

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 27

**Date:** April 9, 2025

**File No(s):** HR-DP-2975-23

[ENGLISH TRANSLATION]

**Between:**

**Jan Zawilski**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Cogeco Connexion Inc.**

**Respondent**

**- and -**

**Council of Canadians with Disabilities**

**Interested person**

**CONFIDENTIALITY ORDER**

**Member:** Sarah Churchill-Joly

[1] ON APPLICATION by the Respondent, filed in writing on April 1, 2025, requesting a confidentiality order and the sealing of the entirety of the following documents, in the event they are filed in the Tribunal's record:

- a. the exhibit entitled *Cartes illustrant les zones et régions où la technologie IPTV est disponible et indisponible, en liasse (7 cartes)* [maps illustrating zones and regions where IPTV technology is available and unavailable, in a bundle (7 maps)];
- b. the exhibit entitled *Plan de modernisation de Cogeco* [Cogeco modernization plan];
- c. the exhibit entitled *Déroulement d'un projet de mise à niveau chez Cogeco* [Cogeco upgrade project workflow];
- d. the exhibit entitled *Déroulement d'un projet de modernisation chez Cogeco* [Cogeco modernization project workflow]; and
- e. the exhibit entitled *Coûts afférents au plan de modernisation de Cogeco* [costs related to Cogeco modernization plan].

[2] Pursuant to section 52(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA); and

[3] ON CONSENT of the other parties;

[4] WHEREAS in its ruling in *Zawilski v. Cogeco Connexion Inc.*, 2025 CHRT 12, dated February 7, 2025 (the "Decision"), the Tribunal granted the request for a confidentiality order under section 52(1) of the CHRA regarding four other documents or groups of documents that the parties intended to file in evidence at the inquiry;

[5] WHEREAS the Respondent now asks the Tribunal to extend the orders provided for in paragraphs 62 and 63 of the Decision to the above documents;

[6] WHEREAS at a teleconference on April 8, 2025, the Respondent also asked the Tribunal to order:

- a. that testimony on these documents be heard *in camera*; and
- b. that the Tribunal put in place measures to ensure that the parties and the Interested Person do not disclose the contents of these documents in their final submissions;

[7] WHEREAS the Respondent filed an affidavit by Éric Pigeon, Director – IP Access, External Network Development and Standards, Cogeco Connexion Inc., in Trois Rivières, in support of its request;

[8] CONSIDERING that the following principles have been accepted and applied by the Tribunal when ruling on requests for confidentiality orders, notably in this case previously, in the Decision at paragraphs 16 to 23, 38 to 40, and 43:

- The open court principle is presumed to apply (*Attorney General of Nova Scotia v. MacIntyre*, 1982CanLII14 (SCC) at para 34) and applies to the Tribunal's legal proceedings;
- This principle must be applied with some flexibility, as there are circumstances where it must be balanced against other rights and interests whose protection may require imposing discretionary limits;
- Section 52 of the CHRA provides the Tribunal with broad powers to make any orders it considers necessary to ensure confidentiality in certain circumstances;
- The criteria under this section are consistent with those established by the Supreme Court in *Sherman (Estate) v. Donovan*, 2021 SCC 25;
- The *Sherman (Estate)* test requires the party seeking the confidentiality order to meet the following three criteria:
  - 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.
- In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, the Supreme Court stated that an important public interest may be commercial in nature and that the applicant must demonstrate:
  - 1) that the information in question has been treated at all relevant times as confidential;
  - 2) that it is of a confidential nature; and
  - 3) that it was accumulated with a reasonable expectation of it being kept confidential.

Its disclosure must also, on a balance of probabilities, be likely to harm the applicant's proprietary, commercial and scientific rights.

[9] CONSIDERING that the information is of a commercial nature, as it relates to internal processes or to the Respondent's future strategic modernization plans and projects, and that it has been treated at all relevant times as confidential information, as it has not been disclosed publicly and comes from internal databases with restricted access;

[10] CONSIDERING that the information in the documents in question is of a confidential nature, since it contains sensitive technical and financial information concerning the Respondent's internal processes and future business projects, and that it is of particular value to the Respondent, since its disclosure to the Respondent's competitors could result in a loss of differentiation or reduce the Respondent's competitive advantage;

[11] CONSIDERING that the information in the documents in question was accumulated with a reasonable expectation that it would remain confidential, as it contains internal data and discussions among a limited number of employees;

[12] CONSIDERING that, on a balance of probabilities, disclosing the information in the documents in question could jeopardize the applicant's proprietary, commercial and scientific interests, since it could give its competitors a competitive advantage in an industry with a limited number of players;

[13] CONSIDERING that the Respondent therefore meets the first criterion of the *Sherman (Estate)* test and has established that these documents contain confidential financial and technical information and trade secrets, the disclosure of which would present a serious risk to an important public interest in the form of a commercial interest and would cause it undue, irreparable hardship;

