



At any time after an Application has been filed with the Tribunal, a party may make a Request for an Order during a proceeding by completing this Request for an Order During Proceedings (Form 10).

The Tribunal will determine whether a Request for an Order will be heard in writing, in person or electronically and, where necessary, will set a date for the hearing of the Request. This Request may be heard on the basis of Form 10 alone.

**Follow these steps to make your request:**

1. Fill out this Form 10.
2. All documents you are relying on must be included with this Form 10.
3. Deliver a copy of Form 10 to all parties and any person or organization who has an interest in this Request.
4. If this is a Request for an Order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7 (q), this Form 10 must be delivered to the non-party in addition to the other parties in the proceeding.
5. Complete a Statement of Delivery (Form 23).
6. File Form 10 and Form 23 with the Tribunal.

**Information for all parties and any person or organization who receives a copy of this Request**

You may respond to this Request for an Order by completing a Response to a Request for an Order During Proceedings (Form 11).

**Follow these steps to respond:**

1. Fill out Form 11.
2. All documents you are relying on must be included with Form 11.
3. Deliver a copy of Form 11 to all parties and any other person or organization that has an interest in the Request.
4. Complete a Statement of Delivery (Form 23).
5. File Form 11 and Form 23 with the Tribunal.

You must file your Response to a Request for Order not later than **fourteen (14)** days after the Request for Order was delivered to you.

Download forms from the Tribunal's web site [tribunalsontario.ca/hrto](http://tribunalsontario.ca/hrto). If you need a paper copy or accessible format, contact us:

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

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

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

Email: [hrto.registrar@ontario.ca](mailto:hrto.registrar@ontario.ca)



Application Information	
Tribunal File Number:	2020-411858-I
Name of Applicant:	Borderland Pride, Northern Ontario Pride Network, D Judson, K Shoemaker
Name of Each Respondent:	Township of Emo, H McQuaker, H Boven, W Toles

**1. Your contact information (person or organization making this Request)**

First (or Given) Name Timothy		Last (or Family) Name Phelan		Organization (if applicable) Cambridge LLP	
Street Number 31	Street Name Nova Scotia Walk			Apt/Suite 307	
City/Town Elliot Lake		Province ON	Postal Code P5A 1Y9	Email tphelan@cambridgellp.com	
Daytime Phone 705-578-5080	Cell Phone		Fax	TTY	

If you are filing this as the Representative (e.g. lawyer) of one of the parties please indicate:

Name of party you act for and are filing this on behalf of: All of the applicants	LSUC No. (if applicable) 81550K
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What is the best way to send information to you?  Mail  Email  Fax  
(If you check email, you are consenting to the delivery of documents by email.)

Check off whether you are (or are filing on behalf of) the:

- Applicant     Respondent     Ontario Human Rights Commission  
 Other - describe: \_\_\_\_\_

**2. Please check off what you are requesting:**

- |   |  |
|---|--|
| <input type="checkbox"/> Request to consolidate or have applications heard together | <input type="checkbox"/> Request to re-activate deferred Application   |
| <input type="checkbox"/> Request to add a party                                     | <input type="checkbox"/> Request for particulars   |
| <input type="checkbox"/> Request to amend Application or Response                   | <input type="checkbox"/> Request for production of documents   |
| <input type="checkbox"/> Request to defer Application                               | <input checked="" type="checkbox"/> Other, please explain:<br>To strike witness statement contents filed by the respondents, as outlined in Schedule "A" |
| <input type="checkbox"/> Request extension of time                                  |  |

**3. Please describe the order requested in detail.**

See attached hereto as Schedule "A".

**4. What are the reasons for the Request, including any facts relied on and submissions in support of the Request?**

See attached hereto as Schedule "A".

**5. Do the other parties consent to your Request?**

Yes       No       Don't know

**6. If you are requesting production of a Document(s), please explain if you have already requested the document and any response you have received. You must attach a copy of your written Request for the Document(s) and the Responding Party's Response, if any.**

Not applicable.

**7. If you are relying on any documents in this Request, please list below and attach. You must include all the documents you are relying on.**

See attached hereto as Schedule "A".

**8. Please check off how you wish the tribunal to deal with the matter:**

In writing       Conference call       In person hearing       Don't know

**9. Explain why you wish the Tribunal to deal with the request in the manner indicated above.**

We propose that this Request for Order During Proceedings be determined at the outset of the hearing scheduled for June 2024.

