

COURT OF APPEAL FOR ONTARIO

CITATION: Association of Architectural Technologists of Ontario v. Ontario
Association of Architects, 2026 ONCA 539

DATE: 20260723

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Sossin, Monahan and Wilson JJ.A.

BETWEEN

Association of Architectural Technologists of Ontario

Moving Party (Respondent)

and

Ontario Association of Architects

Respondent (Appellant)

Graeme A. Hamilton, Laura M. Wagner and Brianne Taylor, for the appellant

Valerie Wise and Victoria Brennan, for the respondent

Heard: June 15, 2026

On appeal from the order of Justice R. Lee Akazaki of the Superior Court of Justice dated December 1, 2025, with reasons reported at 2025 ONSC 3555, 2025 ONSC 4183 and 2025 ONSC 6692.

Monahan J.A.:

I. OVERVIEW

[1] The deliberate flouting of court orders, if tolerated or permitted, would inevitably erode the public respect accorded to court decisions, thereby undermining an independent judiciary and the rule of law itself. As Quinn J. stated

in *Gordon v. Starr* (2007), 42 R.F.L. (6th) 366, at para. 23 (Ont. S.C.), a court order is “an order, not a suggestion”.

[2] At the same time, courts have long recognized that the power to punish for contempt must be approached cautiously and utilized only as a last resort: see e.g., *Bell ExpressVu Limited Partnership v. Corkery*, 2009 ONCA 85, 94 O.R. (3d) 614, at para. 20; *Oliveira v. Oliveira*, 2022 ONCA 218, at para. 16. Contempt should not be found easily and should be used sparingly, or else “a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect”: *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at para. 36, quoting *Centre commercial Les Rivières Itée v. Jean Bleu inc.*, 2012 QCCA 1663, at para. 7.

[3] The order under appeal provides a textbook illustration of the inappropriate use of the Superior Court’s contempt power.

[4] The underlying dispute in this case concerns a decades-long political battle between the Ontario Association of Architects (the “OAA”) and the Association of Architectural Technologists of Ontario (the “AATO”) over which organization can and should regulate architectural technologists in the province.

[5] The motion judge found the OAA in contempt of a court order issued on consent of the parties by Akbarali J. on May 10, 2023 (the “2023 Consent Order” or the “Order”), which prohibited the OAA from issuing licences based either on an

administrative policy that had been adopted by the OAA in 2010 (the “2010-20 Policy”) or a similar policy not set out in regulation. Although the motion judge recited the requirements that had to be satisfied before making a finding of civil contempt, he failed to apply those requirements in holding the OAA in contempt and imposing a fine of \$30,000. I would therefore allow the appeal and set aside the contempt order, the associated penalty, and the full indemnity costs order made against the OAA.

II. BACKGROUND

1. The 2010-20 Policy

[6] The *Architects Act*, R.S.O. 1990, c. A.26 (the “Act”) authorizes the Registrar of the OAA (the “Registrar”) to grant architect licences to persons who satisfy academic, experience, and examination requirements prescribed by the Act and its regulation (R.R.O. 1990, Reg. 27; the “Regulation”). The 2010-20 Policy permitted the OAA to exempt persons from these statutory requirements if they completed the OAA’s “technologist program” launched in 2003 and administered by an associated non-profit organization. The practical result was that an architectural technologist could be licensed by the Registrar of the OAA even though they did not meet the generally prescribed requirements for an architect’s licence.

[7] Persons qualifying for an exemption under the 2010-20 Policy were licensed as “Licensed Technologists OAA”, which entitled them to provide architectural

services subject to specific terms, conditions, and limitations. Their scope of practice was very limited. They could only perform activities that were already in the public domain (i.e., that any member of the public could perform without holding a licence of any kind), save for minor exceptions.¹ Prior to 2023, the OAA issued approximately 150 such Licensed Technologist OAA licences pursuant to the 2010-20 Policy.

2. The 2023 Consent Order

[8] The AATO is a voluntary professional association for architectural technologists. The *Association of Architectural Technologists of Ontario Act, 1996*, S.O. 1996, c. Pr. 20 empowers the AATO to regulate the use of professional designations, including “M.A.A.T.O.”, “architectural technician”, “architectural technologist”, “registered building technologist”, and “registered building technician”. Only AATO members can use such titles. However, the services provided by AATO members are entirely in the public domain and do not require a licence of any kind to perform.