[14] CONSIDERING that this information relates to the Respondent's ability to make descriptive video available to its subscribers and enables the Respondent to raise an important defence in this case, while respecting the parties' right to a fair hearing;

[15] CONSIDERING that there are no other reasonable or efficient means of restricting the disclosure of these documents and avoiding the risk of undue hardship to the Respondent, since it is not possible to redact the documents without rendering them useless

and since it is not possible for the witness who will present them to talk about them without revealing their confidential elements;

[16] CONSIDERING that the Respondent therefore meets the second criterion of the *Sherman (Estate)* test and has established that the confidentiality order is necessary because disclosure of this information would represent a serious risk to the Respondent's important commercial interests, and there are no reasonably alternative measures to prevent this risk;

[17] CONSIDERING that the Respondent's request is targeted because it concerns only certain documents, that the parties, the Interested Person and the Tribunal will have access to them, and that the hearing and all the evidence will otherwise remain accessible to the public;

[18] AND CONSIDERING that the Respondent therefore meets the third criterion of the *Sherman (Estate)* test and has established that the benefits of the confidentiality order, including its effects on the parties' right to a fair hearing, outweigh its negative effects on open courts, including its effects on the right to freedom of expression;

[19] NOW THEREFORE, being satisfied that there is, pursuant to section 52(1)(c) of the CHRA, a serious risk that disclosing these documents would cause undue hardship to the Respondent such that the need to preserve their confidentiality outweighs the public interest in their being made available to the public;

[20] THE TRIBUNAL:

1. **GRANTS** the request for a confidentiality order;
2. **ORDERS** the sealing of the following documents, should they be filed in the Tribunal record:
  - a. the document entitled *Cartes illustrant les zones et régions où la technologie IPTV est disponible et indisponible, en liasse (7 cartes)*;
  - b. the document entitled *Plan de modernisation de Cogeco*;
  - c. the document entitled *Déroulement d'un projet de mise à niveau chez Cogeco*;

- d. the document entitled *Déroulement d'un projet de modernisation chez Cogeco*; and
  - e. the document entitled *Coûts afférents au plan de modernisation de Cogeco*.
3. **ORDERS** a ban on the disclosure, publication and distribution of these documents;
  4. **ORDERS** that at no time during the proceeding will these documents be disclosed, directly or indirectly, without the prior consent of the Tribunal, to any person or entity other than the Tribunal, the Commission, the Complainant and the Interested Person;
  5. **ORDERS** the Complainant, the Commission, the Interested Person and the Tribunal to protect the confidentiality of these documents, including in any judicial review or appeal of the decision and after the final decision has been rendered;
  6. **ORDERS** the Complainant, the Commission, the Interested Person and the Tribunal to retain any electronic version of these documents using a secure storage method;
  7. **ORDERS** the Complainant and the Interested Person to destroy these documents, including any notes, tables and memoranda prepared from them, after the final decision has been rendered and once all legal remedies have been exhausted.

[21] The Respondent asks me, should I not grant its request, to adopt confidentiality guidelines similar to those in *Eadie v. MTS Inc.*, 2013 CHRT 5. As I have already stated in the Decision, I am of the opinion that the guidelines established in that case remain applicable to the present proceeding, despite my decision to grant the Respondent's request, as they clearly and usefully describe how the Tribunal and the parties should conduct themselves in light of the confidential nature of these documents. Now therefore, the Tribunal:

8. **ORDERS** that the confidential documents be filed separately and that they be clearly marked as confidential;
9. **ORDERS** that any party wishing to make use of documents or information designated as confidential during the hearing must inform the Tribunal of its intentions in advance. The Tribunal will then exercise its discretion under section 52 of the CHRA to hear the proceedings *in camera* to the extent necessary;

9. **ORDERS** that the confidential documents not be used for any purpose other than this proceeding;
10. **ORDERS** the Commission, in its capacity as a government agency, to guarantee the confidentiality of the documents in accordance with applicable government policies and directives on the retention and protection of confidential proprietary information;
11. **ORDERS** the parties and the Interested Person to take steps to keep this information confidential in their final submissions.

*Signed by*

Sarah Churchill-Joly  
Tribunal Member

Ottawa, Ontario  
April 9, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** HR-DP-2975-23

**Style of Cause:** Jan Zawilski v. Cogeco Connexion Inc.

**Ruling of the Tribunal Dated:** April 9, 2025

**Motion dealt with in writing without appearance of parties**

**Oral and/or written representations by:**

Josée Gervais and Carla Chirila, for the Respondent

Sarah Chênevert-Beaudoin, for the Canadian Human Rights Commission

Mohammed El-Shafie and David Taylor, for the Complainant