

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 98

**Date:** August 26, 2024

**File Nos.:** HR-DP-2899-22 & HR-DP-2900-22

**Between:**

**Amanda Lepine and Amanda Lepine (on behalf of A.B.)**

**Complainants**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**- and -**

**West Coast LEAF**

**Interested party**

**Ruling**

**Member:** Naseem Mithoowani

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## **I. OVERVIEW**

[1] The Complainant is a Métis woman who was incarcerated while newly pregnant. She has made a complaint on behalf of herself and on behalf of her Indigenous minor son (hereinafter referred to as "A.B."). The complaint centers around discrimination in the receipt of services provided by the Correctional Service of Canada related to the Complainant's pregnancy with A.B, and her subsequent delivery and post-natal care during her incarceration.

[2] The Respondent denies the allegations.

[3] The Complainant has filed a motion to anonymize the minor child's name in these proceedings and to treat as confidential other identifying information of the child.

[4] The Complainant also seeks that all her medical records, and the medical records pertaining to the minor child, be treated as confidential and not be made available to public.

[5] The Respondent consents to the motion. The Canadian Human Rights Commission takes no position on the motion.

## **II. DECISION**

[6] For the reasons that follow, I am satisfied that a confidentiality order on the terms sought by the Complainant is reasonable and necessary in the circumstances. I grant the Complainant's motion.

## **III. ANALYSIS**

[7] Section 52 of the *CHRA* provides broad powers to the Tribunal to take any measures and make any orders it considers necessary to ensure the confidentiality of the inquiry in certain circumstances.

[8] 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 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).

[9] The Supreme Court in *Sherman Estate v Donovan*, 2021 SCC 25, indicated the following test when assessing confidentiality motions: firstly, it must be established that court openness poses a serious risk to an important public interest; secondly, the order sought is necessary to prevent this serious risk because reasonably alternative measures will not prevent the risk; and finally, as a matter of proportionality, the benefits of the order outweigh the negative effects.

[10] This test is consistent with Section 52 of the CHRA. As a result, the Tribunal has confirmed that the Tribunal's assessment of a confidentiality motion ought to be informed by the Supreme Court's decision in *Sherman Estate* (see, for example, *GH v. Canadian Security Intelligence Service*, 2023 CHRT 28 and *SM, SV, and JR v. Royal Canadian Mounted Police* 2021 CHRT 35).

[11] I am satisfied that there is an important public interest in protecting the privacy interests of a vulnerable minor child. Disclosure of the minor's name, identifying information

and medical records would result in the release of sensitive information related to his birth and his immediate care after his birth. This carries the potential of undue harm to the reputational interests and self-worth of the child. I am satisfied that the disclosure of the minor's name and the medical records of the minor pose a real and substantial risk to that public interest.

[12] I am also satisfied that there is an important public interest in protecting the medical records of the Complainant. The medical records in question are deeply personal. A complainant has the right to privacy and confidentiality with respect to their medical records. I agree with the Complainant that disclosure of these records would pose a real and substantial threat to this interest given the potential for undue hardship by way of embarrassment and an affront to her dignity.

[13] With respect to the second part of the test, I am satisfied that that the order requested by the Complainant, and agreed to by the Respondent, minimally impair the open court principal.

[14] Anonymizing the minor child's name and redacting identifying information from the record will not impair the public's ability to understand the proceedings and will have a minimal impact on the public interest to an open inquiry into the complaints.

[15] Treating medical records as confidential will also not impact the public's ability to understand these proceedings. The parties to the complaint will have unrestricted access to the medical records and will be able to fully understand and participate in the proceedings. The Order only restricts the public's access to these materials. However, most of the file will remain public.

[16] The relief sought by the Complainant, and consented to by the Respondent, is the least intrusive option available that achieves the objectives of preventing the risk to the privacy interests of the minor child and Complainant.

[17] Finally, I am of the view that the important public interest in protecting the privacy of a minor child and the sensitive medical records of the Complainant outweigh any negative effects.

**IV. ORDER**

[18] For these reasons, the Tribunal Orders that:

1. The name of the minor child be treated confidential. The minor child shall be identified only as A.B. throughout these proceedings, including in any documents filed with the Tribunal, in oral submissions and in the Tribunal's rulings and decisions.
2. Identifying information for A.B. is to be treated as confidential and redacted from the record. The Tribunal instructs the parties to proceed to the ordered redaction as documents are being filed with the Tribunal.
3. The medical records of the Complainants are to be treated as confidential, and not made available as part of the Tribunal's public record. These records must be placed in a sealed envelope marked confidential if provided to the Tribunal.
4. All materials which do not comply with this Order are to be re-filed within 30 days so they may be placed on the Tribunal's public record.
5. The Tribunal's Registry will ensure that any information requested from the Tribunal's public record complies with this Order before it is disclosed.

*Signed by*

Naseem Mithoowani  
Tribunal Member

Toronto, Ontario  
August 26, 2024

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File Nos.:** HR-DP-2899-22 & HR-DP-2900-22

**Style of Cause:**

Amanda Lepine v. Correctional Service Canada

Amanda Lepine (on behalf of A.B.) v. Correctional Service Canada

**Ruling of the Tribunal Dated:** August 26, 2024

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Katie Duke and Sophie Maraldo, for the Complainants

Geneviève Colverson, for the Canadian Human Rights Commission

Jon Khan and Aleksandra Mihailovic, for the Respondent

Bety Tesfay, Jessica Lithwick and Maya Ollek, for the Interested Party