[9] The AATO objected to the OAA granting a separate class of limited licences for technologists (i.e., the “Licensed Technologist OAA” licences), arguing that the

¹ For example, a member of the public could perform architectural services for buildings not more than three storeys in height, not more than 600 square meters in area, and intended for residential, business, personal services, mercantile, or industrial occupancy. A Licensed Technologist OAA could perform these same activities for a building intended for restaurant occupancy. In the case of a residential occupancy, a Licensed Technologist OAA could provide services for a building up to four storeys in height, rather than the public domain limit of three storeys.

Act only conferred on the Registrar authority to issue full architect licences. In 2022, the AATO filed an application seeking: (i) a declaration that the OAA had no lawful authority to issue licences based on the 2010-20 Policy; (ii) a declaration that licences issued under the 2010-20 Policy were invalid; and (iii) an order prohibiting the OAA from issuing any further licences based on the 2010-20 Policy or a similar policy not set out in regulation under the Act.

[10] Following discussions between the two organizations, the OAA ultimately agreed that the Act did not authorize the issuance of licences using the internal process created by the 2010-20 Policy, and therefore the OAA consented to the relief sought by the AATO. This resulted in the issuance of the 2023 Consent Order in May 2023.

[11] The 2023 Consent Order almost exactly reproduced the language from the “relief sought” in the AATO’s notice of application. The court made the following material orders:

1. THIS COURT ORDERS that the OAA has no lawful authority to issue Certificates of Practice or licences based on the OAA’s [2010-20 Policy] or similar policy not set out in a regulation under the [Act], including without limitation Certificates of Practice or licences described as “Licensed Technologist OAA” or “Licenced Architectural Technologist OAA”;

2. THIS COURT FURTHER ORDERS that any Certificates of Practice or licenses issued by the OAA based on the OAA’s [2010-20 Policy] or similar policy not set out in a regulation under the [Act], including without

limitation Certificates of Practice or licences described as Certificates of Practice or licences described as “Licensed Technologist OAA” or “Licenced Architectural Technologist OAA”, are void *ab initio* and of no force and effect;

3. THIS COURT FURTHER ORDERS that the OAA is prohibited from issuing Certificates of Practice or licenses based on the OAA’s [2010-20 Policy] or similar policy not set out in a regulation under the [Act], including without limitation Certificates of Practice or licenses described as “Licensed Technologist OAA” or “Licensed Architectural Technologist OAA.”

[Emphasis added.]

3. Events subsequent to the issuance of the 2023 Consent Order

[12] Shortly after the 2023 Consent Order was issued, the OAA sent two notices (the “Regulatory Notices”) to the 150 persons who it had designated as a Licensed Technologist OAA, informing them that their licences were now void and that they were obliged to notify third parties of their change in status. The Regulatory Notices also indicated that the OAA had commenced efforts to seek legislative amendments that would permit the OAA to issue limited licences similar to the Licensed Technologist OAA licences that had been voided by the 2023 Consent Order.

[13] The Regulatory Notices further advised the former licensees of an alternative process they were entitled to follow. The notices explained that the Act permitted any individual to apply for an architect’s licence. If the Registrar determined that an applicant did not meet the requirements to be licensed as an

architect, the applicant was nevertheless entitled to a hearing before the registration committee constituted under the Act (the “Registration Committee” or the “Committee”). The Committee had the discretion to direct the Registrar to issue a licence to the applicant, despite them not meeting the requirements and qualifications to be an architect.

[14] The Regulatory Notices described the Registration Committee as an independent, statutory body that “acts impartially between the OAA and the applicant”. The notices provided the following information on the nature of the hearing process before the Committee:

The hearing is a quasi-judicial proceeding held before a panel of the Registration Committee. It is an opportunity for an applicant to present evidence in support of their application. The applicant bears the onus of satisfying the panel, on reasonable grounds, that they meet the requirements of the Act and the Regulations for the purpose of issuance of a licence or Certificate of Practice.

Following a hearing, the panel may make a number of recommendations, including the possibility of directing the Registrar to issue a licence or CoP subject to specified terms, conditions, or limitations, or requiring the applicant to successfully complete further examinations or training. The panel of the Registration Committee will make its decision based on the evidence before it, in a procedurally fair manner, and premised on the protection and service of the public interest.

