



Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

(Disponible en français)

tribunalsontario.ca/hrto

How to Respond to an Application Where You Are Named as a Respondent

Use this form if you have been named as a respondent in a human rights application under section 34 of the *Human Rights Code*.

If you fail to respond to the Application, you may be deemed to have accepted all of the allegations in the Application, and the Tribunal may proceed without further notice to you.

Before you start:

1. Read the questions and answers below.
2. Download and read the [Respondent's Guide](#) from the Tribunal's website tribunalsontario.ca/hrto.
If you need a paper copy or accessible format contact us at:

Human Rights Tribunal of Ontario
15 Grosvenor Street, Ground Floor
Toronto, Ontario M7A 2G6

Phone: 416-326-1312

Fax: 416-326-2199

TTY: 416-326-2027

Email: hrto.registrar@ontario.ca

Website: tribunalsontario.ca/hrto

Toll-free: 1-866-598-0322

Toll-free: 1-866-355-6099

Toll-free: 1-866-607-1240

The Tribunal has other guides and practice directions to help all parties to an Application understand the process. Download copies from the Tribunal's website or contact us.

3. Complete each section of the Response form that applies to you. As you fill out each section, refer to the instructions in the [Respondent's Guide](#).

Questions about Responding to an Application

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application.

What happens if I fail to complete a Response Form?

You may be deemed to have accepted all the allegations. The Tribunal may deal with the Application without any further notice to you.

What is the time limit for responding?

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Are there defences to discrimination under the *Human Rights Code*?

Yes, there are some defences and exemptions in the *Code*. Please see the [Respondent's Guide](#). If you believe one of these applies, please explain how when you fill out the Response form.



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Can the Tribunal deal with an application where the facts and issues have been dealt with or are being dealt with in another proceeding?

The *Code* has special rules depending on what the other proceeding is and at what stage the other proceeding is at. Read the [Respondent's Guide](#) and get legal advice if:

1. You are currently involved in, or were previously involved in a civil action based on the same facts and the applicant asked for a human rights remedy; or
2. A complaint was ever filed with the Ontario Human Rights Commission based on the same subject matter; or
3. You are currently involved in, or were previously involved in another proceeding (for example, a union grievance based on the same facts.

You must file a Response even if you believe that the Tribunal should defer the the Application or that the Application is outside the jurisdiction of the Tribunal, except where you allege the issues in dispute fall within exclusive federal jurisdiction.

Learn more

To find out more about human rights in Ontario, visit www.ohrc.on.ca or phone 1-800-387-9080.



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Note: Complete all parts of this form, using the [Respondent's Guide](#) for help. If your form is not complete, the Tribunal may return it to you. At the end of this form, you will be required to read and agree to a declaration that the information in your Response is complete and accurate (if you are a lawyer or legal representative assisting a respondent with this Form 2, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Tribunal File Number

2020-41858-1

Contact Information for the Respondent

Respondent Contact Information

Please choose the type of Respondent: Organization Respondent Individual Respondent

1. Respondent Contact Information - Organization

Contact information for a responding organization, such as a corporation, association, or group. Please complete both this section and Question 3.

Full Name of Organization

The Corporation of the Township of Ermo

Organization Type:

- Corporation
 Partnership
 Sole proprietorship
 Unincorporated business/organization

Other (specify):



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Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this Application.

First (or Given) Name Bridget		Last (or Family) Name Foster		Title CAO/Clerk-Treasurer - subject to Council approval	
Street # 39	Street Name Roy Street			Apt/Suite PO Box 520	
City/Town Emo		Province Ontario	Postal Code P0W 1E0	Email bfoster@emo.ca	
Daytime Phone 807-482-2378		Cell Phone	Fax 807-482-2741		TTY

What is the best way to send information to you?
 (If you check email, you are consenting to delivery of documents by email)

Mail Email Fax

Is this Response being filed on behalf of any other respondent? Yes No

3. Representative Contact Information

Complete this Section only if you are authorizing a lawyer or other Representative to act for you.

I authorize the organization and/or person named below to represent me.

My representative is:

<input checked="" type="checkbox"/> Lawyer	LSUC # 31974W
<input type="checkbox"/> Paralegal	LSUC #

Other- please specify the Nature of Exemption from licensing requirements in the text box below:
 (e.g. Unpaid family member or friend)

For further information, see the Tribunal's Policy on Representation before the HRTO at tribunalsontario.ca/hрто.



