

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

**Citation: 2023 CHRT 29
Date: July 7, 2023
File No.: T2664/4021**

Between:

K.L.

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Post Corporation

Respondent

Ruling

Member: Gabriel Gaudreault

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I. Background

[1] This is a ruling of the Canadian Human Rights Tribunal (the “Tribunal”) on a motion by the Complainant and the Canadian Human Rights Commission (the “Commission”) to have measures taken to ensure the confidentiality of the inquiry, in accordance with subsection 52(1) of the *Canadian Human Rights Act* (the CHRA).

[2] Without entering into all the details, the Complainant asks, because of the domestic violence perpetrated against her by a former partner and the risks to her safety and that of her children, that her name and other personally identifying information be protected.

[3] As for the Commission, it proposes several specific orders for the Tribunal to make, which can be summarized as follows:

- a. A publication ban
- b. Anonymization of the names of the Complainant, witnesses, geographic locations and personally identifying information
- c. Sealing the Tribunal file
- d. Filing new, anonymized Statements of Particulars
- e. A ban on the disclosure/distribution of recordings
- f. Retention of jurisdiction by the Tribunal over the issue of confidentiality

[4] The Canada Post Corporation (the “Corporation” or the “Respondent”) opposes the motion. It argues that the motion is premature because it is based on evidence not relevant to the case. It is also of the view that the alleged risk is speculative.

[5] Moreover, the Corporation argues that if the Tribunal granted the motion, the confidentiality measures requested by the Complainant and the Commission would be too broad and should be strictly limited to anonymizing the Complainant’s address and current geographic location, among other things.

II. Issue

[6] Are there special circumstances allowing the Tribunal to order measures to ensure the confidentiality of the inquiry because of

- a real and substantial risk to the fairness of the inquiry such that the Complainant's need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public?
- a real and substantial risk that disclosure of personal or other matters will cause undue hardship to the Complainant such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public? or
- a serious possibility that the life or security of the Complainant and her children will be endangered?

III. Decision

[7] For the following reasons, the Tribunal grants the motion in part.

IV. Analysis

[8] The general rule is that judicial proceedings, including those of the Tribunal, are subject to the open courts principle. Section 52 of the CHRA is clear and essentially comes down to this: Tribunal proceedings shall be conducted in public.

[9] However, the open courts principle is not absolute, and there may be specific cases where measures may be taken to ensure the confidentiality of judicial proceedings where circumstances require it.

[10] The Tribunal's case law is consistent in this regard. For such measures to be taken, there must be grounds that justify doing so, in accordance with subsection 52(1) of the CHRA (see for example *Woodgate et al. v. Royal Canadian Mounted Police*, 2021 CHRT 20 (CanLII); *A.B. and Gracie v. Correctional Service Canada*, 2022 CHRT 15 (CanLII)).

[11] Subsection 52(1) of the CHRA sets out these exceptions and establishes the criteria to be met before the Tribunal may order confidentiality measures. They may be summarized as follows:

- There is a real and substantial risk to public security [paragraph (a)].
- There is a real and substantial risk to the fairness of the inquiry [paragraph (b)].
- There is a real and substantial risk that personal or other matters will be disclosed, and their protection outweighs the societal interest that the inquiry be conducted in public [paragraph (c)].
- There is a serious possibility that the life, liberty or security of a person will be endangered [paragraph (d)].

[12] In *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), at paragraph 38, the Supreme Court clarified the three criteria that must be met when analyzing whether court openness may be limited:

- (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.
- (3) As a matter of proportionality, the benefits of the order outweigh its negative effects.

[13] The Tribunal recently confirmed that the Supreme Court of Canada's amended analysis supports the traditional criteria established by subsection 52(1) of the CHRA (*SM, SV and JR v. Royal Canadian Mounted Police*, 2021 CHRT 35 (CanLII), at para 8). This therefore means that the analysis under section 52 of the CHRA does not contradict the Supreme Court of Canada.

[14] Finally, the Tribunal has also stated, in *White v. Canadian Nuclear Laboratories Ltd.*, 2020 CHRT 37 [*White*], that section 52 of the CHRA requires an analysis that balances the societal interest in open courts with the personal interests of the party requesting that the inquiry be kept confidential, in whole or in part (*White*, at para 54). In other words, there is a burden of proof to be met before a confidentiality order may be granted.