**10. Do the other parties agree with your choice for how the Tribunal should deal with your Request?**

Yes       No       Don't know

**11. Signature**

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Name: Timothy Phelan	
Signature: Timothy Phelan	Date: (dd/mm/yyyy) 24/04/2024

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

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.)

## SCHEDULE “A” TO THE FORM 10 REQUEST FOR ORDER

### (Motion to Strike)

1. The applicants Borderland Pride, the Northern Ontario Pride Network, Douglas W. Judson, and Kathryn L. Shoemaker [together, “**Applicants**”] request an order striking the following materials from the witness statements of the respondent Harrold Boven, and Warren Toles [together, “**Individual Respondents**”] as frivolous, vexatious, irrelevant, misleading, and as materials that are subject to settlement privilege and improperly produced as evidence:

- a. Paragraphs 63 to 69 and Exhibits “12”, “13”, and “14” of the Witness Statement of Harrold Boven;
- b. Paragraph 55 and Exhibit “8” of the Witness Statement of Harold McQuaker; and
- c. Paragraph 57 and Exhibit “8” of the Witness Statement of Warren Toles.

2. The Applicants propose that this Request for Order During Proceedings be either determined in writing in advance of the merits hearing or at the outset of the merits hearing in June 2024.

#### **A. Irrelevant and Vexatious Evidence Related to the Court Application**

3. At paragraphs 63 to 68 and Exhibits “12” and “13” of his witness statement, Mr. Boven makes statements concerning a court application brought against him under the *Municipal Conflict of Interest Act* [“**MCIA**”].<sup>1</sup> It is apparent that Mr. Boven has not entered this “evidence” for any proper purpose, but rather only to cast aspersions and unwarranted disrepute on the applicant Douglas W. Judson and his law practice. The statements made are false and irrelevant to the issues in this proceeding.

4. First, this part of Mr. Boven’s witness statement makes vexatious comments which baselessly allege impropriety in our client’s law practice. These attack our client’s lawyer-client relationship. The applicant in the *MCIA* proceeding was Luke Judson, who is the brother of Douglas W. Judson. Douglas W. Judson’s law firm, Judson Howie LLP, acted for Luke Judson in the *MCIA* application.<sup>2</sup> Douglas W. Judson is the only full-time civil litigator who is a member of

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<sup>1</sup> Witness Statement of Harrold Boven [“**Boven Statement**”] at paras. 63-68 and Exs. “12” and “13”.

<sup>2</sup> Supplementary Witness Statement of Douglas W. Judson, dated April 23, 2024 [“**Judson Supplementary Statement**”] at para. 12.

the Rainy River District Law Association. Luke Judson's choice of counsel is irrelevant to the within application and is none of Mr. Boven's concern.

5. Second, the irrelevant nature of this portion of Mr. Boven's evidence is apparent from the misleading framing of it in his witness statement. Mr. Boven omits the nature of the court application or the statute it was brought under yet suggests that it dealt with the same issues as the within proceeding. It did not. In fact, Warkentin J stated in her reasons, that "[t]he merits of the HRTO proceeding are not relevant in this application".<sup>3</sup>

6. From this, it is clear that the court application did not deal with the underlying merits of this matter before the Tribunal. The court only dealt with whether Mr. Boven had breached the *MCIA* when he voted to indemnify himself in respect of his legal costs in the Tribunal matter. As such, the references to the court application in Mr. Boven's witness statement have no bearing on this matter.

7. Third, Mr. Boven suggests, at paragraph 64 of his witness statement, that Luke Judson was a stalking horse for Douglas W. Judson. This is vexatious and misleading and is intended to smear our client before this Tribunal. Mr. Boven and his current counsel made similar statements to the court. These submissions were not accepted and are not concerns that were canvassed in Warkentin J's decision.<sup>4</sup> They were meritless then and there, and they are meritless here and now.

8. The bad faith nature of these statements is also apparent because, at the time Mr. Boven provided this witness statement to the Tribunal, he would have been aware of several facts which refute his assertions. For instance, Mr. Boven would have known (i) that Luke Judson had provided uncontroverted affidavit evidence that he had retained Judson Howie LLP to act for him, (ii) that our client produced a certificate under rule 15.02 of the *Rules of Civil Procedure* confirming that he was authorized to commence the *MCIA* application on behalf of Luke Judson, and (iii) that Luke Judson, when his application was unsuccessful, had personally made payment of costs to him.<sup>5</sup> As such, these comments in Mr. Boven's witness statement are vexatious, false, and misleading.

