Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2022 CHRT 27
Date: September 7, 2022
File No.: T2459/1620

Between:

Cathy Woodgate, Richard Perry, Dorothy Williams, Ann Tom, Maurice Joseph and Emma Williams

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

- and -

A.B.

Interested party

Ruling

Member: Colleen Harrington

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I. Background

[1] This Ruling of the Canadian Human Rights Tribunal (Tribunal) concerns the confidentiality Motion filed by the Interested Person in this matter, referred to hereinafter as "A.B."

[2] A.B. is not a party to this human rights complaint before the Tribunal. A.B. was granted interested person status by the Tribunal on January 24, 2022 for the limited purpose of applying for confidentiality and, if requested, to assist the Tribunal to determine an issue related to documents allegedly produced in this proceeding contrary to an implied undertaking to the British Columbia Supreme Court (BCSC) (*Woodgate et al. v RCMP*, 2022 CHRT 3).

[3] After receiving A.B.'s confidentiality Motion as well as inquiries from the media, including the Aboriginal Peoples Television Network (APTN), the Tribunal agreed to give notice of this Motion to media outlets that have expressed interest in this case (*Woodgate et al. v RCMP*, 2022 CHRT 10). As a result, the Tribunal has received and considered submissions from APTN and The Tyee, in addition to the submissions filed by A.B. and the parties to this complaint.

[4] There are three parties to this complaint: the Complainants, the Respondent RCMP and the Canadian Human Rights Commission (Commission). The Complainants are members of the Lake Babine First Nation in northern British Columbia. Their human rights complaint is against the RCMP. They allege that the RCMP discriminated against them and others by failing to properly investigate claims of child abuse at schools in Burns Lake and Prince George. The alleged perpetrator of the abuse – A.B. – taught at these schools in the late 1960s and 1970s and was the subject of the RCMP's investigation, which did not result in any criminal charges against A.B.

[5] The allegations of historic child abuse were brought to the public's attention by Laura Robinson, who is a journalist. She was also involved in providing information to the RCMP during its investigation. Ms. Robinson is identified as a non-legal representative of the Complainants in the human rights proceeding and appears on the Complainants' witness list.

[6] A.B. and Ms. Robinson have sued one another for defamation, and three people brought civil actions against A.B. relating to alleged abuse when they were children. All three civil actions were dismissed by the BCSC. A.B. withdrew his defamation claim against Ms. Robinson and Ms. Robinson's defamation claim against A.B. was dismissed by the BCSC. During the defamation proceeding, the BCSC ordered the RCMP to produce documents pertaining to its investigation of A.B. and the Court's order specified that the documents would be subject to the implied undertaking rule. A.B. alleges that Ms. Robinson disclosed documents in this human rights proceeding - specifically when the complaint was being investigated by the Commission – in contravention of the implied undertaking to the BCSC.

[7] The Commission has filed a Motion relating to the implied undertaking documents. That Motion asks the Tribunal to seal certain lists of documents filed with the Tribunal on the basis that some of the documents listed may have been disclosed in breach of the implied undertaking. The parties and A.B. have provided submission in relation to the Commission's Motion. Some of these submissions allege inappropriate use of the documents that is broader than simply itemizing them on a list of documents for the purposes of disclosure.

[8] In the Ruling in which I granted A.B. interested person status (*Woodgate et al. v RCMP,* 2022 CHRT 3), I agreed to seal the Tribunal's record until such time as the confidentiality Motion has been decided. While the present Ruling addresses A.B.'s confidentiality Motion, I have not yet decided the Implied Undertaking Motion. In order to ensure the fairness of the inquiry is not in jeopardy, certain documents will remain sealed pending the determination of the Implied Undertaking Motion, as described further in the Order below.

II. Motion for Confidentiality

[9] In his Motion, A.B. is seeking the following orders:

a) That he will be identified only by the pseudonym "A.B." in all documents and pleadings filed with the Tribunal until further order of the Tribunal;

b) Any information that would tend to identify him or his family members in relation to this proceeding shall not be published in any document or broadcast or transmitted in any way;

c) All material filed by all parties in support of this motion for a confidentiality order and any other materials previously filed that identify him other than by the pseudonym “A.B.” are sealed and will not be made available to the public;

d) The parties are directed to prepare a publicly accessible version of any statement of particulars or other materials previously filed with the Tribunal that identify him other than by the pseudonym “A.B.” in which his name and any information that would tend to identify him including, without limitation, his past or present occupation, date of birth, names of family members, is redacted and his name is replaced by “A.B.”

[10] The Tyee opposes the request for confidentiality orders. The Complainants and APTN oppose A.B.’s request, with the exception of the request to keep certain information filed in support of this Motion sealed, specifically medical and financial information. The Respondent and the Commission take no position with respect to the confidentiality Motion. The Commission, however, has provided submissions on the applicable legal principles for the Tribunal’s consideration.

III. Decision

[11] The Tribunal substantially grants A.B.’s Motion, with modifications as detailed in the Order below. A.B.’s name shall be anonymized and there shall be a ban on the publication of his name and identifying information in association with these proceedings.

