

Lisikh v. Ontario (Education), 2023 HRTO 263

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

B E T W E E N:

GLEB LISIKH

Applicant
(Moving Party)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTRY OF EDUCATION**

Respondent

MOTION RECORD OF THE MOVING PARTY

TO:

Superior Court of Justice – Ontario, Divisional Court
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130 Queen St. W. Rm 174
Toronto ON M5H 2N5
scj-csj.divcourtmail@ontario.ca
416-327-5100

Human Rights Tribunal of Ontario (HRTO)
15 Grosvenor Street, Ground Floor, Toronto, ON M7A 2G6
hrto.registrar@ontario.ca
416-326-1312

His Majesty the King in the Right of Ontario as represented by the Ministry of Education
315 Front Street West, 14th Floor, Toronto, Ontario M7A 0B8
minister.edu@ontario.ca
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(Court file no.) 512/23

FORM 37A
Courts of Justice Act
NOTICE OF MOTION

Lisikh v. Ontario (Education), 2023 HRT0 263

NOTICE OF MOTION

Gleb Lisikh will make a motion to the Divisional Court of Ontario (day),
..... (date), at (time), or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard (*choose appropriate option*)

In writing under subrule 37.12.1 (1) because it is (*insert one of on consent, unopposed or made without notice*);

In writing as an opposed motion under subrule 37.12.1 (4);

In person;

By telephone conference;

By video conference.

at the following location

(*Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc., if applicable*)

THE MOTION IS FOR (*state here the precise relief sought*).

Extension of time to apply to set aside or vary the decision of a judge who hears and determines the motion to extend Judicial Review deadline for the following case: *Lisikh v. Ontario (Education), 2022 HRT0 263 (CanLII)*, <<https://canlii.ca/t/jszvd>>

THE GROUNDS FOR THE MOTION ARE (*specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on*).

1. The breach of the short 4 day deadline for an appeal and hence the extension of time request is due to:
 - 1.1. No timely advice from the Divisional Court about the appeal process. On contrary, the Applicant was advised to ask questions from the judge by Karen N. Nolan (she/her) (JUD), which he did but never received a response but led to the breach of the deadline.

- 1.2. Applicant's having no legal experience and misled by a legal advice to have the matter escalated to the Court of Appeal, which he did (within 15-day deadline), and which led to the breach
2. As for the grounds for the motion to set aside or vary the decision in question:
 - 2.1. The Divisional Court erred in law by failing to consider crucial documentary evidence submitted by the applicant during the motion proceedings.
 - 2.1.1. Contrary to the principles of procedural fairness and natural justice, the Divisional Court at the very least overlooked Exhibit A7 (as filed in caselines) which was critically pertinent to the issues before the court. The exhibit presents a submission which unequivocally titles and enumerates the explaining of why Mr. Lisikh considers Human Rights Tribunal of Ontario decision unreasonable, but according to the Divisional Court analyses [8] "Mr. Lisikh has not provided any submissions explaining why the Tribunal's decision is unreasonable.", which became the basis for "devoid of merit" decision to dismiss the motion.
 - 2.1.2. This failure to properly consider and address the applicant's documentary evidence constitutes a breach of the applicant's right to a fair hearing as guaranteed under section 2(e) of the Canadian Bill of Rights.
 - 2.1.3. The omission of the applicant's documents from the court's analysis resulted in an incomplete and inaccurate understanding of the factual and legal issues at hand, thereby prejudicing the applicant's right to a just determination of the motion.
 - 2.2. The Divisional Court erred in law by disproportionately relying on the statements and submissions of the respondent while largely disregarding the substantive arguments and evidence presented by the motion applicant.
 - 2.2.1. The Divisional Court analyses consists of reiterating and agreeing with the original Tribunal decision arguments while not attending the applicant's response to those, including the core part of the motion - the situation with filing of the form 4A.
 - 2.2.2. Contrary to the principles of procedural fairness and the right to be heard, the Divisional Court failed to give due consideration to the motion applicant's legal submissions and documentary evidence, thereby depriving the applicant of a fair and impartial hearing. This failure is in breach of Rules of Civil Procedure that requires the court to adhere to the process that is fair to everyone involved in a decision on a motion. The Divisional Court's failure to adhere to this rule constitutes an error in law.
 - 2.2.3. The disproportionate reliance on the respondent's statements and submissions, to the detriment of the applicant's arguments and evidence, resulted in a biased and flawed decision that does not reflect a fair and just determination of the motion.

As a result, the applicant respectfully submits that the Divisional Court's decision should be to extend the deadline to allow for a motion to set aside, and the matter remitted for reconsideration, taking into account all relevant arguments and documentary evidence submitted by the applicant.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:
(list the affidavits or other documentary evidence to be relied on).

1. An email thread of an appellant asking about the appeal process
2. DIVISIONAL COURT FILE NO.: 512/23 Motion Decision Letter
3. Notice of Motion to Extend Judicial Review Deadline (motion exhibit A3)
4. Request for reconsideration (motion exhibit A5)

5. Form 4A (motion exhibit A6)
6. Nov 23rd 2022 email from G. Lisikh to HRTO (motion exhibit A7)

(Date) 2024-05-20

(Name, address, email address (if any), and telephone number of moving party's lawyer or moving party)

Gleb Lisikh,
88 Turning Leaf Dr. Woodbridge ON L4H2J4,
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416-917-3741

TO (Name, address, email address (if any), and telephone number of responding party's lawyer or responding party)

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130 Queen St. W. Rm 174
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Human Rights Tribunal of Ontario (HRTO)
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315 Front Street West, 14th Floor, Toronto, Ontario M7A 0B8
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Ontario. Ministry of the Attorney General
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RCP-E 37A (September 1, 2020)

FORM 4D
Courts of Justice Act
AFFIDAVIT

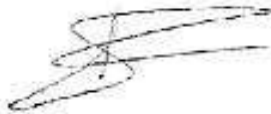
Lisikh v. Ontario (Education), 2023 HRTO 263

AFFIDAVIT OF GLEB LISIKH

I, Gleb Lisikh, of the city of Woodbridge of Vaughan Municipality, MAKE OATH AND AFFIRM:

1. I am the Applicant in this matter and as such have knowledge of the facts hereinafter deposed to.
2. The breach of the short 4-day deadline for an appeal and hence the extension of time request is due to:
 - 2.1. No timely advice from the Divisional Court about the appeal process. On contrary, the Applicant was advised to ask questions from the judge by Karen N. Nolan (she/her) (JUD), which he did but never received a response which led to the breach of the deadline (refer to Exhibit "B1" as a true copy of Nolan's email with an advice to reach out to the judge with clarifying questions and no reference to the due process).
 - 2.2. Applicant's having no legal experience and mislead by a legal advice to have the matter escalated to the Court of Appeal, which he did (within 15-day deadline), and which took time and led to the breach (refer to exhibit "B2" is a true copy of email thread with the Court of Appeal Registrar eventually advising the Applicant to fall back to the Divisional Court to make the appeal as per due process)
3. The applicant respectfully submits that the Divisional Court's decision should be to extend the deadline to allow for a motion to set aside the decision in question for reconsideration, taking into account all relevant arguments and documentary evidence submitted by the Applicant in hereto attached factum and exhibits.

Sworn (or Affirmed) before me at the (City, Town, etc.) of
Toronto on 04/06/2024



Commissioner for Taking Affidavits
(or as may be)



(Signature of deponent)

RCP-B 4D (November 1, 2005)

Jake Joseph Detras
a Commissioner, etc., Province of Ontario,
for the Government of Ontario,
Ministry Government and Consumer Services,
Expires April 20, 2025

TAB 3 - FACTUM OF THE MOVING PARTY

File # 307/24

Courts of Justice Act

FACTUM OF THE MOVING PARTY

Lisikh v. Ontario (Education), 2023 HRTO 263

REQUEST:

Extend time to allow filing of a motion to set aside the Justice O'Brien's decision dismissing a motion requesting extension of time from the lower court (HRTO) for the Applicant to request judicial review of the Human Rights Tribunal of Ontario's *Lisikh v. Ontario (Education)* initial and reconsideration decisions.

PART I - OVERVIEW

1. This motion is brought by the Applicant, Gleb Lisikh, seeking an order to extend time to file an appeal due to procedural and substantive errors by the Divisional Court on file # 512/23.
2. The Applicant is self-represented and is learning the court process and procedures as well as legal language as he is moving through the proceedings, which in many instances resulted in otherwise avoidable delays and missed deadlines. This is exacerbated by the Applicant's hearing impairment, which limits his communication to mostly email exchange, thus leaving the Applicant at the mercy of the respondent's promptness and diligence – the fact that so far greatly contributed to breaching deadlines.
3. The core of the issue is stemming from a seemingly administrative error of HRTO's not filing all the submissions (specifically, reasons for Reconsideration and Form 4A) done by the Applicant at the Reconsideration Application stage of the proceedings.
4. Those unaccounted submissions are now deemed "not received" which is recited throughout all the reasoning of the HRTO and respondent (His Majesty the King) following the HRTO's Reconsideration Decision (Exhibit C1), which leads to "no standing" and "no new information" claims resulting in rejecting the Applicant's appeals.
5. Such reciting is also done in Justice O'Brien's decision. Despite the Applicant's documented and filed evidence to the contrary and all the efforts to rectify the situation with those allegedly missing submissions, the HRTO denial of the facts and evidence continues to prevail over material submissions and reality.
6. This motion also goes over some controversial statements made in the initial HRTO decision, which are believed to be of great public importance bearing on the need to set aside the decision in question for reconsideration and ultimately bring the original HRTO decision to judicial review.

