

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 23
Date: March 26, 2025
File No.: HR-DP-3069-24

Between:

J.K.

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Brokenhead Ojibway Nation

Respondent

Ruling

Member: Anthony Morgan

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I. OVERVIEW

[1] The Complainant, J.K., has asked the Tribunal to anonymize their identity and that of their immediate family members in this proceeding. This ruling provides reasons for granting their request.

[2] The Complainant alleges that the Respondent, Brokenhead Ojibway Nation (BON), discriminated against and harassed them on the basis of their national or ethnic origin and that the Respondent also retaliated against J.K. for filing this complaint under the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the “Act”). The Complainant asks that their name and those of their family members be anonymized in this proceeding because of a real and substantial risk that disclosure will cause undue hardship to the Complainant and their family, especially their minor child, M.K.

[3] The Complainant is not a Band member of BON. The Complainant moved to the BON to reside with their life partner, K.K., who is a member of BON. The Complainant has three children, who I agree to refer to as L.K., M.K. and N.K.

[4] The Respondent takes no position on the Complainant’s confidentiality motion. The Canadian Human Rights Commission (the “Commission”) supports the Complainant’s motion.

II. DECISION

[5] The confidentiality request is granted. The Complainant’s name as well the names of their immediate family members will be anonymized using random initials. As noted above, the Complainant’s name will now appear as J.K., J.K.’s partner will appear as K.K., and J.K.’s children, to the extent that they need to be referred to at all in the proceedings, will appear as L.K., M.K. and N.K. The latter initial, “K”, in each randomly anonymized name is of no significance, but repeats in each name simply to represent membership in J.K.’s immediate family.

III. ISSUE

[6] For a confidentiality order to be granted, the Tribunal must be convinced that the conditions for this order are met. These conditions are set out in section 52 of the Act and further elaborated on through the Tribunal's applicable rulings and decisions.

IV. ANALYSIS

A. Issue: Should the Complainant's confidentiality motion be granted?

[7] Yes, the motion should be granted.

[8] By default, Tribunal proceedings are open to the public. This is what is meant by the "open court principle", which recognizes that there is a broad public interest in having courts and tribunals that are open to the public. This openness of Tribunal proceedings is presumed and maintained unless the Tribunal has issued a confidentiality order under section 52(1) of the Act. In which case, the Tribunal may take any measures or make any order necessary to protect this confidentiality.

[9] Even though the Respondent takes no position on the motion and the Commission is in support of it, this does not settle the matter. The Tribunal must exercise its discretion in the public interest. To uphold the open court principle, the Tribunal must assess the facts it is presented with to determine if one of the conditions for permitting confidentiality at section 52(1) of the Act are met (*White v. Canadian Nuclear Laboratories Ltd.*, 2020 CHRT 5 at para 50).

[10] In this instance, the Complainant's request for confidentiality is based on subsection 52(1)(c) of the Act. The Complainant submits that there is a real and substantial risk that disclosure of their name and the names of their immediate family members will cause undue hardship to them and their immediate family members. For the Tribunal to grant this request on this basis, the Tribunal must be satisfied that the need to prevent disclosure outweighs the societal interest in a public hearing.

[11] The Tribunal's interpretation of section 52(1)(c) is guided by *Sherman Estate v. Donovan*, 2021 SCC 25 [*Sherman Estate*], wherein the Supreme Court articulated that certain limitations on court openness can sometimes be appropriate, though they must be applied sparingly.

[12] Informed by the Supreme Court of Canada's principles outlined in *Sherman Estate*, I am of the opinion that the Complainant's circumstance falls within the test set out in section 52(1)(c) of the Act.

(i) There is a real and substantial risk that the disclosure of the identity of the Complainant and their immediate family will cause them undue hardship.

[13] In *Sherman Estate*, the Supreme Court recognized that there is an important public interest in privacy that can temper the openness of courts and tribunals.

[14] The Complainant has emphasized in their submission that their request aims to protect the privacy of at least one of their children. The Complainant's submission also notes that the public interest in protecting children's privacy is well recognized and can engage section 7 of the *Canadian Charter of Rights and Freedoms* (citing *AB v. Bragg Communications Inc.*, 2012 SCC 46 at para 26; *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para 41).

[15] The Complainant submits that one of their minor children, who I agree to refer to as M.K., has been bullied, including being forced into a garbage bin in one instance and attacked with bear mace in another. I am prepared to find that there is a real risk that there is a connection between these occurrences and the present complaint filed by J.K.

[16] J.K. also states in their motion materials that "people in the community have specifically identified the Complainant's Human Rights complaint as a subject for ridicule". J.K. notes that, as their child, M.K. has been involved in material facts of this case, and they will need to be referred to in evidence before the Tribunal.

[17] Given that J.K. has asserted that they and their child have already been identified by community members as being involved with this complaint, the motion has been filed to

minimize further amplification within the community linking the proceeding to the Complainant, J.K.'s family, and one of J.K.'s children, M.K., in particular.

[18] I am persuaded that the Complainant's and their immediate family members' identities, to the extent that they need to be referred to in the proceedings, should be anonymized to protect the privacy of the Complainant's child, M.K. The child's privacy should also be protected to avoid having them possibly experience any further violence, intimidation or bullying resulting from being connected to this complaint.

[19] This is consistent with this Tribunal having already recognized the importance of protecting the privacy interests of non-parties, including children (*Kelsh v. Canadian Pacific Railway*, 2019 CHRT 51 at para 216). This Tribunal has also agreed to anonymize the names of parties and non-parties where one of those parties is a child that has been found to be vulnerable (for example, *Mr. X v. Canadian Pacific Railway*, 2018 CHRT 11 at para 17).

