



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

Contact Information for the Respondent

Respondent Contact Information

Please choose the type of Respondent: Organization Respondent Individual Respondent

2. Respondent Contact Information - Individual

If you have been named as an individual respondent, please complete this section and then go to Question 3.

First (or Given) Name Harold		Middle Name	Last (or Family) Name McQuaker	
Street #	Street Name P.O. Box 105		Apt/Suite	
City/Town Fort Frances		Province Ontario	Postal Code P9A 3M5	Email hmcquaker@emo.ca
Daytime Phone	Cell Phone	Fax	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



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

- It is filed on behalf of all respondents named in the Application
 It is filed on behalf of the following respondents

Based on the selection, please list the name of the respondents represented in this response.

Harrold Boven
Warren Toles

NOTE: While some respondent contact records were not identified by the applicant in Form 1 you may wish to add any additional respondent contact records in Section 4 in order retain accurate contact records on the case.

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 #	55305R
<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/hrto.



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First (or Given) Name Anna	Last (or Family) Name Matas
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Organization (if applicable)
Gillian Hnatiw & Co.

Street # 67	Street Name Yonge Street	Apt/Suite 2nd Floor
-----------------------	------------------------------------	-------------------------------

City/Town Toronto	Province Ontario	Postal Code M5E 1J8	Email anna@gillianandco.ca
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Daytime Phone 416.825.5659	Cell Phone 416.827.5043	Fax 416.352.1526	TTY
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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	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
City/Town	Province	Postal Code	Email
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Daytime Phone	Cell Phone	Fax	TTY
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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 Schedule "A" attached.

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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b) Please explain why you believe the exemption applies:

11. Knowledge of the Events

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

All three Individual Respondents were present during the events described in the Application.

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

Please see Schedule "A".

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?



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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.

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

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
Recorded copy of the Meetings of May 12, 2020 and May 26, 2020	It is a recording of the events on which this Application is based.
Transcript excerpts of the above-noted meetings (unofficial)	It provides an easier to use form of the recorded meetings.



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Email from Councillor Boven to CAO/Clerk Treasurer-Foster	It demonstrates a good faith attempt to resolve the issues underlying this Application.
Written apology from Mayor McQuaker to the Applicants	It demonstrates a good faith attempt to resolve 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		

Add more Documents



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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	This individual respondent was present for events at issue in this claim & can provide first-hand evidence of the events at issue in this Application.
Harrold Boven	This individual respondent was present for events at issue in this claim & can provide first-hand evidence of the events at issue in this Application.
Warren Toles	This individual respondent was present for events at issue in this claim & can provide first-hand evidence of the events at issue in this Application.
Bridget Foster on behalf of Township of Emo	Ms. Foster is the CAO/Treasurer-Clerk of the Township of Emo and was present for the events at issue in this Application.

Add more Witnesses

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?

N/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)

14/07/2021

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” – RESPONDING TO THE ALLEGATIONS (FORM 2)

1. This response is filed on behalf of Harold McQuaker, Harrold Boven and Warren Toles (collectively, “the Individual Respondents”).
2. The Individual Respondents repeat and rely on the submissions set out in the Response to an Application (Form 2) of the Corporation of the Township of Emo (“the Township”), filed on July 13, 2021.
3. For the reasons set out in the Township’s Response, as well as the reasons set out below, the Individual Respondents submit this Application ought to be summarily dismissed in its entirety and/or against them individually.

Background and Relevant Facts

4. As noted at paragraph 20 of the Township's Response, Harold McQuaker is the Mayor of the Township. Harrold Boven and Warren Toles are Councillors in the Township.
5. The Proclamation in support of Pride drafted by the Applicant Borderland Pride ("Borderland") was put to a vote at a Council Meeting on May 12, 2020.
6. Prior to the vote, Councillor Boven expressed concerns relating to a procedural matter, and asked that the vote on Borderland's Proclamation be deferred to a subsequent meeting of Council.
7. Mayor McQuaker agreed that this matter should be put forward to the next meeting, for further consideration and discussion. The next meeting of Council was scheduled for May 26, 2020.
8. Also prior to the vote, Councillor Toles indicated that he was not in favour of the Proclamation as drafted by Borderland but confirmed he would support a Proclamation similar to the one passed by Council in 2019. Specifically, Councillor Toles indicated he would support a Proclamation which would affirm the Township's support of the LGBTQ2S+ community and declare a Pride Week in Emo.
9. Notwithstanding this discussion, a formal vote was called at the May 12, 2020 meeting to pass the Proclamation as drafted by Borderland.

