

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 61

**Date:** June 18, 2025

**File Nos.:** T2218/4017, T2282/3718, T2395/5419, T2647/2321

**Between:**

**Ryan Richards**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**Ruling**

**Member:** Jennifer Khurana

## **I. OVERVIEW**

[1] On June 6, 2025, the Respondent, Correctional Service of Canada (CSC), discovered that a document it disclosed to the parties in the course of these proceedings (the “Proposed Exhibit”) and other materials relating to the complaints were openly shared on a public Instagram account that appears to belong to Ms. Carema Mitchell. Mr. Richards, the Complainant, has described Ms. Mitchell as his sister in his witness list.

[2] CSC seeks a number of orders on an interim and permanent basis to limit the damage created by the breach of the implied undertaking rule and reserves its right to seek a dismissal of the complaints for abuse of process should the matter not be resolved adequately by Mr. Richards or should it learn of further prejudice as a result of the breach. It also seeks a confidentiality order on the reproductions of the Proposed Exhibit found in screenshots of Ms. Mitchell’s account that it included in support of its motion.

[3] Mr. Richards does not deny that he shared the document but says that he thought that the Proposed Exhibit was part of his concluded Federal Court proceeding, and hence, already in the public domain and therefore available to share. He apologises for what he says may have been an error or oversight on his part. He says that once CSC wrote to him about the breach, he immediately sought to rectify the situation. He therefore thinks the orders CSC has requested are moot.

[4] The Commission says that it has no issue with CSC’s requests to enforce the implied undertaking rule. It has no information about whether the Proposed Exhibit was part of the Federal Court proceedings and takes no position on that point. It says it defers to the Tribunal on the interim confidentiality order sought but opposes a general request for a confidentiality order.

## **II. DECISION**

[5] The motion is allowed. Mr. Richards has breached the implied undertaking rule by sharing materials obtained during the disclosure process that were not yet evidence and not

in the public domain. I have made a number of orders regarding the breach and granted CSC's request to seal the Appendix it submitted in support of its motion that reproduced screenshots of the Proposed Exhibit.

### **III. BACKGROUND**

[6] CSC provided the other parties with voluminous disclosure of documents over the course of these proceedings. One of the documents was R-503, a letter regarding disciplinary measures imposed on a CSC employee for conduct toward Mr. Richards, dated November 3, 2015 (the 'Proposed Exhibit'). It includes the employee's personal contact information. It was served on the parties and the list of documents provided to the Tribunal in February 2024, at which time Mr. Richards was self-represented. CSC's list of proposed exhibits noted its intention to have the Proposed Exhibit sealed.

[7] To that end, CSC filed a motion on March 20, 2024 asking the Tribunal to order the Proposed Exhibit and a number of others to be treated as confidential, to not form part of the public record, or be accessible to the public. The motion referred to the implied undertaking rule of confidentiality. I dismissed the motion on April 12, 2024 as premature, finding that proposed hearing exhibits are not part of the official record, and are not accessible to the public (see *Richards v. Correctional Service Canada*, 2024 CHRT 21 at paras 2-5 (the "Confidentiality Ruling")). I noted that CSC could renew its request if and when any of the proposed exhibits were admitted into evidence.

[8] The Proposed Exhibit has not yet been admitted into evidence and is not part of the official record.

[9] CSC says that when it discovered on June 6, 2025 that the Proposed Exhibit was published on what appears to be Ms. Mitchell's public Instagram account, the posts included the words: 'Scanned with CamScanner', a mobile phone application used to scan documents and convert them into PDFs. That same day CSC sent a formal notice to Mr. Richards to immediately take all necessary action to have the material removed from any website or social media platform; not to disclose any materials covered by the implied undertaking rule to anyone except to the extent permitted by law; and to immediately take

all steps required to retrieve and destroy any and all copies of confidential materials disclosed in contravention of the implied undertaking rule; and to promptly confirm that this was done.