[15] As provided by subsection 52(1) of the CHRA, the member must be satisfied that an order is necessary to ensure the confidentiality of the proceeding. As for *Sherman*, the Supreme Court of Canada reminds us that the confidentiality measure must be necessary

to prevent the serious risk in question and that no reasonable alternative measure—in other words, no other, less restrictive measure—can be taken to eliminate that risk.

[16] Finally, the analysis under section 52 of the CHRA and *Sherman* immediately rules out cases where confidentiality orders have been requested by a party because this would be helpful or practical, or because the party thinks publicizing the information could be a source of inconvenience and embarrassment. The analysis also rules out situations where all parties consent to the request for confidentiality or where the request is unopposed, but the criteria under section 52 of the CHRA and *Sherman* have not been met (*White*, at para 50).

[17] In light of the foregoing, the Tribunal finds that the motion by the Complainant and the Commission complies with paragraphs 52(1)(b), (c) and (d) of the CHRA and with the analysis set out in *Sherman*, with a few necessary adaptations as to the measures to be taken to weigh the open courts principle against the Complainant's interests relating to her safety and that of her children. The Tribunal will address a few of the Corporation's arguments head-on and explain why it disagrees with them.

[18] The Corporation is of the view that the motion by the Complainant and the Commission is based on the presumption that the Complainant will have to testify regarding the allegations of domestic violence involving her. According to the Corporation, the Complainant has not established the relevance of the information relating to the domestic violence she allegedly suffered.

[19] The parties have expressly agreed to add *sex* and *family status* to the complaint as prohibited grounds of discrimination. The purpose of this addition was to allow the Complainant to argue that gender-based violence, including domestic violence, is a form of discrimination. To this end, she filed an amended Statement of Particulars on December 16, 2021, with the agreement of the parties and the Tribunal, in which she sets out her position in this regard, at paragraph 21.

[20] It is most surprising to now hear the Corporation argue that neither the Complainant nor the Commission has established the relevance of the allegations of domestic violence. Contrary to what the Corporation argues, the allegations of domestic violence are now laid

out in the complaint and are relevant. The Complainant argues, in particular, that when she revealed to her employer, the Corporation, that she was a victim of domestic violence, she experienced differential adverse treatment in the course of her employment and the Corporation did not renew her employment contract.

[21] The Tribunal also fails to understand the Corporation's argument that the relevance of the allegations of domestic violence must be decided *before* the motion for confidentiality and that, for this reason, the motion is premature. The Corporation is needlessly complicating the proceeding, while the complaint, as previously mentioned, concerns in particular the domestic violence suffered by the Complainant, its effects on her employment and the differential adverse treatment she allegedly suffered after revealing this information to her employer.

[22] It has been clear right from the start of this case that domestic violence is an issue in the complaint and the inquiry into it. The Tribunal does not need to deal with the relevance of these allegations as a preliminary matter since everything is already set out in the Complainant's amended Statements of Particulars. For this reason, the Tribunal will inevitably have to hear evidence on the domestic violence suffered by the Complainant.

[23] Similarly, the Corporation also argues that the Complainant and the Commission have not asked the Tribunal to enter the allegations of domestic violence into evidence at this stage of the proceeding. In other words, it claims that the motion for confidentiality is based on elements not yet admitted into evidence that have yet to be established or proved. The Tribunal finds such an argument perplexing.

[24] As the Tribunal has already mentioned, the allegations of domestic violence are included in the complaint. Now, the Tribunal will have to hear what is ultimately necessary regarding the allegations of domestic violence, which does not open the door to filing evidence that is not relevant or necessary to the complaint. There are limits, as the Corporation argues. The Complainant and the Commission will then be able to concentrate on the aspects of the domestic violence that are necessary to the complaint, and the Tribunal may not necessarily have to accept all the details of the violence the Complainant allegedly suffered.

