

COURT OF APPEAL FOR ONTARIO

CITATION: R (H.C.) v. Ontario Special Education Tribunal, 2026 ONCA 249

DATE: 20260401

DOCKET: M56529 (COA-25-OM-0411)

Rouleau, Thorburn and Favreau JJ.A.

BETWEEN

R (H.C.)

Moving Party (Applicant)

and

Ontario Special Education Tribunal*, Toronto District School Board*, and Ministry
of Education

Responding Parties* (Respondents)

H.C., acting in person

Olivia Filetti and Valerie Crystal, for the responding party, Ontario Special
Education Tribunal

Nicola Simmons and Alex Smith, for the responding party, Toronto District School
Board

Heard: in writing

On review of the order of Justice Wilson of the Court of Appeal for Ontario, dated
November 21, 2025.

REASONS FOR DECISION

[1] The moving party appellant, H.C., purports to act on behalf of his child, R.
He seeks reconsideration of an order of a single judge of this court.

[2] The question is whether this motion is moot and if so, whether this panel should nonetheless exercise its discretion to review the motion judge's decision. In our view, for the reasons that follow, the motion is moot and we should not exercise our discretion to decide it.

[3] The background to this case is as follows.

[4] The moving party filed an appeal with the Ontario Special Education Tribunal ("the Tribunal") to challenge the placement of his child who has learning disabilities, with the Toronto District School Board (the "Board").

[5] Early in the proceeding, the moving party sought to have the hearing panel members recuse themselves for reasonable apprehension of bias. The Tribunal dismissed his application.

[6] The moving party then filed an application to the Divisional Court for judicial review of the interim decision dismissing the recusal request.

[7] The judicial review application was dismissed by the Divisional Court pursuant to r. 2.1.01 of the *Rules of Civil Procedure* on the basis that it was doomed to fail because it was premature and there was no basis to interfere with the ongoing Tribunal proceeding.

[8] After dismissing the moving party's application for judicial review, the Divisional Court directed him to bring a motion for a sealing order or non-publication order for the purpose of continuing the sealing and non-publication

order made by the Tribunal. The moving party refused to do so, arguing that the Divisional Court was biased against him, and that while he sought anonymization, he did not want to pursue a sealing or non-publication order. In so doing, he purported to rely on the open court principle.

[9] Meanwhile, the Tribunal filed a motion seeking an order from the Divisional Court anonymizing the child's name and any information that may identify the child or the child's family, and a publication ban prohibiting the publication of any information that may identify the child or the child's family. An anonymization order and publication ban had been imposed by the Tribunal at the beginning of the second day of the Tribunal's proceeding. The Tribunal sought to continue the order in decisions of the Divisional Court in relation to the judicial review.

[10] The moving party brought a motion for leave to appeal the Divisional Court order. The motion for leave to appeal has yet to be determined.

[11] He also brought a motion to a single judge of this court to stay the Divisional Court proceedings. He sought a stay of all further proceedings before the Divisional Court, including the Tribunal's motion to continue the anonymization order and publication ban, pending the determination of the leave application before this court. He argued that once the Divisional Court rendered its decision to dismiss the recusal request, it became *functus officio* and lacked jurisdiction to impose further orders.

[12] The motion judge dismissed the moving party's motion for a stay of the Divisional Court proceedings pending the determination of his motion for leave.

[13] The moving party now seeks reconsideration of the motion judge's order. He claims that a stay of proceedings was necessary to preserve the status quo and prevent procedural unfairness pending a decision by this court on the motion for leave to appeal. He argues that the stay is in the public interest since the underlying proceedings engage issues of systemic discrimination against non-verbal autistic children in special education.

[14] However, after the motion judge's order was issued and before the date on which this reconsideration motion was scheduled to be heard, the Divisional Court granted the Tribunal's motion for a publication ban and anonymization order. On January 19, 2026, an addendum was added to the Divisional Court's decision on the r. 2.1 application. The addendum indicates that the Divisional Court has "granted the Tribunal's request for an order anonymizing the applicant's name and preventing the publication of any information that could identify the child or the child's family."

[15] The Board and Tribunal take the position that the proceedings before the Divisional Court have concluded, rendering the moving party's motion moot as:

- (a) the Tribunal's motion has been granted;
- (b) the Divisional Court proceeding has ended, and

- (c) the Tribunal is scheduled to hear the matter regarding R.'s school placement on the merits in April 2026.

[16] We dismiss the moving party's motion.

[17] The test for mootness is set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. The first prong is to determine whether there is any live controversy among the parties. This reflects the principle that courts do not adjudicate abstract questions that fail to resolve an actual dispute. Subsequent events may affect the relationship of the parties such that the question before the appeal court is hypothetical and no longer affects their rights.

[18] The second step is to determine whether this court should exercise its discretion to hear the issue notwithstanding its mootness. The exercise of the court's discretion is guided by consideration of: (i) whether the issues can be fully argued by parties who have a stake in the outcome; (ii) the concern for judicial economy, and (iii) the need for the court to remain alive to the proper limits of its law-making function: *Borowski*, at pp. 358-63. See also *Dagg v. Cameron Estate*, 2017 ONCA 366, 136 O.R. (3d) 1, at para. 32.

[19] The moving party's motion for reconsideration is moot. The motion judge's order, which is the subject of this motion, was about whether the Divisional Court proceedings should be stayed to prevent the court from ordering a publication ban

and anonymization order. The Divisional Court has already made this order. There is no live issue between the parties.

[20] Further, this court should not exercise its discretion to hear the issue notwithstanding its mootness. Contrary to the submissions of the moving party, there is no issue of public importance or any issue that extends beyond the interests of these parties. Although the moving party raises broader concerns about alleged systemic discrimination within the public education system, the decision under reconsideration addresses only a very narrow issue, that is whether to prevent the Divisional Court from issuing a publication ban and anonymization which it has now done. This court has yet to determine whether leave should be granted to appeal the Divisional Court's decision to dismiss the judicial review. Nor has the Tribunal heard the substantive issues arising from R.'s school placement as the proceeding is set to resume in April 2026.

[21] Moreover, the moving party's reliance on r. 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, is misplaced. Rule 59.06(1) addresses the court's power to amend an order that contains "an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate". Rule 59.06(2) allows a party to move to have an order set aside or varied in exceptional circumstances.

[22] Rule 59.06 is intended to permit limited amendments to correct errors arising from accidental slips or omissions, fraud, or newly discovered evidence. It does not apply in this case.

[23] An order will be reopened on a reconsideration motion “sparingly and only where it is clearly in the interests of justice”: *Mujagic v. Kamps et al.*, 2015 ONCA 360, 125 O.R. (3d) 715, at para. 12, leave to appeal dismissed, [2015] S.C.C.A. No. 330.

[24] This is not such a case.

[25] Even where it is engaged, r. 59.06 does not permit the moving party an opportunity to reargue or raise new issues after a decision has been rendered: *Render v. ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 512, at para. 9.

[26] Section 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, enables a panel of this court to review the decision of a single judge who hears and determines a motion. However, for the reasons above, this court has no basis to exercise its discretion given that the issues raised on the motion are moot and do not raise any matters of broader importance.

[27] For these reasons, the motion for reconsideration is dismissed.

[28] The Toronto District School Board is entitled to the costs it seeks in the amount of \$1,500, which represents less than half of its partial indemnity costs as

set out in the Board's costs outline filed with their factum. The Tribunal does not seek and is not awarded costs.

"Paul Rouleau J.A."

"Thorburn J.A."

"L. Favreau J.A."