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First (or Given) Name Allan D.		Last (or Family) Name McKitrick		
Organization (if applicable) McKitricks Law Firm				
Street # 17A	Street Name Cumberland Street South			Apt/Suite
City/Town Thunder Bay		Province Ontario	Postal Code P7B 2T3	Email mckits@tbaytel.net
Daytime Phone 807-345-1252	Cell Phone	Fax 807-345-0043		TTY

What is the best way to send information to your representative?

(If you check email, you are consenting to delivery of documents by email)

Mail

Email

Fax

Contact Information - Additional Respondent(s) and Affected Person(s)

Please complete this selection if you believe another person or organization should be named as a respondent or given notice as an affected person(s).

4. Contact Information - Additional Respondent

If there is another organization or person who is not already named as a respondent on the Application form and who you believe should be named as a respondent, provide their contact information here. See the Tribunal's **Practice Direction on Naming Respondents** for more information on how to correctly name a potential respondent.

Please choose the type of respondent: Organization Respondent Individual Respondent

Additional Respondent Contact Information - Organization

Full Name of Organization



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Name of Contact Person from the Organization

First (or Given) Name		Last (or Family) Name		Title	
Street #	Street Name			Apt/Suite	
City/Town		Province	Postal Code	Email	
Daytime Phone	Cell Phone	Fax		TTY	

Add Another Respondent

5. Contact Information - Affected Person

If there is any other organization (such as a union or occupational association responsible for collective bargaining) or person who is not already named as an affected person on the Application form and who might be affected by this Application to the Tribunal, provide their contact information here.

Please choose the type of affected person: Organization Contact

Affected Person Contact Information - Organization

Full Name of Organization

Name of Contact Person from the Organization

First (or Given) Name	Last (or Family) Name	Title
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Street #	Street Name	Apt/Suite		
City/Town	Province	Postal Code	Email	
Daytime Phone	Cell Phone	Fax	TTY	

Add Another Affected Party

Request for Early Dismissal of the Application

6. Request for Dismissal - without Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because one of the four situations below applies. Put an "X" in the box that applies. Please see the [Respondent's Guide](#).

I request that the Tribunal dismiss this Application because:

- A claim based on the same facts has been filed in civil court, requesting a remedy based on the alleged human rights violation. (Attach a copy of the statement of claim and the court decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- A complaint was filed with the Ontario Human Rights Commission based on the same, or substantially the same, facts as this Application. (Attach a copy of the complaint and the decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- The applicant signed a full and final release with respect to the same matter. (Attach a copy of the release. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- The issues in the Application are within exclusive federal jurisdiction. (Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

Note: If you put an "X" in any of the boxes above, go to Question 20. Except in these four situations, or as otherwise directed by the Tribunal, requests to dismiss an Application will not be considered without a complete response.



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7. Request for Dismissal under s. 45.1 of the Code - with Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. Put an "X" below if you are making this request. Please see the [Respondent's Guide](#).

a) I request that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. (Attach a copy of the decision)

b) Please name the other proceeding:

c) Explain why you believe the other proceeding has in whole or in part appropriately dealt with the substance of the Application.

Note: You must complete the entire Response form and attach a copy of the document that started the proceeding and a copy of the decision.

Request to Defer the Application

8. Request to Defer

Complete this section only if the facts of the Application are part of another proceeding that is still in progress.

a) Describe the other proceeding:

<input type="checkbox"/> A union grievance	Name of Union:	
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A claim before another board, tribunal or agency

Name a board, tribunal, or agency:

Other

Explain what the other proceeding is:

b) Are you asking the Tribunal to defer (postpone) the Application until the other proceeding is completed?
(Attach a copy of the document that started the other proceeding)

Yes

No

Responding to the Allegations in the Application

9. Responding to the Allegations

Please summarize the facts and defences that support your Response to this Application. See the [Respondent's Guide](#).

Please include as part of your response:

- any submissions you make that the Application is outside the Tribunal's jurisdiction;
- what allegations in the Application you agree with;
- what allegations in the Application you disagree with;
- any additional facts that you intend to rely on; and
- any defences that you intend to rely on.

Please see attached Schedule "A".

10. Exemptions

Complete this section only if you are relying on one of the exemptions found in the Code. See the [Respondent's Guide](#).

a) What exemption in the Code do you believe applies to this Application?



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[Empty text box for response]

b) Please explain why you believe the exemption applies:

[Empty text box for explanation]

11. Knowledge of the Events

a) When and how did you first become aware of the events described in the Application?

Please see attached Schedule "A".

[Empty text box for response]

b) How did you respond and what was the outcome?

