

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 90
Date: July 12, 2024
File No(s): HR-DP-2788-22

Between:

Sabrina Rizzo

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Air Canada

Respondent

Ruling

Member(s): Marie Langlois

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I. OVERVIEW

[1] The Complainant, Sabrina Rizzo, alleges that Air Canada, the Respondent, has discriminated against her within the meaning of section 7 of the *Canadian Human Rights Act*, R. S. C., 1985, c. H-6 (CHRA) on the basis of her disability, a mental illness.

[2] Ms. Rizzo made a motion for an anonymization and confidentiality order.

[3] In an email sent on May 6, 2024, Ms. Rizzo asks that:

“all of my information especially the medical part remain confidential. I need complete privacy and confidentiality for everything. It would cause me undue hardship if it is public and available information for anyone to have access to any information about me.”

[4] On May 7, 2024, she adds:

“I am requesting and require complete confidentiality in my case. I have gone through so much hardship being discrimination [*sic*] and to have it public is not acceptable to me. Would you like your medical records and personal information made public?”

[5] The Canadian Human Rights Tribunal (the “Tribunal”) asked Ms. Rizzo to provide more details about her motion. It instructed her to review her documents and provide an answer in writing as to which document and which part of the document she would like to have redacted.

[6] On June 14, 2024, Ms. Rizzo answered the following:

I am requesting a confidentiality orders and redactions for my case I want to restrict access so that I am not easily identified and targeted by Identify theft, fraudulent activities and for my personal safety and well being. Please redact all of the following

1. All Personal Identifiers...My Name, My Address, My Birthdate, My phone number, , my social insurance number and health card number and any financial accounts
2. All Biometric Information facial, voice, eyeball and fingerprints from Ministry of Transport when I was a flight attendant they did this as a security check
3. Any information that could pose a safety threat or undue hardship to me if made public

4. Restrict access and redact my entire medical information as it would severely depress me if that became public. And all the medical information has my health card, address, date of birth, name and highly private and sensitive information to me..
5. My witnesses, names and occupations, and PIN for them as well.

[7] The Commission consents to the Complainant's request for an anonymization order. It also states that the other personal identifiers listed are typically redacted in materials filed with the Tribunal. As for the items 2 to 5, the Commission does not take a position.

[8] The Respondent opposes Ms. Rizzo's request for anonymization and confidentiality order.

II. DECISION

[9] The Tribunal accepts in part Ms. Rizzo's request for a confidentiality order. It orders that her personal address, date of birth, phone number, social insurance number and health card number be redacted from the evidence that will be part of the book of documents and other documents that are or may become part of the Tribunal's file.

[10] The anonymization request and her other requests for a confidentiality order are rejected.

III. ANALYSIS

[11] The CHRA states as a general principle that the Tribunal's inquiries are public (s. 52(1) of the CHRA). However, a confidentiality order can be made if 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 (s. 52(1)(c) of the CHRA).

[12] Section 52(1)(c) reads as follows:

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 conducted 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; or

52 (1) L'instruction est publique, mais le membre instructeur peut, sur demande en ce sens, prendre toute mesure ou rendre toute ordonnance pour assurer la confidentialité de l'instruction s'il est convaincu que, selon le cas :

[...]

c) il y a un risque sérieux de divulgation de questions personnelles ou autres de sorte que la nécessité d'empêcher leur divulgation dans l'intérêt des personnes concernées ou dans l'intérêt public l'emporte sur l'intérêt qu'a la société à ce que l'instruction soit publique;

[13] The Supreme Court of Canada reaffirmed in *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 30 [*Sherman Estate*] that court openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy.

[14] Any restriction on the open court principle requires the person asking for it to show that openness presents a serious risk to a competing interest of public importance. This requirement is considered a high bar (*Sherman Estate* at para. 3). Indeed, as the Supreme Court of Canada had summed up in *Vancouver Sun (Re)*, 2004 SCC 43 at paras. 23- 26, the open court principle is not to be lightly interfered with.

[15] While the analysis in *Sherman Estate* was done outside the context of the CHRA, it is generally consistent with the criteria set in s. 52(1) of the CHRA. It informs the statutory analysis the Tribunal must undertake to decide a motion for a confidentiality order (see e.g.,

SM, SV and JR v. Royal Canadian Mounted Police, 2021 CHRT 35 at paras. 8-10; *A.B. and Gracie v. Correctional Service Canada*, 2022 CHRT 15 at paras. 14-16).

[16] Before embarking in its analysis of Ms. Rizzo's requests, the Tribunal notes the absence in the French version of subsection 52(1) of the CHRA of an equivalent for the term "undue hardship" used in the English version. I concur with the Tribunal's recent decision in *Abdul-Rahman v. Transport Canada*, 2024 CHRT 7 at para. 17 [*Abdul-Rahman*] that requiring proof of undue hardship is nevertheless consistent with the Supreme Court of Canada's stance in *Sherman Estate* that a high bar must be met to limit court openness. It is therefore appropriate to assess for undue hardship in the analysis.