IV. Legal Framework

[12] It is well accepted that the Tribunal’s proceedings, like those of courts, are presumptively open to the public (*A.B. and Gracie v CSC*, 2022 CHRT 15 (CanLII) at para 11). The open court principle is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of Canadian democracy (*Canadian Broadcasting Corp. v New Brunswick (Attorney General)*, 1996 CanLII 184 (SCC) at para 23).

[13] Canadian law also recognizes that there are times when discretionary limits must be placed on court openness in order to protect other public interests. Section 52 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (*CHRA*) provides the Tribunal with broad

powers to take any measures and make any orders it considers necessary to ensure the confidentiality of an inquiry in certain circumstances.

[14] Section 52 of the *CHRA* provides that:

> (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 conducted in public, that
>
> > (a) there is a real and substantial risk that matters involving public security will be disclosed;
> >
> > (b) there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;
> >
> > (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; or
> >
> > (d) there is a serious possibility that the life, liberty or security of a person will be endangered.
>
> (2) If the member or panel considers it appropriate, the member or panel may take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (1).

[15] The Tribunal has considered this section of the *CHRA* many times. Recently, the Tribunal concluded that the Supreme Court of Canada's decision in *Sherman Estate v Donovan,* 2021 SCC 25 (CanLII) [*Sherman Estate*] may inform the Tribunal's analysis when considering a confidentiality motion filed pursuant to section 52 of the *CHRA* (*SM, SV and JR v RCMP*, 2021 CHRT 35 (CanLII) [*SM*] at para 7).

[16] In *Sherman Estate*, the Supreme Court established a newly modified three-part test for discretionary orders limiting the open court principle. In order to succeed when seeking a limit on presumptive court openness, the Court determined that an applicant must establish that:

1. court openness poses a serious risk to an important public interest;

2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

3. as a matter of proportionality, the benefits of the order outweigh its negative effects (at para 38).

[17] The Tribunal in *SM* accepted that the *Sherman Estate* test is consistent with the language of section 52(1) of the *CHRA* and applies to the various types of discretionary limits on court openness that may be sought, including a sealing order, a publication ban, an order excluding the public from a hearing, and a redaction order (*SM* at para 8; *Sherman Estate* at para 38).

V. Summary of Positions

A. A.B.

[18] A.B. agrees that the common law test established in *Sherman Estate* applies to his application for a confidentiality order under section 52(1)(c) of the *CHRA*. He submits that he is able to satisfy all three elements of the test.

(i) Serious risk to important public interests

[19] While only one important public interest need be engaged to satisfy the *Sherman Estate* test, A.B. submits that his Motion engages three "social values of superordinate importance" (*Sherman Estate* at para 84): (i) he is an "innocent"; (ii) his privacy, amounting to an affront to his dignity; and (iii) his reputation.

[20] A.B. notes that several of the Complainants' witnesses intend to testify that he abused them when they were at school approximately 50 years ago. Three further witnesses allege he committed domestic violence in the home. A.B. suggests this evidence is being called solely to try to discredit him, as it is unclear how the evidence relates to the complaint of discrimination against the RCMP, which is the subject of the Tribunal's inquiry.

[21] A.B. is not a party to this complaint and so he cannot defend himself against these allegations. He says that the publication of such untested and unproven evidence in a manner that identifies him will cause undue hardship to his dignity, reputation and mental health, which justifies the need to constrain the Tribunal's openness to the public.

[22] A.B. argues that, in the current age of instant social media postings, members of the public are not waiting to find out if the accusations against alleged abusers are proven. Rather, they are judging them as guilty before any trial has taken place. As there is no opportunity for anonymity of a public figure on the internet, A.B. has no way of preventing his reputation from being besmirched and ultimately destroyed in the eyes of the community. He argues that it is therefore imperative for the Tribunal to prevent that harm, particularly since no findings in relation to the untested allegations will be made by the Tribunal.

[23] A.B. argues that the administration of justice suffers when the operation of courts threatens the well-being of individuals and that a responsible tribunal must be attuned and responsive to the harm it causes to other core elements of individual well-being, including individual dignity (*Sherman Estate* at par 72).

(a) Innocent exception

[24] With regard to the "protection of innocent exception", A.B. notes that courts have recognized that when unsubstantiated allegations of criminal conduct are made in a civil claim, in the absence of charges, a defendant should be treated as "innocent" for the purposes of such application (*Doe v. A.B.*, 2021 BCSC 651 (CanLII) [*Doe*] at para 42; *Dr. A v. Mr. C.* (1994), 113 D.L.R. (4th) 724 (B.C.S.C.) at para 31; *B.G. v. HMTQ*, 2002 BCSC 1417 (CanLII) [*B.G.*]). He submits that the cases of *Doe* and *B.G.* offer similar parallels to this case in that the principle of protection of the innocent was applied to the defendants in both cases and confidentiality orders were granted. This was done despite the fact that there had been prior media coverage of the allegations.

(b) Affront to his dignity

[25] A.B. asserts that the publication of his name in association with the untested allegations of historic child abuse against which he would not be permitted to defend himself, and for which no criminal or civil actions have ever been substantiated, would result in an affront to his dignity. He refers to paragraphs 33 and 34 of *Sherman Estate* to argue that, regardless of the outcome of the Tribunal's inquiry into the RCMP, the Complainants' evidence of the untested allegations will contain highly sensitive information that the public, if placed in A.B.'s position, would consider an affront to their dignity and not tolerate its dissemination.

