Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 89
Date: September 8, 2025
File No(s).: T2669/4521

[ENGLISH TRANSLATION]

Between:

Sylvain Morel

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Global Affairs Canada

Respondent

ORDER TO PROTECT THE CONFIDENTIALITY OF CERTAIN INFORMATION

I. OVERVIEW

[1] The Complainant, Mr. Morel, filed a motion under subsection 52(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA), to protect information contained in the following documents once they have been filed with the Tribunal (the "motion"):

a. **Document P-66.1 –** the Complainant's medical file maintained by Dr. Jean Bouthillier, for the period from August 2010 to August 2013

b. **Document P-66 –** the Complainant's medical file maintained by Dr. Jean Bouthillier, for the period from August 2013 to August 2022

c. **Document P-67 –** the progress note dated February 3, 2015, in the Complainant's medical file maintained by Dr. Bergeron, for the period from June 2016 to August 2016

d. **Document P-67.1 –** the Complainant's medical file maintained by Dr. Bergeron, for the period from August 2010 to August 2013

e. **Document P-68 –** the medical report by Dr. Edouard Cattan dated July 23, 2014

f. **Document P-69 –** the Complainant's medical file maintained by psychologist Monique Rochette-Zegers, for the period from July 15, 2014, to July 24, 2017

g. **Document P-70.1 –** the medical file of Dr. Ghislain Devroede, for the period from August 2010 to August 2013

h. **Document P-70 –** the medical file of Dr. Ghislain Devroede, for the period from August 2013 to August 2022

i. **Document P-71 –** the report by Ms. Lucienne Azzie dated March 29, 2014

j. **Document P-72 –** the report by Ms. Lucienne Azzie dated May 9, 2014

k. **Document P-73 –** the Complainant's medical file maintained by Dr. George Adamo, for the period from August 1, 2010, to July 2025

l. **Document P-74 –** the Complainant's medical file maintained by Dr. Carmel, for the period from August 1, 2010, to June 2025

m. The supplementary report by Dr. Morissette, dated July 28, 2025

n. **Document SM-1** – the affidavit filed in support of the Complainant's motion for a confidentiality order, dated August 11, 2025

[2] More specifically, the Complainant is asking for authorization to seal the unredacted documents P-66 to P-70 to limit access to the following persons:

- Counsel for the parties
- Dr. Bergeron
- Dr. Morissette
- Dr. Jean Bouthillier

[3] He is also asking that the following passages from those documents be redacted in a publicly accessible version:

a. Part of the first and second lines of the note dated February 4, 2015, on page 2 of document P-67

b. The eighth and ninth lines of the note dated August 5, 2014, on page 3 of document P-69

c. The second and third lines of the note dated August 5, 2014, on page 4 of document P-69

d. The ninth line of the note dated August 19, 2014, on page 4 of document P-69

e. The fifth line of the note dated August 27, 2015, on page 17 of document P-69

f. Documents P-70 and P-70.1 in their entirety

g. The fourth paragraph of the supplementary report by Dr. Morissette, dated July 28, 2025

h. Paragraphs 9 to 21 of document SM-1

[4] The Complainant argues that these documents contain confidential information and that making them public would cause a real and substantial risk of disclosure of personal matters, including the following:

a. Details of the state of health of third parties to the dispute

b. Extremely sensitive information relating to events experienced by the Complainant when he was a minor

c. Extremely sensitive or objectively embarrassing information

[5] The Complainant also argues that documents P-66 to P-74 contain information that is not relevant to resolving the dispute, such as his health insurance number, the administrative file numbers assigned to him, the names of his contacts and his telephone number, which should also be redacted.

[6] Finally, the Complainant argues that two passages in the progress note dated June 11, 2019, in document P-67 are protected by solicitor-client privilege.

[7] The Respondent takes no position in response to this motion.

II. RULING

[8] The confidentiality order is granted.