Please see attached Schedule "A".

[Empty text box for response]

12. Disability and Employment

Complete this section only if the applicant alleges that they experienced discrimination in employment on the ground of disability. See [Respondent's Guide](#).

a) Did you know about the applicant's particular needs before seeing the Application?

Yes

No

b) What are the requirements (essential job duties) of the position in question?

[Empty text box for requirements]



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c) Do you have a written policy, job description or other documentation that describes the requirements of the job?	<input type="radio"/> Yes	<input type="radio"/> No
d) Was the applicant unable to perform the requirements of the job because of their disability?	<input type="radio"/> Yes	<input type="radio"/> No (Go to 13)

Note: If you said "Yes" to Question 12c, you must attach a copy of the policy, job description or other document that describes the requirements of the job.

Questions About Internal Human Rights Policies

13. Internal Human Rights Policies

Complete this section only if the respondent is an organization. Please see the [Respondent's Guide](#).

a) Do you have a policy related to the type of discrimination alleged in the Application?	<input type="radio"/> Yes	<input type="radio"/> No
b) Do you have a complaint process to deal with discrimination and harassment?	<input type="radio"/> Yes	<input type="radio"/> No (Go to 14)

Note: You must attach a copy of the policy, complaint process, or the document that started the complaint, and the decision, if any.

Mediation

14. Choosing Mediation to Resolve the Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate the Application. The Member will meet with you to talk about your Response. The Member will also meet with the applicant and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? Yes



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Documents that Support Your Response

15. Important Documents You Have

If you have documents that are important to your Response, list them here. List only the most important. Indicate whether the document is privileged. Please see the [Respondent's Guide](#).

Note: You are not required to send copies of your documents at this time. However, if you decide to attach copies of the documents you list below to your Response, they will be sent to the other parties to the Application along with your Response.

Document Name	Why It Is Important To My Response
Borderland Pride Requests for Proclamations in 2018 - 2020 and the Resolutions and Responses from the Township; Alzheimer Society 2019 Proclamation.	They are central to the issues in this Application.

Add more Documents

16. Important Documents the Applicant Has

If you believe the applicant has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response
Unknown	

Add more Documents

17. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response	Name of Person or Organization Who Has It
Unknown		



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Add more Documents

Confidential List of Witnesses

18. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the applicant. See the [Respondent's Guide](#).

Name of Witness	Why This Witness Is Important To My Response
Harold McQuaker	Currently the Township Mayor and attended the council meetings which are central to this application.
Harrold Boven	Currently a Township Councillor for Emo and attended the council meetings which are central to this application.
Lincoln Dunn	Currently a Township Councillor for Emo and attended the council meetings which are central to this application.
Lori Ann Shortreed	Currently a Township Councillor for Emo and attended the council meetings which are central to this application.
Warren Toles	Currently a Township Councillor for Emo and attended the council meetings which are central to this application.
Bridget Foster (CAO/Clerk Treasurer of the Township of Emo)	would have municipal records related to the proclamation resolution requests and also attended the council meetings relevant to this application.

Add more Witnesses



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Other Important Information

19. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?

Please see attached Schedule "A".



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Checklist of Required Documents

20. Documents from Questions 6 to 13

Put an "X" in the box beside the documents that you are required to send with your Response. Put the Tribunal File Number on each document.

- Copy of a statement of claim and the Court decision, if any (from Question 6)
- Copy of a complaint filed with the Ontario Human Rights Commission and decision, if any (from Question 6)
- Copy of a full and final release that the applicant signed dealing with same matter (from Question 6)
- Submissions in support of a Request for Dismissal without Full Response (under Question 6)
- Copy of a decision from another type of proceeding that appropriately dealt with the substance of the Application (from Question 7)
- Copy of a document that started another type of proceeding based on the same facts (from Question 7 & 8)
- Copy of the policy, job description or other document that describes the requirements of the job (from Question 12)
- Copy of your organization's policy on discrimination or harassment relevant to this Application (from Question 13)
- Copy of your organization's complaints process relevant to this Application (from Question 13)
- Copy of the applicant's internal complaint (from Question 13)
- Copy of the decision from the internal complaint process (from Question 13)



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Declaration and Signature

21. Declaration and Signature

Declaration:

To the best of my knowledge, the information in my Response is complete and accurate.

Signature Date (dd/mm/yyyy)

13/07/2021

Please check this box if you are filing your response electronically. This represents your signature.
You **must** fill out the date, above.