4. The Registration Committee hearings

[15] Following receipt of the Regulatory Notices, 39 of the 150 former Licensed Technologists OAA submitted new applications to be licensed under the Act. The Registrar determined that none of the 39 applicants met all of the standard requirements to be licensed as an architect prescribed by the Act, and therefore served each applicant with a notice indicating that she proposed to refuse their application. The Registrar also informed the applicants of their right to a hearing before the Registration Committee.

[16] All 39 applicants requested such a hearing, and the Registration Committee conducted oral hearings for 14 of them between October 2023 and April 2024. The Registrar personally attended the hearings and was represented by external counsel. The Committee's decisions indicate that counsel for the Registrar submitted to the Committee that as a statutory committee, it must adhere to the Act and the Regulation, which are designed to ensure that only qualified people are licensed to become architects so that the public interest is served and protected. The Registrar's counsel also observed that s. 25 of the Act grants the Committee an "incredibly wide power" to exempt an applicant from any of the Act's academic and experience requirements and to direct the Registrar to issue a licence subject to such terms, conditions, or limitations as the Committee specifies. According to one Committee decision, the Registrar's counsel indicated that if the Committee "had sufficient evidence to justify the use of the exemption power under

section 25(8)(b) of the Act it would be appropriate to do so because it would be in the public's interest to have as many licensed architects as possible to provide architectural services". However, the Registrar's counsel also advised that "there must also be confidence that the person who is licensed is able to meet the requisite standards and will be able to practice the profession in a safe and competent way" since otherwise the public's confidence in the practice of architecture would be eroded.

[17] Following these hearings, the Registration Committee issued written reasons setting out its assessment of each applicant's qualifications and its determination as to whether they ought to be exempted from any of the requirements of the Act and, if so, be issued a licence subject to terms, conditions, or limitations. The Committee's directions to the Registrar were as follows:

- (i) Two applicants: refuse licences;
- (ii) One applicant: issue an unrestricted licence;
- (iii) One applicant: issue an unrestricted licence conditional upon successful completion of examinations; and
- (iv) Ten applicants: issue licences subject to specified terms, conditions, and limitations which included an authorization to provide architectural services that were identical in scope to those permitted in respect of the former Licensed Technologists OAA.

[18] The contempt proceedings which are the subject of this appeal primarily concerned the ten applicants who were re-licensed by the Committee under terms, conditions, and limitations (the “Impugned Licences”). The OAA referred to these newly licensed technologists by the designation “Architect TCL”.

5. The contempt proceedings against the OAA

[19] On July 23, 2024, the AATO brought a notice of motion pursuant to r. 60.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, seeking an order finding the OAA in contempt of the 2023 Consent Order. The AATO asserted that the 2023 Consent Order prohibited the OAA from issuing licences to architectural technologists until it was explicitly authorized to do so by way of regulation. Given that the OAA had again issued licences to technologists, the AATO submitted that the OAA did not comply with the 2023 Consent Order, or in the alternative, that it did not comply “with at least the spirit of the Order”.

[20] The AATO acknowledged in its notice of motion that a recent amendment to the Act would grant the OAA authority to issue a limited licence to technologists, subject to requirements and conditions prescribed by regulation. However, the AATO pointed out that as of the date of filing the motion, the statutory amendment had not yet been proclaimed into force and the associated regulatory amendments had not been enacted.

[21] Once the OAA was served with the AATO's contempt motion, it suspended all Registration Committee hearings in respect of the former Licensed Technologists OAA who had applied for a licence in accordance with the Regulatory Notices.

6. Legislative and regulatory amendments come into force effective January 1, 2025 permitting the OAA to issue limited licences with a scope of practice identical to that granted to Licensed Technologists OAA

[22] Effective January 1, 2025, the Act was amended to grant the OAA authority to issue limited licences in accordance with requirements and conditions prescribed by regulation: see s. 13.1 of the Act, as amended by the *Enhancing Access to Justice Act, 2024*, S.O. 2024, c. 2, Sched. 1. The government also promulgated O. Reg. 521/24 which amended the Regulation to set out the requirements and conditions contemplated by s. 13.1.

[23] The amended Regulation (see s. 32) now sets out the academic, experiential, and examination requirements that must be satisfied by an applicant seeking a limited licence (i.e., a technologist), which include the following:

- (i) Successful completion of a three-year architectural technology program at an Ontario college or a three-year college architectural technology program accredited by Technology Accreditation Canada;

- (ii) Successful completion of an examination for licensed technologists published by the OAA; and
- (iii) Successful completion of a total of 5,580 hours of experience under the personal supervision and direction of a person authorized to practice architecture.