[20] There is also an important public interest in protecting parties and, in this case, non-parties connected to proceedings before the Tribunal from violence, intimidation and discrimination. I find that this public interest is seriously threatened by the open court principle in the present case.

[21] Parliament has emphasized the important public interest in protecting parties from the kinds of behaviours alleged by the Complainant at section 59 of the Act. This section of the Act makes clear that no person is permitted to be exposed to threats, intimidation or discrimination for initiating, giving evidence in, or in some way assisting in advancing a complaint before the Tribunal, or because a person has proposed to do so.

[22] The Complainant states that they have already experienced violence and harassment, that they would be harmed by further publication of their name, and that the publication of their name would identify their child, M.K., in their small community.

[23] These facts, as submitted by the Complainant and uncontested by the Respondent, leave me persuaded that public disclosure of the Complainant's and their immediate family

members' identities will cause the Complainant and their immediate family members undue hardship in the form of potential threats, intimidation and/or discrimination.

[24] The Tribunal takes it seriously when a party who participates in a complaint before it claims that their participation has resulted in and is likely to continue to result in them being subject to any kind of violence, harassment or intimidation. This is especially so if any of this alleged behaviour is directed towards a minor. I am further concerned that the Respondent has not contested the troubling facts alleged by the Complainant. That said, I recognize that the Respondent may not view itself as needing to respond to or contest these facts because the Respondent may not have direct knowledge or responsibility for these alleged actions.

[25] In any case, no person (no child, especially) should be subjected to violence, harassment or intimidation because of their connection to a complaint before this Tribunal. As such, I am prepared to find that there is a real and substantial risk that further harm will occur to J.K., and their immediate family members through public disclosure of their identities, and that this harm amounts to undue hardship.

[26] I find that further disclosure of the Complainant's and their immediate family members' identities is likely to expose them to further scrutiny, harassment and potential harm.

[27] For these reasons, I find that court openness poses a serious risk to important public interests.

(ii) The necessity of preventing disclosure outweighs the societal interest in a public hearing

[28] My analysis that follows is largely influenced by the Tribunal's reasons in *Starr et al. v. Stevens*, 2024 CHRT 127 at paras 17–20.

[29] The serious risk to the privacy and safety of the Complainant and their family members discussed above outweighs the societal interest in knowing their identities. The names of the Complainant and their immediate family members are not necessary for the public to have meaningful access to the Tribunal's proceedings in the present matter. I find

that anonymizing the names of the Complainant and their family members still allows the public to access the proceedings without unduly compromising the privacy or safety of the Complainant and their immediate family members.

[30] The unopposed anonymization requested by the Complainant is a minimally intrusive option for protecting them from any further harm from the disclosure of their identities. The present confidentiality order would serve to anonymize only the name of the Complainant and their immediate family members in the public version of documents filed with the Tribunal and in Tribunal rulings and decision. This leaves the rest of the information in these documents open to the public and still allows the hearing in this matter to also proceed in public.

[31] The anonymization ordered in this ruling still permits the public to scrutinize the Tribunal's decision without risking further harm to a party participating in the proceeding.

[32] Finally, I find that the names of the Complainant and those of their immediate family members by themselves are not absolutely necessary for the Tribunal to receive arguments and evidence or make appropriate findings related to the facts, issues or remedies in this matter. This is to say that I am not of the view that the anonymization granted would cause prejudice to the Respondent or the Commission.

[33] The name of the Complainant and those of their immediate family members are therefore anonymized in this ruling and any further rulings and/or decision rendered in this matter. The Complainant's name will also be anonymized in the style of cause of this matter. The Registry will anonymize these names in the Tribunal's official record.

V. ORDER

[34] The Tribunal orders the following:

- A. The Complainant must be referred to as J.K. throughout these proceedings, particularly in any written materials filed by the parties, and in all of the Tribunal's documents in the official record. If the Complainant's partner must be referred to in the evidence, they shall be referred to as K.K., and J.K.'s children must appear as L.K., M.K. and N.K. The child, M.K., is to be understood as the child that the Complainant has submitted has been bullied, was forced into a garbage bin in one

instance and attacked with bear mace. L.K. are the initials to be used to refer to the child who the Complainant has alleged was part of a 2017 conversation with a student councillor at Sergeant Tommy Prince School. The Complainant referred to this conversation in their Statement of Particulars filed with the Tribunal on January 31, 2025. By default, N.K. are the initials to be used for the third child.

- B. Within 45 days of this ruling, each party must refile with the Tribunal anonymized versions of any previously filed documents, including Statements of Particulars or submissions. They must replace the Complainant's name with the initials J.K., their partner's name with the initials K.K., and the Complainant's children's initials with L.K., M.K. and N.K., in accordance with paragraph A immediately above.
- C. The Registry will add the anonymized versions to any materials to the official record. The non-anonymized versions will be sealed by the Tribunal and not disclosed to the public.
- D. The Registry will ensure that any information requested from the Tribunal's official record complies with this ruling before it is disclosed to the public.

[35] The parties and the Tribunal will have further discussions about how this confidentiality order will affect the presentation of oral submissions at the public hearing on the merits in this matter.

Signed by

Anthony Morgan
Tribunal Member

Ottawa, Ontario
March 26, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3069-24

Style of Cause: J.K. v. Brokenhead Ojibway Nation

Ruling of the Tribunal Dated: March 26, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

J.K., Self-represented Complainant

Aby Diagne, for the Canadian Human Rights Commission

Katherine Olson, for the Respondent