[10] The following day, CSC verified the Instagram account, and the case-related materials appeared to have been deleted. It later found the account no longer existed, but on June 9, 2025, it found that the account was active, but had been made private, such that CSC could not verify what was published on it. It also could not verify the full extent to which the Proposed Exhibit or other materials may have been disseminated to other accounts, social networks, web pages or other people. It was concerned that this could happen again.

#### **IV. The filing of this motion and the parties' submissions**

[11] CSC filed this motion on June 10, 2025 prior to the resumption of the hearing on June 16, 2025. As there was not enough time prior to the start of the hearing to obtain written submissions from the parties and because the issues the motion raises require me to determine them as quickly as possible, I told the parties to be prepared to address CSC's motion orally at the hearing. At the start of the hearing day on June 16, I asked Mr. Richards if he had reviewed the motion. He was not sure as he had been busy with hearing preparation, but said he was prepared to give his submissions as he recalled receiving a communication from CSC about the implied undertaking issue. I gave Mr. Richards the opportunity to make the submissions he said he was ready to make, but also provided him with the opportunity to review the full text of the motion on screen on his own and to take as much time as he needed to do so.

[12] The motion included a short affidavit in French. The Commission argued that as Mr. Richards does not speak French, providing the affidavit in French undermined his right to participate fully and meaningfully in this proceeding. CSC said that as the motion had to be brought forward as quickly as possible, it proceeded in one language only.

[13] I agreed with the Commission after hearing the parties on this point. As this is an English proceeding, and as a matter of fairness and substantive language rights, Mr. Richards should have been provided with the English version. In the interests of expediency

and to not delay the hearing and the determination of this motion, the Tribunal immediately had the short affidavit translated into English. Mr. Richards was given the opportunity to review the English version and to add any further submissions after his review of the translated affidavit. As this was a document prepared by CSC, I gave CSC the opportunity to verify the translation. Neither CSC nor the Commission had any concerns with the accuracy of the English translation.

[14] Mr. Richards and the Commission made oral submissions on CSC's motion, and I gave CSC the opportunity to reply orally. I advised that I would issue a written ruling on the motion as soon as possible.

## V. ISSUES

- 1. Did Mr. Richards breach the implied confidentiality rule by sharing materials that were provided to him during the disclosure process? If so, should the Tribunal make the orders CSC requests to limit any prejudice caused by the breach and to prevent further breaches?**
- 2. Should the reproductions of the Proposed Exhibit in support of the CSC's motion be subject to a confidentiality order and sealed from public access pursuant to sections 52(1) and 52(2) of the Act?**

## VI. LEGAL FRAMEWORK

[15] The Tribunal is master of its own procedure. It may decide all questions of law or fact necessary to determining any matter under inquiry (s.50(2) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the "Act"]). The panel may also make any order that it considers necessary against vexatious conduct or abuse of process (Rule 10 of *Canadian Human Rights Tribunal Rules of Procedure*, 2021, SOR/2021-137 [the "Rules"]).

[16] The Tribunal has an inherent power to prevent the misuse of its procedure in a way that would 'bring the administration of justice into disrepute' (*Constantinescu v. Correctional*

*Service Canada*, 2022 CHRT 13 at para 14, citing (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para 37)).

[17] Parties in legal proceedings are required to exchange information before the hearing as part of the disclosure process so that they know the case they are facing and so they can prepare for the hearing (Rules 18(1)(f), 19(1)(e), 20(1)(e) and 23(1)) of the Tribunal's Rules of Procedure, and see, for example, *Miller v. International Longshoremen's Association, ILA Local 269*, 2022 CHRT 43 at para 7 [*Miller*]).

[18] Documents exchanged during the pre-hearing disclosure process are protected by an implied undertaking of confidentiality to the Tribunal. Any documents or information that a party is required to produce may not be shared or used by the parties for any other purpose or proceeding. Only documents filed and admitted as evidence at the hearing become part of the official record and are no longer subject to the implied undertaking rule of confidentiality and can be publicly shared (*Miller* at para 65).

