Federal Court  Cour fédérale

Date: 20210922

Docket: T-325-20

Citation: 2021 FC 979

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 22, 2021

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MICHEL POTHIER

Applicant (Respondent)

and

ATTORNEY GENERAL OF CANADA

Respondent (Moving Party)

ORDER AND REASONS

[1] This Court has before it a motion in writing for a confidentiality order pursuant to sections 151 and 152 of the *Federal Courts Rules*, SOR/98-106 [the Rules], as well as an order for an extension of time and for the establishment of the Attorney General of Canada as respondent.

[2] The moving party seeks a confidentiality order on the basis that Part XX of the *Canada Occupational Health and Safety Regulations*, SOR/86-304 [the Regulations] requires the employer to protect the confidentiality of investigations into allegations of workplace violence. (The Regulations came into force on January 1, 2021 and replace Part XX of the *Canada Occupational Health and Safety Regulations*, portions of the *Canada Labour Standards Regulations*, and several occupational health and safety regulations in the marine, aviation, oil and gas, and railway industries.)

[3] Given the confidentiality of investigations into allegations of workplace violence and the risk of retaliation for disclosing the identity of those involved in the investigation, the moving party submits that a confidentiality order is appropriate in this case.

I. Background

[4] On November 30, 2017, the applicant submitted a workplace violence complaint against several individuals employed by the Department of Natural Resources Canada under Part XX of the Regulations. In June 2019, the Department appointed an independent investigator to look into the complaint. In October 2019, the Department inadvertently forwarded an unredacted copy of the investigation report to the applicant. This fact is not determinative in this case.

[5] On November 4, 2019, the applicant submitted a complaint that the investigator was not impartial and had failed to follow the principles of procedural fairness. The complaint was dismissed in February 2020. On March 2, 2020, the applicant submitted an application for judicial review of the report and investigation.

[6] As part of his application for judicial review, the applicant is seeking disclosure of documents that contain the identities of participants in the investigation of the complaint. In his notice of application, he stated that he seeks disclosure of [TRANSLATION] "[a]ll of the investigator's notes from ExpertiseH2H relating to the interviews of witnesses and respondents conducted during the workplace violence/harassment investigation".

[7] On July 17, 2020, the respondent submitted a motion for order of confidentiality under sections 151 and 152 of the Rules. He argued that it would not be in the public interest for identifying information about individuals involved in a workplace violence complaint to be made public without the consent of those individuals because of the risk of retaliation to which they might be exposed.

[8] The respondent is seeking a limited confidentiality order governing the use, disclosure and release of documents and other materials from the investigation that may reveal the names of witnesses and subjects who have not consented to disclosure of their identity. He does not object to the disclosure of the contents of the file, except for information that may identify the individuals involved.

II. Issues

[9] The main issue raised in this motion is whether the Court should issue a confidentiality order.

[10] The motion raises two additional collateral issues: (i) the timeliness of the filing of the respondent's record, and (ii) the amendment of the style of cause.

III. Analysis

A. *General principles for confidentiality orders*

[11] A court hearing a motion for confidentiality must apply the test set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*] at para 53, and elaborated in *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman*] at paras 37 and 38:

> [37] Court proceedings are presumptively open to the public.
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> [38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order. Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
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> > 1) court openness poses a serious risk to an important public interest;
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> > 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
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> > 3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
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> Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments.
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> [Citations omitted.]

[12] In *Desjardins v Canada (Attorney General)*, 2020 FCA 123 [*Desjardins*], the Federal Court of Appeal (FCA) considered these principles in response to a confidentiality motion brought in a case involving alleged wrongdoing disclosed under the *Public Servants Disclosure Protection Act*, SC 2005, c 46 [the PSDPA]. It should be noted at the outset that *Desjardins* precedes *Sherman*.

[13] At paragraph 85 of his reasons in *Desjardins*, Justice Nadon summarizes what must be taken into account in considering a motion for confidentiality:

> I am of the opinion that the exercise of discretion under Rule 151 requires that a judge analyze all of the relevant facts and all of the circumstances that may show whether or not there is harm to the important interest sought to be protected and thus make the appropriate order. In particular, the exercise of discretion under Rule 151 requires that a court hearing a motion for an order of confidentiality weigh all of the relevant factors, including the objectives and particular provisions of the legislative or regulatory scheme, the public interest at stake in the case, the constitutional rights at issue (privacy, freedom of expression, the open court principle) as well as the information that is already public.

