

CITATION: Stobo v. Queen’s University, 2026 ONSC 2253
COURT FILE NO.: CV-26-00000101-0000 (Kingston)
DATE: 20260422

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
)
BENJAMIN REID STOBO and DOMINIC)
NAIMOOL) *Jordan Afolabi, for the plaintiffs*
)
Plaintiffs)
)
– and –)
)
QUEEN’S UNIVERSITY, RAJ ANAND,)
and GARETH CUNNINGHAM) *Andrea Risk and Tony Virgin, for the*
) *defendants, Queen’s University and Gareth*
Defendants) *Cunningham*
)
) *Tim Gleason, for the defendant Raj Anand*
)
)
)
)
) **HEARD** at Kingston: 1 April 2026

2026 ONSC 2253 (CanLII)

REASONS FOR DECISION

MEW J.

[1] This motion was born of urgency, grew by expansion, and failed on the merits. The plaintiffs, Benjamin Reid Stobo and Dominic Naimool, approached the court on 23 March 2026 requesting an urgent hearing date for what they described as a focused motion to temporarily restrain an ongoing harassment investigation at Queen’s University. Once granted an urgent hearing date, the plaintiffs substantially enlarged the scope of their request. The motion that was ultimately argued bore little resemblance to the motion the plaintiffs described when they first came to the court.

[2] The issues I must decide are: (a) whether the independence of the investigator has been compromised; (b) whether the University’s ongoing harassment investigation should be stayed or enjoined; (c) whether the University should be ordered to investigate Mr. Naimool’s complaint of discrimination; and (d) what directions, if any, should be given regarding the future conduct of this proceeding.

[3] On all three substantive questions, the answer is no. The motion is dismissed.

Background

[4] Mr. Stobo is a student at Queen’s University. Mr. Naimool is a practising lawyer in Kingston and a friend of Mr. Stobo. Both use the University’s Athletics & Recreation Centre (the “ARC”): Mr. Stobo holds a student membership; Mr. Naimool purchased a community membership in September 2024.

[5] Gareth Cunningham is the University’s Director of Recreation and Active Living.

[6] On 29 October 2025, Mr. Naimool sent an email to Mr. Cunningham in response to a request for a meeting, raising concerns about ARC policies and their enforcement. Those concerns included what he described as “potential discriminatory factors” relating to the treatment of ARC members.

[7] The following day — 30 October 2025 — Mr. Cunningham filed a report under the University’s Harassment and Discrimination Prevention and Response Policy (the “H&D Policy”) containing allegations regarding the behaviour of both plaintiffs.

[8] On 19 November 2025, the University sent each plaintiff a notice of investigation and advised them that it had retained Raj Anand as an independent third-party investigator.

[9] On 10 March 2026, the plaintiffs commenced this action by way of a notice of action. On the same day, the plaintiffs’ lawyer sent Mr. Anand an email attaching the notice of action, copied to the University’s associate Vice Principal (Complaints and Investigations) and its General Counsel.

[10] The University promptly retained outside lawyers for itself, Mr. Cunningham and Mr. Anand.

[11] On 16 March 2026, the University’s lawyers delivered a notice of intent to defend on behalf of all three defendants. The following day — 17 March 2026 — Mr. Anand retained his own lawyer, and the lawyers retained by the University served an amended notice of intent to defend on behalf of the University and Mr. Cunningham only.

[12] On 20 March 2026, Mr. Anand notified the plaintiffs’ lawyer that the University had indicated the investigation should proceed, and that the deadline for the plaintiffs to respond to the allegations was 27 March 2026.

[13] At the time of the hearing of the motion, the plaintiffs had not yet delivered a statement of claim.

Procedural History of This Motion

The Request for an Urgent Hearing

[14] As already noted, on 23 March 2026, the plaintiffs' lawyer contacted the court requesting an urgent motion hearing date. The trial co-ordinator at Kingston advised that judicial direction would be required and asked counsel to provide a detailed outline of the nature of the motion and the reasons for urgency. Counsel responded as follows:

The Plaintiffs seek an order restraining Queen's University and its external investigator, Mr. Raj Anand, from continuing an investigation until the motion can be heard on its merits. The investigator has imposed a response deadline of March 27, 2026, four days from now. The investigation commenced from a sexual harassment report filed by Queen's ARC director, Garreth [sic] Cunningham only 6 hours after our clients submitted a formal racial discrimination complaint to him implicating his department.