(c) Reputation

[26] Due to the serious nature of the untested allegations of child abuse, A.B. says he will continue to unjustly suffer irreparable harm to his reputation if his name is publicized in association with the inquiry.

[27] A.B. notes that there is a close association between a person's reputation and their dignity. He says he has filed affidavit evidence to support his contention that the publicity in relation to the Tribunal's inquiry into the RCMP has caused damage to his reputation and mental health, as well as devastating financial consequences for his family.

(ii) The order sought is necessary to prevent this serious risk to the identified interests because reasonably alternative measures will not prevent the risk

[28] A.B. argues that the confidentiality order and publication ban sought are less constraining on the Tribunal's openness to the public than a full sealing order. He says a publication ban would restrict dissemination of personal information to only those persons consulting the Tribunal record for themselves and prohibit those individuals from spreading the information any further.

[29] A.B. argues that an anonymization order and redaction measures are not reasonable alternatives in this case because nearly all of the Complainants' witnesses make untested

allegations against him. Holding the hearing *in camera* and then trying to anonymize or redact the testimony would be more constraining on presumptive openness of the Tribunal than the confidentiality order he seeks.

(iii) As a matter of proportionality, the benefits of the order outweigh its negative effects

[30] In balancing privacy interests against the open court principle, A.B. argues that it is important to consider whether the information the order seeks to protect is peripheral or central to the judicial process (*Sherman Estate* at paras 78 and 86). In this case, he says the confidentiality order sought poses no threat to the public interest in the Tribunal's inquiry into the RCMP and allows the Complainants and their witnesses to testify. He argues that, conversely, publishing his name would not advance a purpose of the *CHRA*, since doing so would amount to the punishment of a non-party.

[31] A.B. argues that the benefits of a confidentiality order outweigh its negative effects, given the concerns expressed in the affidavits filed in support of his Motion. These include severe psychological and emotional suffering.

B. Complainants

[32] With one exception, the Complainants do not agree that the Tribunal should grant the orders sought by A.B. They do agree with his proposal that the materials filed in support of this confidentiality Motion should be sealed.

[33] The Complainants say that it is an important part of their claim before the Tribunal that the RCMP's investigative methods were impacted by the power imbalance that existed between the Complainants and A.B. They say the high-profile nature of his position caused the RCMP's use of allegedly discriminatory investigative methods to be magnified, which exacerbated the harm to the Complainants and others. They oppose banning the publication of information about A.B.'s position because they say it is important for the hearing to publicly inquire into whether the RCMP's investigative methods were more discriminatory when investigating a powerful white individual.

[34] While they are not opposed in principle to anonymizing A.B.'s name, the Complainants recognize that doing so while including his position would likely be ineffective in maintaining his confidentiality.

[35] The Complainants do not agree that section 52(1)(c) of the *CHRA* applies to A.B. and argue that the unique aspects of this case distinguish it from other jurisprudence where anonymity has been deemed appropriate. Specifically, they submit that A.B.'s past actions put the very allegations he seeks to protect into the public sphere, through press conferences and his defamation claim against Ms. Robinson. The Complainants state that A.B. "now wishes to have the very same allegations suppressed in a matter to which he is not a party." They rely on *Cahuzac v Wisniowski*, 2010 NSCC 258 (CanLII) in which a publication ban was denied because the evidence showed the information that would cause embarrassment (an affair between the respondent and applicant) was already subject to media reports and consequently known publicly due to previous unrelated court proceedings.

[36] The Complainants want their allegations of discrimination against the RCMP heard in a public inquiry rather than shrouded by confidentiality measures. They believe that A.B. is trying to suppress information about their allegations such that their testimony and that of most of their witnesses would be given behind "closed doors", which would defeat the open court principle and the Tribunal's purpose of educating the Canadian public on human rights.

[37] The Complainants also dispute A.B.'s affidavit evidence and submission that media coverage of the Tribunal's proceeding has had detrimental impacts on his mental health and financial situation. They argue that it is not the Tribunal's proceedings that have interfered with his employment opportunities, but rather the discovery of unmarked graves at various residential schools across Canada. The Complainants say that the resurfacing of allegations against A.B. occurred in the aftermath of this significant moment in Canadian history, which has led to "truth-seeking and reconciliation for Indigenous peoples in Canada [being] at the fore of the Canadian public consciousness."

[38] The Complainants assert that the current social climate that seeks truth and reconciliation for Indigenous peoples underlines the importance of this matter being heard

in public. The open court principle is of utmost importance to the Complainants because they believe that having their community bear witness to their testimony will aid in healing for all.

C. Commission

[39] The Commission takes no position with respect to the confidentiality Motion brought by A.B. It has helpfully provided submissions on the applicable legal principles for the Tribunal's consideration, including a review of some of the Tribunal's own case law considering section 52 of the *CHRA*.

[40] The Commission notes that A.B. has asked for a broad confidentiality order and publication ban and submits that, in deciding whether the requested order is justified, the Tribunal should balance confidentiality considerations with principles of natural justice and procedural fairness. One relevant consideration is the extent to which confidentiality measures may affect the Complainants' ability to tell their stories and provide sufficient evidence to make their case.