PART II – FACTS

7. The Applicant is the father to a minor child who was interested in a summer education program provided at several Ontario school boards called SummerUp. The SummerUp program was only open to so-called “Black youth”.
8. The father and the minor child are not black and their application for the program was rejected for that reason.
9. The Applicant brought a claim to the Tribunal alleging discrimination contrary to the *Code* in the provision of educational services on the grounds of race and colour.
10. In response to the Tribunal’s inquiries, the Applicant, confused by the need of a signed consent from his minor child to attend his needs (Form 4A, Litigation Guardian on behalf of Child)) and not understanding the notion of “standing” and the consequences of being deemed as not having it, mistakenly replied to the Tribunal that he does not bring the application on behalf of his child to avoid filling an extra unduly dubious form.
11. The Tribunal released its decision to dismiss the application on November 10, 2022. It held that the Applicant did not have standing to bring the application as he did not allege that he experienced discrimination and he did not bring the application on behalf of his minor child.
12. It must be noted as a fact that for any normal parent the pains of his child are the parent’s own – just tripled. So, questioning a parent’s “standing” who’s attending his minor child’s needs and pains and presuming no prejudice to a parent when the child is discriminated against is nonsensical. Also, the Applicant challenges HRTO to find a single case where a minor engages with the HRTO on his own accord with no guardian acting for the child.
13. Further, the Tribunal held there was no breach of the *Code*, as it found the SummerUp program was a special program under s. 14 of the *Code*. But provided no evidence to support that the SummerUp program meets OHRC criteria for qualifying to be a special program under s. 14 of the *Code*, which was the very challenge in the Application.
14. Further, the Tribunal assumed that the Applicant’s race was white and made a profusely controversial statement that “whites” cannot be discriminated against, thus making the Application look moot and setting a case law precedent for excluding “whites” from the Human Rights Code protection (as per VC Nichols, Exhibit A0: “[19] ... an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be claimed by persons who are white and non-racialized”).
15. The Applicant requested reconsideration of the Tribunal’s decision by providing new data and arguments to address every single reason offered in the decision to dismiss the Application (Exhibits A7, A5, A3), namely: Form 4A with confirmation of doing it on behalf of his son (with apologies for not understanding the intricacies of the legal language); being Asian (not white) based on the OHRC definition of race as a social construct, as offered in that very decision; and expressing concerns about impartiality of HRTO when hearing two sides re: s. 14 of the *Code* application.
16. The Tribunal dismissed the request for reconsideration alleging the Applicant did not provide any new facts or evidence contrary to the points above, did not provide with Form 4A and adding an absurdly unfounded assertion that the Applicant’s son did not apply for the SummerUp program (Exhibit C1).
17. The Reconsideration Decision to reject was released on February 28, 2023 (Exhibit C1) followed by the dead silence from HRTO to address what Applicant thought was an

- administrative oversight, especially in regards to the allegedly missing Form 4A. As a result, the deadline to file an application for judicial review, March 20, 2023, passed.
18. After numerous attempts to understand the appeal process, learn the legal procedures, a trip to the Divisional Court Office in downtown Toronto (resulting in a wrong advice), several rejected attempts to file a motion, and a case conference call facilitated by justice Matheson on 27th September 2023, Applicant's Notice of Motion to extend time for judicial review of the HRTO decision was finally served and accepted/filed by the Divisional Court on October 23, 2023 under # 512/23 with the promise to be heard in December (Exhibit A3).
 19. Justice O'Brien passed his decision on *Lisikh v. HRTO Div Court File # 512/23* on 15-Apr-2024 rejecting the Applicant's request to extend deadline for applying for Judicial Review of the HRTO decision in "*Lisikh v. Ontario (Education), 2023 HRTO 263*" (Exhibit A0).
 20. The decision alleges "Mr. Lisikh has not provided any submissions explaining why the Tribunal's decision is unreasonable" (Exhibit A0).
 - a. The Applicant provided submissions filed under 512/23 explicitly and unequivocally explaining why the Tribunal's decision is unreasonable. (Exhibit A7).
 21. The decision alleges that "Mr. Lisikh confirmed he was not bringing the application on behalf of his son". (Exhibit A0).
 - a. If this was not self-evident from the nature of the Application itself, the Applicant unequivocally confirmed he was bringing the application on behalf of his son through Form 4A filed on 23rd Nov 2022 with HRTO – the fact that HRTO denies (and Justice O'Brien simply recites), despite indisputable evidence of the Form 4A submission. (Exhibits A7, A6, A5)
 22. The Applicant (erroneously, by following a malapropos legal advice in addition to not hearing back from the Divisional Court) served a notice of motion for Leave to Appeal with the Court of Appeal on 25-Apr-2024 to dispute Justice O'Brien's decision.
 23. The Applicant (after being advised by the Court of Appeal) served a notice of motion with the Divisional Court to extend deadline for applying to set aside Justice O'Brien's decision for reconsideration on 21-May-2024.

PART III - ISSUES

24. The issues to be determined on this motion are:
 - a. Whether the deadline for filing a motion to set aside 512/23 should be extended due to procedural errors and misleading advice.
 - b. Whether Justice O'Brien's claims in the decision discloses a reasonable cause of action.
 - c. Whether Justice O'Brien's decision should be set aside or varied based on errors in law and breaches of procedural fairness.
 - d. Whether this decision involves a matter of public importance due to some radical pronouncements made in the HRTO decision (discussed in "Analyses").

PART IV - LAW

25. Rule 21.01(1)(b) allows for the striking out of a pleading on the ground that it discloses no reasonable cause of action (Rules of Civil Procedure, R.R.O. 1990, Reg. 194).
26. The test for determining whether a pleading discloses a reasonable cause of action is whether it is "plain and obvious" that the claim cannot succeed (Hunt v. Carey Canada Inc., [1990] 2 S.C.R. 959).
27. Extensions of time for filing an appeal can be granted where there are compelling reasons, such as procedural errors or misleading advice (Ontario Rules of Civil Procedure, Rule 3.02).

PART V - ANALYSIS

28. The Applicant's failure to meet the appeal deadline was due to:
 - a. Misleading advice from the Divisional Court regarding the appeal process. Specifically, the Applicant was misled by Karen N. Nolan (JUD) who advised on 16-Apr-2024 to direct questions to the judge in response to the Applicant's inquiry about challenging the decision (Exhibit B1). Waiting for those questions to be answered by the Justice O'Brien (to no avail), including how to appeal the decision, led to missing the deadline.
 - b. The Applicant's lack of legal experience resulting in following the inappropriate (considering the circumstances) legal advice to engage the higher court (the Court of Appeal) when appealing the court before (the Divisional Court) decisions, which the Applicant did within the required 15-day deadline, but which contributed to the breach of the deadline of the yet to be learnt due process. (Exhibit B2).
29. Justice O'Brien's decision ignored the facts and evidence that disprove the alleged causes of action. It is plain and obvious that Justice O'Brien's claims made in 512/23 decision cannot succeed because they are in direct contradiction with the evidence submitted filed in the motion.
30. Justice O'Brien erred in law by failing to consider crucial documentary evidence submitted by the Applicant. Specifically, Exhibit A7 (submitted in 512/23 filing), in which the Applicant explains why the Human Rights Tribunal of Ontario decision is unreasonable. This oversight is contrary to principles of procedural fairness and natural justice, breaching the Applicant's right to a fair hearing under section 2(e) of the Canadian Bill of Rights.
31. Justice O'Brien unquestionably relied on the HRTO statements and submissions while disregarding the Applicant's substantive arguments and evidence, leading to a biased decision. Specifically:
 - a. HRTO still denies receiving Form 4A (consent of a minor to be represented by a guardian) from the Applicant (Exhibit C1 "The Tribunal has not received the Form 4A that the applicant referenced"), which grants standing to the Applicant. Instead, HRTO continues to allege that the Applicant confirmed he was not applying on behalf of his son, which is nothing but a frivolous assumption by HRTO based on initial reluctance of the Applicant to fill the Form 4A (why would a legal guardian

and a biological parent need a consent from his minor child to represented him in court?).

- b. Nevertheless, the Form 4A was submitted to HRTO on 23rd November 2022 in an email (which was the only and the preferred way of communication by HRTO). That email was replied to by HRTO, thus confirming its receipt (Exhibit C2).
 - c. The email in reference was also explicitly noted in the Applicant's Reconsideration Application made on 22nd January 2023 (Exhibit A5). HRTO processed the Application without raising any concerns about missing any materials referenced in that Application, thus accepting having the Form 4A on file.
 - d. All evidence of the above was filed under #512/23, but instead of reviewing and responding to it accordingly, Justice O'Brien simply restated the false HRTO claim in regards to the state of the Form 4A submission.
32. Contrary to the principles of procedural fairness and the right to be heard, the Justice O'Brien failed to give due consideration to the applicant's legal submissions and documentary evidence, thereby depriving the applicant of a fair and impartial hearing. This failure is in breach of Rules of Civil Procedure that requires the court to adhere to the process that is fair to everyone involved in a decision on a motion. The Justice O'Brien's failure to adhere to this rule constitutes an error in law.
33. In another set of claims of his decision (Exhibit A0, paragraphs 11 to 15) Justice O'Brien, again, relies solely on the statements made by HRTO in the HRTO Decision Lisikh v. Ontario (Education) 2022 HRTO 1345 (Exhibit C3) without any attempt to validate those while unreasonably shifting the burden of proof to the Applicant: "[11] Mr. Lisikh also has not explained on this motion why he says the Tribunal's conclusion that the summer program constitutes a "special program" under the Code was unreasonable.", whereas it is the job of a special program organisers to prove that it meets the OHRC criteria for a "special program" - not for someone to prove that it does not. More specifically:
- a. In the HRTO decision (Exhibit C3) VC Nichols did not apply the criteria to the alleged special program. There is no evidence that all participants of the SummerUp program were/are disadvantaged. This was not examined, yet it is a requirement of the special program criteria as established by the OHRC policy (Exhibit C4).
 - b. In the OHRC policy, an example is given that free legal aid services should not be given to all South Asian people at the SALCO clinic. This is because the criteria are too broad. The policy states that financial criteria should be established in order for the special program to be legitimate under the Code and a financial assessment is included when assessing access to services at SALCO.
 - c. See Page 10 of the OHRC Policy (Exhibit C4):

On the other hand, criteria that are too broad might result in providing benefits to people who don't need them.

Example: Studies show that people of South Asian origin with low income have trouble gaining access to the justice system. The government funds a legal clinic to provide free legal advice and representation to this group.

Criteria too broad: In deciding who could use their services, the legal clinic could help anyone of South Asian origin. However, this would be over-inclusive, because it would allow people with medium and high incomes to benefit. This would partially defeat the rationale behind the program, which is to help people of South Asian origin with low income.

Criteria too narrow or not related to the purpose: The legal clinic could offer services only to people whose income is below a certain level, who identify as South Asian, and who belong to a certain creed. These criteria would be too narrow, since the program is designed to help all South Asian people with low income and allowing people of only one religion to qualify would leave out other South Asian people with low income. The program could also be challenged under the Code as discriminatory against people based on creed. People are protected from discrimination when they take part in a special program, just as they are when receiving a service that is not a special program. Rules or restrictions placed on people participating in the special program must not disadvantage people based on Code grounds.

