

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 27
Date: May 3, 2024
File No.: HR-DP-2972-23

Between:

CB

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Security Intelligence Service

Respondent

Ruling

Member: Athanasios Hadjis

[1] The Complainant filed a human rights complaint with the Canadian Human Rights Commission (“Commission”) alleging that she was discriminated against while employed by the Respondent, the Canadian Security Intelligence Service (“CSIS”). The Commission asked the Tribunal to hold an inquiry into the complaint.

[2] The Respondent requests that the Tribunal issue a confidentiality order anonymizing the identities of the Complainant and any current or former CSIS employees. The Commission and the Complainant stated that they would not be making any submissions on the Respondent’s motion.

[3] For the following reasons, I grant the order but subject to certain conditions.

[4] As I noted in another case involving CSIS, *AB v Canadian Security Intelligence Service*, 2023 CHRT 5 [“*AB v. CSIS*”] at paras 5 and following, s. 52(1) of the *Canadian Human Rights Act*, RSC 1985, c. H-6 (“*CHRA*”) states that Tribunal inquiries are conducted in public. This reflects the principle that hearing processes should be held in the open. The open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy (*Sherman Estate v. Donovan*, 2021 SCC 25 [“*Sherman Estate*”] at para 1).

[5] However, exceptional circumstances do arise where competing interests justify a restriction to the open court principle (*Sherman Estate* at para 3). Thus, in the present context, under s. 52(1)(a) of the CHRA, Tribunal members may take any measures and make any order to ensure the confidentiality of an inquiry if they are satisfied there is a real and substantial risk that matters involving public security will be disclosed. The analysis of confidentiality requests made under s. 52 of the CHRA is informed by the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 [“*Sierra Club*”] (*AB v. CSIS* at para. 14).

[6] According to the *Sierra Club* test, the person asking a court or tribunal to exercise its discretion in a way that limits the presumption that hearings are held in open court must establish that:

- Court openness poses a serious risk to an important public interest;

- The order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and,
- As a matter of proportionality, the benefits of the order outweigh its negative effects.

[7] The complaint in *AB v. CSIS* was similar to the present one. AB was a former CSIS employee who alleged that she had been discriminated against during her employment. I observed in the ruling that the s.18(1) of the *Canadian Security Intelligence Service Act*, RSC, 1985. c. C-23 (“CSIS Act”) provides that no person can knowingly disclose any information from which could be inferred the identity of a CSIS employee who was, is or is likely to become engaged in covert operational activities of CSIS. It is an offence to contravene this provision (s. 18(3) of the CSIS Act).

[8] Applying the *Sierra Club* test, I found that there was a serious risk to an important public interest if the names of persons contemplated in s. 18(1) were revealed. It would give rise to a real and substantial risk that matters involving public security would be disclosed (*AB v. CSIS*, at para 15). I also determined that the anonymization order was necessary and that reasonable alternative measures would not prevent serious risk to the important public interest (*AB v. CSIS*, at para 16). The benefit of the order outweighed the risks (*AB v. CSIS*, at para 20).

[9] There is no practical distinction between the circumstances of the present case and those of *AB v. CSIS*. As in that case, I am satisfied that based on the Complainant’s position title at CSIS described in her complaint she was involved in activities that meet the s. 18(1) criteria. The three parts of the *Sierra Club* test are similarly satisfied and a confidentiality order under s. 52 of the CHRA should be ordered.

[10] However, the Respondent has requested that the order extend to all past and present CSIS employees. This request is too broad. The order should only apply to employees who engaged in covert operational activities as described in s. 18(1) of the *CSIS Act* (see *AB v. CSIS* at para 17).

Order

[11] For these reasons, I order that:

1. Any information identifying the Complainant or any current or past employee of CSIS who was, is or is likely to become engaged in covert operational activities of CSIS, or any person who was a CSIS employee engaged in such activities (a “Confidential CSIS Employee”) is designated to be confidential information (the “Confidential Information”) under s. 52 of *CHRA*;
2. The Complainant will be identified only by the random initials that the Respondent suggested (“CB”) in all documents and pleadings filed with the Tribunal, as well as in all correspondence between parties and with the Tribunal, and in all Tribunal Rulings and Decisions, until further order of the Tribunal;
3. A Confidential CSIS Employee will be identified solely by consistent random initials or other pseudonym in all documents and pleadings filed with the Tribunal;
4. At the request of the Complainant or the Commission, the full name of a Confidential CSIS Employee must be disclosed where the position title and other provided information alone are insufficient to identify who the employee is and their involvement in an issue;
5. If the full name of a Confidential CSIS Employee is disclosed to the Complainant or Commission, they must keep the information in confidence and cannot publicize it nor include it with any documentation submitted to the Tribunal; and
6. All parties must respect the confidentiality of the information by not referring to any Confidential Information in any public proceedings and by only referring to Confidential CSIS Employees by the random initials or other pseudonyms assigned to them.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
May 3, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2972-23

Style of Cause: CB v. Canadian Security Intelligence Service

Ruling of the Tribunal Dated: May 3, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Samantha Lamb, for the Complainant

Aby Diagne, for the Canadian Human Rights Commission

Kevin Palframan, for the Respondent