The Plaintiffs recently learned the investigator has retained the same counsel as the University to defend this action, causing them to apprehend that the investigation is not independent. The Plaintiffs also have reason to believe the investigation has proceeded under the incorrect workplace policy as opposed to the statutorily designated policy which affords greater procedural rights.

[15] On the question of urgency, the plaintiffs' lawyer advised:

If the investigation proceeds before the court can hear the motion, the Plaintiffs may be subject to a process whose independence and procedural integrity have been destroyed. In addition, the Plaintiffs may be subject to further privacy and human rights breaches. The harm that follows cannot be undone.

[16] Two things about that communication warrant comment at the outset.

[17] First, one of the stated bases for urgency was that Mr. Anand had copied a person named "Tim Gleason" on a communication to the plaintiffs. The letter stated that the plaintiffs did not know who Mr. Gleason was, had not consented to the disclosure, and had received no explanation despite counsel's inquiries. In fact, Mr. Gleason was — and was at the time of that letter — the lawyer Mr. Anand had retained in connection with this proceeding. There had been a prior communication to the plaintiffs' lawyer identifying Mr. Gleason. While I accept the assurance of plaintiffs' counsel that he did not consciously mislead the court, it is nevertheless concerning that at least part of the basis for the request for an urgent hearing rested on a false premise.

[18] Second, what the plaintiffs described as requiring an urgent hearing was a confined and focused request: an interim order restraining the investigation pending a motion to be heard on its merits.

[19] The information provided to the trial co-ordinator by the plaintiffs' lawyer was referred to me in my capacity as Local Administrative Judge. Given the apparent urgency, I offered to convene a case conference on 25 March 2026 to discuss scheduling. I advised at that conference that the motion could be heard by me on the afternoon of 1 April 2026. The plaintiffs had not at that point delivered a notice of motion. A timetable was established for the delivery of the notice of motion, the complete motion record and factum, and the responding materials and factums of the defendants.

The Expansion of the Relief Sought

[20] What the plaintiffs delivered bore no resemblance to the focused motion they had described.

[21] The amended notice of motion — consisting of 100 paragraphs over 37 pages — sought an extensive and varied list of relief, including: leave pursuant to s. 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, to hear an application for judicial review before a single judge of the Superior Court on an urgent basis; in the alternative, an order pursuant to s. 8 of that Act directing that this proceeding be treated summarily as an application for judicial review; declarations that the plaintiffs' respective relationships with the University were governed by unwritten contracts of adhesion incorporating the terms of various University policies; a declaration that those contracts attracted the court's jurisdiction under the *Judicial Review Procedure Act*; a declaration that ambiguities in those contracts were to be construed against the University pursuant to the doctrine of *contra proferentem*; an order staying the investigation on multiple grounds; an order directing the University to investigate Mr. Naimool's discrimination complaint through an independent investigator before resuming any investigation against the plaintiffs; and, in the alternative, an order directing the University to file the record of its proceedings with the court pursuant to s. 10 of the *Judicial Review Procedure Act*.

[22] This greatly expanded list of issues was a serious abuse of the accommodation given for an urgent hearing. It should have been obvious to counsel — given the compressed timetable, the knowledge gained at the case conference on 25 March, and the realities of an already crowded judicial schedule — that the time made available for the motion could not accommodate an inquiry into the dozen or more forms of relief being sought. The resulting delays and confusion were entirely avoidable.

The Plaintiffs' Motion Materials

[23] The plaintiffs delivered a motion record totalling 595 pages. On the morning of the hearing, they served a supplementary motion record consisting of a further 222 pages. A total of 817 pages. But no compendium.

[24] The plaintiffs' factum cited 63 cases.

[25] The original motion record included a draft affidavit from a witness who subsequently declined to subscribe to it. On consent, that affidavit was struck from the record.

