SCC File Number: 42120

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

LUCIA DERENZIS

APPLICANT
(Appellant)

AND:

GORE MUTUAL INSURANCE COMPANY and LICENCE APPEAL TRIBUNAL

RESPONDENTS
(Respondents)

REPLY TO THE RESPONSES OF GORE MUTUAL INSURANCE COMPANY AND LICENCE APPEAL TRIBUNAL (LUCIA DERENZIS, APPLICANT)
(Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*)

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Counsel for the Respondent,
Licence Appeal Tribunal

TABLE OF CONTENTS

Tab **Page**

1

APPLICANT'S MEMORANDUM OF ARGUMENT

A. The Order compels destruction of filed evidence and imposes a permanent ban on future use or disclosure, binding parties, counsel, and the affiant beyond this proceeding

1. The practical effect of this appeal extends far beyond the motion or proceeding in which the Destruction and Gag order of whistleblower evidence arose. The Respondents each try to reframe the practical effect as being confined to the motion, or to the proceeding itself, but the Order's effect is not confined to the motion or even to the Tribunal proceeding. The Destruction and Gag order required the impugned whistleblower affidavit material to be destroyed and "not further disseminated in any form," and it compelled written confirmations from every party, every lawyer of record, and the affiant that all physical copies were destroyed and all electronic copies deleted. The effect is permanent: it imposes an ongoing, indefinite prohibition on those identified persons from ever again accessing, using, or disclosing the affidavit and accompanying exhibits – not merely refraining from using them in this proceeding.

2. The practical effect of the Order extends beyond this motion and these parties. They include:

    a. Ms. Derenzis cannot use the affidavit or exhibits as evidence to advance, test, or prove institutional bias in this proceeding or any new proceeding.
    b. Ms. Derenzis cannot use the affidavit or exhibits as evidence in her separate constitutional challenge against the LAT, even though the Ontario Superior Court has recently held that the Tribunal's reliance on solicitor-client privilege and deliberative secrecy over comparable material was improper and that disclosure was required.[1]
    c. Ms. Derenzis is deprived of a meaningful ability to call the affiant, Dr. Kowal, as a fact witness in this proceeding or any new proceeding on the subject matter of the destroyed materials, because the Order eliminates the documentary foundation and imposes permanent non-use and non-dissemination obligations on the affiant.

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[1] *Derenzis et al v. His Majesty the King et al*, 2025 ONSC 2761 at paras. 5-6, 33-35, and 40 ["*Derenzis Constitutional Challenge"*].

d. The press cannot access the list of firms, parties, and individuals alleged to have been blacklisted at the LAT, whether to warn the public about a process alleged to guarantee losses for certain participants or to investigate the institutional bias the affidavit evidence describes.

e. If the affidavit and exhibits surface from other sources outside the parties, their representatives, or the affiant, others may raise the same institutional bias concerns, and the Destruction and Gag Order risks being characterized as institutional suppression of whistleblower evidence later condoned through reasonableness review that did not address s. 2(b).

3. A further practical effect if this court fails to intervene is that the Destruction and Gag Order would stand as a precedent for administrative decision makers to impose destruction and non-dissemination orders over filed evidence without first determining whether such limitation on the open court principle poses a serious risk to an important public interest, whether reasonable alternative measures could avoid that risk, and whether the benefits of the order outweighed its harm to open justice and freedom of expression – which *Sherman Estate v. Donovan,* 2021 SCC 25 [“*Sherman Estate”*] requires.

4. Moreover, the Order also reaches into Ms. Derenzis’ separate Superior Court proceeding involving a constitutional challenge against the LAT, involving the same parties and the same concerns about LAT adjudicator independence and compliance with natural justice. In a separate motion hearing in that proceeding, Justice Mandhane held that Ms. Derenzis’ evidence had valid concerns about LAT adjudicator independence and compliance with natural justice justifying disclosure of information – not suppression. Justice Mandhane’s reasoning was amplified by the Court of Appeal’s finding that the LAT’s internal review process lacked sufficient independence during the same period and under the same executive leadership.[2] Upholding that permanent non-use and non-dissemination remedy permanently disables Ms. Derenzis, her counsel, and the affiant from accessing, using, or disseminating sworn evidence advanced to establish those natural justice concerns in that separate proceeding or any future proceeding.

