

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2017 CHRT 38
Date: December 11, 2017
File No.: T2162/3616

[ENGLISH TRANSLATION]

Between:

Serge Lafrenière

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Via Rail Canada Inc.

Respondent

Ruling

Member: Anie Perrault

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Complaint and motion

[1] This is a preliminary motion by Serge Lafrenière (the complainant) under section 52(1)(c) of the *Canadian Human Rights Act* (CHRA) filed on November 20, 2017, asking the Canadian Human Rights Tribunal to order that all of the documents filed on the Tribunal's official record in the above-mentioned case become confidential until June 2018.

[2] The complainant's motion follows up on the request for access received by the Tribunal from a third party, who seeks to obtain copies of several documents filed as part of this case on the Tribunal's official record. The access request was made when the case was ready to be heard, but hadn't been heard yet.

[3] I will not set out all of the facts alleged in the main dispute, but, this is essentially a complaint filed by the complainant in which he alleges that he was treated differently and that he unjustly received penalty points in his disciplinary file, which led to his dismissal on October 5, 2012. The ground for discrimination alleged in this file and accepted by the Tribunal is disability.

[4] Via Rail Canada Inc. (the respondent) and the Canadian Human Rights Commission (the Commission) did not file any submissions regarding the motion for a confidentiality order filed by the complainant and took no position on the issue, relying on the Tribunal's decision.

Section 52 of the CHRA

[5] Section 52 of the CHRA provides that an inquiry should be heard by the Tribunal in public.

[6] Section 52 of the CHRA also provides that the Tribunal may, in very specific circumstances and if it is satisfied, take any measures and make any order that it considers necessary to ensure the confidentiality of the inquiry. Those very specific circumstances are defined in s. 52(1) of the CHRA.

[7] In this case, the complainant is basing his motion on the circumstances described in s. 52(1)(c):

(c) there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;

Analysis

A. Section 52 of the CHRA

[8] The rule is clear: an inquiry before the Tribunal must be heard in public. The hearing of an inquiry is public.

[9] The Tribunal is of the opinion that conducting a hearing in public implies ensuring public access to the documents filed on the Tribunal's official record: complaint form, letters from the Commission to the Tribunal, amended particulars, motions, documents filed in evidence, audio recordings of the proceedings and reasons for decisions on motions as well as the final decision, if applicable. This is not an exhaustive list.

[10] This is consistent with the principle of quasi-judicial transparency to which this Tribunal subscribes. According to this principle, the Tribunal must ensure that it does not deny the public access to our hearing proceedings.

[11] Thus, the Tribunal would not make a decision based on who makes an access request, but rather in relation to the public interest in general. Section 52 of the CHRA is concerned with access to the file by any member of the public including potential future applicants. It does not govern the rights of particular individuals to access it. Thus, for the more general purposes of section 52, the identity of the requester of information (who may be followed by others) is irrelevant.

[12] Let us return to the preliminary motion on which I must issue a decision. The complainant's motion is unfortunately not well supported. It simply states in a very general

way why the complainant is seeking a confidentiality order from the Tribunal for all of the documents on the record.

[13] Thus, the complainant states the following in his motion: [TRANSLATION] “The documents covered by this request [for access to information] contain personal information that could jeopardise my chances of getting a suitable job pending my reinstatement at Via Rail Canada”.

[14] The complainant did not indicate which documents in particular could be detrimental to his interests. This motion pertains to all of the documents filed on the Tribunal’s official record. This seems much too broad to me.

[15] In addition, the complainant did not describe or explain his fears and in what way the disclosure of personal information contained in all of those documents poses a serious enough risk to him, which would enable the Tribunal to consider that this personal interest outweighs the interest that the hearing be conducted in public.

[16] In my view, the very general information described by the complainant in one sentence in his motion does not constitute sufficient grounds for the Tribunal to warrant an order contrary to the general principle that hearings should be conducted in public.

[17] I would also add that, at this stage in the proceedings, while this inquiry has not yet been heard, some of this information is only allegations that remain to be proven or rebutted before the Tribunal.

B. The *Access to Information Act*

[18] In his motion, the complainant also refers to the *Access to Information Act* and the *Privacy Act*.

[19] Although the Canadian Human Rights Tribunal is a tribunal under federal jurisdiction, it is no longer subject to these two acts (see the *Economic Action Plan 2014 Act, No. 1*, S.C. 2014, c. 20, sections 384 and 423).

[20] However, when the Tribunal is faced with a request for access to documents filed on the official record, as is the case here, it responds to such requests by striking out very sensitive personal identifiers, which add nothing to the public's understanding of the proceedings, such as

- i. dates of birth
- ii. home addresses
- iii. personal email addresses
- iv. personal telephone numbers
- v. government-issued ID numbers (e.g. SIN, passport number)

[21] The Tribunal systematically redacts this information even without a motion for a confidentiality order.

C. Other reasons

[22] In addition, in this case, three decisions on preliminary motions have already been issued and published on the Tribunal's website. Those decision are public and everyone has access to them.

[23] It seems to me that limiting access to documents filed on the Tribunal's official record in this case, as requested by the complainant, while three detailed decisions containing fairly specific information about this dispute are already public, would make no sense.

[24] The first decision pertaining to a motion to strike by the respondent was made public and has been available on the Tribunal's website for over six months.

Conclusion

[25] For all of these reasons, the Tribunal dismisses the complainant's motion for a confidentiality order.

[26] **The Tribunal** orders that the documents that are subject to the access to information request by a third party be made accessible within 30 days of the date of this decision, unless there is a judicial review application regarding it. Personal and very

sensitive information the nature of which is described at paragraph 20 of the reasons for this decision will be struck from the documents in question before being provided to the access requester.

Signed by

Anie Perrault
Tribunal Member

Ottawa, Ontario
December 11, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2162/3616

Style of Cause: Serge Lafrenière v. Via Rail Canada Inc.

Ruling of the Tribunal Dated: December 11, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Serge Lafrenière, for himself