- d. The HRTO shall accept a request to consider OHRC policy if requested. This request is being made.
 - e. The OHRC policy would not accept the SummerUP program as a special program on its face. The Justice O'Brien, HRTO or the Ministry of Education should have to demonstrate that that is a special program as defined by the policy, which was the original request to HRTO by the Applicant.
 - f. There is no evidence that all SummerUP participants qualify under the mandate and scope of the SummerUP program as this issue was not explored.
 - g. The Applicant shall not be expected to prove that SummerUp program does NOT qualify as a "special program". It does not qualify by default until found meeting the respective OHRC criteria, which has not been explored, but merely claimed by HRTO based on how SummerUP was marketed.
34. This decision involves a matter of public importance as it validates the HRTO's decision (*Lisikh v. Ontario (Education)*, 2022 HRTO 1345) (Exhibit C3), which places millions of Ontarians at risk. In that HRTO decision VC Eva Nichols declares that the Code does not apply to white people and opens the door to legal discrimination against 70% of the province's population: "[19] ... an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be claimed by persons who are white and non-racialized". The decision is contrary to jurisprudence as it is contrary to the Code which protects all members of the human family.

- a. The HRTO Decision is in conflict with established jurisprudence, involves a matter of general or public importance, and is of tremendous import to the public interest.
- b. The party making these submissions appreciates that white people may not be eligible for all special programs. There may also be special programs exclusively for white people as well. For example, a Ukrainian Community Centre/Refugee Support Center might require certain staff to be of Ukrainian ancestry/speak Ukrainian which would be a legitimate qualification if the position had specific duties.
- c. However, there is no case law, except for VC Nichols at paragraph 19, that states white people cannot successfully claim racial discrimination. This is patently absurd and offensive.

Jurisprudence/Case Law/Legislation

- d. It is plain and obvious that the Code applies to all races and the claim that jurisprudence indicates otherwise is patently false. The HRTO should investigate VC Nichols for publishing false information.
- e. The party making these submission relies on the spirit of the Code as explained in the Preamble to state the obvious. White people are members of the human family.

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

- f. VC Nichols writes “[19] ... an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be claimed by persons who are white and non-racialized” (Exhibit C3).
- g. She cites no case law to support her position that white people are excluded from protection under the Code. This is because none exists. There is now case law to support this - the case-at-bar - and this is why the HRTO needs to address this appalling paragraph.
- h. There is jurisprudence in human rights that demonstrates that white people can experience discrimination. This should not require an example as it is self-

evident; however, one can refer to *Eva obo others v. Spruce Hill Resort and another*, 2018 BCHRT 238 (CanLII), <https://canlii.ca/t/hvtxm>

- i. The WSIB found that principal Richard Blitzko experienced harassment and a poisoned work environment as a result of racialized insults against him.
- j. There is case law that speaks to special programs and protection of those participants and the eligibility of others; however, paragraph 19 does not specifically and exclusively refer to special programs.
- k. Vice-Chair Nichols overrides the Charter in her declaration that White people have no legal right to seek claims of discrimination under the Code. Her Decision explicitly denied white people their section 15 Charter right to equal treatment under the law.

Charter

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

1. Vice Chair Nichols has opened the door to legalized hate and discrimination against a group of people based on their Code-protected traits (race/colour).
 - i. An example, one of many, is the BlackOut theatre night, that brazenly discriminates against people based on their race/colour with impunity. In a matter presently before the HRTO, they have used the precedent established by Vice Chair Nichols and openly and potentially legally, thanks to Nichols, discriminate against white people.
 - ii. Black Lives Matter Toronto co-founder Yusra Khogali once [tweeted](#) a request to Allah for strength “to not cuss/kill these men and white folks out here today.” For White people who work for BLM or receive services from BLM, as determined by the Code’s Social Areas, this would clearly be a Code breach. However, if Vice-Chair Nichols Decision is allowed to remain as part of the HRTO jurisprudence, it would allow the tweet as acceptable because, as per Vice Chair Nichols, the Code does not protect white people.
 - iii. Hate and violence against white people is not a new phenomenon in Toronto. From the 1994 murder of Georgina Vivi Leimonis, to Jane Creba ((Boxing Day Shooting), to Connor Stevenson (Eaton Centre) to Andrea White (Davani and Bigby), to Reese Fallon (Danforth Shooting), to John Wheeler (Christopher Mitchell) to Karolina Huebner-Makurat to many others.

- iv. In the United States, the examples are far more common. Seth Smith was assassinated by Tony Lorenzo Walker, Carleton Gifford (Oklahoma) murdered out of hate and 8 year old Jackson Sparks and others lost their lives due to the hatred from Darrel Brooks in Waukesha over Christmas 2020, just as Ethan Lemin (Ohio) was killed brutally.
 - v. There are groups in Canada and the United States that openly advocate for harm to whites such as the Black Hebrew Israelites and others. Members of BLM, as proven above, have no compunction openly expressing hate against whites.
 - m. Vice Chair Nichols' Decision gives everyone a free legal pass to engage in discrimination and hate in the five social areas.
 - n. Any reasonable person can recognize the harm that this will produce onto society.
 - o. Any reasonable person will recognize that this Decision mocks the spirit of the Charter and the Code (although this is NOT a Constitutional challenge) and is an affront to the Canadian public interest.
 - p. Any reasonable person would accept that all people are members of the human family.
35. For the above reasons, the Applicant requests to set aside the Justice O'Briens decision so that the HRTO decision in question and paragraph 19 specifically could be addressed by the HRTO and is noted on public record as an illegitimate finding by VC Nichols. Obviously, this additional review should NOT be conducted by VC Nichols. A further request is that VC Nichols be immediately removed from the panel and a motion put forth by the HRTO to have her disbarred by the LSO.

PART VI - ORDER SOUGHT

- 36. The Applicant seeks an extension of the deadline to file an appeal due to the procedural errors and misleading advice received.
- 37. If such an extension is granted, the Applicant will seek an order to set aside the Divisional Court's decision for reconsideration, taking into account all relevant arguments and documentary evidence submitted by the Applicant.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2024-06-06

Gleb Lisikh, the Applicant

Self-represented.



TAB 4 - EXHIBITS

Exhibit A0: DIVISIONAL COURT FILE NO.: 512/23 Motion Decision Letter. This is the subject of this appeal.

The below “A” exhibits are numbered to match how the documents were filed in 512/23 caselines for easy cross reference

Exhibit A3: Notice of Motion to Extend Judicial Review Deadline to appeal HRTO decisions

Exhibit A5: Request for reconsideration of the HRTO decision where the Applicant references Nov 23rd 2022 email (exhibit A7) for reconsideration reasons and Form 4A.

Exhibit A6: Form 4A (consent of a minor). An attestation of the Applicant to act on behalf of his son, as per HRTO requirements of “standing”.

Exhibit A7: Nov 23rd 2022 email from G. Lisikh to HRTO that enumerates the reasons for disagreeing with the HRTO decision and has Form 4A (exhibit A6) attached to it

The below “B” exhibits are in reference to the reasons for missing a 4-day deadline to appeal through the motion to set aside the decision for reconsideration.

Exhibit B1: An email thread of the Applicant’s asking the Divisional Court about the appeal process and receiving a misleading advice.

Exhibit B2: An email thread of the Applicant with the Court of Appeal trying to get the motion filed and at the end getting an advice to fall back to the Divisional Court appeal process.

Exhibit C1: 2021-46376-I Lisikh Reconsideration Decision 28-Feb-2023. HRTO rejecting Lisikh’s request to reconsider the initial decision citing (among other things) “The Tribunal has not received the Form 4A that the applicant referenced”, which is false.

Exhibit C2: HRTO’s response to Nov 23rd 2022 email from G. Lisikh. This serves as a proof of receipt of both Form 4A and reasons for requesting Reconsideration.

Exhibit C3: 2021-46376-I Lisikh Final 10-Nov-2022. The original HRTO decision (2022 HRTO 1345)

Exhibit C4: Special programs and the Ontario Human Rights Code: A self-help guide. It explains OHRC criteria that need to be met in order to allow discrimination on the grounds of colour/race in special programs. https://www.ohrc.on.ca/sites/default/files/attachments/Special_programs_and_the_Ontario_Human_Rights_Code_-_A_self-help_guide.pdf

CITATION: Lisikh v. HRTO, 2024 ONSC 2177
DIVISIONAL COURT FILE NO.: 512/23
DATE: 20240415

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

RE: Gleb Lisikh Applicant (Moving Party)

AND:

His Majesty the King in Right of Ontario as Represented by the Ministry of
Education

Respondent

BEFORE: Justice O'Brien

COUNSEL: *G. Lisikh, Self-Represented*

E. Guilbault, Counsel for the Respondent

HEARD: Motion In-Writing

ENDORSEMENT

Overview

[1] The Applicant, Mr. Lisikh, has brought a motion for an extension of time to seek judicial review of two decisions of the Human Rights Tribunal of Ontario. The first decision is dated November 10, 2022 and the second is a reconsideration decision dated February 28, 2023. Pursuant to s. 5(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 (JRPA), Mr. Lisikh had 30 days to file an application for judicial review. Mr. Lisikh's notice of motion was served on October 23, 2023, which was almost 7 months after his deadline.

[2] Mr. Lisikh's application to the Tribunal was related to a summer education program provided at several Ontario school boards. Mr. Lisikh's son was interested in the program. The program was described as providing opportunities to Canadian youth of Black and African-Canadian heritage. Mr. Lisikh's son did not fall within this group. Mr. Lisikh alleged that the program was discriminatory because it was available to Black youth only.

[3] After receiving Mr. Lisikh's application, the Tribunal sent a letter to Mr. Lisikh asking him to file a particular form to confirm the application was on behalf of a minor. Mr. Lisikh responded that he was not applying on behalf of his child.

[4] The Tribunal then sent a Notice of Intent to Dismiss letter to Mr. Lisikh explaining that the application did not identify any acts of discrimination within the meaning of the *Human Rights Code*, R.S.O. 1990, c. H.19 (the Code). He was given a deadline to identify the alleged breaches and/or file a form to confirm he was applying on behalf of his child. In his response to this form, Mr. Lisikh identified the act of discrimination as offering the program to a particular race and not to other races. He again stated that the application was not on behalf of his child.

[5] The Tribunal dismissed the application without a hearing on two bases:

- (1) Mr. Lisikh did not have standing to bring the application. The Tribunal reasoned that Mr. Lisikh had confirmed in writing that he was not bringing the application on behalf of his child. He had not faced any form of discrimination himself and had no standing to bring an application as a public interest complaint.
- (2) The summer program met the criteria of a special program under the Code and therefore was not discriminatory.

