

Court of Appeal sets aside contempt of court finding against professional association (Association of Architectural Technologists of Ontario v. Ontario Association of Architects)

Civil Procedure | Litigation & Dispute Resolution | Orders

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Court orders are meant to be followed; otherwise justice and rule of law will be undermined. Accordingly, courts are empowered to ensure that their orders are obeyed, and in the most extreme cases, can find a litigant in contempt of court for failing to comply with an order. However, the contempt of court power is to be exercised sparingly and should not be used as a tool by judges to make unnecessary and unwarranted derogatory comments about a party whose conduct has not been contemptuous. This was the loud message delivered by the Court of Appeal for Ontario in *Association of Architectural Technologists of Ontario v. Ontario Association of Architects*, 2026 ONCA 539.

In this case, two professional associations were involved in a dispute over the regulation and designation of “architectural technologists”.

Under the *Architects Act*, the Registrar of the Ontario Association of Architects (the “OAA”) is authorized to grant architect licences. A 2010-20 Policy also permitted the OAA to exempt persons from the statutory requirements for obtaining an architect’s licence and to licence architectural technologists who could provide architectural services subject to specific terms, conditions and limitations. Prior to 2023, the OAA issued 150 of these licences under the 2010-20 Policy.

The Association of Architectural Technologists of Ontario (the “AATO”) is a voluntary organization which, under *The Association of Architectural Technologists of Ontario Act, 1996*, is empowered to regulate the use of professional designations, including “architectural technologist”. Only an AATO member could use this designation and no licence was required. The services provided by AATO members were entirely in the public domain.

The dispute occurred because the AATO objected to the OAA granting a separate class of limited licences for technologists. The AATO commenced an application against the OAA contending that the OAA’s Registrar could only issue full architect licences, and to, among other things, prohibit the OAA from issuing further licences based on the 2010-20 Policy.

Ultimately, the OAA agreed that the *Architects Act* did not authorize the issuance of licences based on the 2010-20 Policy. Accordingly, it consented to an order which stated that the OAA had no lawful authority to issue Certificates of Practice or licences based on the 2010-20 Policy or similar policy not set out in a regulation under the *Architects Act*, that any licences which had been issued were void *ab initio* and of no force and effect, and that the OAA was prohibited from issuing licences based on the 2010-20 Policy or similar policy not set out in the regulation under the *Architects Act* (the “Consent Order”).

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

After the Consent Order was issued, the OAA sent out two notices to the 150 persons who had received their “architectural technologist” licences, advising the recipients that their licences were void and that they could apply for an architect’s licence. The application process could involve a hearing before the Registration committee, which held the discretion to direct the Registrar to issue a licence even if an applicant did not meet the requirements and qualifications to be an architect.

More than three dozen applications were made and hearings were held. At the hearings, lawyers for the Registrar submitted that the committee was required to follow the *Architects Act* and its regulation, and that section 25 of the statute granted the committee an “incredibly wide power” to exempt an applicant from the statute’s academic and experience requirements.

As well, counsel advised that the committee could direct the Registrar to issue licences subject to terms, conditions or limitations specified by the committee.

In ten cases, licences were issued subject to terms, conditions or limitations which included an authorization to provide services identical in scope to those which the OAA had permitted prior to 2023. This caused the AATO to bring a contempt motion against the OAA, notwithstanding a pending amendment to the *Architects Act*, not proclaimed into force at the time, which would grant the OAA authority to issue a limited licence to technologists.

The motion judge found that the licences issued by the OAA in 2023 and 2024 were invalid, and that the OAA was in contempt of the Consent Order. Among other things, the motion judge concluded that the OAA had manipulated the committee review process to achieve the identical outcome as the banned 2010-20 Policy and that the newly expressed statutory authority which permitted the OAA to issue licences to architectural technologists was of no merit because “[t]he court order was a final order and remains in full effect today.”

In reaching his decision, the motion judge also heavily criticized the OAA for “perverting its core mandate”, being “unconscious to the seriousness of the breach”, engaging in an “absurd pretence”, conducting itself in a manner that may be “unprecedented in Canadian law”, using a statutory committee as “a false cover for issuing licences prohibited by the court order” and being “prepared to compromise the public protection mandate to perform an end run around the court order.”

On appeal, the Court of Appeal for Ontario set aside the motion judge’s decision. To succeed on a contempt motion, the moving party must prove the following three elements beyond a reasonable doubt:

- a. The order the alleged contemnor breached must be clear and unequivocal;
- b. The alleged contemnor must have actual knowledge of the order; and
- c. The alleged contemnor must have intentionally disobeyed the order.

Furthermore, based on *Jackson v. Jackson*, 2016 ONSC 3466, the contempt remedy “is only available to redress breaches of orders that are live and operative when the contempt finding is made and which the aggrieved party wishes to enforce.”

As well, courts have determined that the power to punish a party for a contempt must be approached cautiously and that it is a remedy of last resort.

The Court of Appeal found that, the motion judge committed several errors in applying the above test and principles.

In general, the motion judge ignored or misapplied the relevant principles governing motions for civil contempt and wrongly approached the motion as an application for judicial review or an application seeking a declaration of invalidity of the licences. Although the motion judge recognized that the AATO bore the burden of establishing, beyond a reasonable doubt, that Consent Order that the OAA had alleged breach was clear and unambiguous, he incorrectly considered how a “reasonable person” would view the Consent Order.

The Court of Appeal stated that the motion judge erroneously placed the burden on the OAA to provide a “more reasonable” interpretation of the Consent Order than his preferred reasonable reading of it, never engaged directly with the language of the Consent Order or explained how it stated clearly and unequivocally what the OAA should and should not do, and failed to explain how the Consent Order prohibited the OAA from issuing licences to the former licensees based on its reliance on section 25 of the *Architects Act*.

With respect to whether the OAA intentionally breached the Consent Order, none of the OAA’s conduct, whether considered individually or collectively, amounted to an intentional breach of the Order. Among other things, the Court of Appeal stated that it was appropriate for the OAA to provide notice to the impacted licensees, and that the motion judge never identified an error regarding the advice that counsel had provided to the OAA’s committee.

Lastly, the Court of Appeal explained that although the contempt order was discretionary, and was therefore normally entitled to deference, no deference was to be afforded to the motion judge’s finding because he had failed to properly turn his mind to the existence or nature of the discretion. The motion judge had

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

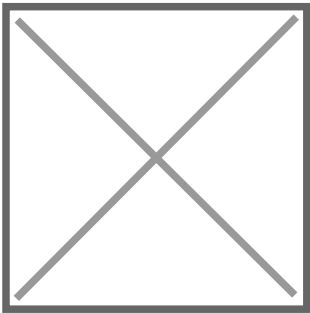
Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

rationalized that the Consent Order required the OAA to wait for government amendments before it could grant technologist licences and regulate persons other than architects. However, the government had proposed amendments to the *Architects Act* and its regulation and the OAA had no need to rely on the 2010-20 Policy to issue restricted licences, which was the crux of the Consent Order.

The key takeaways from this case are that courts will sparingly hold a party in civil contempt and that a party who seeks such an order will be strictly held to their burden of establishing the elements of contempt beyond a reasonable doubt. Also, the case illustrates that courts must be cautious in using dismissive and derogatory language to characterize the actions of a party who exercises statutory powers. The Court of Appeal sternly noted that there was no basis for the motion judge's use of dismissive and derogatory language in relation to the actions of the OAA, which the Court of Appeal found had acted throughout in good faith and in a manner consistent with its statutory mandate. A PDF version is available to download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com