[24] The amended Regulation (see s. 32.1) also defines the authorized scope of practice for licensees receiving limited licences in accordance with s. 13.1 of the Act. The terms and conditions are essentially identical to those that applied to Licensed Technologists OAA under the 2010-20 Policy, as well as to the ten individuals who had received limited licences in accordance with directions provided by the Registration Committee in 2023 and 2024.

III. CONTEMPT FINDING AND PENALTY

[25] The legal issue before the motion judge was whether the OAA was in contempt of the 2023 Consent Order. Rather than immediately focus on this issue, the motion judge devoted the first 50 paragraphs of his reasons to an issue that was not before him, namely, whether the licences issued to the former Architectural Technologists OAA in 2023 and 2024 were valid.

[26] The OAA argued that the Impugned Licences were valid since they were authorized by the combined effect of ss. 13 and 25 of the Act. These provisions direct that if the Registrar proposes to refuse a licence to an applicant, the applicant

is entitled to a hearing before the Registration Committee. Clauses 25(8)(a)-(c) provide the Registration Committee with wide discretion in adjudicating such applications in the exercise of the OAA's mandate to ensure that persons licensed under the Act will engage in the practice of architecture with competence and integrity. This includes exempting the applicant from any of the requirements of the Act and/or directing the Registrar to issue a licence to the applicant with specified terms, conditions, and limitations.

[27] While the motion judge acknowledged that the Committee had such discretion, he believed that it could be exercised in only limited circumstances, such as where the Registrar had refused a licence on "formal or technical points". This interpretation was based on the motion judge's view that "no reasonable reading of ss. 13 and 25 [of the Act] would contemplate issuing an architect licence to a candidate who had never matriculated the equivalent of an accredited university architecture degree". In the motion judge's view, the Registration Committee incorrectly directed the Registrar to issue architect licences to applicants who plainly lacked the required educational and experiential qualifications. He reproduced a portion of one Committee decision which posited that practitioners are capable of learning things "outside of the walls of a university school of architecture", and critiqued this reasoning as being a "loose 'university of life' theory". In the motion judge's view, the Committee's approach was "[unsound]" and would lead to "unfair and absurd outcome[s]". Although the motion judge did

not go so far as to expressly declare that the Impugned Licences were invalid, this was the inescapable conclusion flowing from his analysis.

[28] Having found that the Registration Committee exceeded its jurisdiction in issuing the Impugned Licences, the motion judge then turned to the issue actually raised by the AATO's motion, namely, whether the OAA was in contempt of the 2023 Consent Order. The motion judge correctly identified the three elements of civil contempt that a moving party must prove beyond a reasonable doubt in accordance with *Carey*, at paras. 32-35, namely: (i) the order the alleged contemnor breached must be clear and unequivocal; (ii) the alleged contemnor must have actual knowledge of the order; and (iii) the alleged contemnor must have intentionally disobeyed the order.

[29] Rather than consider each of these requirements separately, the motion judge blended together his analysis of the first and the third elements. He provided his interpretation of the "meaning" or "point" of the Order, while at the same time explaining how in his view the OAA intentionally breached it.

[30] The motion judge offered the following observations and comments on the meaning of the 2023 Consent Order:

- (i) The dispute over the language of the Order "zeroed in on the words, 'or similar policy'" and whether a "similar policy" had to be in writing (at paras. 61-62);

- (ii) “Since the point of the underlying suit was to recognize the unlawfulness of the OAA technologists, the meaning of the order was to require the OAA to wait until the government amended the regulation to grant it authority to license and regulate persons other than architects” (at para. 64);
- (iii) The OAA’s submission that it was not relying on any formal policy in issuing the Impugned Licences “defied reason” given the regulator’s institutional context (at para. 65);
- (iv) “The point of the order was expressed by the words ‘not set out in a regulation under the *Architect’s Act*.’ A more reasonable reading of the order was that the OAA had to wait for an amendment to the regulation before issuing licences to technologists” (at para. 65);
- (v) The OAA’s position that it could issue licences without a formal policy and on the basis of discretionary decisions made by the Committee pursuant to s. 25 of the Act “should surprise any reasonable person expecting the OAA to be the public’s gatekeeper of rigorous architect licensing requirements” (at para. 66); and
- (vi) The process the OAA claimed it was following “lets loose the forces of chaos into an application process that is supposed to be

transparent and orderly” and “undermines public confidence in the institution and, by extension, the practice of architecture” (at para. 68).