[25] That said, the Complainant is not represented by counsel, and the Tribunal is an administrative tribunal that must necessarily be flexible (subsection 48.9(1) of the CHRA). The Tribunal will allow her all the flexibility she needs to testify about her experience so that she can tell her story and relate what she experienced while working for the Corporation. The Tribunal finds that she will inevitably have to talk about her experiences with domestic violence. Now, this situation will not deprive the Corporation of an opportunity to cross-examine the Complainant or to address in its final arguments the weight or relevance to be given to the Complainant's evidence, just as this does not deprive it of the opportunity to argue that domestic violence is not covered by the CHRA, contrary to what the Complainant and the Commission claim.

[26] Further, as the Tribunal well knows, motions that are filed before the leading of evidence, which is done at the hearing, are generally based on evidence that has not yet been tested *at the hearing*, which naturally makes sense. This is why a party will also file certain materials in support of their motion, such as an affidavit. This is exactly what the Complainant did. In this affidavit, which was duly made under oath, the Complainant explains that she is a survivor of domestic violence perpetrated by a former partner and addresses in great detail what she experienced and how this violence affected her and her children.

[27] To reassure the Corporation, the Tribunal is not, at this stage, going to assess the evidence in the file. The evidence will be led at the hearing. Nor is the Tribunal going to determine whether domestic violence should be covered by the CHRA. The Tribunal will also hear the parties on this subject at the hearing. The purpose of this ruling is aimed solely at determining whether confidentiality measures should be granted to ensure the Complainant's safety and that of her children.

[28] At this stage, the Tribunal has an affidavit filed by the Complainant in support of her motion and that of the Commission. The Corporation did not ask to cross-examine the Complainant on this affidavit, which it could have done. Therefore, the Tribunal may rely on the facts provided by the Complainant in her affidavit and may consider them to be true *for the purposes of the motion*. However, these allegations do not constitute evidence for the hearing. If the Complainant decides to lead the evidence in her affidavit at the hearing, she

will have to prove that evidence, and the Tribunal will assess it at the appropriate time. The Corporation, for its part, will have the opportunity to challenge that evidence, for example, by cross-examining the Complainant or arguing the weight or relevance to be given to the evidence.

[29] Similarly, the Tribunal also disagrees with the Corporation's argument that the Complainant's allegations of domestic violence, her fears and the actions she had to take to protect herself and her children are speculative. The same reasons set out above apply in the circumstances. The Complainant filed an affidavit, which was not challenged by the Corporation. Consequently, the fact included in it may be taken as true by the Tribunal, for the purposes of the motion. The Complainant's affidavit is clear and categorical with regard to the existing real and substantial risks and the lack of reasonable alternative measures to prevent these risks (s. 52(1) of the CHRA and *Sherman*, mentioned above).

[30] In her affidavit, the Complainant explains that she is a survivor of domestic violence perpetrated by a former partner and recounts in detail what she experienced. She states she was physically and verbally assaulted and was threatened in person, by telephone, by text and on social media. Her former partner was arrested and charged with several crimes related to domestic violence, but the Complainant later withdrew these charges because of all the pressure she was under. She confirms that he does, however, have a criminal record related to domestic violence against other women.

[31] The Complainant adds that her former partner admitted to her that he would kill any women who reported him to the police and that he is still wanted by the police for violent acts committed against another woman.

[32] The Complainant confirms that she has moved several times in recent years because she fears for her life and safety. She has also placed her children in someone else's care to protect them. She adds that she does not believe that, at present, her former partner knows where she currently lives or has any knowledge of her contact information, including her telephone number, her email address or her social media accounts. The Complainant knows nothing of her former partner's comings and goings. She is trying, to the extent possible, not to attract his attention and to prevent him from finding her.

[33] The Complainant argues that she experienced differential adverse treatment by her former employer, the Corporation, in the course of her employment when she revealed to the Corporation that she is a victim of domestic violence. In addition, her employment contract was not renewed. She states that she will testify at the hearing regarding the domestic violence she suffered and its effects on her, her wellbeing, her performance at work and her interactions with her former employer until her employment was terminated.