[6] Mr. Lisikh requested reconsideration of the Tribunal's decision to dismiss his application. The Tribunal dismissed the request for reconsideration because Mr. Lisikh did not provide any new facts or evidence and did not cite any case law or procedure that would contradict the Tribunal's decision, nor did he rely upon any factor that would outweigh the public interest in the finality of the Tribunal's decisions. Mr. Lisikh merely expressed his disagreement with the decision.

Analysis

[7] Subsection 5(2) of the JRPA authorizes the court to extend the time for making an application for judicial review where there are apparent grounds for relief and no substantial prejudice will result to any person affected by reason of the delay. The question of whether there are “apparent grounds for relief” requires consideration of the merits of the claim. It is in the court’s discretion whether to grant or deny the extension: *Unifor and its Local 303 v. Scepter Canada Inc.*, 2022 ONSC 5683, at paras. 17, 21.

[8] In this case, I agree with the respondent that there are no apparent grounds for relief. On applications for judicial review, this court reviews decisions of the Tribunal on a reasonableness standard: *Ontario (Health) v. Association of Ontario Midwives*, 2022 ONCA 458, at para. 83. Mr. Lisikh has not provided any submissions explaining why the Tribunal’s decision is unreasonable.

[9] With respect to standing, the Tribunal reasoned, pursuant to *Carasco v. University of Windsor*, 2012 HRTO 195, that there is no public interest standing under the Code. Applications must be brought by an individual alleging discrimination, by an individual on behalf of another person, or by the Ontario Human Rights Commission under s. 35 of the Code where it believes it to be in the public interest to do so. Mr. Lisikh confirmed he was not bringing the application on behalf of his son and the other options did not apply to him. The Tribunal’s reasoning on this point

was transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 15.

[10] Mr. Lisikh stated in his e-mail requesting reconsideration that he filed the appropriate form to represent his son in time for the reconsideration application. The Tribunal's reconsideration decision states the Tribunal did not receive the form. Even if Mr. Lisikh attempted to file the form later, it was open to the Tribunal to deny Mr. Lisikh standing where he had expressly confirmed more than once he was not bringing the application on behalf of his son.

[11] Mr. Lisikh also has not explained on this motion why he says the Tribunal's conclusion that the summer program constitutes a "special program" under the Code was unreasonable.

[12] Subsection 14(1) of the Code provides:

14(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

[13] The Tribunal concluded the summer program in this case fell within s. 14. It reasoned that a program that aimed to "provide equal opportunities to persons who are disadvantaged on the basis of a Code protected ground, such as colour or race or disability, can, without in any way breaching the Code, limit its services to individuals who are identified by the prohibited ground, which in this instance is their race or colour."

[14] In his reconsideration request, Mr. Lisikh stated that s. 14 is invoked to justify exceptions for programs that are otherwise discriminatory. He stated the Tribunal's analysis did not clearly acknowledge the discriminatory nature of the program. He also submitted the Tribunal should not have concluded without further evidence the program fell within the requirements of s. 14.

[15] The Tribunal noted there was nothing new in these submissions to justify a reconsideration. I would add that, to the extent Mr. Lisikh relies on these submissions (which were filed in his material on this motion) to say the Tribunal decisions were unreasonable, s. 14 does not state a finding of discrimination is required for it to be invoked and Mr. Lisikh has not provided any authority for this proposition. I also do not see a basis to interfere with the Tribunal's factual findings that the summer program fell within the requirements of a s. 14 program.

[16] Mr. Lisikh submits in his notice of motion seeking an extension of time that he is self-represented with no experience in legal procedure. He states that he did not have enough time to find and solicit legal advice. He also states that the Tribunal did not assist him with how to challenge its decision.

[17] The Respondent does not claim this motion should be dismissed because of the length of or reasons for the delay. It also does not assert prejudice. The court may exercise its discretion to deny an extension of time solely because of a lack of merit: *Yan v. Law Society of Ontario*, 2023

ONSC 1290, at para. 8. Mr. Lisikh need not show he has a successful application on the merits, but he has not provided any basis on which this court could find the Tribunal’s decisions unreasonable. The proposed application for judicial review is devoid of merit and contains no “apparent grounds for relief.” In these circumstances, the extension is denied, and the motion is dismissed.

[18] The Respondent has not made a request for costs and none are ordered.

Date: April 15, 2024

O’Brien J

File # 512/23

DIVISIONAL COURT

B E T W E E N

GLEB LISIKH

Applicant

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

as represented by the Ministry of Education

Respondent

NOTICE OF MOTION

The Applicant will make a motion to the court on 4 December 2023, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard (*choose appropriate option*)

In writing under subrule 37.12.1 (1) because it is (*insert one of on consent, unopposed or made without notice*);

In writing as an opposed motion under subrule 37.12.1 (4);

In person;

By telephone conference;

By video conference.

at the following location

Zoom meeting, if needed, as set up by the Court Registrar

THE MOTION IS FOR an extension of time to file an application for Judicial Review of the Human Rights Tribunal of Ontario's decision [Lisikh v. Ontario \(Education\)](#), 2022 HRTO 1345 (CanLII) and its reconsideration decision [Lisikh v. Ontario \(Education\)](#), 2023 HRTO 263 (CanLII)

THE GROUNDS FOR THE MOTION ARE (*specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on*).

- Section 5(2) of the Judicial Review Act, RSO 1990, c. J.1

- The Applicant is self-represented with no experience in legal procedures including judicial review. Furthermore, at the time, he did not have enough time to find and solicit legal advice. The HRTO did not provide assistance as to how to challenge their decision. See attached affidavit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- Affidavit of the Applicant with Exhibits.

October 25, 2023

Gleb Lisikh
88 Turning Leaf Dr.
Woodbridge ON L4H2J4,
416-917-3741
gleblisikh@gmail.com

TO: Government of Ontario (Ministry of Education)
200-900 Bay St,
Toronto ON M7A 0B1
416-325-6127

Attorney General of Ontario
McMurtry-Scott Building
720 Bay Street, 11th floor
Toronto, Ontario M7A 2S9
416-326-2220
attorneygeneral@ontario.ca

Human Rights Tribunal of Ontario
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
416-326-1312
hrtto.registrar@ontario.ca



A party may file a Request for Reconsideration by completing this Form 20 within **thirty (30)** days from the date of a final decision. Please see the Tribunal's **Practice Direction on Reconsideration** for important information on Requests for Reconsideration.

Follow these steps to make your request:

1. Fill out this Form 20.
2. Deliver a copy of Form 20 to all parties.
3. Complete a Statement of Delivery (Form 23).
4. File Form 20 and Form 23 with the Tribunal.

A Request for Reconsideration made more than 30 days following the Decision will not be granted unless the Tribunal determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

Information for all parties who receive this Request for Reconsideration:

A Request for Reconsideration of a decision of the Human Rights Tribunal of Ontario has been initiated. You are not required to file a Response to this Request at this time. The Tribunal will review this Request and may direct you to file a Response.

If the Tribunal directs you to file a response, you must complete a Response to Request for Reconsideration (Form 21) and deliver it and file it as directed by the Tribunal.

Download forms from the Tribunal's web site 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
M7A 2A3

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
Email: hrto.registrar@ontario.ca



Application Information	
Tribunal File Number:	2021-46376-I
Name of Applicant:	Gleb Lisikh
Name of Each Respondent:	Ontario Ministry of Education

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

First (or Given) Name Gleb		Last (or Family) Name Lisikh		Organization (if applicable)	
Street Number 88	Street Name Turning Leaf Dr.			Apt/Suite	
City/Town Woodbridge		Province ON	Postal Code L4H2J4	Email gleblisikh@gmail.com	
Daytime Phone 416-917-3741	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:	LSUC No. (if applicable)
---	--------------------------

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 the reasons why you are making this Request for Reconsideration. Check all that apply.

- There are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier.
- You were entitled to notice but, through no fault of your own, did not receive notice of the proceeding or a hearing.
- The decision is in conflict with established case law or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance.
- Other factors exist that outweigh the public interest in the finality of Tribunal decisions.

3. Please provide detailed reasons and representations in support your Request.

I emailed detailed reasoning to HRTTO on November 23, 2022 6:03 PM
This field is too small to fit them in. Please refer to my email.



4. If your Request for Reconsideration is granted, what remedy or relief are you seeking?

Proceed with serving my Application

5. If your Request for Reconsideration is being filed more than 30 days after the date of the Decision, explain in detail the reason for the delay and why the Request should be accepted late.

I received a response from HRTO on how to appeal the decision only on 13th January 2023 and only after numerous followups that I started immediately after I had received the decision to dismiss on Nov 10th 2022.

6. 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:

Gleb Lisikh

Signature:

Date: (dd/mm/yyyy)

22/01/2023

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.)



A litigation guardian is a person who conducts an application on behalf of a person who does not have legal capacity to do so. Rule A10 of the Social Justice Tribunals Ontario Common Rules sets out the process for appointment of and responsibilities of litigation guardians. For more information about litigation guardians and the completion of this form, see the SJTO practice direction on Litigation Guardians.

Complete this form when you seek to be litigation guardian for a person under the age of 18. **YOU MUST ALSO COMPLETE AND FILE AN APPLICATION (FORM 1) OR RESPONSE (FORM 2) WITH THE TRIBUNAL.** The Form 1 or 2 may be filed electronically or by mail, email or fax. This Form 4A may be filed by mail, email or fax at the same time as you file the Form 1 or 2 or immediately afterwards.

An Application or Response where a minor is represented by a litigation guardian will not be accepted until the Form 4A is filed with the Tribunal.

Download forms from the Tribunal's web site 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
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Minor's Name and Date of Birth

First (or Given) Name Elias	Last (or Family) Name Lisikh
--------------------------------	---------------------------------

What is the minor's date of birth? 31/07/2005
(dd/mm/yyyy)

Litigation Guardian's Name and Contact Information

First (or Given) Name Gleb		Last (or Family) Name Lisikh		
Street Number 88	Street Name Turning Leaf Dr.			Apt/Suite
City/Town Woodbridge	Province ON	Postal Code L4H2J4	Email gleblisikh@gmail.com	
Daytime Phone	Cell Phone	Fax	TTY	

Litigation Guardian's Declaration
For each declaration below please mark the box confirming the statement

- 1. I declare that I consent to and am prepared to act as litigation guardian for _____ (name), a minor under the age of 18 years, in this Application before the Human Rights Tribunal of Ontario.
- 2. I declare that I am at least 18 years of age and that I understand the nature of this proceeding.
- 3. I declare that:
 - I am a parent or legal guardian with lawful custody of the minor and with whom the minor resides.
OR
 - I am another person with lawful custody of the minor.
(You must attach the document that provides you with custody of the minor)
OR
 - My relationship with the minor is as follows: father



4. I declare that:

There are no other persons, including no other parent, with custody or legal guardianship of the minor.