[31] In the course of this discussion of the meaning of the 2023 Consent Order, the motion judge explained how he concluded the OAA breached it:

- (i) The Impugned Licences were “‘based’ on” the 2010-20 Policy because they incorporated the same restrictions that applied to Licensed Technologists OAA (at paras. 69-71);
- (ii) The Regulatory Notices “were expressions of policy”, “were in writing”, and “telegraphed the existence of a plan to restore the annulled licences” (at paras. 73, 84);
- (iii) The OAA “tilted the wheel more than a half-turn at the committee hearings to steer them into issuing limited licences to the technologists in the very form the court order prohibited” (at para. 91);
- (iv) The Registrar advising the Committee that it could restrict the scope of licences “only shed the absurd pretence of the formal proposal to refuse their issuance” (at para. 95); and
- (v) “The OAA, and not the Registration Committee, breached the clear and unequivocal meaning of the order” (at para. 91).

[32] Even though the motion judge found that the OAA “manipulate[d] the committee review process to achieve the identical outcome as the banned

licensure policy”, he also found that the OAA “honestly believed the s. 25 powers to exempt and limit provided a loophole to get around the court order”. However, because the OAA misinterpreted s. 25, its honest belief that its conduct was legal did not provide a lawful excuse for intentionally disobeying the 2023 Consent Order.

[33] After apparently finding that the three elements of civil contempt were met, the motion judge then considered whether it was appropriate to make a finding of contempt given the legislative and regulatory amendments that had come into force effective January 1, 2025. Citing *Jackson v. Jackson*, 2016 ONSC 3466, at para. 49, he recognized that the contempt remedy “is only available to redress breaches of orders that are live and operative when the contempt finding is made, and which the aggrieved party wishes to enforce”. He considered the OAA’s position that because there was now express statutory authority permitting it to issue licences to architectural technologists, the 2023 Consent Order was arguably spent, and it would therefore be inappropriate and unnecessary to make a finding of contempt.

[34] The motion judge saw no merit in this argument since “[t]he court order was a final order and remains in full effect today”. Moreover, “the coercive purpose of civil contempt is to deter future disobedience, not only by the contemnor but also by others”. Thus, even if practically the OAA would never breach the 2023 Consent

Order again in the future, it should be found in contempt to deter others from engaging in similar unlawful conduct.

[35] Six months later, the motion judge held a separate sentencing hearing. In his sentencing reasons, the motion judge noted that the primary purpose of the sanction for civil contempt is to “compel obedience with court orders and to uphold the court’s authority”. The OAA argued that no such rationale applied in this case since the offending conduct had ceased and, as noted above, the January 2025 statutory and regulatory amendments essentially foreclosed the possibility that the 2023 Consent Order would be breached in the future.

[36] The motion judge rejected this argument, finding that a significant penalty should be imposed because the OAA disobeyed a court order “by perverting its core mandate”. The hearings before the Registration Committee were “not process” but instead were “pretense”. A fine of \$30,000 was fit because it would “serve the purpose of compelling the [OAA’s] membership to ask questions and thus deter future breaches of court orders”.

IV. GROUNDS OF APPEAL

[37] The OAA argues that the motion judge erred in the following respects:

- (i) by misinterpreting the Order and introducing extraneous and irrelevant considerations into the interpretive analysis;

- (ii) by misapplying contempt principles in finding the OAA in contempt of the 2023 Consent Order;
- (iii) by characterizing the Registration Committee's exercise of its statutory authority as the execution of policy;
- (iv) by disregarding relevant evidence;
- (v) by failing to consider whether contempt was an appropriate remedy; and
- (vi) in the alternative, by imposing sanctions that were disproportionate and unreasonable.

[38] Both parties agree that the standard of review for the interpretation of a court order which is the subject of contempt proceedings is correctness: see *Fontaine v. Canada (Attorney General)*, 2020 ONCA 688, at para. 29; *Whitehead v. Tucker*, 2025 ONCA 674, 179 O.R. (3d) 522, at para. 45. However, findings of fact or mixed fact and law within the contempt proceeding are reviewed on the traditional standard of palpable and overriding error absent an extricable legal error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 26-31.