Accommodation Required

If you require accommodation of *Code* related needs please contact the Registrar at HRTO.Registrar@ontario.ca or

Phone: 416-326-1312 Toll-free: 1-866-598-0322

Fax: 416-326-2199 Toll-free: 1-866-355-6099

TTY: 416-326-2027 Toll-free: 1-866-607-1240

Collection of Information:

Under the Ontario *Human Rights Code*, the Human Rights Tribunal of Ontario (HRTO) has the right to collect the personal information requested on this form. We use the information to resolve your application. After you file the form, your information may also be available to the public. If you have questions about how the HRTO uses your personal information, contact the HRTO at 416-326-1312 or 1-866-598-0322 (toll-free.)

Submit to HRTO

Print Form

Note: Only submit your Response once. If the Tribunal receives this Response more than once, it will only accept the first Response Form received.

ONTARIO
HUMAN RIGHTS TRIBUNAL

B E T W E E N:

**BORDERLAND PRIDE, the NORTHERN ONTARIO PRIDE NETWORK, DOUGLAS
W. JUDSON, and KATIE SHOEMAKER**

Applicants

- and -

**THE TOWNSHIP OF EMO, HAROLD MCQUAKER, HARROLD BOVEN, and
WARREN TOLES**

Respondents

SCHEDULE “A” TO THE RESPONSE

PART I - OVERVIEW

1. This is the Response of The Township of Emo, whose correct name is The Corporation of the Township of Emo (the “Township”).
2. The Township supports the LGBTQ2S+ community and principles of equality, inclusivity and diversity.

3. In fact, every year that the Applicant Borderland Pride has requested that the Township make a proclamation for Pride Week/Month, all Members of Council have supported the making of one.
4. The Township would like to work with Borderland Pride in 2021 to create language for a proclamation resolution this year which is supportive of the LGBTQ2S+ community and Pride.
5. As will be elaborated upon in this Response, the Township's issue is with the Applicants' position that it must write exactly what Borderland Pride tells it to write in its proclamations, including all facts and opinions asserted by Borderland Pride, to show its support of the LGBTQ2S+ community and Pride Week/Month.
6. Such demands, among other things, infringe on the *Charter* protected rights of freedom of thought, belief, opinion and expression and are inconsistent with principles of municipal law and government.
7. The Township also takes issue with the mistreatment of its councillors and employees and the threats of financial hardship and ruin and other consequences to those councillors that do not do and say exactly what Borderland Pride says they must do and say and the impact on municipal government resulting from the strategy of naming the majority of the

Township's Council members personally in the Application, simply based on how they voted on a resolution before Council, and seeking an Order prohibiting these councillors from being indemnified by the Municipality or any insurance policy.

The Township

8. The Township is an Ontario municipal corporation located in the Rainy River District in Northwestern Ontario.
9. The population of the Township is approximately 1,330. It is a rural community, located approximately thirty (30) minutes by car to the west of Fort Frances.
10. The Township Council consists of one mayor and four councillors.
11. The role of Council is set out in section 224 of the *Municipal Act, 2001*.
12. Among other things, it is the role of Council to represent the public and to consider the well-being and interests of the municipality and to determine which services the municipality provides.

13. A municipal council acts as a body and the Township is not responsible for the acts, statements or views of council's individual members.
14. The Township has very few employees. With respect to the Township administration itself, there is currently a Chief Administrative Officer and one administrative assistant. They, as well as Council, have been doing their best to keep the Township functioning during the pandemic.
15. Those who agree to run for municipal election in small towns, generally speaking, do so to serve their communities. They act in good faith, even when they sometimes make mistakes; they come from diverse backgrounds; some have post-secondary educations and some do not; some are wealthy and some live pay cheque to pay cheque or otherwise just get by financially.
16. The financial remuneration paid to councillors is low; the abuse taken (especially in a world of electronic communication) is high; and the risks and burdens to themselves and their families, financially and otherwise, for agreeing to serve their communities are ever increasing.
17. As a result, it is getting harder and harder to get people to run for municipal office in Northwestern Ontario and, as a result, many persons are acclaimed to council positions in the region.

18. With respect to the Township, the mayor receives \$9,000.00 per annum for serving as mayor, and the other councillors receive \$6,000.00 per annum to serve as councillors.
19. The monetary amount claimed by the Applicants from the individual councillors in this Application represents more than they make for serving as councillors in a year.
20. The members of the current Township Council, with their full time occupations de-noted in brackets beside their names respectively are as follows:

Mayor

1. Harold McQuaker (business person, primarily in the gravel industry)

Councillors

2. Harrold Boven (bus driver);
3. Lincoln Dunn (newspaper manager);
4. Lori Shortreed (childcare provider); and
5. Warren Toles (owner of an agricultural business).