[14] *Desjardins* concerned an application for judicial review of a decision of the Commissioner. After an investigation, the Commissioner found that the appellant had committed wrongdoings under the PSDPA. The appellant submitted an application for judicial review of that decision and sought a copy of all documents and information related to the investigation.

[15] The respondent, the Commissioner, objected to the disclosure of the investigation file, noting that sections 11, 22 and 44 of the PSDPA impose a duty on chief executives in the public service, and the Commissioner, to protect the identity of disclosers and witnesses of wrongdoing. To meet these obligations, the Commissioner sought a confidentiality order under sections 151 and 152 of the Rules.

[16] The FCA allowed the appeal on the basis that the evidence of the risks associated with disclosure was too general and did not meet the standard of "well grounded" or convincing evidence (at para 87). The essence of the FCA's decision is explained in the following passage:

> [90] In my opinion, the Judge confused an important interest, that is, protecting persons who make a disclosure and witnesses, with a serious risk of harm that could result from disclosing their identity. In other words, the fact that Parliament stated in the Act that in order to maintain public confidence in the integrity of the public service it was necessary to establish disclosure and protection procedures does not lead to the conclusion that in all cases where a person made a disclosure the public will not be entitled to know the identity of the persons who made the disclosure and the witnesses. It follows from that observation that Parliament did not take into account Rule 151, which stipulates, as I indicated above, that the Court, before making a confidentiality order, "must be satisfied that the material should be treated as confidential".
>
> [91] Consequently, given the strong presumption that courts should be open and that reporting of their proceedings should be uncensored, the Judge had to consider whether, in the case before him, there was or could be a serious risk of harm to the persons who made the disclosure and the witnesses if their identities were made public. In my opinion, the Judge failed to consider this issue because he found that the existence of the Act was sufficient in order to find that there was a serious risk of harm.

[17] One of the issues in this case is whether the clarification of the test in *Sherman* has any bearing on the principles established in *Desjardins.*

B. *Application in this case*

(1) Positions of the parties

[18] The moving party submits that *Desjardins* is distinguishable from the present case on the basis that in this case the evidence establishes not only that four individuals did not consent to

the disclosure of their identity, but also that two of them expressly indicated in writing that they did not consent to the disclosure of their identifying information to the applicant. The moving party argues that this is convincing evidence, which was not before the Court in *Desjardins*.

[19] In addition, the moving party argues that the FCA did not consider the workplace violence prevention regime established by the Regulations. The FCA stated, in paragraph 85 of its reasons in *Desjardins*, that the purposes and provisions of the statutory regime may be considered when a tribunal is assessing a motion on section 151 of the Rules. The moving party noted that the persons affected by the investigation had a reasonable expectation of anonymity outside of the investigation under the provisions of the Regulations, in particular subsection 20.9(3) and paragraph 20.9(5)(b):

20.9 (3) If the matter is unresolved, the employer shall appoint a competent person to investigate the work place violence and provide that person with any relevant information whose disclosure is not prohibited by law and that would not reveal the identity of persons involved without their consent.	**20.9 (3)** Si la situation n'est pas ainsi réglée, l'employeur nomme une personne compétente pour faire enquête sur la situation et lui fournit tout renseignement pertinent qui ne fait pas l'objet d'une interdiction légale de communication et qui ne révèle pas l'identité de personnes sans leur consentement.
. . .	. . .
(5) The employer shall, on completion of the investigation into the work place violence,	**(5)** Sur réception du rapport d'enquête, l'employeur:
. . .	. . .
(b) provide the work place committee or the health and safety representative, as the case may be, with the report of the competent person, providing information whose disclosure is not prohibited by law and that would not reveal the identity of	**b)** transmet le dossier au comité local ou au représentant, pourvu que les renseignements y figurant ne fassent pas l'objet d'une interdiction légale de communication et qu'ils ne révèlent pas l'identité de

persons involved without their consent. . .	personnes sans leur consentement. . .