[41] The Commission also argues that the Tribunal has already recognized that Indigenous peoples across Canada greatly suffered under the residential school system and its impact over the years has led to historical disadvantage for Indigenous people today (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (CanLII) at paras 2 and 402). It argues that the Tribunal should consider that the Complainants in this matter are Indigenous and that their allegations stem directly from their lived experiences in the residential school system in determining how best to balance the societal interest in having public proceedings versus confidentiality.

D. Respondent

[42] The RCMP takes no position on A.B.'s Motion for a confidentiality order.

E. APTN and The Tyee

[43] APTN agrees with the Complainants that a confidentiality order can apply to the financial and medical information that was filed by A.B. in support of his Motion. However, it opposes all other orders requested. It argues that there is no justification at law for a confidentiality order. It also submits that there is no legitimate basis for interfering with the public's constitutional entitlement to full openness and access to information before the Tribunal, in light of A.B.'s long connection to the subject matter of the complaint.

[44] APTN submits that A.B. has not met the high onus of proving that there is a serious risk of information being disseminated which would "reveal" core aspects of his private life when such information has been in the public forum for years (*Sherman Estate* paras 33-35).

[45] The Tyee argues that the extent to which the information is already in the public domain should be given substantial weight (*Sherman Estate* para 81). It says given the existing extraordinary public presence of this information, any sensitive information disclosed before the Tribunal is not likely to be disseminated more broadly, nor be more easily accessible than it already is.

[46] The Tyee also argues that granting the confidentiality order would in a sense replicate the power imbalance between the Complainants and A.B. that existed at the time the events referred to in the complaint are alleged to have occurred, and the power imbalance between them that exists now. It says that, aside from the limited matters covered by the consent confidentiality order granted by the Tribunal in 2021 (*Woodgate et al. v RCMP*, 2021 CHRT 20), the intimate details of the Complainants' lives, mental and physical health, and families will be disclosed, while A.B. would have those same matters protected and shielded from public view by the Tribunal's order.

F. A.B.'s Reply

[47] A.B. reiterates that, as he is not a party to the proceedings, the allegations made against him merely provide context for the RCMP's investigation, which is the subject matter of the complaint. The reliability or accuracy of those allegations are not issues for the

Tribunal to resolve. He argues that the Tribunal's ability to meaningfully determine whether the RCMP discriminated against the Complainants as a result of its allegedly biased traditional investigative practices will not be impeded or compromised by referring to him as A.B. and restricting the publication of any identifying information.

[48] A.B. disagrees with the argument that he previously "publicized" the allegations against him, stressing that he actually defended himself against them repeatedly. He submits: "It would be a perverse result if this permissible self-defence resulted in [A.B.], years later, being denied the ability to protect his reputation due to the Tribunal's proceeding."

[49] A.B. submits that the Complainants, Commission, APTN and The Tyee all overstate the scope of the limited confidentiality order he is seeking. He stresses that he is not asking to restrict the public nature of the Tribunal's proceedings, including the actual testimony or oral submissions made by the Complainants and their witnesses. He only seeks to anonymize his name to A.B. in the documents and pleadings filed with the Tribunal. He also seeks a restriction on information that would tend to identify him or his family members in relation to the proceedings through publication, transmission or broadcast in another public forum.

[50] This means that, in reporting on the Tribunal's proceedings, the media would only be limited to excluding identifying information about A.B., not about any other aspect of the inquiry. He says the Complainants would also be limited in their public statements about the Tribunal proceedings to comments about whether the RCMP was influenced by the alleged abuser being a non-Indigenous person who for a limited time held a high-profile public service position which had ended prior to the RCMP's investigation.

[51] A.B. submits that limiting publication of this identifying information minimally impairs the open court principle, as it relates only to a "sliver of information" (*A.B. v Bragg Communications Inc*., 2012 SCC 46 (CanLII) at para 28).

[52] Finally, A.B. says the tragic legacy of residential schools and the importance of truth and reconciliation do not inexorably lead to the necessity of publicly identifying him in

connection with the Tribunal's inquiry into alleged discrimination by the RCMP. He stresses that neither of the schools he taught at in northern British Columbia was a residential school.

VI. Analysis

[53] For the reasons that follow, I am satisfied that A.B. meets the requirements of section 52(1)(c) of the *CHRA*, as informed by the Supreme Court's analysis in *Sherman Estate*.

A. There is a real and substantial risk that disclosure of personal or other matters will cause undue hardship to A.B.

[54] The language of section 52(1)(c) of the *CHRA* requires a finding that a public inquiry poses a real and substantial risk of "undue hardship" to a person involved. This is consistent with the first part of the *Sherman Estate* test requiring that court openness poses a serious risk to an important public interest.

[55] A.B. has identified three separate factors that he says each constitute an important public interest – his "innocence", his dignity, and his reputation. These factors are interrelated and I find that, combined, they constitute an important public interest in the particular circumstances of this case. A fully open inquiry, without some confidentiality measures in place, poses a real and substantial risk of undue hardship to A.B., beyond the ordinary intrusions inherent when one participates in a judicial process, such as stress, discomfort or embarrassment (*Sherman Estate* paras 7 and 84).