[26] The supplementary motion record was struck in its entirety, save for two pieces of correspondence. Those two documents I directed could be treated as properly part of the record, on the undertaking of plaintiffs' counsel to file a proper affidavit attaching them. As of the date of the release of these reasons, that undertaking remains unfulfilled.

[27] Unsurprisingly, a significant portion of the hearing was consumed by addressing what the record should consist of. Valuable time was lost for the hearing of oral submissions on the two live issues: the stay of the investigation and the mandatory order to investigate Mr. Naimool's discrimination complaint. On the other relief sought in the notice of motion, I have had to rely principally on the written submissions of the parties.

Issue 1: Is the Independence of the Investigator Compromised?

[28] The plaintiffs assert that Mr. Anand cannot be regarded as truly independent because the University's lawyers initially delivered a notice of intent to defend on behalf of all three defendants, including Mr. Anand.

[29] I reject that assertion.

[30] The facts are straightforward. The University's lawyers delivered the notice of intent to defend on behalf of all defendants. Within 24 hours, Mr. Anand had appointed his own lawyer, and an amended notice of intent to defend — excluding Mr. Anand — was served. Counsel for the University and Mr. Cunningham confirmed at the hearing that no common interest privilege would be claimed as between all defendants, and that the purpose of the initial notice was simply to ensure that communications concerning this matter were directed to the lawyers.

[31] The plaintiffs' assertion that Mr. Anand's independence has been "irrevocably compromised" by a procedural step corrected within 24 hours is supported by nothing more than a bare allegation. The *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 requires an independent investigation; both the University and Mr. Anand are well aware of that obligation.

[32] There is a further observation. The notice of intent to defend was, in any event, a procedural redundancy at the time it was delivered. The plaintiffs had not yet delivered a statement of claim. Rule 14.08(2) of the *Rules of Civil Procedure* requires the notice of action and statement of claim to be served together. A party who delivers a notice of intent to defend without having been served is deemed to have been served as of the date of delivery: Rule 16.01(2). The result is that service is deemed to have taken place even though no statement of claim exists — an anomaly of the plaintiffs' own making.

[33] The independence issue fails. Mr. Anand's independence as investigator has not been compromised.

Issue 2: Should the Investigation Be Stayed or Enjoined?

[34] The test for a stay of proceedings or injunctive relief is well established: (a) Is there a serious issue to be tried? (b) Will the applicant suffer irreparable harm if the order is not granted? (c) Where does the balance of convenience lie? *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311.

[35] Where, as here, the plaintiffs seek mandatory orders, the threshold is higher still; a strong *prima facie* case must be established: *R. v. Canadian Broadcasting Corp.*, [2018] 1 SCR 196, at para. 17.

Serious Issue to be Tried

[36] The plaintiffs have not identified a serious issue to be tried. Two reasons compel that conclusion.

[37] First, there is no proper vehicle for the relief the plaintiffs seek. There is no application before this court. The notice of action that the plaintiffs issued is incapable of grounding a request for leave pursuant to s. 6(2) of the *Judicial Review Procedure Act*. That jurisdictional hurdle is fatal to most of the relief sought.

[38] Second, and independently, the court should not intervene in an administrative process that has not run its course. As the Court of Appeal stated in *Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541, at para. 68, absent exceptional circumstances, a court should not interfere in an administrative proceeding until it has concluded, especially where adequate alternative remedies exist under the administrative scheme.

[39] Schabas J. explained the rationale in *Wahbi v. Ontario College of Teachers*, 2023 ONSC 3713, at para. 18:

The principle respects administrative decision-making and prevents fragmentation, delay and additional costs. It allows the administrative process, often before a tribunal with expertise and experience in the area, to proceed while preserving the right of the court to intervene in exceptional circumstances and, of course, at the end of the process when the court will have the benefit of the tribunal's findings and reasons which, to quote Stratas J.A. in *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] F.C.R. 332, at para. 32, "may be suffused with expertise, legitimate policy judgments and valuable regulatory experience."

[40] The investigation here is not yet at its halfway point. The investigator has provided the plaintiffs with a summary of the allegations against them and invited them to respond. They have not responded. Nor have they responded to the investigator's offer to receive details of Mr. Naimool's allegations of reprisal as a defence to the allegations against him. Not one of the procedural or jurisdictional concerns raised on this motion has been put to the investigator. There is nothing for the court to review — no ruling, no decision, no finding of any kind.