III. LEGAL FRAMEWORK AND ISSUES

[9] The open court principle is presumed to apply (*Attorney General of Nova Scotia v. MacIntyre*, 1982 CanLII 14 (SCC) at para 34). This principle is essential to the proper functioning of Canadian democracy and is inextricably tied to freedom of expression (*A.B. v. Bragg Communications Inc.*, 2012 SCC 46 at para 11) and to the public's right to obtain information about the courts in the first place, which is guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms* (*Canadian Broadcasting Corp. v. New Brunswick*

(Attorney General), 1996 CanLII 184 (SCC) [*New Brunswick*] at para 23). It applies to the Tribunal's legal proceedings.

[10] Canadian law recognizes that the open court 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.

[11] In the context of the CHRA, this discretion is provided for in section 52. This section gives the Tribunal broad powers to take any measures and make any order it considers necessary to ensure the confidentiality of an inquiry in certain circumstances. The Tribunal may, in particular, use these powers when there is a real and substantial risk that the disclosure will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public (s. 52(1)(c) of the CHRA).

[12] Paragraph 52(1)(c) is worded as follows:

52 (1) An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that . . .	52 (1) L'instruction est publique, mais le membre instructeur peut, sur demande en ce sens, prendre toute mesure ou rendre toute ordonnance pour assurer la confidentialité de l'instruction s'il est convaincu que, selon le cas : (…)
(c) there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; . . .	c) il y a un risque sérieux de divulgation de questions personnelles ou autres de sorte que la nécessité d'empêcher leur divulgation dans l'intérêt des personnes concernées ou dans l'intérêt public l'emporte sur l'intérêt qu'a la société à ce que l'instruction soit publique; (…)

[13] These legislative criteria established by the Supreme Court of Canada in in *Sherman (Estate) v. Donovan*, 2021 SCC 25 [*Sherman (Estate)*] are, on the whole, consistent with the statutory criteria set out in the CHRA and can therefore inform the analysis. In light of paragraph 38 of that decision, a person asking the Tribunal to exercise its discretion to limit

the open court presumption has the burden of showing that the following three prerequisites have been met:

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.

[14] Only where all three of these prerequisites have been met can a limit on openness properly be ordered. The Supreme Court has clarified that this test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Sherman (Estate)* at para 38, citing *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at paras 7 and 22).

IV. ANALYSIS

A. Issue No. 1: Is there a real and substantial risk that publicly disclosing the information identified in the motion will cause the Complainant undue hardship, which poses a serious risk to an important public interest?

[15] In this case, the Complainant states that disclosing the confidential information he wants to redact in certain passages of documents P-67 and P-69, Dr. Morissette's supplementary report of July 28, 2025, the affidavit sworn in support of the motion (document SM-1), and the entirety of documents P-70 and P-70.1 would present a serious risk to an important public interest, namely, the protection of his privacy and dignity. This confidential information is sensitive medical information about his health and biographical information related to his childhood. He argues that, since it would undermine his dignity and psychological integrity, making it public would cause him undue hardship.

[16] In an affidavit submitted in support of his motion, certain paragraphs of which are also the subject of a confidentiality application, the Complainant provided a detailed explanation of the nature of the sensitive information in question and the hardship that

disclosing it would cause to him personally and to his relationships with third parties. The Tribunal was also able to consult an unredacted copy of the evidence in question.

[17] Privacy is a fundamental value necessary to the preservation of a free and democratic society, but some degree of privacy loss is often inherent in any legal proceeding open to the public. Dignity, on the other hand, is a related but narrower concern than privacy and is a matter that concerns society at large (*Sherman (Estate)* at para 33). In short, there is no doubt that the Complainant raises an important public interest. It remains to be seen whether there is a "serious risk" that it will be compromised, and whether the Complainant has demonstrated that "undue hardship" would result.

[18] The Tribunal must thus reconcile, just as the Supreme Court made clear in *Sherman (Estate)* at para 31, the Complainant's right to privacy, which is not absolute, with the principle, which is not without exceptions.

(i) Has the Complainant demonstrated a "serious risk"?