OR

Marianna Gorchakova _____ (name) has custody or legal guardianship of the minor and I have provided that person or organization with a copy of all the materials related to this Application as well as a copy of the Social Justice Tribunals Ontario practice direction on litigation guardians.

5. I declare that I have no interest that would conflict with the interests of the person represented.

6. I declare that I will diligently attend to the interests of the person represented and shall take all steps necessary for the protection of those interests including:

- a. to the extent possible, informing and consulting with the person represented about the proceedings;
- b. considering the impact of the proceeding on the person represented;
- c. deciding whether to retain a representative and providing instructions to the representative; and
- d. assisting in gathering evidence to support the proceeding and putting forward the best possible case to the tribunal.

Signature of Litigation Guardian

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: Gleb Lisikh	
Signature:	Date: (dd/mm/yyyy) 23/11/2022

Please check this box if you are filing this form 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.)



G L <gleblisikh@gmail.com>

Re: 2021-46376-I Lisikh v. Ontario (Education)

1 message

Gleb <gleblisikh@gmail.com>

23 November 2022 at 19:03

To: "HRTO-Registrar (MAG)" <hrto.registrar@ontario.ca>

Bcc: [REDACTED]

Hi!

I am following up on my request to launch an appeal process to un-dismiss the application. Further to my initial email I'd like to elaborate on why I consider the dismissal wrongful..

My understanding, based on the analysis done by Eva Nichols, is that there are three reasons for dismissing my application. Here's why those reasons are invalid or no longer apply.

1. No standing [23].

Please forgive my profound lack of understanding of the intricacies of HRTO workings. To render this objection moot, please accept the attached Form 4A where I formally request to represent someone who has the standing. Hope this clears it ,and sorry, again for not doing it earlier when requested.

2. Being white and hence having no grounds for negative racial discrimination appeals [19].

As interesting as this statement is, in and of itself, it is, nevertheless, moot and not applicable. The claimant's and my own socially racialized construct [re: 18] is Asian.

On that note, I am deeply offended by the groundless assumption made by Eva Nichols about my socially constructed race affiliation. I view such prejudiced judgement as a concealed propping of white supremacy in that it is driven by presumption that only a white man has a prerogative or abilities to place claims of this nature with HRTO. While I am grateful for deepening my understanding of race, I am, nevertheless, looking forward to an apology and would like to express my concerns about the racist attitudes and biases that seem to be present within the Tribunal itself.

3. Section 14 of the Code justifies ameliorating programs like SummerUp.

According to the Code, Section 14 is invoked to justify exceptions for the programs that are otherwise discriminatory and in breach of the Code. From Eva's analysis, it is not clear if the discriminatory nature of the SummerUp set of programs was acknowledged by HRTO, which would make invocation of the Section 14 warranted "*...his Application does not identify a breach of the Code on the alleged grounds of race and/or colour.*" [8]. As soon as this contradiction is resolved, and we are truly in Section 14 waters without any ambiguity, we can then argue about applicability of this Section to the case.

The application of Section 14 is the primary point of dispute which I am bringing to the Tribunal. You cannot dismiss my application by assuming de facto that the conditions for Section 14 are met merely based on how the defendant with its affiliated organizations marketed the SummerUp campaign (and this is what Eva did in the analyses). This would be identical to passing a court decision in favour of the defendant without having an actual trial and by accepting the defendant's side of the story as unquestionably true.

I hope this explanation alone suffices to resume the case. If not, please advise why and what the appeal process is.

Regards,
Gleb

On Thu, 10 Nov 2022 at 15:29, Gleb <gleblisikh@gmail.com> wrote:

The grounds upon which my case was dismissed are in contradiction with my claim, which was grossly misrepresented by the attached explanation.

What is the appeal process to "un-dismiss" the application?

Regards,
Gleb

On Thu, 10 Nov 2022 at 12:54, HRTO-Registrar (MAG) <hrto.registrar@ontario.ca> wrote:

To Recipients:

Please find attached a Decision issued by the Tribunal for the following matter:

Re: Lisikh v. Ontario (Education)

File Numbers: 2021-46376-I

Pursuant to Rule 1.12 of the HRTO's Rules of Procedure, all written communications with the HRTO, including e-mail correspondence, must be addressed to the Registrar at hrto.registrar@ontario.ca with a copy delivered to all other parties.

Sincerely/Cordialement,

Office of the Registrar | Bureau du Greffier

[Human Rights Tribunal of Ontario](#) | Tribunal des droits de la personne de l'Ontario

Tel/Tél.: 416-326-1312 | Toll-free/Sans frais: 1-866-598-0322 | TTY/ ATS: 1-800-855-0511

hrto.registrar@ontario.ca

tribunalsontario.ca

-




Tribunals Ontario

Tribunaux décisionnels Ontario

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email. All file-related HRTO correspondence must be sent to hrto.registrar@ontario.ca with a copy delivered to all other parties on the file (See HRTO [Rule 1.12](#)).

Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel. Toute correspondance relative aux dossiers du TDPO doit être envoyée à hrto.registrar@ontario.ca avec une copie remise à toutes les autres parties (voir [la règle 1.12](#) du TDPO).

| | /SH

 **Form 4A.pdf**
225K



G L <gleblisikh@gmail.com>

RE: Lisikh v. HRT0 Div Court File # 512/23

1 message

SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>

6 May 2024 at 13:10

To: Gleb <gleblisikh@gmail.com>, "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>

Cc: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>

Good Morning,

Please be advised that pursuant to section 21(5) of the *Court of Justice Act*, a panel of the Divisional Court may, on motion, set aside or vary the decision of a judge who hears and determines a motion. furthermore a person who moves to set aside or vary the order of a judge of an appellate court under this (21(5)) section of the *Courts of Justice Act* shall do so by a notice of motion (form 37 A) that is served and filed, with proof of service, within four days after the order is made and states that the motion will be heard on a date to be fixed by the Registrar.

Sincerely,

Saurabh Baweja

From: Gleb <gleblisikh@gmail.com>**Sent:** May 4, 2024 6:29 PM**To:** SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>**Cc:** JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>**Subject:** Re: Lisikh v. HRT0 Div Court File # 512/23

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hello there,

I am very confused by your response.

Is approaching Divisional Court must necessarily be done through assistance or a lawyer? What is in the way of offering a simple yes/no answer to the question of whether a decision on the motion in question can be appealed within the Divisional Court or not?

Are the court officials familiar with the rules and procedures of the court less than lawyers?

I am sorry if this sounds annoying to you but to me those are very common sense issues for the court system designed to serve Canadian public interests. I might [docide.to](https://www.docide.to) engage a lawyer if I find the appeal process cumbersome, but at this point I'd like to be simply pointed to one - hope you can still do it..

Regards,

Gleb

On Fri, May 3, 2024, 09:55 SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca> wrote:

Good morning,

A lawyer is in the best position to advise you of the applicable court procedures and to advise what, if any, legal remedies may exist to assist you. If you do not currently retain counsel, you can contact the Lawyer Referral Service operated by the Law Society of Ontario. This service will provide you with the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options. More information is available at: <http://www.lsuc.on.ca/>.

Kind regards,

Ariel Lawrence (she/her)

Divisional Court Toronto

Osgoode Hall

130 Queen Street W., Rm 174

[Toronto, ON M5H 2N5](#)

Phone: (416) 327 5100

From: Gleb <gleblisikh@gmail.com>

Sent: May 2, 2024 6:57 PM

To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>; JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>

Subject: Re: Lisikh v. HRTTO Div Court File # 512/23

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

As per my earlier request please advise how this decision can be appealed,

I was advised by the higher court that there is still a recourse to appeal the matter in Divisional Court.

Regards,

Gleb

On Wed, 17 Apr 2024 at 12:00, Gleb <gleblisikh@gmail.com> wrote:

Hi!

I was kindly advised that I can still ask clarifying questions pertaining to the Analysis that resulted in dismissing my motion. Please find below 4 questions to clarify 4 select sections of the Divisional Court Analyses.

[8] In this case, I agree with the respondent that there are no apparent grounds for relief. On applications for judicial review, this court reviews decisions of the Tribunal on a reasonableness standard: Ontario (Health) v. Association of Ontario Midwives, 2022 ONCA 458, at para. 83. Mr. Lisikh has not provided any submissions explaining why the Tribunal's decision is unreasonable.

1. What submissions/evidence from Mr. Lisikh have been considered by the Judge from which it followed they contained no explanation? Has the Judge considered document A7 (as filed in caselines) which starts with the following?

I am following up on my request to launch an appeal process to un-dismiss the application. Further to my initial email I'd like to elaborate on why I consider the dismissal wrongful..

[9] With respect to standing, the Tribunal reasoned, pursuant to *Carasco v. University of Windsor*, 2012 HRTO 195, that there is no public interest standing under the Code. Applications must be brought by an individual alleging discrimination, by an individual on behalf of another person, or by the Ontario Human Rights Commission under s. 35 of the Code where it believes it to be in the public interest to do so. Mr. Lisikh confirmed he was not bringing the application on behalf of his son and the other options did not apply to him. The Tribunal's reasoning on this point was transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 15.

2. What submissions/evidence have been reviewed by the Judge to conclude that Mr. Lisikh confirmed he was not bringing the application on behalf of his son?

[10] Mr. Lisikh stated in his e-mail requesting reconsideration that he filed the appropriate form to represent his son in time for the reconsideration application. The Tribunal's reconsideration decision states the Tribunal did not receive the form. Even if Mr. Lisikh attempted to file the form later, it was open to the Tribunal to deny Mr. Lisikh standing where he had expressly confirmed more than once he was not bringing the application on behalf of his son.

3. What is the Judge's decision/understanding (based on the motion submissions/evidence) about the state of the Form 4A filing? Was it filed or not? And if it is still undetermined, how can its undetermined timing be brought into the reasoning at all? This is the main point of disagreement between Mr. Lisikh and HRTO upon which the motion was requested and upon which the HRTO main reconsideration decision is based ("The form 4A has not been received"). So, this is a crucial and simple yes/no fact that cannot be left in an undetermined state.