PART II – PRELIMINARY ISSUE

21. Given the impact that these preliminary issues are having on the Township's ability to function and respond to this Application, the preliminary issues set out below require immediate attention and resolution.
22. The Application, as it has been brought by the corporate applicants, ought to be summarily dismissed forthwith against all Respondents as the *Human Rights Code* (the "Code") confers rights upon individuals and not corporations.
23. In addition, it is the Township's position that the Application made by all Applicants ought to be summarily dismissed against the individual respondents.
24. Reasons why are set out below.
25. In the Application, the Applicants state that, "the individuals named as respondents [together, "**Individual Respondents**"] are members of the Council who voted against the resolution, causing its defeat by a recorded vote of 3-2."
26. A council of a municipal corporation speaks as a whole and the naming of all municipal councilors as parties based on how they voted on a matter and

then seeking an order from the Human Rights Tribunal that they cannot be indemnified either by the Township or pursuant to an insurance policy (especially in a proceeding before the HRTTO where costs are not awarded) is:

1. an abuse of process;
 2. contrary to public policy;
 3. contrary to the *Municipal Act, 2001*, and, in particular, infringes on an individual councillor's immunity rights provided for in section 448 of the *Municipal Act, 2001*;
 4. contrary to the *Canadian Charter of Rights and Freedoms* (the "*Charter of Rights*");
 5. contrary to principles of municipal government and democracy; and
 6. contrary to the purposes of the principle of qualified privilege as it relates to municipal council meetings.
27. If councillors are exposed to human rights applications simply based on how they vote, in good faith, on an issue; are prohibited from claiming indemnity internally or through a policy of insurance; and cannot recover costs in a proceeding before the HRTTO because the HRTTO does not award them; then

the impact on who can afford to run for municipal office and how a municipal government functions will be severe.

28. Further, if the approach of bringing a human rights application against any councillor personally who does not fully support what an applicant is seeking is a permitted strategy, there will, among other things, be a chilling and negative effect on municipal government, free speech, and the principles of qualified privilege regarding deliberations at municipal council meetings.

Minority of Council Members Now Constitute the Majority in Respect of this Application

29. In the within application, the Township Council decision that resulted in this human rights application being commenced was made by a 3-2 vote.
30. The Applicants have named all three councillors (the majority of Council) that voted against the subject motion (for reasons that are elaborated on in this Response) but not the two councillors (the minority of Council) that voted for the subject motion.
31. Because they have been named personally in this Application, the three named councillors are not participating as Township representatives in decision-making as it relates to this proceeding, any possible settlement of

this Application or, in fact, with respect to the making of any proclamation decisions in the Township at all.

32. By virtue of section 7 of the *Municipal Conflict of Interest Act*, a quorum of Council can reduce to 2 in a circumstance such as this.
33. As a result, the minority of Council, which consists of the two councillors who voted for the subject motion, now constitutes the whole of the Council of the Township to make decisions on this Human Rights Application and any proclamation requests whatsoever that are brought in the Township.
34. Even if an application is wholly without basis under the *Code*, the practical effect of a strategy of naming the majority of councillors personally is that the minority of the Members of Council are now exclusively responsible for making decisions on the issue.
35. Given that it can take several years, and sometimes longer, for a human rights matter to be heard and decided on its merits, the circumstances described above may last for the balance of a term of council, and, in some cases, significantly longer.
36. Further impacting on the functioning of municipal government, if councillors can be named personally based on how they vote, councillors may make

decisions when there are potential human rights issues involved that are not in the public interest and/or out of fear because to do otherwise may cause financial hardship or ruin to them and their families if they are named in a human rights application and cannot in any way be indemnified in such process.

37. There is a reason that section 448 of the *Municipal Act, 2001* exists. It exists not only to protect municipal councillors from financial hardship or ruin, but to ensure that, rightly or for wrongly, they make decisions that they believe are in the best interests of the community, free from outside pressure.
38. Similarly, there is a reason that the principle of qualified privilege exists at Council meetings and that there are rights to protect democratic institutions, democracy, and freedom of expression under the *Charter of Rights*.