[19] In *Sherman (Estate)*, the Supreme Court stated that the "important public interest in privacy, as understood in the context of the limits on court openness, is aimed at allowing individuals to preserve control over their core identity in the public sphere to the extent necessary to preserve their dignity" (at para 85). However, the risk to this interest will be "serious" only when the information that would be disseminated as a result of court openness is "sufficiently sensitive" such that disclosure can be shown "to meaningfully strike at the individual's biographical core in a manner that threatens their integrity" (*Sherman (Estate)* at para 85).

[20] The Tribunal finds that the Complainant has met this criterion. The evidence described is obviously of a sensitive nature and relates to the dignity of the Complainant. The fact that some of these sensitive elements took place during his childhood reinforces, in my opinion, their intimate and confidential nature. There is no doubt in my mind that disclosing them would pose "a serious risk" to his privacy and dignity.

(ii) Has the Complainant demonstrated “undue hardship”?

[21] The French rendering of paragraph 52(1)(c) of the CHRA does not explicitly refer to the notion of undue hardship. However, the Tribunal has already determined that this requirement, expressed by the phrase “undue hardship” in the English version of this provision, is very similar to the requirement set out by the Supreme Court in paragraph 3 of *Sherman (Estate)*, according to which a high bar must be met to limit court openness (*Abdul-Rahman v. Transport Canada*, 2024 CHRT 7 au para 17; see also*Rizzo v. Air Canada*, 2024 CHRT 90 at para 16). As part of its analysis, the Tribunal must therefore determine whether the Complainant has demonstrated undue hardship.

[22] The case law recognizes that some degree of privacy loss—resulting in inconvenience, even in upset or embarrassment—is inherent in any legal proceeding open to the public (*New Brunswick* at para 40, as cited in *Sherman (Estate)* at para 31). Undue hardship therefore requires, as this Tribunal stated in *Peters v. United Parcel Service Canada Ltd. and Gordon*, 2022 CHRT 25 at para 40 [*Peters*], “something more than some hardship, embarrassment, or the normal stresses of being a party in a public legal proceeding. There is an aspect of accountability, as well, coincident with the expectation that our public legal system will be transparent”. It requires “something more than the discomfort that parties may feel respecting the prospect of third-party judgement of and societal interest in their acts, omissions, allegations and defences in a manner that is attributed to them”. This is a high bar, which is met where the information in question strikes at the core identity of the individual concerned (*Sherman (Estate)* at para 34).

[23] The Tribunal is satisfied that, in this case, the Complainant has demonstrated that there is a serious risk that public disclosure of this information will cause him undue hardship that is more than “some hardship” or “embarrassment, or the normal stresses” that parties to a public legal proceeding can expect, as described in *Peters*. The Complainant describes the [TRANSLATION] “immense stress” associated with the possibility of this information being made public. He speaks of serious damage to his psychological integrity and a risk of ties with third parties being severed, causing him and others irreparable harm. As the Supreme Court recognized in paragraph 72 of *Sherman (Estate)*, where dignity is impaired, the impact

on the individual is not theoretical. It can have real human consequences, including psychological distress. The Tribunal therefore finds that the hardship in question would indeed be undue.

B. Issue No. 2: Is the confidentiality order necessary in the sense that no alternative measures would prevent the real and substantial risk of undue hardship to the Complainant while preserving the values underlying the open court principle?

[24] At this stage of the analysis, I need to determine whether there are reasonable alternatives to the confidentiality order and its scope in order to protect the Complainant's privacy while ensuring that it is not overly broad.

[25] I also consider that there are no other reasonable alternatives that would allow these documents to be disclosed without revealing their confidential aspects and that, as a result, the order is necessary. The Complainant asks that documents P-70 and 70.1 be redacted in their entirety, as they cannot be partially redacted without making their contents completely incomprehensible. The Complainant also asks that specific passages be redacted from the other documents such that the public will still have access to most of each document concerned. The Supreme Court stated, in paragraph 66 of *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*], that at this stage of the analysis, "[t]he test asks whether there are reasonably alternative measures; it does not require the adoption of the absolutely least restrictive option". I find that, in this case, the measures requested by the Complainant are not only the most reasonable option, but also the least intrusive way possible of protecting the information that is the subject of the motion.