V. DISCUSSION

[39] As I explain below, the motion judge ignored or misapplied the relevant principles governing motions for civil contempt, which were errors of law sufficient to require that the contempt orders be set aside. Since these errors dispose of the

appeal, it is unnecessary to consider the issue which significantly preoccupied the motion judge, namely, whether the Impugned Licences were validly issued by the OAA in 2023 and 2024. Simply put, this was a motion for contempt not an application for judicial review or an application seeking a declaration of invalidity.

[40] Nevertheless, while I decline to consider whether the Impugned Licences are valid, the language used by the motion judge to describe the OAA's conduct was so dismissive and derogatory that it cannot simply be ignored. I return to this concern in the concluding section of these reasons.

1. The motion judge failed to find that the 2023 Consent Order was clear and unambiguous

[41] As the motion judge himself recognized, in a contempt proceeding the moving party must establish beyond a reasonable doubt that the order that the contemnor is alleged to have breached is clear and unambiguous. The terms of the order "must state clearly and unequivocally what should and should not be done": *Carey*, at para. 30, quoting *Prescott-Russell Services for Children and Adults v. G. (N.)* (2006), 82 O.R. (3d) 686 (C.A.), at para. 27. This requirement of absolute clarity ensures that a party will not face the serious consequences of a contempt finding if the terms of the order are vague, ambiguous, or open to different interpretations. Any ambiguity in the text of the order must be resolved in favour of the party who is alleged to be in contempt: *Prescott-Russell*, at para. 39.

[42] Despite devoting 35 paragraphs of his reasons to a subsection entitled “Was the meaning of the order clear and unequivocal?”, the motion judge never expressly turned his mind to this key issue. He did explain why he rejected the OAA’s interpretation of the 2023 Consent Order and described it as one that would “surprise any reasonable person expecting the OAA to be the public’s gatekeeper of rigorous architect licensing requirements”. He offered what he regarded as a “more reasonable reading of the order”, which was that the OAA “had to wait for an amendment to the regulation before issuing licences to technologists”. The motion judge preferred this understanding of the 2023 Consent Order to that offered by the OAA because it gave effect to “the point of the underlying suit [by the AATO]”.

[43] There are at least three problems with this line of reasoning.

[44] First, the OAA had no obligation to provide a “more reasonable” interpretation of the Order to avoid a finding of contempt. Rather, the moving party, the AATO, bore the burden of establishing beyond a reasonable doubt that the terms of the order that the OAA was alleged to have breached were clear and unambiguous: *Bell ExpressVu*, at para. 29. The fact that the OAA’s interpretation of the Order might “surprise a reasonable person” could not provide a basis for finding the OAA in contempt. This would be akin to rejecting the explanation proffered by a criminal defendant, and convicting on that basis alone, without

returning to the question of whether the Crown proved the allegations beyond a reasonable doubt.

[45] Second, the motion judge applied the wrong legal test in his interpretation of the Order, asking how a “reasonable person” would view the Order rather than whether the Order had been shown beyond a reasonable doubt to be clear and unequivocal: *Carey*, at paras. 32-33.

[46] Third, at no point did the motion judge engage directly with the language of the Order, and explain how it stated clearly and unequivocally what should and should not be done. Instead, he interpreted the Order in light of the purpose of the AATO’s underlying lawsuit, rather than the language that was actually used in the Order itself.

[47] I reproduce the material language of the 2023 Consent Order here for convenience:

[T]he OAA is prohibited from issuing Certificates of Practice or licences based on the OAA’s “Policy of the Council with respect to the Licensed Technologist OAA” or similar policy not set out in a regulation under the *Architect’s Act*.

[48] Unlike the 2010-20 Policy, which purported to allow the Registrar to unilaterally grant licences to architectural technologists who satisfied criteria established internally by the organization, the process that the OAA relied on following the 2023 Consent Order was routed through the statutory Registration

Committee. In the ten cases scrutinized by the motion judge, the Committee directed the Registrar to grant licences after conducting an individual assessment of each applicant to determine whether they would engage in the practice of architecture with competence and integrity. It appears that the problem with the OAA's conduct under the 2010-20 Policy was that the Registrar effectively granted exemptions that she was not entitled to grant under her governing statute. That likely is the conduct the 2023 Consent Order was intended to prohibit. The exemption process involving the Registration Committee and s. 25 of the Act is quite different. It is certainly not immediately obvious that the language of the Order prohibiting the issuance of licences "based on the [2010-20 Policy] or similar policy" clearly and unambiguously extended to the s. 25 process.