[20] According to the moving party, the intention to establish a confidential procedure to encourage witnesses to participate in a workplace violence investigation is clear from the Regulations:

> [TRANSLATION]
>
> Serious harm will result from disclosure of the unredacted record to the applicant. If the unredacted record is disclosed to the applicant, the workplace violence prevention regime will be compromised with potentially dangerous consequences. Moreover, the order sought will have minimal impact on procedural fairness and court openness. The applicant will have access to the information gathered by the appropriate person with the exception of the identifying information of four individuals. Furthermore, the disclosure of the identifying information of these individuals will not serve any public interest since they are third parties not involved in the present litigation.
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> [Response of the respondent (moving party), at para 15.]

[21] However, the applicant objects to the motion on the basis that there is a public interest in the applicant's case. He also argues that the moving party is seeking such an order because he does not want the media pick up the story. Further, according to the applicant, there is no risk of retaliation or harm to the respondents and witnesses because they obeyed their boss's orders. The applicant names the two individuals who did not consent to disclosure, noting that he knows their names even though the investigator's notes are redacted. He argues that he needs the full notes in order to present his case in the judicial review proceedings.

(2) Discussion

[22] In applying the guidelines set out in *Sherman*, three questions must be considered:

i. Does court openness pose a serious risk to an important public interest?

ii. Is the order sought necessary to address this risk in the absence of other reasonable measures?

iii. Do the benefits of the order outweigh its negative effects?

a) *Does the evidence demonstrate a serious risk?*

[23] Certainly, the prevention of violence in the workplace is in the public interest, which goes beyond the personal or individual interests of the employer or employees. This is reflected in Part XX of the Regulations. In *Sherman,* the Supreme Court of Canada has already recognized "that there is an important public interest in protecting individuals from physical harm" (para 96).

[24] The importance and nature of the problem of workplace violence, and the public interest in measures to prevent and reduce it, are quite clear. As stated in the *Regulatory Impact Analysis Statement* (SOR/2008-148, at p 1214) [RIAS], "[t]he protection of workers from violence at work remains a prevalent issue across Canada. . . . However, employers who have implemented prevention programs and their employees have indicated that there is a need for increased emphasis on prevention and protection of employees, particularly related to enforcement". The Regulations impose a duty on the employer to investigate each incident.

[25] The issue of procedural confidentiality was raised during the public consultations on the draft Regulations. According to the RIAS, "[i]t was . . . agreed upon that security sensitive information that may endanger the health, safety and security of employees or the public would

not be released" (p 1218). The provisions of the Regulations, in particular subsections 20.9(3) and (5), reflect this commitment.

[26] Given the subject matter of the proceeding, namely workplace violence, it is easy to see why the provisions of the Regulations place such importance on maintaining the confidentiality of investigations of complaints of workplace violence. The risk of harassment, intimidation, or potential violence associated with the disclosure of a potential witness's identity explains the reluctance of the witness to participate in an investigation if he or she is not assured that his or her name will not be disclosed (to the person who allegedly committed the acts or to the victim) without his or her consent. It is for this reason that specific confidentiality obligations are contained in the provisions of Part XX of the Regulation.

[27] In light of the above, I have no difficulty in concluding that the prevention of violence in the workplace is the type of important public interest that may warrant the protection of a confidentiality order in appropriate circumstances.

[28] The question is whether the evidence meets the test of demonstrating that the open court principle poses a serious risk to the public interest. As the Supreme Court stated in *Sherman*, at paragraph 42, while the determination of what is a significant public interest "can be done in the abstract at the level of general principles that extend beyond the parties to the particular dispute . . . , whether that interest is at 'serious risk' is a fact-based finding that, for the judge considering the appropriateness of an order, is necessarily made in context".

[29] The starting point for the analysis is the recognition in our jurisprudence that "the open court principle is protected by the constitutionally-entrenched right of freedom of expression

and, as such, it represents a central feature of a liberal democracy. . . . Accordingly, there is a strong presumption in favour of open courts" (*Sherman*, at paras 1–2). This recognition has influenced the approach to deciding whether a serious risk has been established; as stated in *Sherman*, at paragraph 43, "the requirement that a serious risk to an important interest be demonstrated imposes a meaningful threshold necessary to maintain the presumption of openness".