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[2] *Shuttleworth v. Licence Appeal Tribunal*, 2018 ONSC 3790, aff’d 2019 ONCA 518 referenced at *Derenzis Constitutional Challenge*, para. 35.

3

B. The s. 2(b) Open Court Issue Not Decided Despite Being Raised; *Sherman Estate* Not Considered

5. The Divisional Court's reasons contain no analysis of the open court principle guaranteed by s. 2(b) of the *Charter* and no articulation or application of the *Sherman Estate* test. That omission leaves an unresolved *Charter* question: whether an administrative tribunal can order the destruction and permanent non-dissemination of sworn evidence filed in an adjudicative proceeding without the findings *Sherman Estate* requires, especially where the evidence alleges institutional bias within the tribunal body itself.

6. The Respondents nevertheless assert that the s. 2(b) issue is "new," is being raised "for the first time at this juncture," and has deprived the Respondents of an opportunity to respond and deprived this Court of a sufficient record and analysis below.[3]

7. The suggestion that the s. 2(b) issue is "new" is contrary to the LAT's own acknowledgement that Ms. Derenzis' written materials invoked s. 2 in the Divisional Court proceeding in direct response to the Attorney General's position.[4] The issue was therefore raised on judicial review, and all parties, including the Ontario Trial Lawyers Association Intervenors and the Attorney General of Ontario, had an opportunity to address it at the Divisional Court hearing.

8. The problem for this appeal is not lack of notice, lack of opportunity to respond, or an incomplete evidentiary record. The problem is that neither the Tribunal nor the Divisional Court made the findings required to justify a destruction and permanent non-dissemination order over evidence filed in the proceeding under s. 2(b) and the open court principle. The Divisional Court's reasons contain no s. 2(b) justification and do not apply *Sherman Estate* to that remedy. That is why leave is required: the constitutional validity of imposing and upholding that remedy without *Sherman Estate* findings has never been decided; it has only been avoided.

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[3] LAT Response, paras. 16, 46–48; Gore Response, paras. 25–28.
[4] LAT Response, paras. 16, 46.

4

C. The LAT's '*Sherman Estate* was already dealt with' point fails because *Sherman Estate* was never applied to destruction and perpetual non-dissemination order

9. The LAT points to the Divisional Court's interim sealing order made before the judicial review hearing and says Sherman Estate was already applied.[5] An interim seal pending a merits hearing is a routine, preservative step. It keeps the subject matter intact so the court can decide the application without the documents being made public first. It does not decide whether the Tribunal's destruction and non-dissemination order can be upheld without the *Sherman Estate* findings required for limits on the open court principle.[6]

10. The Court itself treated the interim seal as interlocutory and not determinative of the merits. Justice Corbett directed that "the order will be spent upon decision of the panel," that the order of Matheson J., "being interlocutory, is not binding upon the panel," and that the parties "will be at liberty to argue before the panel that the impugned documents should be made public following the court's decision on the application for judicial review."[7] The Divisional Court's reasons uphold the destruction and non-dissemination order without making the *Sherman Estate* findings required to justify it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of January, 2026.

Imtiaz Hosein
Joseph Campisi
Christos Kakaletris

Counsel for the Applicant

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[5] LAT Response, para. 45.
[6] *Sherman Estate v. Donovan*, 2021 SCC 25, para. 38.
[7] Directions of the Ontario Superior Court of Justice (Divisional Court) by Justice Corbett, dated March 11, 2024, paras. 1–3 [**Tab 2A**].

5

TABLE OF AUTHORITIES

From: Baweja, Saurabh S. (JUD) <Saurabh.Baweja@ontario.ca>
Sent: March 11, 2024 at 07:31 pm
To: Jennifer Pinho <jenniferp@campisilaw.ca>; SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>; Lee, Douglas (He/Him) (MAG) <Douglas.Lee@ontario.ca>; Kellythorne, Morgana (MAG) <Morgana.Kellythorne@ontario.ca>; 'acamporese@csdlawyers.ca' <acamporese@csdlawyers.ca>; Joseph Colangelo <jcolange@istar.ca>
Cc: Jenna Zorik <jenna@campisilaw.ca>
Subject: DERENZIS v GORE MUTUAL – 546/23
Attachments: 546-23

Good Afternoon,

Honourable Justice Corbett directs me to advise you as follows:

The applicant has delivered a notice of motion to review the order of Matheson J. granting the respondent's motion to seal documents pending the determination of the application for judicial review.

