

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 35

Date: October 26, 2022

File No.: T2644/2021

Between:

Melanie Blache

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bell Canada

Respondent

Ruling

Member: Paul Singh

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I. Introduction

[1] The Complainant Melanie Blache, a Black single mother of two, filed a complaint alleging that the Respondent Bell Canada (“Bell”) discriminated against her on the basis of family status and color, contrary to sections 7 and 10 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (“CHRA”). Ms. Blache’s complaint includes allegations that Bell treated her differently than her White colleagues, who she says were afforded accommodation and the option to choose their work schedules while she was not. Bell denies these allegations.

[2] Bell has filed a confidentiality motion for an order to anonymize the names and protect the personal information of current and former Bell employees (the “Other Accommodated Employees”) who may be referenced in these proceedings as having been accommodated by Bell or as having made requests to Bell for accommodation. Ms. Blache opposes Bell’s motion while the Canadian Human Rights Commission (“Commission”) does not.

[3] For reasons set out below, Bell’s motion is granted.

II. Analysis

Legal framework for a confidentiality order

[4] Court proceedings, including those of this Tribunal, are presumptively open to the public and the open court principle is essential to the proper functioning of Canadian democracy.

[5] However, Canadian law recognizes that there are times when there needs to be discretionary limits on court openness in order to protect other public interests where they arise. The need for this flexibility in the application of the open court principle for the Tribunal is set out in section 52 of the CHRA which 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.

[6] 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.

[7] The recent Supreme Court of Canada decision in *Sherman Estate v. Donovan*, 2021 SCC 25 [*Sherman Estate*] reiterated the high bar that must be met to limit court openness. In order to succeed in seeking a limit on presumptive court openness, it must be established 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. (*Sherman Estate* at para 38).

[8] The *Sherman Estate* test, which applies to various types of discretionary limits on openness including sealing orders, publication orders, redaction orders, or orders excluding the public from a hearing, is generally consistent with, and informs the statutory analysis the Tribunal must undertake under s. 52 of the CHRA: *A.B. and Gracie v. Correctional Service Canada* 2022 CHRT 15; *SV SM, JR v. RCMP* 2021 CHRT 35.

Balancing privacy interests with the open court principle

[9] Bell's motion is most appropriately considered under s. 52(1)(c) of the CHRA – that is, whether the risk of harm to the Other Accommodated Employees from disclosure of personal information outweighs the societal interest in conducting a public hearing. On considering the *Sherman Estate* factors and for reasons set out below, the Tribunal finds that it does.

[10] First, while documents and information relating to accommodation requests of the Other Accommodated Employees are relevant to Ms. Blache's complaint and should be disclosed, there is no dispute that these documents and information contain sensitive personal information, including medical information, of the employees. The reasonable privacy concerns of these employees, who are not parties to these proceedings, constitute an important public interest that must be balanced with the open-court principle.

[11] Second, the confidentiality order sought by Bell appears reasonable when considering other alternative measures. Ms. Blache, in opposing the motion, says that Bell is trying to "conceal" records and "silence" witnesses. However, Bell is not seeking a broad confidentiality order that would prevent disclosure of any information pertaining to the Other Accommodated Employees. Rather, Bell is seeking to simply anonymize the names of the employees in these proceedings, which constitutes a reasonable, proportionate measure to address the privacy issues raised. Documents and information relating to these employees will still be disclosed to Ms. Blache and the employees can still testify at the hearing so as to limit any prejudice to the parties.

[12] Third, the benefits of the confidentiality order sought by Bell outweigh its negative effects. While anonymizing the names of the Other Accommodated Employees will have the benefit of protecting sensitive personal information of non-parties, it will not meaningfully impact the public's ability to understand the nature of the complaint, the relationship between the parties, or the evidence and issues considered by the Tribunal.

[13] Finally, the Tribunal notes an issue raised by the Commission that, as the parties review documentary disclosure, they may require more information about the identities of some of the Other Accommodated Employees to, for example, identify which documents

belong to whom and to cross-reference initials with names. In these circumstances, if the identity of an Other Accommodated Employee is disclosed by Bell to Ms. Blache or the Commission by consent or by Tribunal order, their identity is to be kept confidential by the parties in accordance with the confidentiality rule applicable to the disclosure process and this anonymization order made by the Tribunal.

III. Conclusion

[14] Bell's motion is granted and the Tribunal makes the following orders:

- i. The Other Accommodated Employees will be referred to by their initials in all further motions, submissions (both written and oral), hearings, and rulings in these proceedings.
- ii. Documents and information pertaining to the Other Accommodated Employees will be redacted by removing their names and replacing them with their initials.
- iii. If the identity of an Other Accommodated Employee is disclosed by Bell to Ms. Blache or the Commission by consent or by Tribunal order, their identity is to be kept confidential by the parties.
- iv. The above measures will remain in effect until the Tribunal declares otherwise.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
October 26, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2644/2021

Style of Cause: Melanie Blache v. Bell Canada

Ruling of the Tribunal Dated: October 26, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Melanie Blache, for herself

Julie Hudson, for the Canadian Human Rights Commission

Maryse Tremblay and Marie-Pier Emery, for the Respondent