

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 5
Date: February 10, 2022
File No.: T2432/9119

Between:

B.C.

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bank of Nova Scotia

Respondent

Ruling

Member: Alex G. Pannu

Motions for Anonymity

A. Background

[1] Both the Complainant and Respondent have filed Notices of Motion under the Canadian Human Rights Tribunal's (the "Tribunal") Rules of Procedure.

[2] The Complainant requests that his name be anonymized in the upcoming hearing pursuant to section 52(1)(c) of the *Canadian Human Rights Act*.

[3] Section 52(1)(c) says:

52(1) An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being in public, that

(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.

[4] The Complainant specifically requests that:

- a. His name be anonymized;
- b. His identifying information be redacted;
- c. The name of witnesses for the Complainant be anonymized, or initials used, to prevent a connection to him;
- d. All documents placed into evidence which mention his name and identifying information shall be redacted to give full and proper effect to this request for anonymity.

[5] The Respondent submits that in order to protect the Complainant's future job prospects, the motion should be broadened to include the Respondent's name and the names of their witnesses.

[6] In reply the Complainant submits that the protection sought is not for future job prospects in the niche energy trading sector in Calgary but for his broader prospects. Thus, the requested motion is sufficient to protect his privacy while not impinging unduly on the public interest in holding public proceedings. He notes that he is not asking for a publication ban or an *in-camera* hearing.

B. Law

[7] There have been a number of cases where the Tribunal have granted requests to anonymize the Complainant's name. Generally, in granting the request, the Tribunal needs to balance the public interest in the open court principle with the potential harm that could be done to the Complainant. This is done on a case-by-case basis.

[8] In *A.A. v. Canadian Armed Forces* 2019 CHRT 34, the Tribunal Member granted a request to anonymize the Complainant's name noting "...in balancing the public interest of ensuring that inquiries are conducted in public versus the desire for privacy of [the Complainant] to not have his name disclosed publicly, there is little, if any harm done to the goals inherent in the open court principle in allowing his request"

[9] In *T.P. v. Canadian Armed Forces* 2019 CHRT 10, the Tribunal also had to consider the impact on future job prospects if private medical information were disclosed on the complainant's mental disability. The Tribunal member recognized the stigma surrounding mental disabilities and granted an anonymization order and publication ban.

[10] In *T.P.* the Tribunal member said "Anonymizing the Complainant's identity will not change the public's ability to understand the evidence or the issues to be decided in this case, nor will it affect the fairness of the Tribunal's proceeding or the precedential value of any decision. However, there is a very real possibility that the complainant could experience undue hardship if his identity is publicized, and information relating to his cognitive and intellectual abilities and past psychiatric condition becomes publicly available in the course of the proceeding."

C. Orders

[11] Having considered the arguments of the parties, I find that it would not undermine the open court process to anonymize the Complainant's identity. Therefore, I make the following orders:

- a. The Complainant's name be anonymized;
- b. His identifying information be redacted;
- c. The name of witnesses for the Complainant be anonymized, or initials used, to prevent a connection to him;
- d. All documents placed into evidence which mention his name and identifying information shall be redacted to give full and proper effect to this request for anonymity.

D. Analysis

[12] The Complainant's motion is not a general statement about his privacy interests but is a specific request to protect his future job prospects beyond the niche energy trading sector in Calgary, the size of such sector is acknowledged by the parties.

[13] It is reasonable to assume that the Complainant who has suffered a traumatic brain injury, would have more difficulty in securing employment if his medical information were made public not only in his former employment niche but in the broader job market.

[14] The Respondent's submission that a wider anonymization is required that included the Respondent's name is overly broad and unnecessary. The Respondent is a large bank with thousands of employees. The Complainant's privacy can be protected with only his name anonymized.

[15] I am persuaded that anonymizing the Complainant's name will not undermine the public interest in maintaining an open justice system. In exercising my discretion under section 52(1)(c), I believe an anonymity order strikes an appropriate balance in protecting the complainant's privacy with the public interest *AA v. Canadian Armed Forces* 2019 CHRT 34 at para 7.

Motions for Disclosure

A. Background

[16] The Complainant filed a motion for disclosure by the Respondent of a large number of documents in February 2021. The Respondent objected to much of the disclosure request on the basis that they were overly broad, not available or would require the creation of documents. The Tribunal asked the parties to attempt to resolve their opposing positions themselves if possible.

[17] The Tribunal held a Case Management Conference Call (CMCC) on April 6, 2021 to facilitate an agreement between the parties on the disclosure issues.