The Registrar is directed to issue a notice pursuant to r. 2.1 that the court is considering dismissing the review motion as frivolous, vexatious and an abuse of process for the following reasons:

1. It appears that the order will be spent upon decision of the panel on the application for judicial review.

2. It appears that the effect of the impugned order is to protect the very subject matter of the application for judicial review: if the sealed documents are made public before the court decides the application for judicial review, then the impugned decision of the LAT will be defeated before the court may rule on the merits of that order.

3. It appears that the order of Matheson J., being interlocutory, is not binding upon the panel, and that the parties will be at liberty to argue before the panel that the impugned documents should be made public following the court's decision on the application for judicial review.

4. The moving party's grounds for the review motion appear to be premised on its position on the underlying merits of the application, which, on its face, raises serious issues for decision by a panel of this court.

In short, it appears that the impugned order is necessary to preserve the ability of the panel to do justice on the underlying application, and it appears there will be no prejudice resulting from the order of Matheson J. to the parties in their ability to argue the application on the merits.

The applicant shall have the usual 15 days in which to respond to this notice pursuant to r. 2.1. The non-party may, but is not required, to make submissions, limited to ten pages in length, within ten days of the date of delivery of the applicant's response to the r. 2.1 notice,

which (if the non-party elects to make such submissions) should address the basis on which the non-party says that she has standing in respect to this issue, since she has not, herself, appealed the Tribunal's order.

No other party shall make submissions on the r. 2.1 issue unless this court subsequently directs otherwise.

All parties other than the applicant are directed to provide the court with their position, without argument, on the applicant's request for an extension of one day in which to bring the proposed review motion - an issue that will only be addressed further by the court if the court concludes that the review motion has sufficient merit such that it should not be dismissed pursuant to r. 2.1.

The underlying application is not stayed and the parties shall follow any case management directions concerning exchange of application materials and scheduling of the application itself.

Accordingly as directed, please find attached notice issued by the Registrar pursuant to rule 2.1.

Regards
Saurabh Baweja

From: Jennifer Pinho <jenniferp@campisilaw.ca>
Sent: March 11, 2024 3:43 PM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Cc: Jenna Zorik <jenna@campisilaw.ca>
Subject: RE: FOR FILING – DERENZIS v GORE MUTUAL – 546/23 – Notice of Motion

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

Good Afternoon Ms. Clegg,

Thank for the intake form. We can advise of the following:

1. This is a motion to quash a decision of a single judge, released February 29, 2024 of the Divisional Court to a panel of three. We acknowledge and all counsel have been advised that our motion was served one day late (five instead of four days) – we ask the court's indulgence / leave, related thereto.

2. The decision can be found at: *Derenzis v. Gore Mutual Insurance Company,* 2024 ONSC 1226 (CanLII), <https://canlii.ca/t/k356p>

3. ISSUES: 1) the late filing may require further action / consent; 2) some of the materials filed will be under seal – so two filings; and 3) there is no particular urgency.

4. Notice of Motion was filed on OneKey. The confirmation number is 2103636.

Counsel are:

The Licence Appeal Tribunal

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Counsel for Dr. Kowal, affiant ordered to destroy records

Kind Regards,

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Senior Law Clerk

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CHAMPIONS WITH HEART.
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To: Jennifer Pinho <jenniferp@campisilaw.ca>
Subject: RE: FOR FILING – DERENZIS v GORE MUTUAL – 546/23 – Notice of Motion

Hello Ms. Pinho,

Could you please provide me an intake form to go along with this motion to quash?
I have attached a template to this email.

Thank you,

Jessa-Marie Clegg
Divisional Court Toronto
130 Queen Street West
Osgoode Hall – Room 174
Toronto, Ontario
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From: Jennifer Pinho <jenniferp@campisilaw.ca>
Sent: March 7, 2024 3:22 PM
To: SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Subject: FOR FILING – DERENZIS v GORE MUTUAL – 546/23 – Notice of Motion

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Good afternoon,

Please see attached the Notice of Motion in the above-noted matter for filing.

I look forward to receiving confirmation of same.

Kind Regards,

Jennifer Pinho
Senior Law Clerk

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