

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 18

Date: April 29, 2021

File Nos.: T1852/8212

Between:

Brian William Carter

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada

Respondent

Ruling

Member: David L. Thomas

I. Background

[1] This is a ruling in the matter of a complaint brought by Mr. Brian Carter (the “Complainant”) against his once prospective employer, Department of Fisheries and Oceans Canada (the “Respondent”). The initial complaint was filed with the Canadian Human Rights Commission (the “Commission”) on June 3, 2011. The complaint was forwarded to the Canadian Human Rights Tribunal (“CHRT” or “Tribunal”) on July 31, 2012, and the matter was assigned to Member Luftig.

[2] In the course of case management, Member Luftig issued four interim rulings: 2014 CHRT 3; 2014 CHRT 23; 2015 CHRT 13; and, 2016 CHRT 6 (collectively, the “Rulings”).

[3] The inquiry finally went to hearing on August 15, 2016. For reasons not relevant to this ruling, Mr. Carter decided to withdraw his complaint on August 26, 2016. The inquiry was never finished and there was no necessity for Member Luftig to render a final merits decision.

[4] However, the file at the Tribunal was never closed because Mr. Carter had requested that the Rulings remain unpublished on the Tribunal’s website, or if they were published, that his name be anonymized. There were also submissions from the parties at the time that in the alternative, certain sensitive medical information about Mr. Carter could be redacted.

[5] The issue remained outstanding for a long time. Member Luftig did not seriously address the anonymization / confidentiality request until earlier this year. In the meantime, the Rulings were never published on the CHRT website as Member Luftig had directed they remain unpublished until she had made a decision on Mr. Carter’s request for anonymity.

[6] In finally addressing the matter, Member Luftig contacted the parties earlier this year and asked if they wished to supplement the submissions they had made in 2016. Mr. Carter expressed his surprise that the matter was still pending and requested that a new member be assigned to finalize this matter.

[7] Member Luftig agreed to recuse herself from this file and I have taken it upon myself, as Chairperson of the CHRT, to render this ruling and bring this complaint to a close.

II. Position of the Parties

[8] Mr. Carter's main objection has been the disclosure of certain medical information in Tribunal ruling 2014 CHRT 3. In section 1 of paragraph 9, Member Luftig described some details of Mr. Carter's medical condition (the "Medical Information") that formed part of his complaint. Mr. Carter contends that some of the Medical Information was confidential and he wished it to be cloaked under a confidentiality order of the Tribunal. He further contends that some of the Medical Information is simply incorrect.

[9] In its original submissions in 2014, Respondent counsel argued that Mr. Carter had not made a sufficient argument to merit anonymity or confidentiality to protect certain information. However, in a submission dated March 25, 2021, Respondent counsel stated they do not object to the Medical Information being subject to a confidentiality order. In their view, the exclusion of this information from the public does not make the process less open or transparent.

[10] While he was previously in favour of making his identity anonymous in these proceedings, Mr. Carter states in his letter dated February 12, 2021 that he no longer wishes to have anonymity. He does, however, still wish to have the Medical Information remain confidential.

[11] The Commission did not provide supplemental submissions.

III. Decision

[12] Having reviewed the materials in this case, I concur that the Medical Information contained in 2014 CHRT 3 is not necessary for the public's ability to understand the essence of this complaint and this proceeding.

[13] The openness and transparency of legal proceedings is a well-established principle in Canada (*Toronto Star Newspapers Ltd. vs. Ontario*, 2005 SCC 41 at para 4). As indicated

in section 52(1) of the *Canadian Human Rights Act*, R.S.C 1985, c. H-6 (“the *Act*”), human rights hearings are intended to be public. However, section 52(1)(c) of the *Act* gives the Tribunal discretion to take any measures or make any orders necessary to ensure the confidentiality of the inquiry if there is a real and substantial risk that the disclosure of personal information will cause undue hardship to the persons involved. This must be however balanced with the societal interest that the inquiry be conducted in public.

[14] With the consent of Mr. Carter and Respondent counsel, I hereby order that the sentence in section 1 of paragraph 9 in 2014 CHRT 3 be struck and replaced with the following sentence: “The Complainant has a medical condition which he states is a disability under the *Act*.”

[15] Subject to the aforementioned change, the Rulings will be translated into the second Official Language and will be posted on the Tribunal website in due course, thus forming a part of the permanent record of this Tribunal. All information contained in the file pertaining to Mr. Carter’s underlying medical condition will remain confidential under this order granted under s. 52 of the *Act*.

[16] Upon the publication of this ruling and the Rulings, the Tribunal will close this file and advise the parties. The matter will then be closed.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
April 29, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1852/8212

Style of Cause: Brian William Carter v. Attorney General of Canada

Ruling of the Tribunal Dated: April 29, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Brian Carter, himself

Kevin Palframan, for the Respondent