HRTO Practice Direction on the Naming of Individuals in Addition to Corporations as Respondents

39. The naming of the individual councillors as parties is contrary to the Practice Direction on Naming Respondents of the HRTO. Among other things, it is not necessary that the individual councillors be named as parties for actions taken by them while performing their duties in good faith on behalf of the Township.

40. It is submitted that, for the reasons stated above, the Application against the individual councillors and the corporate applicants' Application against all respondents ought to be forthwith dismissed.
41. Further, the information and details provided in the Application do not provide any basis for a claim of discrimination under the *Code* against Councillors Boven or Toles. There is no link between the grounds claimed by the Applicant and the facts presented in the Application with respect to them and, with respect to the attempt to draw inferences against Councillor Boven based on his religious beliefs, such allegations are speculative and discriminatory. For these reasons alone, the Application against them ought to be dismissed.

PART III

General

42. The submissions made in this Response are made without derogating from the Township's preliminary positions as stated above.
43. The Respondents did not discriminate against any of the Applicants on the basis of sexual orientation, gender identity, gender expression, family status or creed under the *Code*.

44. The Township supports the LGBTQ2S+ community and principles of equality, inclusivity and diversity.

The Making of Proclamations by the Township

45. The Township gets very few requests for proclamations per year.
46. In all cases in which the current Council has made proclamation resolutions for any organizations, the wording contained in the proclamation resolution is very general in nature.
47. By way of example, on December 10, 2019, the Township carried the following resolution at the request of the Alzheimer Society.

“BE IT RESOLVED that the Township of Emo hereby declares January, 2020 as Alzheimer Awareness Month.”

48. For comparison purposes, the resolution that was passed in 2019 respecting Pride Week read as follows:

“Be it resolved that I, Mayor Harold McQuaker do hereby proclaim the week of June 2 through 9, 2019 to be Pride Week in the Township of Emo;

And further that all citizens are encouraged to reflect and work together on equality, acceptance, and inclusion for all people throughout the year.”

49. A letter was provided to Borderland Pride together with this Resolution which included the following:

“Council fully recognizes the importance of this matter and felt strongly about supporting your initiative.”

Events Related to Proclamations - 2018

50. In or about May of 2018, the Township received a request from Borderland Pride to make a proclamation that the week beginning July 9, 2018 be declared Pride Week.
51. This was the first proclamation request that the Township had ever received from Borderland Pride or from anyone with respect to a Pride Week or Month.
52. Together with this request, a draft proclamation resolution was provided by Borderland Pride.
53. It was stated in the cover letter from Borderland Pride that this draft proclamation/resolution was enclosed as “a **sample** proclamation/resolution” [emphasis added] and that the Township was “encourage[d] to use this as a model for their own version”.

54. The language requested by Borderland Pride in this 2018 proclamation request differed from the language contained in the requests from Borderland Pride in subsequent years and the Council at the time that the 2018 proclamation was made was different than the Council in 2019 and 2020.
55. The 2018 proclamation request was considered by the Township Council and, though not in the exact language requested by Borderland Pride, a supportive proclamation request was carried.
56. No issues arose respecting either the 2018 request or the 2018 proclamation that was made.
57. On October 22, 2018, there was a municipal election.
58. Two of the members of the previous council (Lori Shortreed and Warren Toles) were re-elected and three new members of Council (the Respondents Harold McQuaker and Harrold Boven in this Application and Lincoln Dunn) were elected.
59. It is a principle of municipal law that one Council is not bound to follow the policy of a previous one.

Events Related to Proclamations - 2019

60. By way of a letter dated April 22, 2019, Borderland Pride requested that Council pass a proclamation resolution.
61. Together with this Borderland Pride proclamation request letter, a proposed resolution was attached. Such language included factual assertions and opinions.
62. Borderland Pride made it clear in its request letter that the requested proclamation resolution need not be in the text suggested by Borderland Pride.
63. Rather, Borderland Pride stated that it “would **prefer** a resolution using the text of the enclosed document [emphasis added]”.
64. The request was considered at the Township Council meeting held on May 14, 2019.
65. Council decided to make a proclamation supportive of the LGBTQ2S+ community and Borderland Pride but did not use all of Borderland Pride’s suggested language when making such resolution.

66. Council considered the fact that the language suggested by Borderland Pride was only suggested language and, in Council's view, the appropriate resolution to make was one that, while supportive of the LGBTQ2S+ community, was more general in nature, being an approach that is consistent with all other proclamation resolutions that have been made during this term of Council for any organizations.