[18] Significant progress was made during the April CMCC although counsel for the Complainant advised that he needed to seek further instruction from the Complainant.

[19] The Complainant did not agree with many of the issues that were agreed upon during the CMCC. Therefore, the parties asked the Tribunal to make a ruling on their motions for disclosure.

B. Law

[20] The standard for disclosure of documents in accordance with the Tribunal's Rules has been well-settled by the case law. Parties before the Tribunal must be given a full and ample opportunity to present their case. To be given this opportunity, parties require, among other things, the disclosure of arguably relevant information in the possession or care of the opposing party prior to the hearing of the matter. Along with the facts and issues presented by the parties, the disclosure of information allows each party to know the case it is up against and, therefore, adequately prepare for the hearing. If there is a rational connection between a document and the facts, issues or forms of relief identified by the parties in the matter, it should be disclosed. *Yaffa v. Air Canada* 2014 CHRT 22 para. 3

[21] However, the request for information must not be speculative or amount to a fishing expedition and the documents should be identified with reasonable particularity. *Brickner v.*

Royal Canadian Mounted Police, 2017 CHRT 28 at para 7 and *Guay v. Canada* (Royal Canadian Mounted Police), 2004 CHRT 34, paras. 42-44

[22] While the threshold for arguable relevance is low, and the tendency now is toward more disclosure, the nexus between the issues to be proven and the requested material must nonetheless be demonstrated. *Warman v. Bahr*, 2006 CHRT 18, paras. 6-7, 9.

[23] A party should make reasonable efforts to locate and disclose the relevant documents to the extent they exist. *Nur v. Canadian National Railway Company*, 2019 CHRT 5 at para 136.

C. Orders

[24] I believe a balance can be struck between the intent of the legislative scheme to allow for full and ample disclosure and the need to maintain an efficient and expeditious process. The CMCC held in April 2021 accomplished much of the goals of the balance sought. Unfortunately, the Complainant disagreed and did not consent to what was proposed. Nevertheless, I am convinced that the agreement reached at the CMCC should form the basis of my order.

[25] Having considered the arguments submitted by the parties, I make the following orders:

- A. Keyword Searches – The Respondent shall conduct keyword searches for communications that include “B.”, “C.” and “B.C.” for the period May 1, 2015 until April 13, 2016 involving Brian Manson, Doug Schneidmiller and Reuben Govender;
- B. Instant messages – The Respondent shall search Skype messages of Brian Manson, Doug Schneidmiller, Reuben Govender and Peter Choi for the same terms and same time period as keyword searches listed in paragraph A above;
- C. The Respondent shall disclose the Complainant’s physical human resources file if found;

[26] There are two outstanding issues which are not addressed in this ruling. Firstly, the Complainant has asked for disclosure of bonuses paid in 2015 by the Respondent to members of its Calgary energy trading team. Secondly, the parties dispute a number of documents of which the Respondent has claimed privileged and redacted portions thereof.

[27] The parties have not asked the Tribunal to rule on these issues. Instead, they have committed to trying to resolve these issues themselves. With respect to the 2015 bonuses, the resolution might come in an agreed statement of facts. With respect to the redaction issue, if the parties are not able to resolve it, the Tribunal is prepared to review the documents in question and make a determination at that time.

D. Analysis

[28] The Complainant asked for the time period of the searches to start from the date of his injury rather than the date he went on medical leave. He also wanted to include two human resources managers in addition to the previously agreed upon senior direct managers of him

[29] In my view, the Complaint's request was overly broad and based on pure conjecture that the human resources managers might have said something about him. I also believe the time period requested was unnecessarily broad without a supportable explanation.

[30] In *Kayreen Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, the Tribunal said it should be cautious about ordering searches where a party would be subjected to an onerous and far-reaching search for documents, especially where ordering disclosure would risk adding substantial delay to the efficiency of the inquiry or where the documents are merely related to a side issue rather than the main issues in dispute.

[31] Following receipt of this ruling, the Tribunal shall convene a Case Management Conference Call to determine any remaining procedural issues prior to establishing hearing dates and location.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
February 10, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2432/9119

Style of Cause: B.C. v. Bank of Nova Scotia

Ruling of the Tribunal Dated: February 10, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Wade Poziomka, for the Complainant

Daphne Fedoruk, for the Canadian Human Rights Commission

Alison M. Adam & Jessica N. Kruhlak, for the Respondent