[15] The Tribunal noted there was nothing new in these submissions to justify a reconsideration. I would add that, to the extent Mr. Lisikh relies on these submissions (which were filed in his material on this motion) to say the Tribunal decisions were unreasonable, s. 14 does not state a finding of discrimination is required for it to be invoked and Mr. Lisikh has not provided any authority for this proposition. I also do not see a basis to interfere with the Tribunal's factual findings that the summer program fell within the requirements of a s. 14 program.

4. What were the facts considered by the Judge that Mr. Lisikh brought forth as new for reconsideration of the initial application dismissal, but deemed as not new or unjustifiable by HRTO?

Thank you very much for your prompt attention and response. I'd also like to ask what is the next escalation step to challenge this motion dismissal or previous HRTO's decisions.

Regards,

Gleb

----- Forwarded message -----

From: **SCJ-CSJ Divisional** <SCJ-CSJ.Divisional@ontario.ca>

Date: Tue, 16 Apr 2024 at 09:55

Subject: RE: Lisikh v. HRTO Div Court File # 512/23

To: Gleb <gleblisikh@gmail.com>

Cc: Guilbault, Elizabeth (MAG) <Elizabeth.Guilbault@ontario.ca>

Good morning

You can send in your questions which will be forwarded to the judge. Kindly ensure you use the scj-csj.divcourtmil@ontario.ca email as per the instructions in the email with your decision.

Sincerely,

KAREN L NOLAN (SHE/HER) (JUD)

Divisional Court Toronto

Osgoode Hall

[130 Queen St. W. Rm 174](#)

[Toronto ON M5H 2N5](#)

416-327-5100

From: Gleb <gleblisikh@gmail.com>
Sent: April 16, 2024 8:39 AM
To: SCJ-CSJ Divisional <SCJ-CSJ.Divisional@ontario.ca>
Cc: Guilbault, Elizabeth (MAG) <Elizabeth.Guilbault@ontario.ca>
Subject: Re: Lisikh v. HRTO Div Court File # 512/23

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Can I ask clarifying questions about the statements made in the "Analysis" or is there a special process/procedure to do that?

Thank you,

Gleb

On Mon, 15 Apr 2024 at 14:06, SCJ-CSJ Divisional <SCJ-CSJ.Divisional@ontario.ca> wrote:

Good Afternoon:

This email is not for correspondence and is being used to give notice of a Divisional Court release only

Attached please find a copy of the decision for the above-mentioned matter.

Please acknowledge receipt by return email.

If you have any questions or concerns about this or any other matter, please contact the Toronto Divisional Court at scj-csj.divcourtmail@ontario.ca.

Sincerely,

KAREN L NOLAN (SHE/HER) (JUD)

Divisional Court Toronto

Osgoode Hall

[130 Queen St. W. Rm 174](#)

[Toronto ON M5H 2N5](#)

416-327-5100



G L <gleblisikh@gmail.com>

RE: Notice of Motion for Leave to Appeal 512-23

1 message

JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>

1 May 2024 at 16:04

To: Gleb <gleblisikh@gmail.com>, JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>

Good afternoon,

At this time I cannot provide directions on reviewing the Divisional Court Single Judge to a panel, Divisional Court would have to provide you with those directions. As I mentioned, it would appear that this matter was from a motion and not from an appeal; as such you still have recourse to appeal your matter in Divisional Court. I would try to call their office rather than sending an email or perhaps attending their office.

Thank you kindly,

Office of the Registrar/Stacy

Regards,



Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N5

Toll Free: 1-855-718-1756

Telephone number: (416) 327-5020

Facsimile number: (416) 327-5032

E-Mail: coa.e-file@ontario.caWebsite: <http://www.ontariocourts.ca/coa/en/>

Business Hours: 8:30 a.m. to 4:00 p.m.

Court Counter Hours: 9am – 11am & 2pm – 4pm

From: Gleb <gleblisikh@gmail.com>
Sent: May 1, 2024 3:56 PM
To: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>
Subject: Re: Notice of Motion for Leave to Appeal 512-23

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Hi Stacy,

May I ask you to please be more specific about what that "recourse to review the decision of the Divisional Court" is and how it does not push me over the deadline for escalating this matter to the Court of Appeal? I responded to the Divisional Court decision right away questioning their analyses and asking about the recourse/escalation. I received no answer.

So, I am trying to request a Motion for Leave to Appeal so that I don't miss the deadline. All the parties were served with the Notice of Motion for Leave to Appeal within 15 days from the decision, which was made on 15th April 2024.

Thank you so much,

Gleb

On Wed, 1 May 2024 at 15:17, JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca> wrote:

Good afternoon Gleb,

As per your email addressed to Mr. Archer, please note that since your matter was from a motion in-writing, you still have further recourse to review the decision of the Divisional Court. In the event that you are not satisfied with the court's decision, you can then appeal to the Court of Appeal by serving a Notice of Motion for Leave to Appeal within 15 days after the decision has been released. Please see s.21 (2-5) of the Court's of Justice Act for your ease of reference.

Thank you kindly,

Office of the Registrar/Stacy

Regards,



Court of Appeal for Ontario
Osgoode Hall
[130 Queen Street West](#)
Toronto, Ontario M5H 2N5

Toll Free: 1-855-718-1756
Telephone number: (416) 327-5020
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E-Mail: coa.e-file@ontario.ca

Website: <http://www.ontariocourts.ca/coa/en/>

Business Hours: 8:30 a.m. to 4:00 p.m.

Court Counter Hours: 9am – 11am & 2pm – 4pm

From: Gleb <gleblisikh@gmail.com>
Sent: April 30, 2024 1:49 PM
To: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>
Subject: Re: Notice of Motion for Leave to Appeal 512-23

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Hi Kristopher,

Sorry for the confusion - I am new to this. As per my motion form, my intention is to appeal the divisional court decision to dismiss my other motion. The decision in question was made on 15-Apr-2024.

I am attaching it here. I thought it would be linked to the court file I used because that's the only reference number I have.

I hope you will be able to do the filing now.

Thank you,

Gleb

On Tue, Apr 30, 2024, 13:18 JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca> wrote:

Good afternoon,

After reviewing the material, I am unable to file the Motion for Leave to Appeal to extend Judicial Review deadline in divisional court.

To bring a motion for leave to appeal in the Court of Appeal from a Divisional Court matter, the notice of motion needs to be submitted within 15 days of that decision. The only decision that you are referencing in your Notice is from November 10th, 2022.

If you are over the 15 days from the decision you want to appeal, you will need to get a late filing consent from the other party or bring a motion for leave for an extension of time to file the motion.

If the Divisional Court dismissal of the extension of time occurred within the 15 days, please adjust the Notice of Motion to indicate the hearing that you are appealing.

Thank you,

Office of the Registrar/Kristopher Archer



Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N5

Toll Free: 1-855-718-1756

Telephone number: (416) 327-5020

Facsimile number: (416) 327-5032

E-Mail: coa.e-file@ontario.ca

Website: <http://www.ontariocourts.ca/coa/en/>

Business Hours: 8:30 a.m. to 4:00 p.m.

From: Gleb <gleblisikh@gmail.com>
Sent: April 26, 2024 8:48 PM
To: JUS-G-MAG-Judicial COA E-file <COA.E-file@ontario.ca>
Subject: Notice of Motion for Leave to Appeal 512-23

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hello there!

I am sorry but I could not figure out through your web site instructions how to file a Motion for Leave to Appeal. The only instructions I found were related to filing through electronic means like email which I am using, but motions were not explicitly listed there.

<https://www.ontariocourts.ca/coa/how-to-proceed-court/practice-directions-guidelines/filing-electronic-documents/>

I served the Notice to the responding parties yesterday. Now I understand I only have 5 days to file it with the court (5 business or calendar days?). And it's Friday evening, and I am traveling Sat - Tue, so might not even have a chance to get help through a phone call, not to mention visiting the court personally.

I don't want to miss the deadline, and I do realise that I cannot even comply with the naming convention for the subject line and naming the attachments as I don't have a case number from the Court of Appeal. I am using the lower court case number instead and hope it's OK.

In any case, it would be great to have this motion filed or to receive prompt instructions with reasonable timelines to do the filing properly, even though I fully understand that this email is not for help questions.

Thank you in advance.

Sincerely,

Gleb Lisikh



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Gleb Lisikh

Applicant

-and-

**His Majesty the King in the Right of Ontario
as represented by the Ministry of Education**

Respondent

RECONSIDERATION DECISION

Adjudicator: Eva Nichols

Date: February 28, 2023

File Number: 2021-46376-I

Citation: 2023 HRTO 263

Indexed as: **Lisikh v. Ontario (Education)**

BACKGROUND

[1] This Application alleged discrimination in the provision of educational services on the grounds of race and colour, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”). The Application was filed on July 13, 2021.

[2] The Tribunal dismissed the Application on November 10, 2022, in Decision 2022 HRTO 1345 (the “Decision”). In the Decision, the Tribunal stated that the Application was dismissed due to the fact that the applicant had no standing to bring the Application since (a) he had not been denied a service by the named respondent, (b) having identified himself in his Application as white (race), he has no standing to allege racial discrimination and further, (c) the educational program that he alleged as being discriminatory met the criteria for a special program under Section 14 of the *Code*.

[3] On November 10, 2022, the applicant sent an email to the Tribunal stating that he wished to launch an appeal process to “un-dismiss the application”. He received a response referring him to the due process for reconsideration on January 13, 2023.

[4] Subsequently, on January 22, 2023, the applicant filed a Form 20 Request for Reconsideration in accordance with the Tribunal’s Rule 26. However, the Form 20 did not include any submissions. Instead, it asked that the applicant’s earlier emailed appeal request referenced above be considered.

[5] Rule 26 of the Tribunal’s Rules of Procedure allows for a party to request reconsideration of a decision within 30 days of the date that the Decision is issued. The Rule further states that a request for reconsideration made more than 30 days following the Decision will not be granted unless the Tribunal determines that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[6] Although the Tribunal’s processes are clearly set out on its website and therefore the applicant could have found the way to request reconsideration within the specified

time limits without waiting to hear back from the Tribunal, I am prepared to accept that no substantial prejudice will result to any person as a result of this reconsideration. Even though the actual Form 20 Request filed is out of time, there is no prejudice to the respondent since the original Application had not been served on the named respondent.