[34] She therefore fears the fact that the Tribunal's inquiry is public, which includes, for example, future Tribunal rulings that would contain her name, the public notices of hearing on the Tribunal's website and the fact that this could draw the attention of her former partner, his friends or his relatives. She also fears that her case will attract the attention of the media, which could publish her name and other personal information.

[35] The Complainant is also aware that some organizations have filed applications with the Tribunal to attend the inquiry as interested persons because of the allegations related to domestic violence. She fears that these organizations' interest will attract public and media attention to her case.

[36] She believes that if her former partner learns of her Tribunal proceeding, he could file an access to information request regarding the official record to gain access to the documents in her case. She also believes that he will recognize her voice in the Tribunal's recordings if he requests access to it.

[37] She fears for her safety and that of her children if her former partner becomes aware of her allegations of domestic violence. She also dreads the possibility that if her personal information were not protected, he would be able to find her or her children so that he can harm them or extort money from her.

[38] The Complainant adds that she also wants to testify regarding her friendship with someone close to her former partner who tried to protect her. She states that her former partner is not aware of the friendship between her and this person and that if he finds out about it, he will inevitably come after her.

[39] Finally, she believes that if her personal information is not protected, she will not feel safe enough to testify freely and candidly before the Tribunal. She fears that her former partner, if he learned of this proceeding, could gain access to information that would allow him to find her or her children. The only solution, as she sees it, if her information is not protected will be to move after the Tribunal hearing, which will have consequences on her life, her finances and her children, among other things.

[40] The Tribunal is sensitive to the information that the Complainant has provided, and it has enough information to warrant setting up protections to ensure the Complainant's safety and that of her children under paragraphs 52(1)(b), (c) and (d) of the CHRA. The Complainant's case is a good example of why section 52 of the CHRA exists.

[41] The Tribunal acknowledges that domestic violence is a plague to which the justice system must pay special attention. Courts and tribunals necessarily have a role to play in ensuring that victims of domestic violence can feel safe in the judicial proceedings in which they take part. Although there is no such thing as zero risk, we have to try as much as possible to avoid doing anything that could endanger the safety of victims of domestic violence or put them back in a dangerous situation when they must share information regarding their abusers and the violence they experienced.

[42] According to the allegations made by the Complainant, which include death threats, it is clear that the benefits of protecting the Complainant and her children outweigh the societal interest in holding proceedings in public.

[43] When the Tribunal must analyze real and substantial risk under subsection 52(1) of the CHRA, this risk must be assessed in light of what could happen. In other words, when the Tribunal weighs the interests of society in holding proceedings in public, it must also consider the existing real and substantial risk if confidentiality measures are not ordered and if this risk should actually materialize.

[44] In the case at hand, it is not a matter of the Complainant merely fearing embarrassment if her information were to end up in the public domain. Under oath, the Complainant told us about the real and substantial risks to her physical safety and that of her children as well as the potential psychological, emotional and financial harm. The

Complainant suffered violence at the hands of her former partner, was threatened and had to hide, change addresses several times and take refuge in a women's shelter because of this violence and her former partner's actions. He looked for her, found her and threatened her by telephone, by text message and on social media.

[45] The Complainant tried, and is still trying, to escape the clutches of her former partner and avoid drawing his attention. The Tribunal is very concerned to hear that the Complainant's abuser also admitted to her that he would kill any woman who reported him. Those are strong, disturbing words that cannot be ignored.

[46] The Complainant basically fears for her life should her former partner ever find out about the Tribunal proceedings and learn that she is going to recount what she went through under his yoke. She fears for her safety and that of her children and states that her participation in the hearing would be considerably reduced if her information were not reasonably protected.

[47] It is with these risks in mind that the Tribunal must assess the motion, and this is all it takes to conclude that orders to protect the Complainant's identity pursuant to paragraphs 52(1)(b), (c) and (d) of the CHRA are necessary to ensure her protection, her safety and the safety of her children. What the Complainant recounts is not a trivial matter, and we cannot take any chances when someone's life, their safety and above all the safety of children is at stake.

[48] Finally, the Corporation filed copies of certain social media accounts of the Complainant in which her full name and her current location allegedly appear. The Corporation argues that photographs of her and her children can be found on the Complainant's social media accounts, and that there are means of contacting her and sending her messages.