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<sup>3</sup> *Judson v. Boven*, 2023 ONSC 6915 ["**MCIA Decision**"] at para. [14](#).

<sup>4</sup> *MCIA Decision*.

<sup>5</sup> *Judson Supplementary Statement* at para. 12.

9. Finally, Mr. Boven makes a number of misleading and patently false statements about Douglas W. Judson's own experiences as a municipal councillor, none of which are relevant to this application and all of which appear to be intended to cast aspersions on our client.

10. At paragraph 66 of his witness statement, Mr. Boven states that "I also believe that this ONSC application was brought for an improper purpose because the alleged wrongdoing in the application was the same behaviour Douglas Judson himself had engaged in".<sup>6</sup> Mr. Boven is referring to a request that our client made to his council, in Fort Frances, in which he sought indemnification from the municipality in respect of a proceeding that was commenced against him.

11. This statement is false, based on Mr. Boven's own evidence. Exhibit "12" of Mr. Boven's witness statement includes the minutes of the meeting that Mr. Boven alleges our client engaged in the same behaviour as him. Contrary to his assertions, these minutes show that – unlike Mr. Boven – (i) our client declared an interest in his request for indemnification, (ii) he did not vote on the resolution to indemnify himself, and (iii) he was not granted indemnification by his council.<sup>7</sup> A publicly reported decision also confirms that, unlike Mr. Boven, Douglas W. Judson sought reimbursement, not indemnity in an active proceeding.<sup>8</sup>

12. It is concerning that Mr. Boven's counsel would allow his client to try to mislead the Tribunal about these matters. He acted for Mr. Boven in the court application where all of these matters were addressed. He would know that his client's statements are meritless, false, and vexatious.

## **B. Settlement Privileged Evidence**

13. Each of the Individual Respondents claim that there were efforts to address the issues in dispute before the tribunal matter through a letter of apology. This reference appears in Mr. McQuaker's witness statement at paragraph 55 and Exhibit "8", in Mr. Boven's witness statement at paragraph 69 and Exhibit "14", and in Mr. Toles' witness statement at paragraph 57 and Exhibit "8".<sup>9</sup>

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<sup>6</sup> Boven Statement at para. 66.

<sup>7</sup> Boven Statement at Ex. "12"; Judson Statement at para. 13.

<sup>8</sup> *Judson v. Fort Frances (Town)*, [2023] O.J. No. 4286 (S.C. – Small Claims) at para. 7.

<sup>9</sup> Boven Statement at para. 69 and Ex. "14", Witness Statement of Harold McQuaker at para. 55 and Ex. "8", Witness Statement of Warren Toles at para. 57 and Ex. "8".

14. The letter appended as an exhibit to each of these witness statements was never sent. This document was only ever relayed to legal counsel for the Applicants from counsel for the individual respondents as one component of a proposed settlement privileged discussion. Indeed, their counsel's letter of December 3, 2020 expressly confirms that the letter is being sent "without prejudice" and is protected by "settlement privilege." Further discussions between the parties were then undertaken to attempt to resolve the matter. The December 3, 2020 so-called apology letter was *proposed* language for an apology to try to achieve resolution as part of a broader discussion between counsel—indeed, the parties subsequently exchanged several iterations of the letter amending its language. No apology was made by any of the respondents, and no apology was received, accepted, or rejected by any of the Applicants.<sup>10</sup>

15. This document is settlement privileged as between the parties. Settlement privilege attaches to documents whether or not a settlement is reached. "[T]he privilege belongs to both parties and it cannot be unilaterally waived by either one of them."<sup>11</sup>

**C. Conclusion and Request**

16. The Applicants submit that the material listed above should be struck from the witness statements of the Individual Respondents prior to the hearing of this application on its merits.

ALL OF WHICH IS RESPETFULLY SUBMITTED this 24th day of April, 2024.

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<sup>10</sup> Judson Supplementary Statement at para. 8.

<sup>11</sup> *Hansraj v Ao*, [2002 ABQB 385](#) at para 13. See also *Delchev v. R.*, [2012 ONSC 2094](#) at para 19.



Borderland Pride et al v. The Township of Emo et al  
*Applicants Respondents*

File No. 2020-411858-I

**HUMAN RIGHTS  
TRIBUNAL OF ONTARIO**

**SCHEDULE A TO THE FORM 10 REQUEST  
FOR ORDER**

**(MOTION TO STRIKE)**

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