THE RIGHT TO RECONSIDERATION

[7] Under s. 45.7 of the *Human Rights Code*, the Tribunal may, at the request of a party or on its own initiative, reconsider its decisions in accordance with Tribunal's Rules. The Tribunal has issued Rule 26 governing requests for reconsideration and has also issued a Practice Direction on Reconsideration.

[8] In accordance with the Rules and the Practice Direction, the Tribunal has found many times (such as in *Sigrist and Carson v. London District Catholic School Board*, 2008 HRTO 34 for example) that reconsideration is a discretionary remedy, that there is no right to have a decision reconsidered by the Tribunal even if the criteria in Rule 26 are met, and that reconsideration is not an appeal or an opportunity to re-argue the case.

[9] As noted by the Divisional Court in *Landau v. Ontario (Minister of Finance)*, 2012 ONSC 6926, at paragraph 17,

A reconsideration is not an appeal or a hearing *de novo*. More importantly perhaps, there is no right to have a decision reconsidered.

[10] In *Paul James v York University and Ontario Human Rights Tribunal*, 2015 ONSC 2234, the Divisional Court confirmed (at paragraph 56-58) the importance of not treating the Tribunal's reconsideration process as an appeal, or as an opportunity to repair any deficiencies in the original presentation of a case. They also found that it was reasonable for the Tribunal to decline to exercise its discretion to reconsider its original decision in that case as

...there were no compelling and extraordinary circumstances for doing so and there were no circumstances which outweighed the public interest in the finality of orders and decisions of the Tribunal.

[11] On the Form 20 filed by the applicant, he claimed that the reasons for his reconsideration request are the following in accordance with Rule 26.5:

- There are new facts or evidence that could potentially be determinative of the case and that could not reasonably have been obtained earlier
- The decision is in conflict with established case law or Tribunal procedure and the proposed reconsideration involves a matter of general or public importance,
- Other factors exist that outweigh the public interest in the finality of Tribunal decisions.

[12] In response to the question where applicants are asked to provide detailed reasons and representations in support of the request, as stated above, the applicant referred to his November 23, 2022, email, where he set out his disagreement with the Decision.

[13] In the email, the applicant addressed the reasons in the decision as follows:

1. With regards to the matter of standing, he asserts that he was now attaching a Form 4A, thereby alleging that he was applying on behalf of his child.
2. He disagrees with the statement in the Decision that, as a person who self-identifies as white (race) in an Application, as he did, he cannot bring a racial discrimination allegation in relation to accessing a special program that is set up specifically to ameliorate the impact of racial discrimination on Black youth.
3. He disagrees with the statement that the SummerUp program potentially meets the special program criteria of section 14 of the *Code*.

[14] I have considered the above reasons submitted by the applicant. It is clear that he disagrees with the Decision. However, I must note that he does not cite any new facts or evidence that could be determinative of the case and that could not have been obtained any earlier. The Tribunal has not received the Form 4A that the applicant referenced, and it is clear from the Application that his son did not apply for the SummerUp program and was, therefore, not refused the service cited.

[15] Similarly, the applicant did not cite any case law or Tribunal procedure that would contradict the Decision.

[16] Finally, he did not cite or rely upon any other factors, except his own opinions, about such matters as the relevance of and applicability of Section 14 to special programs that would outweigh the public interest in the finality of Tribunal decisions.

DECISION

[17] As set out above, none of the Tribunal's Rule 26.5 criteria were satisfied by the applicant. Therefore, I see no reason for exercising my discretion to reconsider the Decision. The Decision stands as issued.

ORDER

[18] The Request for Reconsideration is denied.

Dated at Toronto, this 28th day of February, 2023.

A handwritten signature in cursive script that reads "Eva Nichols". The signature is written in black ink and is positioned above a horizontal line.

Eva Nichols
Member



G L <gleblisikh@gmail.com>

RE: 2021-46376-I Lisikh v. Ontario (Education)

1 message

HRTO-Registrar (MAG) <hrto.registrar@ontario.ca>
To: "gleblisikh@gmail.com" <gleblisikh@gmail.com>
Cc: "HRTO-Registrar (MAG)" <hrto.registrar@ontario.ca>

13 January 2023 at 09:17

Dear Party,

Please submit a form 20: Request for Reconsideration and serve to all parties.

Sincerely/Cordialement,

Office of the Registrar | Bureau du Greffier

Human Rights Tribunal of Ontario | Tribunal des droits de la personne de l'Ontario

Tel/Tél.: 416-326-1312 | Toll-free/Sans frais: 1-866-598-0322 | TTY/ ATS: 1-800-855-0511

hrto.registrar@ontario.catribunalsontario.ca**Tribunals Ontario****Tribunaux décisionnels Ontario**

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email. All file-related HRTO correspondence must be sent to hrto.registrar@ontario.ca with a copy delivered to all other parties on the file (See HRTO [Rule 1.12](#)).

Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel. Toute correspondance relative aux dossiers du TDPO doit être envoyée à hrto.registrar@ontario.ca avec une copie remise à toutes les autres parties (voir [la règle 1.12](#) du TDPO).

P Please consider the environment before printing this email

/NGR

From: Gleb <gleblisikh@gmail.com>
Sent: January 7, 2023 12:43 PM
To: HRT0-Registrar (MAG) <hrto.registrar@ontario.ca>
Subject: Re: 2021-46376-I Lisikh v. Ontario (Education)

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Could you please let me know (Yes/No) if you are planning to respond?

Regards,

Gleb

On Wed, 23 Nov 2022 at 19:03, Gleb <gleblisikh@gmail.com> wrote:

Hi!

I am following up on my request to launch an appeal process to un-dismiss the application. Further to my initial email I'd like to elaborate on why I consider the dismissal wrongful..

My understanding, based on the analysis done by Eva Nichols, is that there are three reasons for dismissing my application. Here's why those reasons are invalid or no longer apply.

1. No standing [23].

Please forgive my profound lack of understanding of the intricacies of HRT0 workings. To render this objection moot, please accept the attached Form 4A where I formally request to represent someone who has the standing. Hope this clears it ,and sorry, again for not doing it earlier when requested.

2. Being white and hence having no grounds for negative racial discrimination appeals [19].

As interesting as this statement is, in and of itself, it is, nevertheless, moot and not applicable. The claimant's and my own socially racialized construct [re: 18] is Asian.

On that note, I am deeply offended by the groundless assumption made by Eva Nichols about my socially constructed race affiliation. I view such prejudiced judgement as a concealed propping of white supremacy in that it is driven by presumption that only a white man has a prerogative or abilities to place claims of this nature with HRT0. While I am grateful for deepening my understanding of race, I am, nevertheless, looking forward to an apology and would like to express my concerns about the racist attitudes and biases that seem to be present within the Tribunal itself.

3. Section 14 of the Code justifies ameliorating programs like SummerUp.

According to the Code, Section 14 is invoked to justify exceptions for the programs that are otherwise discriminatory and in breach of the Code. From Eva's analysis, it is not clear if the discriminatory nature of the SummerUp set of programs was acknowledged by HRTO, which would make invocation of the Section 14 warranted "...his Application does not identify a breach of the Code on the alleged grounds of race and/or colour." [8]. As soon as this contradiction is resolved, and we are truly in Section 14 waters without any ambiguity, we can then argue about applicability of this Section to the case.

The application of Section 14 is the primary point of dispute which I am bringing to the Tribunal. You cannot dismiss my application by assuming de facto that the conditions for Section 14 are met merely based on how the defendant with its affiliated organizations marketed the SummerUp campaign (and this is what Eva did in the analyses). This would be identical to passing a court decision in favour of the defendant without having an actual trial and by accepting the defendant's side of the story as unquestionably true.

I hope this explanation alone suffices to resume the case. If not, please advise why and what the appeal process is.

Regards,

Gleb

On Thu, 10 Nov 2022 at 15:29, Gleb <gleblisikh@gmail.com> wrote:

The grounds upon which my case was dismissed are in contradiction with my claim, which was grossly misrepresented by the attached explanation.

What is the appeal process to "un-dismiss" the application?

Regards,

Gleb

On Thu, 10 Nov 2022 at 12:54, HRTO-Registrar (MAG) <hrt0.registrar@ontario.ca> wrote:

To Recipients:

Please find attached a Decision issued by the Tribunal for the following matter:

Re: Lisikh v. Ontario (Education)

File Numbers: 2021-46376-I

Pursuant to Rule 1.12 of the HRTO's Rules of Procedure, all written communications with the HRTO, including e-mail correspondence, must be addressed to the Registrar

at hrtto.registrar@ontario.ca with a copy delivered to all other parties.

Sincerely/Cordialement,

Office of the Registrar | Bureau du Greffier

[Human Rights Tribunal of Ontario](#) | Tribunal des droits de la personne de l'Ontario

Tel/Tél.: 416-326-1312 | Toll-free/Sans frais: 1-866-598-0322 | TTY/ ATS: 1-800-855-0511

hrtto.registrar@ontario.ca

tribunalsontario.ca



Tribunals Ontario

Tribunaux décisionnels Ontario

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email. All file-related HRTTO correspondence must be sent to hrtto.registrar@ontario.ca with a copy delivered to all other parties on the file (See HRTTO Rule 1.12).

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/SH



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Gleb Lisikh

Applicant

-and-

**His Majesty the King in the Right of Ontario as represented by the Ministry of
Education**

Respondent

DECISION

Adjudicator: Eva Nichols

Date: November 10, 2022

File Number: 2021-46376-I

Citation: 2022 HRTO 1345

Indexed as: **Lisikh v. Ontario (Education)**

WRITTEN SUBMISSIONS

Gleb Lisikh, Applicant)
)
) Self-represented

BACKGROUND

[1] This Application alleges discrimination in the provision of educational services on the grounds of race and colour, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “*Code*”). The Application was filed on July 13, 2021.

[2] The Application alleges that a summer program offered to Black students in 2021 by the local school board, which was not available to white students, and which was funded in part by a grant from the Ministry of Education was discriminatory and therefore amounts to a breach of the *Code*.

[3] On July 27, 2022, the Tribunal sent a letter to the applicant asking for additional information and, in particular, for the filing of a Form 4A, to confirm that the Application relates to the provision of educational services to a minor. The applicant was given a deadline of August 5, 2022, to file the required form. The applicant responded by return email to state that he did not intend to file a Form 4A, since he was not applying on behalf of his child, i.e., as Litigation Guardian for a minor.