[26] In the circumstances of this case, I therefore find that the confidentiality order is necessary because disclosing the confidential documents concerned would represent a serious risk to the Claimant's privacy, and because there are no other reasonable alternatives.

C. Issue No. 3: Does the real and substantial risk of hardship outweigh the societal interest in knowing the information contained in the documents concerned, that is, do the benefits of the order outweigh its negative effects?

[27] At this stage, I have to weigh the salutary effects of the confidentiality order, including its effects on the parties' right to a fair trial, against its deleterious effects, including its effects on the right to free expression, which in turn is connected to the principle of open and accessible proceedings. This balancing will ultimately determine whether the confidentiality order ought to be granted (*Sierra Club* at para 69).

[28] I am persuaded that the requested measures to address the hardship that the Complainant would experience if the assessment documents were publicly revealed outweigh the societal interest in a public inquiry. The Tribunal, the Respondent's counsel and Drs. Bergeron, Morissette and Bouthillier will have unredacted access to the documents in question, and the parties will be able to file the redacted versions as public evidence at the hearing. The Complainant's right to privacy and dignity will be preserved to avoid causing him any hardship. The requested confidentiality order is the best way to achieve this result.

[29] The negative effects of the order and the limit on court openness are minimal. The inquiry will remain public, and the public will have access to most of the Complainant's medical records, enabling them to follow the proceedings, understand the reasoning behind the Tribunal's decision and generally undertake their own search for the truth and the common good. The Complainant, the parties' representatives and the witnesses concerned will have the opportunity to refer to and test the protected information during the hearing and to make their case, in accordance with the principles of procedural fairness. The parties' representatives and the witnesses concerned will, however, be required not to disclose protected information publicly.

[30] When I weigh the sensitive nature of the content in question, the hardship that might result from its disclosure, the limited scope of the order and the maintenance of procedural fairness that it ensures, I conclude that the interference with the open court principle is justified and that the Complainant meets the necessary conditions for granting his request.

D. Redaction of information protected by solicitor-client privilege

[31] The Complainant asks that the Tribunal allow him to redact two passages from **document P-67** that describe a confidential conversation between him and his lawyer. Under subsection 50(4) of the CHRA, the Tribunal may not admit or accept in evidence anything that would be inadmissible in a court by reason of any privilege. This standard applies to, among other things, communications protected by solicitor-client privilege. The Complainant can and must redact the privileged information in question.

E. Other redactions

[32] The Complainant asks for the Tribunal's authorization to redact confidential information not relevant to the resolution of this dispute, such as his telephone number and health insurance number, the administrative file numbers assigned to him and the names of contact persons in his medical documents. This information can be found in documents P-66 to P-74.

[33] Although the Complainant raises it in the context applying paragraph 52(1)(c) of the CHRA, I find that the passage dealing with the state of health of third parties to the dispute found in the February 3, 2015 progress note in document P-67 also constitutes information that is not relevant to the dispute.

[34] The protection of this irrelevant information is not covered by paragraph 52(1)(c) of the CHRA. The Tribunal addressed the issue of redacting irrelevant content from medical records in *Cherette v. Air Canada*, 2024 CHRT 8, in which it stated that this exercise is not always necessary or desirable. Indeed, as the Tribunal put it in paragraph 62 of that case, "[i]f parties, courts and tribunals adopted the practice of ensuring that every document disclosed in a legal proceeding was redacted of irrelevant content, our legal system would grind to an abrupt halt. It is neither realistic nor sustainable for the courts or for this Tribunal to adopt such a practice. Instead, the parties and their lawyers operate on an implicit understanding that irrelevant content that does not create a problem for a party to the proceeding will be ignored". The Tribunal noted that for the parties to be permitted to make

redactions, there must be an interest at stake that must be protected and goes beyond the irrelevance of the content (*Cherette* at para 62).