[49] The Tribunal understands that the Corporation is arguing that the fact that the Complainant's information can already be found in the public domain and can already be accessed by the public raises doubts as to whether there is a real and substantial risk within the meaning of subsection 52(1) of the CHRA (see for example *A.B. and Gracie v. Correctional Service Canada*, 2022 CHRT 15, at para 39).

[50] On this point, the Commission noted that the Complainant has confirmed that the information on her social media accounts is out of date. One need only read the copies taken from the Complainant's social media accounts and filed by the Corporation to see that the Complainant's information is from several years ago, while it is now 2023. According to the Commission, the Complainant also confirmed that she no longer lives at the location mentioned on social media. As the Complainant's social media accounts date back several years, without it being possible to establish whether the information has been updated, and since the Complainant has confirmed that she no longer lives at the places mentioned on social media, the weight to be given to the Corporation's arguments on this point is considerably reduced. Moreover, the Tribunal notes that there is no reference in her social media accounts to her place of work at the Corporation.

[51] In addition, the Tribunal agrees with the Commission's argument that the purpose of a confidentiality order is not to erase *all traces* of the Complainant's existence in the public domain. It is not up to the Tribunal to do so, and it has no control over what is already in the public domain. The Tribunal's role is to determine whether there is a serious risk to the identified interest (*Sherman*) if the information were disclosed *in its own proceeding*. In other words, the Tribunal must determine whether disclosing the Complainant's information in *its own proceeding* poses a real and substantial risk under subsection 52(1) of the CHRA, and the Tribunal's answer to this in the circumstances is yes.

[52] In the case at issue, the real and substantial risk resides in particular in the connections that the Complainant's former partner may make between her and the personal information found in the public domain because of the proceeding before the Tribunal. The purpose of the confidentiality orders is, among other things, to avoid allowing the former partner to cross-reference enough data to find the Complainant or her children or inspiring in him a desire or intention to try to find her.

[53] Finally, the Corporation also argued that the measures sought by the Commission and the Complainant are overly broad and should be limited, in particular to the Complainant's address or her geographical location. The Tribunal finds that it is indeed possible to balance the societal interest in conducting proceedings in public while still

adequately protecting the Complainant and her children, particularly with regard to the existing real and substantial risk.

[54] The Tribunal notes that, in this case, the real and substantial risk relates to possible psychological, emotional and financial violence, in addition to physical violence, including death threats that were made by her former partner against any woman who might report him. Given the existing real and substantial risk and the lack of other measures that could reduce this risk, the Tribunal finds that it must make orders to protect the Complainant and her children, with a few necessary adaptations, to strike a balance with the societal interest that judicial proceedings be conducted in public.

(i) Anonymization of Proceedings and Protection of Personal Information, Past and Future

[55] The first measure, which will offer the Complainant considerable protection, is to anonymize her throughout the entire Tribunal proceeding. Anonymizing the Complainant will considerably reduce the risk that her former partner might connect her with the Tribunal proceeding. Accordingly, anonymizing the proceeding provides in large part the desired protection and will considerably reduce the existing real and substantial risk.

[56] Therefore, for the purposes of this proceeding, the Complainant will be referred to by the letters K. L. There is no need to protect the Respondent's identity in the circumstances. The parties will have to file new Statements of Particulars in which they have removed all references to the Complainant's name and replaced them with the letters K. L. The previous Statements of Particulars will be removed from the Tribunal record and replaced with the new versions.

[57] The Commission's request to have the entire Tribunal record to date sealed has been made because it is useful or practical, not out of necessity. There is no justification for such a limitation within the meaning of subsection 52(1) of the CHRA or *Sherman*. If a request for access to the Tribunal's official record is made by a member of the public or a media outlet, any reference, past or future, to the Complainant's name will be replaced with K. L. in all the

documents requested, including correspondence, directions and summaries of case management teleconferences, among other things.

[58] In addition, the Tribunal finds that all personal information relating to K. L. must be protected, which includes her email address, home address, telephone number and other personally identifying information. Accordingly, regarding all documents to be filed in the Tribunal's official record in future, the parties will have to redact any information that could identify the Complainant, including her email address, home address and telephone number. Should this information have an impact on the evidence, the parties and the Tribunal will explore other solutions, for example, filing unredacted copies of the documents in question that could then be sealed.