[56] A.B. is the subject of allegations that he abused children when he taught at schools in northern British Columbia in the 1960s and 1970s. While some of the Complainants and their witnesses reported the allegations to the RCMP during its investigation of A.B., many chose not to, yet they intend to testify about them in this proceeding.

[57] In the context of this Motion, the word "innocent" is being used to mean the following, as described by the British Columbia Supreme Court in *B.G.* (*supra,* citing an earlier decision of the same Court):

> [T]he word "innocent" is used in a narrow sense in civil cases to describe persons against whom unsubstantiated allegations are made in the

> proceedings. Until a trial has occurred, there is no way of knowing whether the allegations are true. In the meantime, however, the individual against whom the allegations are made may be seen to be guilty in the eyes of the public. While someone is yet "innocent" against the unproven allegations, it may be necessary to protect his or her identity so that his or her reputation does not suffer irreparable harm.

[58] Most of the case law relied on to argue that A.B. is not deserving of confidentiality in this proceeding is distinguishable on the basis that the applicants for confidentiality in those cases were parties to the proceedings.[1]

[59] A.B. is not a party in this proceeding and so he cannot fairly defend himself against these allegations. The RCMP did not charge A.B. with any criminal offence. According to A.B., most of the allegations of abuse that the Complainants and their witnesses intend to testify about have not been raised in any other criminal or civil proceeding and those that have were found to be unsubstantiated. This has not been disputed.

[60] A.B. submits that widespread media coverage of such testimony without the protection of a confidentiality order would have severe consequences, significantly damaging his reputation, personally and professionally, as well as his emotional and mental well being.

[61] APTN submits that a party seeking to restrict *Charter* rights has the onus to prove their case with clear and convincing evidence (*Turner v Death Investigation Oversight Council et al.*, 2021 ONSC 6625 (CanLII) at para 70). It submits that A.B.'s request for confidentiality lacks well-grounded and convincing evidence, which is fatal to his request. I disagree. A.B. has provided compelling and uncontested affidavit evidence that confirms the substantial risks posed by disclosure of his identifying information in this proceeding.

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[1] See, for example, *Cahuzac v Wisniowski*, 2010 NSCC 258 (CanLII); *Orpin v College of Physicians & Surgeons (Ont.)* (1988), 25 C.P.C. (2d) (Ont. Div. Ct.); *Hammill v Victorian Order of Nurses*, 2021 HRTO 482 (CanLII); *Bao v Simon Fraser University and another*, 2014 BCHRT 167 (CanLII); *Danso v Bartley*, 2018 ONSC 4929 (CanLII); *Dr. Jane Turner v Death Investigation Oversight Council and Dr. Michael Pollanen*, 2021 ONSC 6625 (CanLII); *CTV Television Inc. v Hogg*, 2006 MBCA 132; and the recent case of *R.R. v Newfoundland and Labrador*, 2022 NLSC 46 (application for leave dismissed by the Supreme Court of Canada on August 4, 2022).

[62] APTN says that the affidavits were not made available to the media for scrutiny and challenge or subjected to cross examination and therefore the high onus upon A.B. to warrant a restriction on court openness cannot be met in these circumstances.

[63] When I agreed to provide notice to the media of A.B.'s confidentiality Motion, I stated in my Ruling that, while I did not believe, at least on an initial basis, that the media would require the affidavits in order to understand A.B.'s position in his Motion, "if the affidavits are later specifically requested by legal counsel, I will consider this request at this time" (*Woodgate et al. v RCMP*, 2022 CHRT 10 at para 39). Neither APTN nor The Tyee requested a copy of the affidavits. No party asked to cross examine any of the affiants in the course of this Motion.

[64] A.B.'s affidavit evidence supports his contention that his reputation has already been damaged by his public association with the Tribunal's proceedings, as various entities have decided not to engage with him professionally on this basis.

[65] The Complainants have argued that any reputational or financial damage incurred by A.B. is not due to the Tribunal's proceeding but is a result of the current social climate triggered by the discovery of unmarked graves at former residential school sites. While it certainly may be the case that this contributed to the decisions by various organizations to not work with A.B., he has provided affidavit evidence that clearly links the cancellation of these employment opportunities to coverage of the Tribunal's proceedings.

[66] In addition to the adverse effects on his employment opportunities which have resulted in lost income, A.B. and his wife depose that she left her own employment to provide support to A.B. due to the impact of the continued proliferation of the allegations on his health.

[67] The affidavit evidence indicates that A.B.'s mental health has been negatively impacted by his public association with this matter and that further publication of his name in the media, social media, and on the internet in relation to the allegations could have very serious consequences. I take the evidence about the mental health impacts of the Tribunal's proceedings on a non-party seriously. Yet none of the parties who oppose this Motion meaningfully address this factor.

[68] The Complainants simply dispute that the association of the allegations with A.B. will cause him undue hardship and submit that he has not demonstrated that his privacy is an "important public interest". They suggest the public would likely perceive A.B. to have impliedly waived his privacy interests because of his past actions in "publicizing" the allegations and his denial of those allegations. They share the view of APTN and The Tyee that an open Tribunal inquiry will simply make available to the public what is already broadly and easily accessible.