[30] The fact that the disclosure of personal information may cause inconvenience is not sufficient to rebut this presumption. The law requires proof of greater harm; otherwise, it would be too easy to justify holding all court proceedings in camera. In contrast, in *Sherman*, the Supreme Court recognized that the disclosure of highly personal "biographical information" may create a sufficiently serious risk to justify a confidentiality order.

[31] In *Sherman*, the Supreme Court provides guidance as to the kinds of factors that are relevant in determining whether a serious risk has been established. These factors include the extent to which the information would be disseminated without specific restrictions (para 80); the extent to which the information is already in the public domain (para 81); the likelihood that the apprehended dissemination of the information will actually occur (para 82); and whether "the threatened loss of control over information about oneself is so fundamental that it strikes meaningfully at individual dignity. These circumstances engage 'social values of superordinate importance' beyond the more ordinary intrusions inherent to participating in the judicial process" (para 84).

[32] Applying these parameters to the present case, and exercising my discretion under section 151 of the Rules, I find that there are several considerations that support the order sought.

[33] First, the legal context underscores the importance of protecting the identity of persons involved in complaints of workplace violence. I agree with the respondent that the intention to maintain the anonymity of participants in a workplace violence investigation is reflected in the provisions of the Regulations. I also accept that the purpose of these provisions is to encourage individuals to report, or testify about, incidents of workplace violence in order to assist the employer, the union (if any) and the employees in fostering a healthy workplace.

[34] The respondent argued that *Desjardins* is distinguishable from the present case because the two cases deal with different statutory regimes: the PSDPA in the first case, and the Regulations in the second. The provisions of the PSDPA establish a general obligation to protect the identity of persons affected by the disclosure of wrongdoing and information gathered for the purpose of an investigation. In contrast, the Regulations that apply to this proceeding impose an obligation on the employer not to reveal the identity of persons involved in a workplace violence investigation without their consent, not even to the investigator reviewing the allegations.

[35] I agree that the statutory provisions are different and that the confidentiality requirement in the Regulations is a strong indication of the importance Parliament placed on this aspect of investigations. I also accept that the assurance of anonymity given to persons involved in investigations contributes to the effectiveness of the anti- violence in the workplace system.

[36] That said, the statutory provisions in this case are not determinative, because of the discretion granted to the Court by section 151 of the Rules.

[37] It is clear from the provisions of the Regulations that the employer cannot disclose the names or other identifying information of survey participants without their consent. Employees

may have thought that their names would never be disclosed without their consent. However, *Desjardins* rejects an approach that restricts the exercise of discretion under section 151 of the Rules in a systematic way. Each case must be dealt with on its own facts and in light of all the circumstances.

[38] In considering the legal context as a whole, it must be remembered that Parliament has not seen fit to impose a duty of confidentiality on the Court when exercising its powers in the course of a judicial review, as it has done with respect to information covered by the *Access to Information Act*, RSC 1985, c A-1, sec 47, and the *Privacy Act*, RSC 1985, c P-21, s 46. This is a factor mentioned in *Desjardins* (see paras 32 and 92).

[39] Regarding the interests of individuals, the affidavit submitted by the respondent states:

> [TRANSLATION]
>
> Several witnesses and respondents did not consent to the disclosure of their identities to the applicant. Specifically, two of the individuals involved explicitly stated, in writing, that [they] do not consent to the disclosure of their identifying information to the applicant. In addition, I did not obtain consent from two of the individuals involved.

[40] The issue is whether the risk is "well grounded in evidence" (*Sierra Club*, at para 54) and whether the evidence is "convincing" (*Desjardins*, at para 82). In this regard, I note in passing that the moving party did not seek to submit confidential affidavits from those who did not consent to disclosure in order to explain why they did not consent. Nor did the moving party produce any evidence of his experience in dealing with complaints of workplace violence, such as information about the reluctance of some to submit a complaint or to participate in the process in the absence of a guarantee of anonymity, or about the frequency of such requests in such

investigations. The question, therefore, is whether, in order to meet its burden of proof, the party seeking a confidentiality order is required to produce such evidence.