[59] In addition, if a request for access to the Tribunal's official record is made by a member of the public or a media outlet, any reference, past or future, to this information will also be protected.

[60] Considering the affidavit filed by the Complainant, the parties' submissions and the exhibits attached to them, the Tribunal orders that the parties' submissions and the documents submitted in support of this motion for confidentiality be sealed pursuant to subsection 52(2) of the CHRA.

[61] Any future decision of the Tribunal, correspondence, emails and case management teleconference summaries will refer to the Complainant with the letters K.L.; this includes rulings related to motions to intervene by third parties.

[62] Future correspondence from the parties, motions and other documents sent to the Tribunal must not include the Complainant's name. The Complainant's name and her personally identifying information will also have to be redacted from the documents that will be filed for the purposes of the hearing.

[63] In accordance with the *Policy on Access to Canadian Human Rights Tribunal Official Records*, recordings of case management teleconferences are not part of the Tribunal's official record and therefore not accessible to all. The Tribunal nonetheless orders a ban on distributing these recordings, since the names of the Complainant, witnesses, geographic

locations, etc. have already been mentioned in them. If the parties have already requested access to this teleconference information, the Tribunal prohibits distributing them to anyone.

(ii) Witnesses' Names

[64] The Tribunal has looked at the Complainant's witness list and acknowledges that some witnesses could indeed pose certain problems, particularly the name of a member of the Complainant's family. In addition to this individual's name posing a problem, it is important to avoid the cross-referencing of information in the public domain, particularly witnesses' names and their places of work at the Corporation at the time of the alleged events, so that this will not allow the former partner to identify and find her. The Tribunal is also aware that it must avoid triggering a reaction that would push the former partner to try to find the Complainant and her children, given the safety issues in this case.

[65] Once again, the Tribunal notes that the real and substantial risk in this case is not mere embarrassment should the Complainant's identity and personal information be disclosed. There are, in our case, risks to the safety of the Complainant and her children, including death threats made by the former partner against any woman who might report him. In an ideal world, the Tribunal proceeding must avoid placing the Complainant and her children back in a dangerous situation.

[66] To this end, the identities of all the parties' witnesses will be protected. When the parties file their Statements of Particulars and their witness lists, they will have to identify the witnesses by the initials of their first and last names. The initials of the witnesses' names must be used in all correspondence, documents and evidence filed in the Tribunal record in future. Witnesses' names in correspondence with the Tribunal, case management summaries, emails, etc. will be replaced with their initials if a request for access to the record is made.

[67] As will be discussed below, witnesses' names may be used in case management teleconferences and at the hearing, under certain conditions, which will be explained below.

(iii) Geographic Locations

[68] The Tribunal finds that there is a real and substantial risk that if the Complainant's former partner should learn the location of her employment with the Corporation, he might be able to make the connection between her, the Tribunal proceedings and the allegations of domestic violence against him. The objective is in effect to avoid the cross-referencing of information that would allow this man to find the Complainant and her children and trigger in him a desire to find them.

[69] To balance the Complainant's request with society's interest in conducting proceedings in public and in a transparent manner, the Tribunal will avoid referring to the Complainant's place of work in its final decision. If it must refer to the place of work, it will use the geographic location of the province in question in this case.

[70] If the parties or the interested persons, as the case may be, must mention a location, the Tribunal asks that they use the geographic location of the province in question in this case.

[71] As for the Tribunal's official record to date, if a request for access is made by a member of the public or a media outlet, the Tribunal will remove any references to geographic locations, except for the province.

[72] When the parties file new versions of their Statements of Particulars, their lists of documents, witnesses' names, summaries of testimony and all future documents to be filed in the Tribunal's official record, they will have to remove the geographic locations, except for the province.

[73] As for the evidence that will be filed at the hearing, the parties and the interested persons, as the case may be, will have to remove all geographic locations mentioned in that evidence, except for the province.