[17] In *Peters v. United Parcel Services Canada Limited and Gordon*, 2022 CHRT 25 at para. 40 [*Peters*], the Tribunal states that undue hardship "requires something more than some hardship, embarrassment, or the normal stresses of being a party in a public legal proceeding. There is an aspect of accountability, as well, coincident with the expectation that our public legal system will be transparent." The notion of undue hardship "requires something more than the discomfort that parties may feel respecting the prospect of third-party judgement of and societal interest in their acts, omissions, allegations and defences in a manner that is attributed to them."

[18] The onus is on Ms. Rizzo to prove that there is a real and substantial risk that the disclosure will cause her undue hardship.

[19] The Tribunal finds that Ms. Rizzo's motion is broad and does not specify what part of a document in her medical record would make her suffer undue hardship unless it is redacted and maintained confidential. She seems to plead that all her medical record should be confidential. I find there is a lack of specificity that does not permit the Tribunal to make a serious analysis of the hardship that she proclaims.

[20] Ms. Rizzo wants to restrict access to the information "so that I am not easily identified and targeted by Identify theft, fraudulent activities and for my personal safety and well being". However, she did not present any evidence of the danger or risks she faces. In order to decide on the redaction of some documents, the Tribunal needs to know what information ought to be redacted and why. A sole allegation of undue hardship does not compensate

for a lack of evidence in the context where the open court principle is the rule and the bar to impose restrictions on it is quite high.

[21] As concerns more particularly the request for anonymization, the Tribunal reviewed in *White v. Canadian Nuclear Laboratories*, 2020 CHRT 5 at para. 48 [*White*] anonymization orders issued in previous decisions. In some cases, the Tribunal had “found that the identification of the complainant could cause undue hardship and risk of harm to the complainant’s children or might result in the disclosure of highly personal or sensitive information, for example in sexual harassment complaints” (for example, *Mr. X v. Canadian Pacific Railway*, 2018 CHRT 11 and *N.A. v. 1416992 Ontario Ltd. and L.C.* 2018 CHRT 33 at paras. 15-30). In other cases, the Tribunal had been satisfied of the “very real possibility [the party seeking the confidentiality order] would experience harm as a result of stigma that could impact future job prospects” (for example, *T.P. v. Canadian Armed Forces*, 2019 CHRT 10 at paras. 24-30).

[22] In *White*, the Tribunal considered that a “general statement about the privacy interests of the complainant” was not enough to show a “real and substantial risk” of undue hardship. “Human rights issues are difficult, often deeply personal matters for the parties involved, including complainants”, it adds. “The complainant has not established what is unique about her case as opposed to other human rights matters which similarly address personal matters and which often refer to disability and health issues” (*White* at para. 49).

[23] In the present case, the Tribunal is faced with the same kind of situation as in *White*, inasmuch as Ms. Rizzo makes a broad statement not substantiated with evidence. It is true that mental illness carries a societal stigma, especially when a person is seeking employment. However, Ms. Rizzo has not given any evidence of this or of anything else. The Tribunal has nothing to analyze and could not support a decision favourable to Ms. Rizzo’s request. As stated earlier, allegations cannot compensate for a lack of evidence. In the present case, there is no evidence whatsoever.

[24] Furthermore, Ms. Rizzo’s disability is the specific prohibited ground of her human rights complaint. She is the one raising her medical condition (i.e., her mental illness) as the ground on which she says she was differentiated adversely in the course of her employment

at Air Canada. In the absence of any evidence, the Tribunal cannot justify departing from the open court principle that is so important in our judicial system and has to reject Ms. Rizzo's motion except for the part concerning her personal identifiers, that is, her personal address, date of birth, phone number, social insurance number and health card number.

IV. CONCLUSION

[25] For these reasons, the Tribunal

ACCEPTS IN PART Ms. Rizzo's motion for a confidentiality order;

ORDERS that Ms. Rizzo's personal address, date of birth, phone number, social insurance number and health card number be redacted from the evidence that will be part of the book of documents and other documents that are or may become part of the Tribunal's file. For that purpose, the Tribunal instructs the parties to proceed to the ordered redaction as documents are being filed with the Tribunal;

REJECTS Ms. Rizzo's anonymization request;

REJECTS Ms. Rizzo's other requests for a confidentiality order.

Signed by

Marie Langlois
Tribunal Member(s)

Ottawa, Ontario
July 12, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2788-22

Style of Cause: Sabrina Rizzo v. Air Canada

Ruling of the Tribunal Dated: July 12, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Sabrina Rizzo, for herself

Sophia Karantonis, for the Canadian Human Rights Commission

Rachel Younan and Jacob Wagner, for the Respondent