[35] In this case, the Complainant wants to block access to irrelevant personal information, the disclosure of which would put him at risk of fraud or identity theft and violate the dignity of a third party. It is a matter of privacy. That said, privacy has been recognized by the courts as a legitimate interest that should be protected (*Cherette*, at paras 63 and 64).

[36] The only exception to this conclusion in this case concerns the names of contact persons. I have not noted any redaction of this type of information in the documents in question, but I would point out that making them public would not, in my opinion, be an invasion of privacy. The Complainant must therefore avoid redacting them.

[37] I therefore conclude that it is appropriate for the Complainant to redact this information, in application of these principles.

V. ORDER

[38] For these reasons, 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. Document P-66.1 – Complainant’s medical file maintained by Dr. Jean Bouthillier, for the period from August 2010 to August 2013
    b. Document P-66 – Complainant’s medical file maintained by Dr. Jean Bouthillier, for the period from August 2013 to August 2022
    c. Document P-67.1 – Complainant’s medical file maintained by Dr. Bergeron, for the period from August 2010 to August 2013
    d. Document P-67 – Complainant’s medical file maintained by Dr. Bergeron, for the period from June 2016 to August 2016
    e. Document P-68 – Medical report by Dr. Edouard Cattan dated July 23, 2014

f. Document P-69 – Complainant's medical maintained by psychologist Monique Rochette-Zegers, for the period from July 15, 2014, to July 24, 2017

g. Document P-70.1 – Medical file of Dr. Ghislain Devroede, for the period from August 2010 to August 2013

h. Document P-70 – Medical file of Dr. Ghislain Devroede, for the period August 2013 to August 2022;

3. ORDERS a ban on the disclosure, publication and distribution of these documents, until the Tribunal orders otherwise;

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

   a. the Tribunal;

   b. the Complainant;

   c. counsel for the parties;

   d. Dr. Bergeron;

   e. Dr. Morissette; and

   f. Dr. Jean Bouthillier;

5. ORDERS that any party wishing to rely on these documents during the hearing and wishing to ask the Tribunal to exercise its discretion under section 52 of the CHRA to hear the proceedings in camera must notify the Tribunal of its intentions in advance;

6. ORDERS the Complainant, counsel for the parties, Dr. Bergeron, Dr. Morissette and Dr. Jean Bouthillier, and the Tribunal, to protect the confidentiality of these documents, including for the duration of any judicial review or appeal of the decision and after the final decision has been rendered;

7. ORDERS the Complainant, counsel for the parties, Dr. Bergeron, Dr. Morissette and Dr. Jean Bouthillier, and the Tribunal, to retain any electronic version of these documents using a secure storage method;

8. ORDERS counsel for the parties, Dr. Bergeron, Dr. Morissette and Dr. Jean Bouthillier 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;

9. ORDERS the redaction of the following passages from these documents, in a publicly accessible version:

a. Part of the 1st and 2nd lines of the note dated February 4, 2015, on page 2 of document P-67

b. The 8th and 9th lines of the note dated August 5, 2014, on page 3 of document P-69

c. The 2nd and 3rd lines of the note dated August 5, 2014, on page 4 of document P-69

d. The 9th line of the note dated August 19, 2014, on page 4 of document P-69

e. The 5th line of the note dated August 27, 2015, on page 17 of document P-69

f. Documents P-70 and P-70.1 in their entirety

g. The 4th paragraph of Dr. Morissette's supplementary report dated July 28, 2025

h. Allegations 9 to 21 of document SM-1;

10. ORDERS the redaction of all personal identifying information not relevant to the resolution of the dispute, the publication of which would violate the privacy of all exhibits filed; and

11. ORDERS the redaction of the two passages in the June 11, 2019 progress note in document P-67 that are protected by solicitor-client privilege.

September 8, 2025

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Order by:
Sarah Churchill-Joly
Member of the Canadian Human Rights Tribunal

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2669/4521

Style of Cause: Sylvain Morel v. Global Affairs Canada

Ruling of the Tribunal Dated: September 8, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Alex Naud-Vincent, for the Complainant