(iv) Publication Ban

[74] Although no media outlets have shown an interest in this proceeding, the Tribunal finds that there is a real and substantial risk—that is, to the safety of the Complainant and that of her children, particularly with regard to the death threats already made by the former partner against women who might report him—and that it is in the interests of the Complainant and her children to protect her personal information. The Tribunal orders a publication ban with regard to the names of the Complainant and her children, their personal information, witnesses' names and relevant geographic locations, except for the province in question in this case.

[75] To strike a balance with the societal interest in a public inquiry, and as will be discussed in the next section, members of the public and media outlets will be allowed to watch and listen to the hearing. However, the publication ban will prevent them from disclosing information identified by the Tribunal outside the hearing, to protect the identities of the Complainant and her children.

(v) Hearing Recordings

[76] The Tribunal concludes that there is also a real and substantial risk related to the audio recordings of the hearing being accessible to the former partner, and the risk that he would be able to cross-reference information allowing him to identify the Complainant and track her down. Once again, the risk in this case is significant.

[77] To strike a balance with the societal interest that proceedings be held in public and to sufficiently protect the Complainant and her children and considering the real and substantial risks in this case, particularly with regard to the death threats that have been made, the Tribunal will allow the public and the media to watch and listen to the hearing, subject to the publication ban in effect.

[78] At the hearing, to ensure that the Complainant, her witnesses and those of the Corporation can speak freely and that the hearing is conducted as smoothly as possible, the Tribunal will allow all participants to use the names of any persons involved in the

proceeding and to refer to geographic locations that are relevant to the inquiry. The Tribunal wants the participants to be able to fully present their evidence, without holding back.

[79] However, the audio recordings of the hearing will be sealed and thus inaccessible to the public and the media until the Tribunal's record is destroyed. The names of the Complainant and her children, her personal information, witnesses' names and the geographic locations relevant to this case, except for the province, are also subject to a publication ban. In other words, no participant in the hearing, member of the public or media outlet may publish this information.

[80] As for the minutes of the hearing, they will also be accessible to the public and the media (paragraph 47(1)(l) of the *Canadian Human Rights Tribunal Rules of Procedure*, 2021, SOR/2021-137), but they will have to abide by the Tribunal's orders regarding the publication ban, the use of the names of the Complainant, her children and the witnesses and the protection of her personal information and geographic locations.

[81] The only exception is this: the parties and the interested persons in this case will be able to access the audio recordings, if need be, but are prohibited from distributing such recordings to anyone, apart from reviewing courts should an application for judicial review of the final decision be made.

(vi) In-Person Hearing

[82] The Tribunal finds that another measure to protect the Complainant would be to hold an in-person hearing in federal government offices, at a place to be determined, so that the comings and goings of members of the public can be monitored.

[83] Unfortunately, virtual hearings do not allow for monitoring as strict as what is possible with in-person hearings. The Tribunal notes that members of the public and the media are prohibited from intervening in the hearing or using their cameras or microphones. Even though the Tribunal has a list of individuals having requested access to its virtual hearings, and even though it may order the exclusion of witnesses, it is more difficult to monitor who is really behind the camera in a virtual setting, compared with an in-person hearing.

[84] Accordingly, and without ruling on the issue, the Tribunal will propose to the parties that the hearing be held in person, at a place to be determined. This proposal will be discussed with the parties at a later date. The Tribunal is mindful of the fact that the mode of hearing must make sense for the parties and that it may be necessary to accommodate the hearing participants, to the extent possible.

(vii) Retention of Jurisdiction and Applicability of Orders

[85] The Commission's request for the Tribunal to retain its jurisdiction over the issue of confidentiality is unnecessary. Similarly, the Tribunal does not need to order that its orders remain applicable even after the case ends.

[86] The Tribunal's orders apply in the case's past, present and future up to the destruction of the Tribunal's official record in accordance with its policies in this regard. The Tribunal may make orders to ensure confidentiality measures are maintained without having to mention that they remain in force despite the inquiry being over. Such an order is therefore unnecessary.