[41] To intervene at this stage would require truly exceptional circumstances. As Raikes J. explained in *Kadri v. Windsor Regional Hospital*, 2019 ONSC 5427, at para. 59, assertions of bias, procedural unfairness, breach of natural justice and lack of jurisdiction do not, of themselves, give rise to an automatic right to judicial review of interlocutory administrative rulings.

[42] The plaintiffs have established nothing beyond bare assertions. No cogent basis for a finding of exceptional circumstances has been put before the court. All of the concerns now raised on this motion could and should have been raised as part of the plaintiffs' response to the investigation process. Instead, the plaintiffs have come to this court prematurely, imposing thousands — if not tens of thousands — of dollars of legal costs on all sides, and causing delays that were entirely avoidable.

[43] The plaintiffs fall at the first hurdle. They have not established a serious issue to be tried, let alone exceptional circumstances.

[44] Because the plaintiffs have failed on the serious-issue threshold, I decline to deal with the other relief sought under the *Judicial Review Procedure Act*.

Irreparable Harm

[45] Although it is not strictly necessary to address irreparable harm given the failure on the serious-issue threshold, I do so briefly.

[46] The irreparable harm the plaintiffs assert flows from the investigation itself. Mr. Stobo is a current Queen's University student with a pending application to law school. Mr. Naimool is a practising lawyer and college instructor. Mr. Naimool also asserts that the investigation will cause him stress and anxiety — although the evidence of his therapist in support of that assertion was withdrawn before the hearing.

[47] Irreparable harm must be established on clear and non-speculative evidence: *BrokerLink Inc. v. The Commonwealth Mutual Insurance Group*, 2026 ONSC 20, at para. 48; *2158124 Ontario Inc. v. Pitton*, 2017 ONSC 411. The plaintiffs' claims are speculative. They fear that the investigation may be flawed, that the University may then act punitively, and that any adverse findings may be made public. Those concerns do not satisfy the test.

[48] The plaintiffs have not established irreparable harm.

Balance of Convenience

[49] The balance of convenience favours the University. The University carries a statutory obligation under the *Occupational Health and Safety Act* to investigate workplace harassment. The plaintiffs' speculative concerns about the investigation do not outweigh that obligation or the interests of the University's employees in having complaints of harassment properly investigated.

[50] The plaintiffs' motion for orders staying the investigation or enjoining the University from continuing with it is dismissed.

Issue 3: Should the University Be Ordered to Investigate Mr. Naimool’s Discrimination Complaint?

[51] Mr. Naimool seeks a mandatory order requiring the University to investigate his discrimination complaint. He argues that the email he sent to Mr. Cunningham on 29 October 2025 triggered an immediate and mandatory duty on the University to investigate the moment it acquired knowledge of a potential human rights violation — regardless of whether a formal complaint was filed.

[52] I do not accept that submission.

[53] The email was Mr. Naimool’s response to a request for a meeting. In it, he raised concerns about ARC policies — including, among several other items, “potential discriminatory factors” in their enforcement. The specific concern he articulated was that his race may be “a factor in the disproportionate surveillance, enforcement and general hostility” he had experienced, while noting that he did not assert intent. That email is not the same as a formal complaint of racial discrimination invoking the *Human Rights Code*, R.S.O. 1990, c. H.19.

[54] The cases on which the plaintiffs rely — including *Cybulsky v. Hamilton Health Sciences*, 2021 HRTO 213, and *Laskowska v. Marineland of Canada Ltd.*, 2005 HRTO 30 — arose in the employment context, where obligations under s. 5(1) of the *Human Rights Code* regarding equal treatment in employment are engaged. Mr. Naimool’s relationship with the University is as a recipient of services, not as an employee. Section 1 of the Code provides every person with the right to equal treatment with respect to services, goods and facilities, without discrimination on any of the prohibited grounds. Whether that right has been infringed by the University’s treatment of Mr. Naimool remains to be determined, either in this proceeding, or otherwise.