[69] The Tyee lists 24 articles from 15 different media sources and 3 court decisions dealing with what it calls "the subject matter of the Complaint" that cover a 10-year period up to March 2022. To be clear, the subject matter of the complaint that the Tribunal has been asked to inquire into relates to the RCMP's investigation into allegations of abuse at schools in northern British Columbia in the late 1960s and 1970s. Many of these articles do not even mention the RCMP's investigation, but they all mention A.B. by name.

[70] These articles and court cases support A.B.'s position that, rather than publicizing the allegations of child abuse, he has maintained his innocence and engaged in defending himself against the allegations since they were first published by Ms. Robinson.

[71] In spite of the media coverage thus far, A.B. disputes that the allegations the Complainants and their witnesses intend to testify about are actually widely accessible. He says that, although broad or generic versions of some of these allegations may be found in the public domain, none of the proposed witnesses have ever provided oral testimony before any court or tribunal, and so no details stemming from oral testimony have ever been published.

[72] The Supreme Court in *Sherman Estate* says that, just because certain information is already available somewhere in the public sphere does not preclude further harm to one's privacy interest through additional dissemination, "particularly if the feared dissemination of highly sensitive information is broader or more easily accessible" (para 81).

[73] APTN submits that A.B. has not provided evidence to support his assertion that the details of the testimony before the Tribunal will likely come to be known by a large segment of the public. However, APTN has applied to the Tribunal to broadcast the hearing on its

National News, its website and its social media pages. Both APTN and The Tyee have already reported on the Tribunal's proceedings, as have other media outlets. I accept that that there is a significant likelihood that the details of the testimony will come to be known by a large segment of the public.

[74] I also accept that this is not a case where court openness will simply make available what is already broadly and easily accessible, because much of the proposed witness testimony is not in the public domain. The fact that some information is accessible to the public through previous coverage does not negate the risk to A.B.'s privacy and therefore to his dignity through coverage of the Tribunal's inquiry.

[75] The Supreme Court states that the "important public interest in privacy, as understood in the context of the limits on court openness, is aimed at allowing individuals to preserve control over their core identity in the public sphere to the extent necessary to preserve their dignity" (*Sherman Estate* at para 85).

[76] The proper administration of justice requires that, where one's dignity is threatened by court openness, measures will be taken to accommodate this privacy concern. However, the "risk to this interest will be serious only when the information that would be disseminated as a result of court openness is sufficiently sensitive such that openness can be shown to meaningfully strike at the individual's biographical core in a manner that threatens their integrity" (*Sherman Estate* at para 85).

[77] The Court in *Sherman Estate* recognized that, where dignity is impaired, the impact on the individual is not theoretical but could engender real human consequences, including psychological distress (at para 72). A.B. has provided affidavit evidence supporting that such psychological distress has already occurred and that he is at high risk of very serious mental health consequences if his name continues to be associated with the Tribunal's proceedings.

[78] I accept that A.B.'s dignity will be at serious risk if he is not granted confidentiality in the Tribunal's proceedings. The information that will be disseminated in a fully open inquiry – unproven allegations of child abuse from approximately 50 years ago in a process in which

A.B. cannot defend himself and for which he has never been charged – will cause him more than simply embarrassment or discomfort. It strikes at his biographical core.

[79] Without a confidentiality order, there is a real and substantial risk that the untested allegations will be disseminated and publicized widely in the media, social media and on the internet and this will result in an affront to A.B.'s dignity, reputation and mental health and cause him undue hardship. This justifies the need to constrain the Tribunal's openness to the public to some extent.

[80] Finally, The Tyee argues that, because A.B. has already been publicly associated with the allegations, it is simply an illusion to believe that the objectives of anonymity and privacy can be achieved by the orders sought. It suggests any confidentiality order the Tribunal could make would prove futile or would be difficult to enforce, relying on case law relating to injunctions to argue its point.

[81] I accept that A.B.'s request for a confidentiality order reflects a careful compromise that balances the limitation on disseminating personal information which would cause him significant personal and professional harm, against the open court principle and the Complainants' desire to be publicly heard.

[82] I disagree that adhering to the Tribunal's order will prove to be difficult. Any publication following the date of the order which identifies A.B. in connection with the Tribunal's proceeding will be in breach of the order.

B. The Tribunal is satisfied that a confidentiality order is necessary because reasonably alternative measures will not prevent the risk

[83] I accept that the confidentiality order below is the least intrusive option available that achieves the objectives of protecting A.B.'s identity from disclosure to the public in association with the Tribunal's proceedings, while also protecting the public's interest in an open inquiry into the complaint.

[84] A.B. is not asking to restrict the evidence of the Complainants and their witnesses. He is simply asking that materials that have been filed with the Tribunal thus far anonymize his name and have identifying information removed. He is also asking that his name not be

published or broadcast in association with the hearing. This does not mean that witnesses cannot use his name when testifying, but only that his name cannot be publicized by those observing the hearing, including the media. I agree that this information is not central to the Tribunal's inquiry into alleged discrimination by the RCMP.

