



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Emily Carasco**

**Applicant**

**-and-**

**University of Windsor and Richard Moon**

**Respondents**

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## INTERIM DECISION

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**Adjudicator:** Sherry Liang  
**Date:** October 15, 2010  
**File Number:** 2010-06245-I  
**Citation:** 2010 HRTO 2090  
**Indexed as:** **Carasco v. University of Windsor**

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**WRITTEN SUBMISSIONS BY**

Emily Curasco, Applicant	)	) Mary Eberts, Counsel
	)	)
University of Windsor, Respondent	)	) Raj Anand, Counsel
	)	)

[1] This is an Application filed on July 14, 2010 under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended (the “Code”).

[2] On review of the material before me, including consent of the applicant, the University of Windsor Faculty of Law is removed as a respondent to this Application and the style of cause amended accordingly.

[3] This Interim Decision deals with the Request for Order During Proceedings filed by the respondent, the University of Windsor (“the University”), in which the University seeks an order relating to the use, disclosure and anonymization of certain documents. The time for filing a Response to the Application by the University has been held in abeyance pending this Interim Decision.

[4] As described in the Tribunal’s previous Interim Decision in this matter, 2010 HRTO 1968 (CanLII), the applicant is a Professor at the Faculty of Law, University of Windsor. In November 2009, she applied for the position of Dean at the Faculty and, as of February 2010, was one of the final two candidates on the short-list. During the final stages of the interview process a colleague of the applicant, the personal respondent, came forward with allegations that the applicant had participated in plagiarism, which was made known to the Search Committee (“the Committee”).

[5] Ultimately, the Committee decided not to recommend either of the final two candidates for appointment as Dean. The Faculty was advised of this at a meeting on April 14, 2010.

[6] The applicant alleges that the actions of her colleague, the Committee and its chair amount to discrimination against her on the basis of race and sex. She alleges that their actions would not have been taken had the Faculty not been on the brink of choosing a woman of colour as its Dean.

[7] The Request filed by the University seeks essentially an order of the Tribunal confirming its right to use and disclose certain classes of documents, and an order

permitting or requiring it to redact those documents prior to disclosure. The University also asks that the Tribunal require all parties to sign an undertaking not to disclose the contents of such documents to any person other than for the purposes of the Application or as required by law.

[8] The Application concerns the propriety of the University's search for a Dean for its Faculty of Law, and the applicant's contention that the search was tainted by discrimination. The documents at issue in the Request relate to that search and include, by way of example, internal correspondence among members of the Committee, candidate evaluations, and communications between Committee members and third parties regarding the two final candidates.

[9] The University refers to its By-law 10, s. 2.3.1 (the "Confidentiality Requirements") under which "all proceedings of the Search Committee shall be kept confidential." The University states that in order to present its case "untrammelled, with adequate information and documentation at its disposal" so that "the litigation can be fairly advanced", the University must make use of the documents at issue. Indeed, it states, the applicant has also indicated that these documents are important to her Application.

[10] The University is of the view therefore that it requires an order for the Tribunal to enable it to use and disclose documents covered by the Confidentiality Requirements of its By-law. In addition, it wishes to be able to redact some of the information in those documents, when it discloses them to the other parties.

[11] The applicant filed a Response to the Request objecting to the orders sought. I understand the gist of her objections to relate to the University's request that certain information be redacted from documents disclosed during the course of this proceeding, although she does also take the position that the orders sought are premature and unnecessary to enable the University to file a Response. The personal respondent has not taken a position.

[12] I see no reason to deny the order permitting the University to use and disclose the documents at issue. Clearly, the University's case in response to the Application will be based on the material collected and reviewed by the Committee, its deliberations and conclusions. It may well be necessary to use or refer to some of the information in the documents in order to file a full Response, and for that reason, that part of the Request is not premature. Further, the parties have agreed to mediation, and it would be beneficial for mediation for the University to be able to share some of the relevant documents.

[13] I find it unnecessary to apply the *Wigmore* criteria, referred to by both parties, to this part of the order, to the extent that the order relates to the University's ability to use and disclose its own documents. The University is not seeking a production order against another party, but rather an order confirming its ability to use and disclose its own documents. This is therefore not a situation where a party opposed in litigation seeks production of documents, and production is resisted on the basis of a privilege to which the *Wigmore* criteria are said to apply.

[14] I agree with the applicant that the second general issue raised by the Request, the redaction and anonymization of documents, is premature. The University's obligations to disclose and produce all arguably relevant documents do not arise until an application is scheduled for hearing, which in this case will not occur until and unless mediation is unsuccessful. At that point, if the University and the applicant have a dispute about whether the University has met these obligations, including whether documents have been improperly or unnecessarily redacted and the appropriate application of the *Wigmore* criteria, the Tribunal can determine the issue then.

[15] I therefore decline to make any orders about redaction or anonymization at this stage. I also decline to make the order that parties enter into a confidentiality undertaking. This is unnecessary given the provisions of Rule 3.3 of the Tribunal's Rules of Procedure prohibiting parties and their representatives from using documents obtained under the Rules for any purpose other than in the proceeding before the Tribunal.

[16] In conclusion, the Tribunal confirms the University's right to use and disclose the classes of documents described in paragraph 1 of the order sought. Paragraphs 2, 3 and 4 are denied.

[17] The University's Response must be filed with the Tribunal within two weeks of the date of this decision.

[18] The Request to Intervene made by the University of Windsor Faculty Association will be dealt with by the Tribunal if necessary following mediation.

[19] I am not seized of this matter.

Dated at Toronto this 15<sup>th</sup> day of October, 2010.

\_\_\_\_\_ "*signed by*" \_\_\_\_\_  
Sherry Liang  
Vice-chair