McQuaker and “the current Chief Administrative Officer (“CAO”) of the Township” complete human rights training.¹

[4] Emo and Mayor McQuaker filed for judicial review of the HRTTO’s decision. One of the grounds relied upon was that the order that the CAO take an education course is incorrect and unreasonable.

[5] Emo and the Mayor McQuaker seek to file the January 10, 2025 affidavit from Ms. Gray, the CAO affected by the order, which:

- a. reviews her employment history;
- b. confirms that she was not employed by Emo and had no involvement in the May 2020 decision of the Emo council that was determined to be discriminatory;
- c. confirms she was CAO of Emo from November 16, 2023;
- d. reviews the HRTTO decision;
- e. states that she was not given notice that she may be subject of any HRTTO order;

¹ *Borderland Pride v. Corporation of the Township of Emo*, 2024 HRTTO 1651, at paras. 78, 82-86.

- f. attaches media and social media posts about the HRTO decision.
- g. reviews her prior human rights training; and
- h. describes her “personal impact” from the decision.

Positions of the Parties

[6] The parties agree on the legal test to be applied, and both parties have relied upon the following passage from *Lachance v. Ontario (Solicitor General)*:²

[11] Generally, the evidence on an application for judicial review is restricted to the evidence that was before the original decision-maker. The narrow exceptions – established in *Keeprite* – are:

- (a) materials that ought to have been included in the record of proceedings (that is, they are properly part of the record pursuant to s. 20 of the *Statutory Powers Procedure Act*);
- (b) evidence that was not before the decision-maker but which,
 - (i) sets out general background that would assist the court;
 - (ii) shows procedural defects that are not apparent from the record or the reasons; or
 - (iii) shows a complete lack of evidence to support a material finding of fact; and
- (c) materials that are properly “fresh evidence” on the application.

[7] Emo and Mayor McQuaker submit that this affidavit contains evidence that was not and could not have been before the HRTO and, as such, is “fresh evidence”. Emo and Mayor McQuaker also submit that the affidavit provides information on matters of procedural fairness and assert that Ms. Gray had no notice that she may be subject to an order.

[8] Borderline Pride submits that all necessary facts are apparent from the record, noting that Ms. Gray’s employment history was set out in an affidavit filed with the HRTO and that Ms. Gray

² 2023 ONSC 7143, at para. 11.

testified before the HRTTO. It is not disputed that Ms. Gray was not given notice of the intention of the HRTTO to impose a remedial order on the CAO. The balance of the facts alleged in the affidavit relate to post decision events and are not relevant to the judicial review of the decision.

Analysis and Disposition

[9] I agree with the position of both parties that the record should be defined in advance of the hearing where the proposed evidence is clearly inadmissible.

[10] In this case, Ms. Gray's employment history including her start date as CAO was before the HRTTO. As noted, it is not disputed that she was not given notice that she may be subject to any order. There is no other evidence that is relevant to the judicial review of the HRTTO decision.

[11] Emo's motion is dismissed.

Costs

[12] The parties agree that costs are "in the cause".



The Hon. Mr. Justice W.D. Newton

Released: January 23, 2026

CITATION: Corporation of the Township of Emo et al v. Borderland Pride et al, 2026
ONSC 481

DIVISIONAL COURT FILE NO.: DC-24-0016-00JR

DATE: 2026-01-23

ONTARIO

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N:

Corporation of the Township of Emo and
Harold McQuaker

Applicant

- 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

REASONS FOR DECISION

Newton J.

Released: January 23, 2026