[85] With respect to the orders sought by A.B. in his Motion, I make the following comments and conclusions:

(a) A.B.'s request that he be identified only by the pseudonym "A.B." in all documents and pleadings filed with the Tribunal until further order of the Tribunal.

[86] I agree that this request is reasonable. This will require the parties to review the documents and pleadings, including their submissions to all Motions, that they have previously filed with the Tribunal, and – if necessary – to re-file them with A.B.'s name replaced by the pseudonym A.B.

(b) A.B.'s request that any information that would tend to identify him or his family members in relation to this proceeding shall not be published in any document or broadcast or transmitted in any way.

[87] The Tribunal has previously recognized the privacy interests of non-parties to its proceedings and given protection to those interests. For example, in *Clegg v Air Canada*, 2017 CHRT 27 (CanLII), the Tribunal determined that the Identifying Information of Pilot XY was not relevant to the proceeding (at para 46). In this case neither A.B. nor his family members are parties to the proceeding.

[88] The only family member that I am aware of having been named in these proceedings thus far, is A.B.'s wife, who filed an affidavit in support of this Motion. Her involvement in the case is limited to this one issue. I see no reason for her name or the names of other family members to be publicized in association with this Tribunal inquiry.

[89] I agree that A.B.'s wife's name and the names of A.B.'s children and grandchildren shall not be published in any document or broadcast or transmitted in any way in relation to this proceeding. If A.B. is concerned about the name of another family member being mentioned in connection with these proceedings, he may advise the Tribunal and a decision may be made with respect to ensuring their name remains confidential as well.

[90] I agree to order that A.B.'s name may not be published in any document or broadcast or transmitted in any way in relation to this proceeding. The request that "any information that would tend to identify him" is overly broad and could lead to uncertainty by those determining whether they are in compliance with the Tribunal's order.

[91] A.B. wishes to stop his name from being published in association with these proceedings going forward. Given all of the previous publications, it would be impossible to make an order that prevents any information from being published in relation to this proceeding that might possibly lead someone to identify him. As such, in addition to his name, I agree that the following information about A.B. may not be published or broadcast in relation to this proceeding: his date and country of birth; the city or province in which he resides; names of current family members; honours or awards bestowed on him; his past or present occupations, voluntary activities or sources of income, aside from his jobs teaching at the schools in northern British Columbia in the 1960s and 1970s (as it is A.B.'s more recent high-profile occupations that would most easily enable someone to identify him).

[92] I agree that a publication ban is the least intrusive option available that achieves the objective of protecting A.B.'s identity in relating to the Tribunal's proceedings. Holding even parts of the hearing *in camera* and then trying to anonymize or redact the testimony would be more constraining on presumptive openness. A publication ban allows the witnesses to testify using A.B.'s name if they wish and also still permits the public to observe the full hearing.

(c) A.B.'s request that all material filed by all parties in support of this motion for a confidentiality order and any other materials previously filed that identify him other than by the pseudonym "A.B." be sealed and not be made available to the public.

[93] I understand this request to mean that all documents that have already been filed with the Tribunal that contain A.B.'s name and that are part of the Tribunal's public record should be re-filed to replace his name with "A.B." and that the original unredacted documents containing his name be sealed. I agree to this.

[94] I also accept that all affidavit materials filed in support of this Motion and his Interested Person Motion should be sealed and may not be made available to the public. The reason

for this is that the affidavit material contains confidential medical and financial information relating to A.B. and his wife which are not relevant to the complaint before the Tribunal.

[95] The Tribunal has previously imposed confidentiality measures to restrict the public disclosure of a complainant's medical records due to their sensitivity (*Clegg v Air Canada*, 2019 CHRT 3 (CanLII) at para 100). Again, neither A.B. nor his wife are parties before the Tribunal. A.B. appropriately filed this affidavit material to support his application for confidentiality, but I accept that permitting this material to remain in the Tribunal's public record poses a real and substantial risk of undue hardship to A.B.

[96] Sealing A.B.'s affidavit materials will not interfere with the public's ability to understand A.B.'s Motions or the Tribunal's Rulings. No party opposes sealing the affidavit materials filed by A.B. in this Motion and I agree it is appropriate to do so to prevent further undue hardship to A.B.

(d) A.B.'s request that the parties be directed to prepare a publicly accessible version of any statement of particulars or other materials previously filed with the Tribunal that identify him other than by the pseudonym "A.B." in which his name and any information that would tend to identify him including, without limitation, his past or present occupation, date of birth, names of family members, is redacted and his name is replaced by "A.B."

[97] I agree that the parties must re-file their Statements of Particulars if they contain the following identifying information: A.B.'s name, his date and country of birth; the city or province in which he resides; names of current family members; honours or awards bestowed on him; his past or present occupations, voluntary activities or sources of income, aside from his jobs teaching at the schools in northern British Columbia in the 1960s and 1970s. While his name should be replaced by the pseudonym "A.B.", the other information may simply be redacted.

[98] A.B., The Tyee and APTN should also re-file materials they have previously filed with the Tribunal that contains this information, for the public record.

[99] These publicly accessible versions of the documents will be placed in the Tribunal's public record, while the original, unredacted versions will be sealed. However, the Tribunal, the Complainants, the Respondent and the Commission will have access to the unredacted

information so that the confidentiality order will not affect the fairness of the inquiry into the complaints.