[55] Even if I was persuaded that the University was subject to a duty to investigate, a mandatory order would not follow. The bar for a mandatory order is high; a strong *prima facie* case must be established: *R. v. Canadian Broadcasting Corp.*, at para. 17. The plaintiffs have not met that threshold.

[56] Moreover, Mr. Naimool has other remedies available to him. He may apply to the Human Rights Tribunal under s. 34(1) of the *Human Rights Code*. He may pursue any claim for infringement of his Part I rights in this action pursuant to s. 46.1 of the Code — and indeed, his notice of action already includes a claim for a declaration of discrimination and damages. In addition, Mr. Anand has offered to consider Mr. Naimool’s allegations of reprisal — including his allegations of racial discrimination — as part of the existing investigation. Mr. Naimool has not responded to that offer.

[57] There will be no mandatory order. The motion on this issue is dismissed.

Concluding Remarks

[58] The plaintiffs came to the court describing a focused and urgent problem: a four-day window before an investigation deadline that they feared would irreparably harm them if not briefly restrained. On that representation, they were given a hearing date within days,

accommodated by a schedule that left no room for the hearing that actually took place. Once given the date, the plaintiffs served 817 pages of materials, including a supplementary record served early on the morning of the hearing, and sought a dozen discrete forms of relief — much of it jurisdictionally unavailable — that had never been mentioned when they asked for the urgent date.

[59] Allegations of discrimination and harassment are serious. They should be investigated and, where discriminatory or harassing conduct is found, appropriate sanctions or remedies should follow.

[60] Queen’s University, as an educational institution and employer, has policies and procedures in place for exactly that purpose. Those procedures should be permitted to run their course without court intervention except in the rarest of circumstances. No such circumstances exist here.

[61] The plaintiffs are not without recourse. If the investigation produces a result they consider unjust, avenues of challenge will remain open. If Mr. Naimool believes the University has discriminated against him in the provision of services, the *Human Rights Code* provides remedies. If the plaintiffs wish to pursue a judicial review, a proper application must be brought. The court is not powerless to assist them — but the assistance they seek on this motion is not available on the record and in the form they have presented.

[62] The plaintiffs must decide which route they intend to pursue. If they seek judicial review, a proper application must be commenced. If they seek civil remedies, a statement of claim must be filed in accordance with rule 14.03(3) of the *Rules of Civil Procedure* and thereafter served.

Costs

[63] Queen’s University is a publicly funded institution. The courts are a publicly funded resource. The plaintiffs’ misguided and chaotic pursuit of this motion consumed significant public time and resources.

[64] Raj Anand has submitted a costs outline showing actual fees and disbursements of \$25,844.30, supporting a partial indemnity award of \$15,904.59.

[65] Queen’s University and Gareth Cunningham have submitted a costs outline showing actual fees and disbursements of \$37,983.82, supporting a partial indemnity award of \$22,578.52.

[66] The plaintiffs have not provided a costs summary.

[67] Counsel for Mr. Anand submits that the unfounded allegations of bias and lack of independence made against Mr. Anand constitute an attack on his professional integrity and ethical conduct, and should attract costs on a full indemnity basis. While I have some sympathy for that submission, I must also have regard to general principles of proportionality and to the fact that one of the plaintiffs is a student.

[68] Because counsel for the plaintiffs was not prepared to address costs at the conclusion of the hearing, I have not yet heard his submissions. My preliminary view is that the defendants are

entitled to their costs of this motion on a partial indemnity scale. I will withhold a final determination until plaintiffs' counsel has had a further opportunity to make submissions. Those submissions — not to exceed four pages in length, together with a costs summary if counsel deems it appropriate — shall be delivered within ten business days of the release of these reasons.

[69] Alternatively, I would encourage counsel to agree on the disposition of costs.

Mew J.

Released: 22 April 2026

CITATION: Stobo v. Queen's University, 2026 ONSC 2253
COURT FILE NO.: CV-26-00000101-0000 (Kingston)
DATE: 20260422

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BENJAMIN REID STOBO and DOMINIC NAIMOOL
Plaintiffs

– and –

QUEEN'S UNIVERSITY, RAJ ANAND, and
GARETH CUNNINGHAM
Defendants

REASONS FOR DECISION

Mew J.

Released: 22 April 2026