67. As noted earlier in this Response, the proclamation resolution that was carried read as follows:

“Be it resolved that I, Mayor Harold McQuaker do hereby proclaim the week of June 2 through 9, 2019 to be Pride Week in the Township of Emo;

And further that all citizens are encouraged to reflect and work together on equality, acceptance, and inclusion for all people throughout the year.”

and this proclamation resolution was provided together with a letter dated May 22, 2019, in which Borderland Pride was informed of the resolution's passage and included the following supportive statement:

“Council fully recognizes the importance of this matter and felt strongly about supporting your initiative”.

68. Borderland Pride was not satisfied with the proclamation that was made. In their view, the resolution needed to be as they worded it (notwithstanding that

they stated in their cover letter that the language that they were proposing was simply what they would “prefer”).

69. Borderland Pride subsequently made it known that it was displeased with the Township’s decision to not use the exact language that Borderland Pride had suggested to the Township Council for its consideration and Borderland Pride representatives and others then proceeded to criticize and ridicule Township councillors publicly, on social media and otherwise, for not enacting the proclamation resolution in exactly the preferred wording that Borderland Pride had submitted to it for consideration.

Events Related to Proclamations - 2020

70. With respect to the pandemic, its declaration in March of 2020 resulted in the Township Council and Administration focusing on matters relating to the emergency situation.
71. As noted above, the Township is very small and, among other things, has no Information Technology (“IT”) Department and the move to working remotely and the transfer to the conduct of virtual council and other meetings took a substantial amount of administration time and there was a substantial

learning curve in the conduct of virtual meetings for all concerned, including Township councillors and employees.

72. By way of a letter dated April 29, 2020, Borderland Pride made a request for a proclamation resolution in wording drafted by Borderland Pride.
73. This request again contained more information (some of which was different than the wording requested in 2019), including opinions and factual assertions that are not contained in the proclamations that this Township Council makes for any organizations.
74. The proclamation resolution in wording drafted by Borderland Pride also contained opinions and factual assertions that are not contained in proclamations made by many other municipalities throughout Ontario.
75. However, unlike in 2019, this time Borderland Pride made it clear that the Resolution that it was requesting had to contain all factual assertions and opinions in the exact text of the proposed resolution that it provided to the Township.
76. The matter was placed on the Agenda for the Township Council meeting to be held on May 12, 2020 and was considered on that date.

77. At the Council Meeting, there were preliminary discussions regarding how to deal with the matter procedurally, including discussions about what to do if Council preferred to make a proclamation resolution which was supportive of Borderland Pride, but not in the exact wording provided to it by Borderland Pride.
78. It was determined at the May 12th Council Meeting that the present motion on the floor respecting Borderland Pride's request for a proclamation exactly in the wording drafted by Borderland Pride needed to first be voted on at that meeting, before other resolutions could be considered.
79. At the May 12th Council Meeting, two of the Township's councillors stated that they wanted to pass a resolution in the exact wording presented to Council by Borderland Pride and they put a motion on the floor in that respect.
80. The other three councillors stated that they would support the making of the same supportive proclamation that was made the year before. However, the two councillors that moved and seconded the motion noted that there was no motion on the floor to make a proclamation resolution in the wording being suggested by the other three councillors.
81. Council then voted on the resolution for a proclamation exactly in the wording drafted by Borderland Pride and the motion was lost by a 3-2 vote.

82. A request that Council reconsider its decision was made by Borderland Pride by way of a letter dated May 21, 2020.

83. In this letter, it was made clear that far more than the passage of the initially requested resolution would now be required to resolve the matter. Apologies and other actions such as mandatory training would now also be required and the reconsideration request was made with a threat of legal action.

84. More particularly, in this letter, it was stated that, now to resolve the matter, all of the following “corrective actions” would be required to satisfy Borderland Pride:

1. “Make a public, unreserved apology to their citizens for the homophobic comments and actions taken at their meeting on May 12, 2020;
2. Require councillors to complete training on topics related to diversity, inclusion, and human rights, with a focus on LGBTQ2 issues; and
3. Adopt the resolution, as drafted and submitted by Borderland Pride for the May 12, 2020 meeting of Council.”