[19] The implied undertaking rule of confidentiality sets out that the parties are prohibited from using the information or documents obtained through discovery except for the purposes of that litigation, namely preparing for the trial and defending his or her interests at trial, and are prohibited from disclosing it to third parties, without specific leave from the court (*Juman v. Doucette*, 2008 SCC 8 at para 4 [*Juman*]; *Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, 2001 SCC 51 at para 42).

[20] The primary rationale for the implied undertaking rule is the protection of privacy. It is in general wrong that one who is compelled by law to produce documents for the purpose of particular proceedings should be in peril of having those documents used by the other party for some purpose other than the particular legal proceeding, or that they should be made available to third parties who might use them to the detriment of the party who has produced them on discovery (*Egan v. Canada Revenue Agency*, 2019 CHRT 27 at para 32, citing *Goodman v Rossi*, 1995 CanLII 1888 (ON CA) [*Egan*]). The rule seeks to facilitate discovery in giving the parties the certainty that, at this stage, the information provided will stay confidential, except with leave of the Court or Tribunal (*Juman* at paras 23-25 and 30).

[21] The fear of collateral use may also act as a disincentive to proper discovery, which is contrary to the proper administration of justice (*Egan* at para 32). The collateral use of documents and information covered by the implied undertaking rule has also been described as an abuse of process (*Perry v. Mass Fidelity Inc.*, 2019 ONSC 1134 at para 21).

[22] A breach of an undertaking to the Court or Tribunal can be remedied by a variety of means, including a stay or dismissal of the proceeding, striking a defence, or contempt proceedings for breach of the undertaking owed to the court (*Juman* at para 29).

[23] In respect of CSC's confidentiality request, the presumptive openness of Tribunal proceedings is not absolute and the Tribunal may take any measures or make any order necessary to ensure the confidentiality of the inquiry if the Tribunal is satisfied that there is a real and substantial risk that the disclosure of matters will cause undue hardship to the persons involved and that this outweighs the societal interest in a public hearing (ss. 52(1)(c) of the Act). If the Tribunal considers it appropriate, it may take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (1) ((ss 52(2) of the Act)).

[24] The confidentiality measure must be necessary to prevent the serious risk in question and no reasonable, less restrictive measure available to eliminate that risk. As a matter of proportionality, the benefits of the order must also outweigh its negative effects (*Sherman Estate v. Donovan*, 2021 SCC 25 at para 38).

## VII. ANALYSIS

### **A. Issue 1: Did Mr. Richards breach the implied confidentiality rule by sharing materials that were provided to him during the disclosure process? If so, should the Tribunal make the orders CSC requests to limit any prejudice caused by the breach and to prevent further breaches?**

[25] Yes. Mr. Richards breached the implied undertaking rule, and I find the orders requested appropriate to limit the prejudice and prevent further breach. The Proposed Exhibit was shared with Ms. Mitchell, and then published on Instagram, which is a public

social media platform. Even if the account has since been set to private, the content may still be available, albeit to a more limited number of people (170 followers according to CSC's screenshots).

[26] Mr. Richards does not deny that the Proposed Exhibit was shared and posted on social media. Rather, he apologised for sharing it and said that he thought it was part of his concluded Federal Court proceeding and therefore was already in the public domain. CSC says that it verified whether the Proposed Exhibit was filed in the Federal Court proceeding and that it was not. In the absence of any evidence to the contrary from Mr. Richards, I do not accept Mr. Richards' claim that the Proposed Exhibit was already publicly accessible.

[27] Further, while Mr. Richards says this breach was an oversight on his part, for which he apologises, he was well aware that CSC had sought a confidentiality order with respect to the sealing of the Proposed Exhibit and Mr. Richards made submissions opposing CSC's request (see the Confidentiality Ruling, at para 3). Further, CSC's submissions in support of its confidentiality motion referred to the implied undertaking rule of confidentiality, which applied to the Proposed Exhibit. In my view, to now claim that the document was already in the public domain in light of the previous confidentiality motion, submissions and the Confidentiality Ruling regarding this very document, demonstrates a reckless disregard for the requisite level of care and responsibility that all parties, including self-represented ones, must demonstrate in participating in Tribunal proceedings.