10. As noted in the Township's Response, the Proclamation proposed by Borderland contains opinions and factual assertions. It is substantively unlike other Proclamations passed by the Township.
11. The Individual Respondents voted against this motion, which was defeated.
12. At this same meeting, subsequent to the vote defeating Borderland's Proclamation, Councillor Toles proposed moving a second motion, to make an alternate Proclamation in support of the LGBTQ2S+ community and to declare a Pride Week in Emo.
13. The Proclamation proposed by Councillor Toles was based on the Proclamation this same Council passed in 2019. However, for procedural reasons, this motion did not come to a vote at the May 12, 2020 meeting.
14. The Individual Respondents reiterate that they repeat and rely on paragraphs 82-91 of the Township's Response with respect to the request for reconsideration and the May 26, 2020 Council Meeting.
15. On or around June 21, 2020, Councillor Boven wrote to the Township's CAO/Clerk-Treasurer in an attempt to have a new motion put forward to declare June Pride Month in Emo and to put forward the Pride Resolution as passed by Council in 2019. For procedural reasons, this motion proposed by Councillor Boven was not tabled at the June 23, 2020 Council Meeting.
16. Despite the initiation of this Application, the Individual Respondents have continued to work towards a resolution of the issues underlying this Application.

17. In a letter dated December 3, 2020, Mayor McQuaker apologized in writing for any of his actions and comments which made any member of the LGBTQ2S+ community feel unwelcome in Emo. He described the reflection and learning he had undertaken with respect to the LGBTQ2S+ community and committed to working to protect this community and to promote equality and inclusion for all members of the LGBTQ2S+ community to ensure everyone feels welcome in the Township.
18. With respect to paragraph 4 of the Township's Response, the Individual Respondents are willing to work with the Applicants in 2021 to draft language for a mutually agreed-upon proclamation this year which is supportive of the LGBTQ2S+ community and Pride.
19. However, as a result of this Application, the Individual Respondents have been unable to participate in any Township Business relating to this Application or these issues because of the conflict of interest created by naming them individually in this Application. This highlights the problematic nature of naming municipal Councillors based on their voting record, as described in great detail at paragraphs 29-38 of the Township's Response.

Submissions on Remedies

20. As a preliminary matter, the Individual Respondents submit they ought not to have been named as Respondents in this matter. Naming the Individual Respondents was contrary to the Tribunal's Practice Direction on the Naming of

Respondents. For this reason alone, this Application ought to be dismissed as against them individually.

21. With respect to the request for compensation to be paid personally by the Individual Respondents set out at paragraph 46(a) of this Application, the Individual Respondents affirm that at all times, they were performing their duties as elected officials on behalf of the Township in good faith.
22. The Individual Respondents claim immunity pursuant to section 448(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, which states in relevant part that “[n]o proceeding for damages or otherwise shall be commenced against a member of [a municipal] council ... for any act done in good faith in performance or intended performance of a duty...”
23. With respect to the balance of the “Order Requested” at paragraph 46 of this Application, the Individual Respondents reiterate their adoption of the submissions set out at paragraphs 93 – 105 of the Township’s Response.

Conclusion and Order Sought

24. The Individual Respondents did not discriminate against the Applicants as alleged, or in any other manner. To the contrary, as outlined above, the Individual Applicants supported passing a Proclamation affirming Pride in Emo in 2020 and the Declaration of Pride Week in Emo.
25. The Individual Respondents should not be sanctioned for refusing to accept the exact wording suggested by Borderland Pride for in respect of the Proclamation proposed.

26. For the reasons set out above, this Application should be dismissed in its entirety and/or as against the Individual Respondents.