[49] The motion judge never expressly engaged with this issue, and thus never explained how the Order clearly and unambiguously prohibited the OAA from issuing licences to former Licensed Technologists OAA based on s. 25 of the Act. In the absence of such a finding, there was no basis upon which to find the OAA in contempt of the Order.

2. The motion judge failed to find that the OAA intentionally breached the 2023 Consent Order

[50] To reiterate, in order to establish civil contempt, the moving party must prove beyond a reasonable doubt that the party allegedly in breach has intentionally done the act that the order clearly prohibits or intentionally failed to do the act that the

order clearly compels: *Carey*, at paras. 35, 38; *Carter v. Carter*, 2026 ONCA 29, 180 O.R. (3d) 81, at para. 46.

[51] In this case, while it is not entirely clear what specific actions taken by the OAA constituted an intentional breach of the 2023 Consent Order, the impugned conduct appears to consist of the following: (i) the Registrar issuing the Regulatory Notices, which “telegraphed the existence of a plan to restore the annulled licences”; (ii) counsel for the Registrar “tilt[ing] the wheel more than a half-turn at the committee hearings to steer them into issuing limited licences to the technologists in the very form the court order prohibited”; and (iii) the Registrar issuing licences with terms and conditions that were identical to those in the Impugned Licences.

[52] None of these impugned actions, whether considered individually or collectively, can amount to an intentional breach of the 2023 Consent Order by the OAA.

[53] I first consider the Regulatory Notices issued by the OAA in May 2023. The 2023 Consent Order provided that the Licensed Technologist OAA licences were void and of no force and effect. It was therefore appropriate for the OAA to inform these former licensees that their licences were no longer valid and that they must immediately cease performing services that were not in the public domain. The motion judge’s objection, however, is that the Regulatory Notices also advised the

former licensees of a process whereby they could reapply for a licence with the OAA, which in his view was a means of communicating to the former licensees the existence of “a plan to restore the annulled licences”. But at the same time, the motion judge acknowledged that there was “sufficient ambiguity in the regulatory notices to question the existence of a plan to defy the order” and the Regulatory Notices were “only groups of pixels in the overall image”. This ambiguity is reflected in the fact that only about a quarter of the Licensed Technologists OAA (39 of 150) took up the invitation to apply for a fresh licence. Thus, despite his concerns over the Regulatory Notices, the motion judge appears to concede that they do not alone establish, beyond a reasonable doubt, the existence of a plan by the OAA to defy the 2023 Consent Order.

[54] As for the motion judge’s description of the submissions by the Registrar’s counsel to the Committee as having improperly “tilted the wheel more than a half-turn”, the motion judge does not identify any error in the legal advice that counsel provided. Although the Registrar’s counsel advised the Committee that it had the discretion to exempt applicants from any statutory requirements and direct the Registrar to issue a licence to such persons, she also cautioned the Committee that they must have confidence that any person who is licensed is able to practice the profession in a safe and competent way. The motion judge does not explain how the making of submissions to the independent Registration Committee could constitute an intentional violation of the 2023 Consent Order, which says nothing

about the making of such submissions and instead is concerned with the issuance of licences based on the 2010-20 Policy.

[55] Finally, the motion judge claims that the Registrar breached the 2023 Consent Order by issuing licences with identical terms and conditions as were contained in licences previously granted to Licensed Technologists OAA. He maintains that the appropriate procedure would have been for the Registrar to inform the court of the Committee's direction concerning each applicant, and seek directions from the court before issuing the licences.

[56] The answer to this objection is that the Registration Committee directed the Registrar to issue the licences pursuant to ss. 25(8)(b)-(c) of the Act. The Act does not confer any discretion on the Registrar to refuse to issue a licence where directed to do so by the Committee. Absent a finding of unconstitutionality, a court order cannot override the terms of a statute. Thus, the 2023 Consent Order cannot possibly be construed as prohibiting the Registrar from issuing licences when required to do so by the Act. Given that the Registrar was legally required by the Act to follow the Committee's direction, her issuance of licences as directed cannot amount to a contempt of the 2023 Consent Order. Since the motion judge expressly acknowledged that the Registration Committee did not breach the Order in providing this direction to the Registrar, it is difficult to understand how this conduct could constitute an intentional breach of the Order.