[87] As for retaining jurisdiction, the Tribunal notes that it retains full jurisdiction over its proceedings so long as the inquiry is still in progress and the Tribunal has not disposed of the complaint. Once the complaint file is closed and the Tribunal has exhausted its mandate under the CHRA, its jurisdiction is extinguished (*functus officio*).

[88] Except in exceptional circumstances, as the Supreme Court established in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848, regarding the concept of *functus officio*, which also applies to administrative decision-makers, the Tribunal cannot revisit final decisions it has rendered once it has fulfilled its mandate and carried out its purpose under the CHRA.

[89] Accordingly, I do not agree to retain jurisdiction over the issue of confidentiality for the future, which, in other words, means that the Tribunal would not leave the door open to dealing with confidentiality in this case, after the complaint has been disposed of and a final decision has been rendered.

[90] However, the parties may still submit additional confidentiality-related requests during the proceeding, if necessary, or ask the Tribunal to reconsider certain orders during the proceeding if there are grounds or special circumstances that warrant reconsidering this order.

V. Order

[91] To sum up, the Tribunal issues the following orders, which must be read in light of the reasons given in this ruling for more details.

[92] Anonymization of the Complainant and the protection of her personal information:

- a. Throughout the proceeding, the Complainant must be identified by the letters K. L.
- b. Throughout the proceeding, the Complainant's personal information, which includes in particular her email address, her home address, her telephone number and other personally identifying information, will be protected.
- c. Regarding any future documents filed in the Tribunal record, the parties must redact any information identifying the Complainant, in particular her email address, her home address, her telephone number and other personally identifying information.
- d. In case of a request to access the Tribunal's official record, any past or future reference to the Complainant's name will be replaced with K. L., and any other personal information in the requested documents, which could include correspondence, directions and summaries of case management teleconferences, will be protected.
- e. Submissions and exhibits relating to this decision will be sealed under subsection 52(2) of the CHRA.
- f. All of the Tribunal's future decisions, correspondence, emails and case management teleconference summaries will refer to the Complainant by the letters K. L.
- g. Recordings of case management conferences will be sealed and remain inaccessible. If the parties have already received copies of these recordings, they are prohibited from distributing them.

[93] Anonymization of witnesses:

- a. The identities of the parties' witnesses will be protected.

- b. In the parties' statements of particulars and their witness lists, the witnesses' names must be replaced with the first letters of their first and last names.
- c. The initials of the witnesses' names must be used in all correspondence, documents, evidence or other documents filed in the Tribunal record in future.
- d. If a request for access to the Tribunal's official record is made, the names of witnesses in the Tribunal's correspondence, case management summaries, emails, etc. will be replaced with the initials of their first and last names.

[94] Geographic locations:

- a. In pleadings and related documents, geographic locations must be protected, and only the name of the province may be used.
- b. Regarding the Tribunal's record to date, if a request for access to the record is made, geographic locations will be removed, except for the province.
- c. Regarding future documents to be filed in the Tribunal's record, which includes the parties' new statements of particulars, witness lists, summaries of testimony, the evidence presented at the hearing or other documents, geographic locations appearing in them, except for the province, must be protected.

[95] Publication ban:

- a. Publishing the names of the Complainant and her children, her personal information, the names of witnesses and relevant geographic locations, except for the name of the province, is prohibited.

[96] Audio recordings of the hearing and minutes:

- a. Audio recordings of the hearing will be sealed and remain inaccessible to anyone, except for the parties and the interested persons, as the case may be, and they will be prohibited from distributing them, except to reviewing courts in case of judicial review.
- b. The minutes of the hearing will also be available to the public and the media; however, the Complainant will be referred to by the initials K. L., witnesses will be referred to by the initials of their first and last names, and the Complainant's personal information, her children's names and geographic locations, except for the province, will be protected.

[97] Public and media participation at the hearing:

- a. The hearing will be open to the public, subject to the publication ban.

- b. The names of the Complainant and her children and geographic locations may be used at the hearing, subject to the ban on publication outside the hearing.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
July 7, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2664/4021

Style of Cause: K.L. v. Canada Post Corporation

Ruling of the Tribunal Dated: July 7, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

K.L., for herself

Brian Smith, for the Canadian Human Rights Commission

Jennifer Hodgins, for the Respondent