

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: ACADEMY OF LEARNING CAREER COLLEGE, FAIZUN KASHEM and
FARIBA SHIRVANION, Moving Parties

AND:

PARESH ASHAR and the HUMAN RIGHTS TRIBUNAL OF ONTARIO,
Responding Party

BEFORE: D.L. Corbett J.

COUNSEL: *Geetha Philipupillai and Amy Chen*, for the Moving Party

Mr Ashar, self-represented Respondent

HRTO, not appearing on this motion

Read at Toronto: June 22, 2026

ENDORSEMENT

D.L. Corbett J.

[1] Several motions and a r. 2.1 issue came before me today, in writing, by direction of Shore J. made January 27, 2026. The underlying proceeding is an intended application for judicial review of a decision of the Human Rights Tribunal of Ontario dated March 28, 2025, awarding the Responding Party, Mr Ashar, \$25,000, and making ancillary orders, for discrimination in connection with Mr Ashar’s employment (2025 HRTO 838).

[2] The case management judge noted as follows in her directions:

... it was agreed that the applicants will only be proceeding on the grounds they were denied procedural fairness, but not on the basis that the decision was unsupported by the evidence before [the HRTO].

[3] It is evident that the case management judge tried to persuade the parties to proceed in an efficient manner so that the case could be disposed of with a minimum of expense and delay. It is a matter of discretion for the case management judge as to the extent that matters in dispute can all be placed before a panel responsible for hearing the merits of the dispute, and when a preliminary matter is of such a nature that it should be decided prior to completion of materials for

the underlying application itself, bearing in mind that an interlocutory decision on the matters in issue on these motions can be reviewed by a panel of three judges of the Divisional Court pursuant to s. 25(1) of the *Courts of Justice Act*. It is unfortunate that this matter has been delayed by six months over the interlocutory issues I decide today.

The Motions

Extension of Time

[4] The Moving Party seeks an extension in time to commence an application for judicial review and a stay of the HRTO order pending the application.

[5] The Moving Parties: (i) intended to seek judicial review within the thirty-day deadline provided in the *Judicial Review Procedure Act*, (ii) thought the application had been commenced, and (iii) thought that the commencement of the application stayed the HRTO decision. The problems leading to non-commencement were challenges encountered filing documents, and errors made by the Moving Parties' counsel (influenced in part by counsel's serious health challenges). The Moving Parties acted with reasonable promptness once the missed deadline was clear to them.

[6] The prejudice to the Responding Party is delay in collecting the \$25,000 awarded by the HRTO. That prejudice would have been attenuated if the Responding Party had consented to the extension on terms limiting the application to arguable grounds and with a schedule for reasonably prompt exchange of materials and scheduling of the application.

[7] On the merits, there is an arguable procedural fairness issue available to the Moving Parties: they had delivered documents to the Responding Party and the HRTO earlier in the process and sought to rely on those documents at the hearing. The HRTO found that those documents had to be re-provided in response to a subsequent disclosure order, and that the Moving Parties could not reasonably have thought that the earlier disclosure would satisfy the subsequent disclosure direction. Notice and disclosure are aspects of procedural fairness, and considerable deference is shown in this court for the HRTO's choice of procedures in achieving fair notice and disclosure prior to a hearing, but where the Tribunal takes an overly formalistic approach to their procedural requirements leading to a result that a party is unable to present its side of the case the Tribunal, this court may well intervene. These comments are not intended to express a view on the ultimate disposition of the procedural fairness arguments, but only to explain why I consider the procedural fairness arguments to be arguable. Further, this explanation is not intended to limit the procedural fairness arguments available to the Moving Party on the application: if any procedural fairness ground is available, then this weighs in favour of granting the extension.

[8] As stated above, Shore J. noted the parties' agreement that the scope of the application be limited to issues of procedural fairness. This was a reasonable agreement: I see no arguable basis that the impugned decision is substantively unreasonable in light of the record that was before the HRTO.

[9] I am satisfied that a balancing of the factors in the test for an extension favours granting the requested extension. I would impose some terms to ameliorate the prejudice to the Responding Party, as set out in my disposition, below.

Stay Pending the Application

[10] On the Responding Party's evidence, he is in difficult financial circumstances (part of his evidence that he is prejudiced by delay in being able to enforce the HRTO's award). In my view, on the basis of this evidence, money paid to the Responding Party pending the hearing of the application would be difficult (and possibly expensive) for the Moving Parties to recover if they prevail on the application.

[11] This said, the delay in this matter has caused prejudice to the Responding Party and will cause further delay in his recovery of the award if he prevails in the application. To ameliorate this prejudice, I would direct the Moving Parties to pay \$27,000 into court, to the credit of this application, as security for the impugned HRTO award, and accrued interest. This payment shall be made within sixty days, and the Moving Parties shall confirm to the court by email, copied to the Responding Party, that they have made this required payment.

[12] Enforcement of the HRTO award is stayed pending final determination of the application or other order of the Divisional Court.

Motion to Quash; r. 2.1 Issues

[13] It follows from my analysis of the permits of the proposed application, above, that I would not quash the application or dismiss it pursuant to r. 2.1. With respect, the motion to quash and the r. 2.1 process was hardly necessary in light of the merits analysis required on the motion for an extension.

Terms of the Extension

[14] I would direct a reasonably prompt hearing of the merits of the application, but a precise schedule cannot be established before production of the HRTO's Record of Proceedings. In these circumstances, I would direct as follows:

- (a) Court staff are asked to issue the Notice of Application in the form tendered by the Moving Parties on this motion, and to provide a copy of the issued notice of application to the parties (including the HRTO).
- (b) The application shall be confined to issues of procedural fairness, as agreed before Shore J. and as directed by this court.
- (c) The Moving Parties shall pay \$27,000 into court to the credit of this proceeding by August 21, 2026, and shall advise the court by email, with copies to the Responding Party and the HRTO, that the payment has been made as directed by August 24, 2026.
- (d) If they have not already done so, the Moving Parties shall pay the fee for issuance of the notice of application by June 26, 2026.

- (e) The HRTO is requested to advise the court by email by June 20, 2026, of the date by which it will deliver its Record of Proceedings.
- (f) The court shall set deadlines for the exchange of application materials once it has received a response from the HRTO. The parties should expect that they will each have about 60 days to provide their materials, and that the JRTO shall have about an additional 14 days after the deadline for the materials of the Responding Party.
- (g) The parties should expect that the hearing of the application will be scheduled late in 2026 or in early 2027.
- (h) The parties may not bring further motions or take additional steps in this application without first seeking a direction from the case management judge.
- (i) D.L. Corbett J. is seized with case management of this application unless he or an administrative judge of the Divisional Court subsequently directs otherwise.
- (j) If the Moving Parties fail to make the payments required by (b) and (c), above, the Responding Party may request the court to dismiss the application by email copied to the Moving Parties and the HRTO.

[15] Although there has been divided success on the motion, the Moving Parties have been more successful on the motion than has the Responding Party. However, the extension motion itself was required because of the Moving Parties' default. Taking everything into account, there shall be no costs awarded in respect to the matters before me this day.

D.L. Corbett J.

Released: June 22, 2026