3. The motion judge failed to properly exercise his discretion and determine whether it was appropriate to make a finding of contempt

[57] The power to make a contempt finding is ultimately a matter of judicial discretion: *Carey*, at para. 36; *Moncur v. Plante*, 2021 ONCA 462, 57 R.F.L. (8th) 293, at para. 10. The remedy cannot be reduced to a mere means of enforcing orders and should not be used routinely as a compliance mechanism. Rather, having regard for the seriousness and quasi-criminal nature of the remedy, it should be invoked cautiously, with great restraint, and as an enforcement power of last resort: *Carey*, at para. 36. The court may decline to impose a finding of contempt where it would work an injustice in the circumstances of the case, including where less onerous remedies, such as a declaration that the party breached the order, would be sufficient to compel compliance: *Carter*, at para. 46.

[58] While the motion judge made reference to the existence of this discretion, he failed to consider or exercise it in any meaningful way.

[59] The motion judge's rationale for finding the OAA in contempt of the 2023 Consent Order was that the Order required the OAA to "wait until the government amended the regulation to grant it authority to licence and regulate persons other than architects". At the time the AATO initiated the contempt proceedings, the Ontario government had already proposed the statutory and regulatory changes necessary to satisfy this precondition. Those amendments came into force as of January 1, 2025 (before the contempt motion was argued), providing the OAA with

express authority to grant limited licences to architectural technologists. Thus, the OAA had no further need to resort to the 2010-20 Policy or any other similar policy in making licensing decisions in relation to architectural technologists, nor was there any realistic possibility that the OAA might violate the 2023 Consent Order in the future.

[60] Since compliance with the 2023 Consent Order was a non-issue, it was incumbent on the motion judge to turn his mind to the possibility that a less severe enforcement option such as the issuance of a declaration would have been appropriate in the circumstances, even assuming that the elements of civil contempt were made out.

[61] Although the motion judge seemingly recognized that there was no longer a need to compel compliance with the 2023 Consent Order by the OAA, he insisted that a finding of contempt was necessary in order to deter others from similar unlawful conduct in the future. But the motion judge did not identify any basis for his apparent concern that other professional regulators might deliberately violate court orders, or why a lesser sanction such as a declaration would not have had the same deterrent effect as a finding of contempt.

[62] While a motion judge's exercise of discretion on a contempt motion is normally subject to deference, no such deference is owed when the motion judge fails to properly turn their mind to the existence or nature of that discretion: *Carter*,

at para. 46. That is precisely what occurred here, which is a further reason why the contempt finding must be set aside: see *Chong v. Donnelly*, 2019 ONCA 799, 33 R.F.L. (8th) 19, at paras. 8-10; *Whitehead*, at para. 76; and *Moncur*, at para. 19.

VI. DISPOSITION

[63] For the above reasons, I would allow the appeal and set aside (i) the contempt order, (ii) the \$30,000 fine, and (iii) the full indemnity costs order. In accordance with the agreement of the parties, the AATO shall pay costs of the appeal in the amount of \$35,000 to the OAA on an all-inclusive basis.

[64] Before concluding, I return to the issue briefly referenced above with respect to the manner in which the motion judge characterized the conduct of the OAA in this case.

[65] Reputation plays a central role in human societies, and it is well established that “reputation is one of the most valuable assets a person or a business can possess”: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 69. Reputation is equally important to regulatory organizations such as the OAA, whose effectiveness ultimately depends upon public confidence that it is acting in the public interest.

[66] It is one thing for a court to determine, in an appropriate case, that an organization such as the OAA has fallen short of its statutory obligations and acted without jurisdiction. It is quite another to criticize the organization for: “perverting

its core mandate”; being “unconscious to the seriousness of the breach”; engaging in an “absurd pretense”; conducting itself in a manner that “may be unprecedented in Canadian law”; using a statutory committee as “a false cover for issuing licences prohibited by the court order”; and being “prepared to compromise its public-protection mandate to perform an end run around the court order”.

[67] It is difficult to conceive of the circumstances which would justify the use of such dismissive and derogatory language in describing the exercise of statutory powers by a professional regulator. Plainly, however, there was no basis for the use of such language in relation to the actions of the OAA in this case, since the organization appears to have acted throughout in good faith and in a manner which it genuinely believed was in furtherance of its statutory mandate to protect and serve the public interest.

Released: July 23, 2026 “L.S.”

“P.J. Monahan J.A.”

“I agree. Sossin J.A.”

“I agree. D.A. Wilson J.A.”