85. In addition, a separate but related email dated May 16, 2020 was received from one of the Applicants, who is a lawyer as well as a municipal councillor in the Town of Fort Frances, being the largest municipality in the Rainy River District.
86. In this email, it was asserted that Council's decision was a "settled matter" and that the Township must now treat the matter as a reconsideration matter.
87. It must be recalled that the majority of the members of Council at the subject Council meeting wanted to defer the matter and consider making a proclamation resolution to support the LGBTQ2S+ community and Pride Month, but in its own wording.
88. In order to deal with the matter as a reconsideration matter, 80%, and not 50% of the Council Members would have to agree to reconsider the matter.
89. This would make it less likely that the matter would be reconsidered or that Council would be able to agree to a proclamation resolution in different wording than that which was proposed by Borderland Pride. Further, as noted above, it was asserted to the Township by the above-noted Applicant that far more than the passage of the initially requested resolution would now be required to resolve the matter.

90. On May 26, 2020, at its Council meeting, Council, following its procedural by-law and the process as asserted by the above-noted Applicant, decided not to reconsider the matter and this human rights application was subsequently commenced.
91. Since the above-noted May 2020 Council meetings, several councillors have, on multiple occasions over social media and otherwise, been the subject of threats and attacks, including threats to their security and attacks to their dignity and self-worth and ridicule based on their ages and religious beliefs.
92. Further, shortly after the meeting had occurred, the exterior of the Township Office Building was, by persons currently unknown to the Township, without permission or authority, placarded with posters, which was widely publicized and reported. Borderland Pride promptly posted a picture of the unauthorized placarding of its municipal office on its Facebook page.
93. With respect to the requested remedies of the Applicants, while the Respondents have not discriminated against any of them, the Respondent Township denies that the Applicants have suffered any such damages and puts them to the strict proof thereof.
94. Further, the Applicants' claims for damages are excessive.

95. In addition, the remedies sought are inappropriate, unnecessary, contravene the *Charter of Rights* and principles of municipal law and otherwise and would not serve the public interest.
96. As well, requests for remedies for relief in perpetuity against a township and its councilors are unreasonable, run afoul with general municipal law principles and do not take into account that the law and society itself are ever changing.
97. Without limiting the Township's position on remedies as stated above, the Township states the following.
98. Specifically with respect to Borderland Pride and the Northern Ontario Pride Network, they are corporations. The *Code* provides rights to individuals, not corporations. Further, corporations cannot suffer human rights damages.
99. Specifically with respect to the remedies sought in paragraph 46(b) - (d), the requests are for compelled expression and forced opinions, which constitute an infringement of a councillor's freedom of expression and freedom of conscience and religion rights under section 2 of the *Charter of Rights* and are inappropriate remedies to impose on an elected municipal government.
100. Specifically with respect to the remedy sought in paragraph 46(e), it is inappropriate and contrary to principles of municipal government and the

public interest to require a municipal government to do such things in perpetuity.

101. Specifically with respect to the remedy sought in paragraph 46(e), the Township already has policies in place to address these matters.
102. Specifically with respect to the remedy sought in paragraph 46(g), a request for a retroactive proclamation for an event that occurred in the past is not practical, necessary or appropriate in the circumstances of this Application. Further, it is inappropriate and contrary to the *Charter of Rights* for the language for such proclamation to be imposed on a municipal government, especially if it must contain compelled statements of fact, forced opinions and other compelled expression.
103. Specifically with respect to the remedy sought in paragraph 46(h), there is no flag pole at the Township office; further the Township does not fly, raise or display flags for any organizations. In addition, such request constitutes compelled expression and it would be inappropriate and contrary to principles of municipal government and the public interest if a corporation other than the municipality could dictate when a township must fly, raise or display a flag of its choosing and for how long.

104. Specifically with respect to the remedy sought in paragraph 46(h), an order from the Human Rights Tribunal to prohibit individual councillors from being indemnified by the Township or pursuant to an insurance policy (especially in a human rights tribunal process where costs are not awarded) is:

1. an abuse of process;
2. contrary to public policy;
3. contrary to the *Municipal Act, 2001*, and, in particular, infringes on an individual councillor's immunity rights provided for in section 448 of the *Municipal Act, 2001*;
4. contrary to the *Charter of Rights*;
5. contrary to principles of municipal government; and
6. contrary to the purposes of the principle of qualified privilege as it relates to municipal council meetings.

105. Specifically with respect to the remedy sought in paragraph 46(j), the HRTTO does not award costs against any party.

PART IV – ORDER REQUESTED

106. The Respondent Township respectfully requests the following Orders:

- a. a preliminary Order
 - i. removing the individual Respondents as parties to this Application;

- ii. dismissing this Application as brought against the Respondents by Borderland Pride and Northern Ontario Pride Network, being corporate entities;
 - iii. dismissing the Application, in part, and narrowing the issues; and
- b. an Order dismissing the Application as brought by all Applicants against all Respondents.