[28] CSC argues that the breach of the implied undertaking rule has grave and irreversible consequences. The Proposed Exhibit was publicly accessible on Instagram for 5 weeks and there is no way of verifying the full extent to which it was disseminated to other accounts, social networks and web pages, or to other people. While the account has been made private since CSC first communicated with Mr. Richards about this issue on June 6, there is now no way of verifying what is still being shared on it. The same is true for other potential documents that may have been shared that are not yet part of the official record.

[29] All parties are bound by the implied undertaking rule, including self-represented litigants. I agree with CSC that breaches of the implied undertaking rule can significantly undermine the parties' ability to meaningfully engage in disclosure and erode their



confidence that the information they share with each other will remain confidential, in this litigation and others. This can affect the integrity of the disclosure process which requires the parties to respect the implied undertaking rule and depends on the trust placed in it by the parties. As set out above, the fear of collateral use may also act as a disincentive to full disclosure, which is contrary to the proper administration of justice.

[30] Allowing the breach to continue would undermine the Tribunal's process and would be contrary to the interests of justice. For our systems of justice to work, all parties to proceedings have to comply with basic rules, including those that apply to documents exchanged during the disclosure process. Failing to address the breach would undermine public confidence in the Tribunal's process. It would also allow a reckless disregard for the rules that apply to parties who participate in Tribunal proceedings to go unchecked, whether they are represented or not.

[31] While the Proposed Exhibit has already been shared and published online and the damage cannot be undone, I find it appropriate to make a number of orders to limit any further prejudice to CSC and to the administration of justice, as CSC submits. I have set these out below and have also included a deadline by which Mr. Richards must confirm that he has complied with the orders.

[32] To assist in maintaining the integrity of the Tribunal's process and in the interests of promptly addressing the breach, this ruling will be copied to Ms. Mitchell who appears to have posted and shared the materials on her Instagram account.

**B. Issue 2: Should the reproductions of the Proposed Exhibit in support of the CSC's motion be subject to a confidentiality order and sealed from public access pursuant to sections 52(1) and 52(2) of the Act?**

[33] Yes. The screenshots of the Proposed Exhibit were necessary for the proof of the facts of CSC's motion. The Proposed Exhibit is not part of the official record, is not accessible to the public, and may never be. The Appendix to the motion, including the screenshots, should be sealed to ensure the motion materials do not make public the very information the motion seeks to protect and because allowing public access to a document

including personal contact information about the employee poses a serious risk to his security and safety. To fail to seal the document would render the motion meaningless.

[34] CSC asserts that the document is still protected by the implied undertaking rule and may potentially remain protected by that rule forever if never admitted into evidence.

[35] Further, CSC submits that the Proposed Exhibit discloses third party personal information that would not normally be made public and should not be part of the official record and publicly available. It argues that the information may cause undue hardship to the employee and includes sensitive information, including the individual's personal address. It argues under s.52(1)(b) that by rendering something public that is not yet in evidence, public access to the materials would cause a real and substantial risk of undermining the fairness of the inquiry, such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public. It also argues that the document should be made confidential under s.52(1)(c) because it could cause undue hardship to the individual involved given the disclosure of personal information, and that it meets the requirements of s.52(1)(d) of the Act, as it raises a serious possibility that the life or security of a person will be endangered by revealing an address for an employee who is a peace officer working with inmates.

[36] CSC further submits that the information is covered by the *Privacy Act*, RSC 1985, c P-21. It argues that the Federal Court - and by extension the Tribunal – must take reasonable precautions to avoid disclosure of certain information, relying on the Federal Court of Appeal's decision in *Chin v. Canada (Attorney General)*, 2023 FCA 144 at para 9.

[37] The Commission opposes a general request for a confidentiality order for the same reasons it opposed the request in the Confidentiality Ruling. It also says that the only aspect of the letter that should remain confidential is the personal information related to the employee's address, and that that the document is otherwise a public document.

