

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 28
Date: July 5, 2023
File No.: HR-DP-2852-22

Between:

GH

Complainant

- and

Canadian Human Rights Commission

Commission

- and -

Canadian Security Intelligence Service

Respondent

Ruling

Member: Edward P. Lustig

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I. Overview

[1] The Complainant (“GH”) alleges that the Respondent, the Canadian Security Intelligence Service (“CSIS”), discriminated against her by providing an unfounded negative reference to a potential future employer, contrary to section 14.1 of the *Canadian Human Rights Act* (“CHRA”). Allegedly, the negative feedback followed a settlement agreement between GH and CSIS from a previous complaint while GH was an employee of CSIS.

[2] CSIS denies that it has engaged in any form of discrimination, and, in particular, denies that it ever provided a reference or negative feedback to anyone at the potential future employer in relation to GH.

[3] CSIS has filed a motion under section 52 of the *CHRA* for a confidentiality order to prevent the public disclosure of the identity of current and past employees of CSIS, as such disclosure puts those individuals at risk, and impairs both the employees’ and CSIS’s ability to investigate threats to the security of Canada. GH and the Canadian Human Rights Commission (the “Commission”) have consented to the order being sought by CSIS.

[4] For the reasons that follow, I am satisfied that a confidentiality order on the terms sought is reasonable and necessary and in the interests of justice in the circumstances, as the public disclosure of the confidential information would result in real and substantial risk to matters involving public security, and where there is a serious possibility that the life, liberty or security of a person will be endangered. As such, the motion of CSIS is allowed and a confidentiality order on the terms set out below is issued.

II. Legal Framework

[5] In *SM, SV, and JR v. Royal Canadian Mounted Police* 2021 CHRT 35, at paragraphs 5-11, Tribunal Member Paul Singh reviewed section 52 of the *CHRA* and the required statutory analysis laid down by the Supreme Court of Canada in *Sherman Estate v. Donovan* (“*Sherman Estate*”) for the Tribunal to issue a confidentiality order on a motion under the section 52. The Court set out a three-part test that must be satisfied in order to succeed on a motion 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.

III. Analysis

[6] During the course of these proceedings, the parties intend to call witnesses, including GH, who are or were employees of CSIS and the parties intend to disclose information, including in the pleadings and documentary evidence, which identifies current and past employees of CSIS.

[7] Disclosure of the information contemplated above through the publicly accessible Tribunal file would be in violation of section 18 of the *Canadian Security Intelligence Service Act* (“*CSIS Act*”). Section 18 of the *CSIS Act* forbids disclosure of the identity of a present or past employee engaged or likely to become engaged in covert operational activities of CSIS or of any information from which identity could be inferred.

[8] Publicly identifying current and former *CSIS* employees puts those individuals at risk, and impairs both the employees’ and *CSIS*’S ability to investigate threats to the security of Canada. Disclosure of the identities of *CSIS* employees can cause a real and substantial risk to matters involving public security as contemplated under section 52(1)(a) of the *CHRA*, and also raises a serious possibility that the life, liberty and security of a person will be endangered as set out at section 52(1)(d). Accordingly, a confidentiality order is necessary in the present case.

[9] The confidentiality terms sought by CSIS are the least obstructive option available that achieves the objectives of protecting the confidential information from disclosure, and Canada’s national security interests, while balancing the public’s interest in an open inquiry. There are no other reasonable alternative terms that could achieve the same goals. The confidentiality terms sought will not prejudice GH in these proceedings, and both GH and the Commission have consented to the confidentiality terms.

[10] The confidentiality terms sought therefore comply with section 52 of the *CHRA* and satisfy the three-part *Sherman* Estate test. Consequently, the motion is allowed and the confidentiality order and terms thereof as set out below is hereby issued.

IV. Confidentiality Order

[11] Any information identifying the complainant or any current or past employee of *CSIS* (a “Confidential *CSIS* Employee”) is designated to be confidential information (“Confidential Information”) under section 52 of the *CHRA*.

[12] The complainant will be identified only by the pseudonym “GH” in all documents and pleadings filed with the Tribunal, as well as all correspondence between parties and with the Tribunal, and in all Tribunal Rulings and Decisions, until further order of the Tribunal.

[13] The parties will have 30 days for the Order of the Tribunal to re-file their documents and pleadings with versions that use the pseudonym “GH”. These new documents will replace previous versions.

[14] Any hard copy documents filed by the parties containing Confidential Information must be placed in a sealed envelope marked confidential and shall not be made part of the public record, provided that a public version of the material from which the Confidential Information is redacted or removed is also filed on the public record.

[15] The respondent may identify any Confidential *CSIS* Employee in any document filed with the Tribunal solely and consistently by the same random initials or other pseudonym and must include their position title.

[16] The parties will have 30 days from the Order of the Tribunal to re-file their documents and pleadings with versions that use pseudonyms, if necessary. These new documents will replace the previous versions.

[17] At the request of a party or the Commission, the full name of a Confidential *CSIS* Employee must be disclosed where the position title and other provided information alone are insufficient to identify who the employee is and their involvement in an issue. They must

keep the information in confidence and cannot publicize it nor include it with any documentation submitted to the Tribunal.

[18] All parties must respect the confidentiality of the information by not referring to any Confidential Information publicly or in any public proceedings and by only referring to Confidential CSIS Employees by the random initial or other pseudonyms assigned to them.

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
July 5, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2852-22

Style of Cause: GH v. Canadian Security Intelligence Service

Ruling of the Tribunal Dated: July 5, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Caline Ritchie, for the Respondent