[4] On August 30, 2022, the Tribunal sent a Notice of Intent to Dismiss (“NOID”) letter to the applicant to explain that his Application did not identify any specific acts of discrimination within the meaning of the *Code*, allegedly committed by the named respondent. The applicant was given until September 30, 2022, to respond and identify the specific alleged breaches of the *Code* and/or file a Form 4A.

[5] The NOID further confirmed that if the applicant does not respond to the NOID and file written submissions to the issues raised, the Tribunal will consider that failure to respond as an abandonment of the Application.

[6] On September 2, 2022, the applicant responded to the NOID with the following statement: “The act of the discrimination is very clear - The Summer programs in question explicitly offered to a particular RACE, and have been confirmed by school officials as NOT available to other RACES (while funded indiscriminatory by taxpayers of all races). It cannot get any more clear and specific, as far as the acts of racial discrimination are concerned.” The applicant also confirmed his previous statement that this Application was not filed on behalf of his minor child.

[7] While the applicant did not identify any further acts of discrimination in his response to the NOID, his response ensured that the Application should not simply be dismissed as abandoned.

[8] However, in spite of the fact that the Application has not been served on the respondent, on the basis of the facts alleged by the applicant and for the reasons set out below, the Application must be dismissed, primarily on the grounds that the applicant has no standing to bring such an Application, and secondly and importantly, because his Application does not identify a breach of the *Code* on the alleged grounds of race and/or colour.

THE ALLEGATIONS SET OUT IN THE APPLICATION

[9] The applicant made the following allegations in response to question 8 in the Application (“What Happened”):

My son wanted to register for one of the summer programs his [high school] offered... The programs’ description suggested that it was only open for “black youth”.

[10] The applicant stated that he reached out to the school principal who confirmed that the specific program that the applicant was looking at was only open to Black youth. The principal apparently confirmed that the so-called “SummerUp Program” provides special summer activities for Black youth across the Province. The principal apparently also confirmed that the applicant’s son cannot enroll in this summer program because he is not Black.

[11] The applicant states in his Application, that he wrote to the Minister of Education to ask for an explanation about the grounds for the Ministry choosing to fund this allegedly discriminatory program, but he has received no response.

[12] He further alleges in his Application, that this program is condescending towards Black youth, that skin colour has no bearing on the ability or desire to learn, and, that there are plenty of Black students who do well in school.

[13] He further states that such programs are a clear case of racial discrimination endorsed by the respondent and it does not advance equality and inclusiveness. The applicant asks for the following remedy in the Application: “tax relief for non-black families, whose children were excluded from those publicly funded programs.”

[14] His allegations conclude that “such approach is every bit as discriminatory against non-Blacks, as it is humiliating for Blacks.” He further requests that the respondent “stop production of this and any similar programs that create unequal opportunities for different races and thus instigate racial tension. Or better, open up those programs to every student who would qualify by relevant criteria, of which skin tone is not.”

ANALYSIS

The Relevance of the *Code*

[15] The *Code*'s preamble includes a statement that public policy in Ontario recognizes the dignity and worth of every person and it provides for equal rights and opportunities without discrimination for all.

[16] Section 1 of the *Code* sets out, under the heading of Freedom from Discrimination, the rights of every person to equal treatment with respect to services, goods and facilities without discrimination.

[17] Section 45.5 of the *Code* states that the Tribunal may consider policies approved by the Ontario Human Rights Commission in a human rights proceeding before the Tribunal. That means that the Tribunal can, on its own initiative, consider the Commission's policies and their relevance to an application filed by an individual.

[18] Colour and race are among the protected grounds. While they are not terms that are defined in the *Code*, the Ontario Human Rights Commission offers the following definitions in its *Policy and guidelines on racism and racial discrimination*:

“Race” is a prohibited ground of discrimination in the *Ontario Human Rights Code*, but it is not specifically defined. The Commission has explained “race” as socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth.

The process of social construction of race is called racialization: “the process by which societies construct races as real, different and unequal in ways that matter to economic, political and social life.”

Recognizing that race is a social construct, the Commission describes people as “racialized person” or “racialized group” instead of the more outdated and inaccurate terms “racial minority”, “visible minority”, “person of colour” or “non-White”.

There is no fixed definition of racial discrimination. However, it has been described as any distinction, conduct or action, whether intentional or not, but based on a person's race, which has the effect of imposing burdens on an individual or group, not imposed upon others or which withholds or limits access to benefits available to other members of society. Race need only be a factor for racial discrimination to have occurred.

[19] It is important to note in the Tribunal's jurisprudence that an allegation of racial discrimination or discrimination on the grounds of colour is not one that can be or has been successfully claimed by persons who are white and non-racialized.

[20] Section 14 of the *Code* addresses the issue of *Special Programs* as follows:

A right under Part 1 is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part 1.

Focussing on the Applicant's Allegations

[21] The applicant alleges in the Application that the SummerUp program, as offered to high school students in 2021 by Ontario school boards, was discriminatory because it offered its programs to Black youth only. White students, such as his son, were not eligible to apply. But the applicant is not filing this Application on behalf of his son.

DOES THE APPLICANT HAVE STANDING TO BRING SUCH AN APPLICATION?

[22] This Application does not allege that the applicant has faced any form of discrimination on a protected ground. Further, he has confirmed in writing that he is not bringing this Application on behalf of another person, namely his minor child or any other party.

[23] Therefore, I must find, as set out below, that the applicant has no actual standing to bring applications that are solely in the nature of public interest complaints. This issue was dealt with in *Carasco v. University of Windsor*, 2012 HRTO 195 (“*Carasco*”), as follows:

The *Code* provides for three ways for an application to be filed. First, a person can file under s. 34(1) if she or he “believes that any of his or her rights under Part I have been infringed.” Second, recognizing that sometimes the affected individual(s) is not in a position to file an application, s. 34(5) of the *Code* also allows for other persons or organizations to file an application on his or her behalf, with the consent of the affected individual.

Applications under s. 34(1) or s. 34(5) can raise issues of systemic discrimination. A person may feel that his or her rights are infringed by operation of a policy or a long-standing systemic pattern of practices rather than an idiosyncratic set of actions or circumstances. For example, in the “special diet” cases, multiple individuals filed applications challenging the Government of Ontario’s policies concerning when Ontario Disability Support Program recipients were entitled to receive additional benefits for medically prescribed diets: See *Ball v. Ontario (Community and Social Services)*, 2010 HRTO 360 (CanLII).

Third, the Ontario Human Rights Commission (the “Commission”) may file an application under s. 35 where it believes it to be in the public interest to do so. Unlike applications made under s. 34, there is no requirement that the Commission identify and obtain the approval of individuals whose rights have been allegedly infringed as a pre-condition to bringing an application under s. 35.

[24] It is clear from the structure of the *Code* that an individual whose rights under the *Code* have not been infringed cannot bring an application to the Tribunal concerning a matter which she or he believes is in the public interest. To allow otherwise would circumvent the intention of the Legislature and the mandate of this Tribunal.

[25] Therefore, the applicant has no standing to bring such an Application and the Application cannot be considered by the Tribunal.

The SummerUp Program

[26] The SummerUp program was provided at several Ontario school boards, including the school board where the applicant's child attends school in the summer of 2021. This program is described as focussing on "providing Canadian youth of Black and African-Canadian heritage with opportunities to enable them to fulfil their personal and professional ambitions, provide inspiring leadership to their communities and country, and make this world a better place for all."

[27] The stated goal of the SummerUp program is to admit promising Grade 10 students and provide them with multi-year opportunities in leadership development, career exploration, responsible citizenship, and encouragement to serve their schools and community.

[28] Based on the above description of its goals, there is no question that the SummerUp program meets the criteria of being deemed a special program, in accordance with Section 14 of the *Code*.

[29] While I note and acknowledge the applicant's observation that many Black youth are highly successful in their education, the Commission's policy on racism and racial discrimination supports the allegation that many more Black students are disadvantaged and experience hardship in accessing equal educational opportunities, as compared to their non-racialized fellow students.

[30] It is clear that in accordance with Section 14 of the *Code*, it is not discriminatory to put in place a program if it is designed to do one or more of the following:

- a. relieve hardship or economic disadvantage;
- b. help disadvantaged people or groups to achieve, or try to achieve, equal opportunity; and/or
- c. help eliminate discrimination

[31] A program that aims to provide equal opportunities to persons who are disadvantaged on the basis of a *Code* protected ground, such as colour or race or disability, can, without in any way breaching the *Code*, limit its services to individuals who are identified by the prohibited ground, which in this instance is their race and colour.

[32] In *KP v. Little Native Hockey League*, 2020 HRTO 298 for example, the Tribunal confirmed that the named hockey league met the requirements for being deemed a special program which enabled it to be selective about its participants. The same applies in this instance.

[33] On that basis, I must find that the SummerUp program, as offered by school boards in Ontario during the summer of 2021 meets the criteria for being considered a special program under section 14 of the *Code*. In the event that this Application were to have proceeded within the Tribunal process, it would be deemed to be a special program under this section of the *Code*. As a result, it would be dismissed.

DECISION

[34] I agree with and adopt the analysis in *Carasco* and find that it appropriately applies to this Application, in which the applicant has clearly intended to bring a public interest application. He has no standing to do so, and for this reason this Application is dismissed.

[35] Further, even if the applicant had standing, which he clearly does not, the applicant's allegations that the respondent breached the *Code* on the grounds of race and colour by providing funding for the SummerUp program and by allowing such a program to be offered in Ontario's high schools to Black students only, must be dismissed.

ORDER

[36] The Application is dismissed.

Dated at Toronto, this 10th day of November, 2022.

A handwritten signature in cursive script that reads "Eva Nichols". The signature is written in black ink and is positioned above a horizontal line.

Eva Nichols
Member

FORM 4C
Courts of Justice Act
BACKSHEET

File 307/24

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

B E T W E E N:

GLEB LISIKH

Applicant
(Moving Party)

- and -

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO
AS REPRESENTED BY THE MINISTRY OF EDUCATION**
Respondent

MOTION RECORD OF THE MOVING PARTY

Lisikh v. Ontario (Education), 2023 HRTO 263

Divisional Court of Ontario

PROCEEDING COMMENCED AT
Human Rights Tribunal of Ontario

Motion Record

(if affidavit, indicate name of deponent and date sworn)

Gleb Lisikh, gleblisikh@gmail.com)

(Law society registration number of solicitor)

(Fax number, if known, of person on whom document is to be served)

RCP-E 4C (November 1, 2005)