[38] I am persuaded that any reproductions of the Proposed Exhibit (Exhibit R-503) as it appears in Appendix A to CSC's motion should be sealed and not be made accessible to the public. First, the document contains personal information and given the manner and potential reach of the sharing of the material, any risk of further exposure should be

minimized. The materials should be sealed because the disclosure of personal contact information raises a serious possibility of a security risk to the individual under s.52(1)(d). Second, in my view, this order is necessary under s.52(2) to ensure the confidentiality of the motion materials in support of CSC's application to enforce the implied undertaking rule and CSC's application under s.52(1). The Proposed Exhibit is not yet in evidence and remains subject to the implied undertaking rule. It should not be publicly accessible through the motion when it has not been admitted into evidence.

[39] Consistent with my decision in the Confidentiality Ruling, the Tribunal will address whether a version of the Proposed Exhibit should be subject to a confidentiality order if it is introduced at the hearing and is admitted as an exhibit. The Tribunal can also consider at that time whether any redactions can avoid the need for a confidentiality order.

## **VIII. ORDER**

[40] As soon as possible, and by no later than June 23, 2025, Mr. Richards must:

1. inform the Respondent and Tribunal of any material covered by the implied undertaking rule that would have been (1) disclosed to anyone except to the extent permitted by law, and/or (2) published on any website or any social media platform (including the name of the people in receipt of the material and on what website or social media platform and account the material has been published);
2. take all necessary action to have any material covered by the implied undertaking rule removed from any website or any social media platform;
3. take all steps required to retrieve and destroy any and all copies, including electronic copies, of confidential materials disclosed in contravention of the implied undertaking rule;
4. obtain undertakings from any person to whom a copy of the confidential materials disclosed in contravention of the implied undertaking rule have been provided to return them and remove them from any website or any social media platform without delay, and destroy any electronic copies.

[41] By no later than June 23, 2025, Mr. Richards must confirm to the Tribunal and the Respondent that he has complied with the orders set out in paragraph [40];

[42] Any individual made aware of this order must:

1. immediately inform the Respondent and Tribunal of any material covered by the implied undertaking rule that would have been (1) disclosed to them except to the extent permitted by law, and/or (2) published on any website or any social media platform (including on what website or social media platform and on what account the material has been published);
2. immediately take all necessary action to have any material covered by the implied undertaking rule removed from any website or any social media platform;
3. not disclose any materials covered by the implied undertaking rule to anyone except to the extent permitted by law, or use such material;
4. immediately take all steps required to return any and all copies of confidential materials disclosed in contravention of the implied undertaking rule, and destroy electronic copies of the material;
5. provide this order to any person to whom a copy of confidential materials disclosed in contravention of the implied undertaking rule have been provided;
6. confirm as soon as possible to the Tribunal and Respondent that this has been done.

[43] The Registry will send a copy of this ruling to Ms. Mitchell who appears to have posted and shared the materials on her Instagram account;

[44] Mr. Richards must immediately transmit the Tribunal's order to any other person to whom a copy of the confidential materials disclosed in contravention of the implied undertaking rule may have been provided and confirm to the Tribunal and Respondent that this has been done or that he has not disclosed the materials to anyone other than Ms. Mitchell;

[45] Mr. Richards must not disclose any materials covered by the implied undertaking rule to anyone except to the extent permitted by law;

[46] The Tribunal makes the following orders under s. 52 of the Act:

1. Exhibit R-503 as it appears in the Appendix to CSC's motion will be sealed and may not be released to the public.

*Signed by*

Jennifer Khurana  
Tribunal Member

Ottawa, ON  
June 18, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File Nos.:** T2218, T2282, T2395, T2647

**Style of Cause:** Ryan Richards vs Correctional Service Canada

**Ruling of the Tribunal Dated:** June 18, 2025

**Date and Place of Hearing:** Ottawa, June 16, 2025

#### **Appearances:**

Ryan Richards, Self-represented

Ikram Warsame and Sameha Omer for the Canadian Human Rights Commission

Dominique Guimond, for the Respondent