[100] In terms of the hearing, it will remain open to the public. A.B. is not asking the Tribunal to either prevent the witnesses from testifying about him, or to hold such testimony *in camera*. The order below will permit the witnesses to testify freely and openly during the hearing. The Complainants' concern about being able to tell their stories in the presence of their community will not be impeded. So long as their evidence is relevant to the complaint, and there are no objections or further confidentiality requests, the Complainants and their witnesses can testify in "open court", in the presence of their communities and the media. They can use A.B.'s name when they testify if they wish to.

[101] The media can attend and report on this case. Members of the public can watch the hearing as they are always permitted to do, including if it takes place by videoconference. The only restriction related to the evidence heard in "open court" will be on the publication or dissemination of A.B.'s name and certain identifying information. This limited information may not be reported by the media in association with the Tribunal proceedings, nor disseminated or publicized by those who observe the hearing or otherwise access the Tribunal's public record.

[102] The Tribunal and parties will have the benefit of the unredacted evidence. This publication ban will not affect the ability of the Tribunal, the parties or the public to understand what this case is about.

C. The need to prevent disclosure outweighs the societal interests that the inquiry be conducted in public

[103] I accept that widespread media reporting of the testimony of the untested allegations of historic child abuse would have serious consequences for A.B. Unlike the civil actions in which he was a party and was able to defend himself against the allegations, he would be unable to do so in the Tribunal's proceeding. A.B. is not a party. He has no standing to cross examine witnesses or make submissions outside of the limits of his interested person status.

[104] The real and substantial risk of undue hardship, being harm to his personal and professional reputation, his dignity and his mental health, has been substantiated by evidence that has not been contested. The need to prevent disclosure of A.B.'s name to alleviate the risk of undue hardship outweighs the societal interest in full court openness in the circumstances of this case.

VII. Conclusion

[105] I accept that there is a real and substantial risk that the disclosure of A.B.'s name and identifying information in the Tribunal's public record or through media coverage of this proceeding will cause A.B. undue hardship.

[106] As such, I make the following orders for confidentiality pursuant to section 52 of the *CHRA.*

VIII. Order

a. The Interested Person shall be identified only by the pseudonym "A.B." in all documents and pleadings filed with the Tribunal, and in all Tribunal Rulings and Decisions, until further order of the Tribunal;

b. The following information that would tend to identify A.B. or his family members in relation to the proceedings shall not be published, broadcast or transmitted in any way: A.B.'s name; his date and country of birth; the city or province in which he resides; names of his current family members, including his wife, children and grandchildren; honours or awards bestowed on him; his past or present occupations, voluntary activities or sources of income, aside from his jobs teaching at the schools in northern British Columbia in the 1960s and 1970s;

c. The affidavit material filed by A.B. in support of this confidentiality Motion and in support of his Motion for Interested Person status shall be sealed and will not be made available to the public;

d. All submissions and materials filed by all parties, and by A.B., The Tyee and APTN in response to this confidentiality Motion, including materials filed in relation to the notice to the media and interim publication ban issue, that identify the Interested Person by other than A.B. or otherwise do not comply with this Order, shall be re-filed within 30 days of the date of this Ruling to comply with this Order so that they may be placed on the Tribunal's public record. The hyperlinks to the 24 news

articles in The Tyee's submission and those in the Complainants' submissions that relate to A.B. shall be removed;

e. The previously filed confidentiality Motion materials referred to in paragraph "d" that do not comply with this Order shall be sealed and will not be made available to the public;

f. The parties, A.B. and APTN are directed to prepare and file with the Tribunal within 30 days of the date of this Ruling a publicly accessible version (meaning in compliance with this Order) of any Statements of Particulars, Motions, submissions or other pleadings, materials or documents previously filed with the Tribunal. In doing so, the Interested Person's name may be replaced by A.B. and the other identifying information, as set out in paragraph "b" of this Order, may be redacted;

g. Unredacted versions of the documents described in paragraph "f" shall be sealed by the Tribunal and may not be disclosed to the public;

h. The Tribunal's Registry is instructed to ensure a copy of this Order remains on file. If any information in the Tribunal's public record is requested by the public, including the Tribunal Rulings, Orders and Decisions in this matter, the Registry shall ensure that A.B.'s name does not appear in the information produced and that the following information is redacted: A.B.'s name; his date and country of birth; the city or province in which he resides; names of current family members, including his wife, children and grandchildren; honours or awards bestowed on him; his past or present occupations, voluntary activities or sources of income, aside from his jobs teaching at the schools in northern British Columbia in the 1960s and 1970s;

i. All Motion materials associated with the Commission's Implied Undertaking Motion, including Schedule A to the Commission's Statement of Particulars dated June 5, 2020, shall be sealed by the Tribunal until such time as that Motion has been decided;

j. The Tribunal and parties will discuss procedures to ensure material placed on the Tribunal's record moving forward, including evidence at the hearing, is in compliance with this Ruling and Order.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
September 7, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2459/1620

Style of Cause: Woodgate et al. v. RCMP

Ruling of the Tribunal Dated: September 7, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

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Bob Sokalski for APTN

Leo McGrady, Q.C. for The Tyee