[41] While the production of such evidence may satisfy an applicant's burden of proof, I am not persuaded that it is mandatory or that its absence is fatal to the application. In the circumstances of this case, I find that the evidence demonstrates that disclosure of the identities of those involved in the investigation of the applicant's complaint would pose a serious risk of harm to an important public interest. Accordingly, the confidentiality order sought by the respondent should be granted.

[42] It is appropriate to begin by recalling the context of the application and the general interests at play in the case, namely the prevention of violence in the workplace and the related interest in enablingthe reporting of such incidents and encouraging those with relevant information to take part in the investigation.

[43] As noted in *Sherman*, at paragraph 77, the case law recognizes that a serious risk may arise from the disclosure of sensitive personal information, including information about victims of sexual assault or harassment. While *Sherman* deals with the disclosure of highly personal "biographical information", it does not preclude consideration of other types of risk.

[44] In this case, it is alleged that there is a risk that individuals who have not consented to the disclosure of their identity will be the target of unwanted attention, harassment or retaliation as a result of the disclosure or their participation in the investigation. This risk may also undermine future complaints and investigations, as individuals will know that the anonymity promised in Part XX of the Regulations may not be maintained if an application for judicial review is filed.

The respondent argues the chilling effect on potential complainants or witnesses, especially given the vulnerability of victims or witnesses to an abuser found guilty of workplace violence.

[45] The provisions of Part XX of the Regulations reflect the seriousness with which Parliament views this general harm. In particular, the obligation imposed by the Regulations on the employer not to reveal the identity of persons involved in a complaint without their consent, not even to the investigator looking into the allegations, underscores the importance of confidentiality and its contribution to the effectiveness of the regime.

[46] It is now generally accepted that publication bans or other limitations on the open court principle are necessary for victims of certain types of crimes and witnesses in such proceedings, including crimes of sexual violence. An important argument in favour of such measures is that the fear of attracting attention may deter people from reporting these serious crimes or participating as witnesses in proceedings. The provisions of the *Criminal Code*, RSC 1985, c C-46, regarding the confidentiality of certain court proceedings reflect Parliament's view that combating these types of crimes is sufficiently important to limit the application of the open court principle.

[47] Workplace violence is a manifestation of the same scourge, and the same reasoning underlies the application in this case. There is a legitimate question as to whether disclosure of the identity of persons involved in a complaint will discourage others from making complaints of workplace violence or from participating in investigations of such complaints in the future. This point is recognized in *Sherman*, at paragraph 54: "[s]imilarly, there may be circumstances where the prospect of surrendering the personal information necessary to pursue a legal claim may deter

an individual from bringing that claim (see *S. v. Lamontagne*, 2020 QCCA 663, at paras. 34-35 (CanLII))".

[48] The present case serves as a case in point: four witnesses did not consent to the disclosure of their identities to the applicant, two of whom expressly stated so in writing. While we do not know why they refused to consent, this refusal at least indicates that it was an important factor in their decision to participate in the investigation. In this regard, the evidence before me is more concrete and specific than that before the Federal Court of Appeal in *Desjardins*, where the affidavits submitted merely expressed general concerns about the impact of disclosure on future matters (see para 86).

[49] Two other factors are important in this case. First, the information at issue is the names and other identifying information of the persons who are third parties in this proceeding. As noted in *Sherman*, at paragraph 55, it is not open to third parties to terminate the litigation to avoid any impact on their privacy. This is precisely the situation in this case. Individuals who participated in a workplace violence investigation and expressly stated that they did not consent to the disclosure of their identities are now at risk of being identified simply because the applicant has made an application for judicial review. It is now impossible for these individuals to prevent the proceedings from continuing.

[50] Second, the limited content of the order sought by the moving party is important. No one is objecting to the disclosure of the contents of the investigation file; what is being sought is an order redacting the names of persons who have not consented to the disclosure of their identity and other identifying information.

[51] The applicant claims that this order will deprive him of a fair hearing, but he has not shown why this would be inevitable. I also note that if he can prove that the redaction of the names has in fact prevented him from making his case, he can make that argument to the trial judge. If necessary, action can be taken to address his concerns.

[52] Regarding the last two points, I note that Justice Nicholas McHaffie was not persuaded by similar arguments in another case involving disclosure of wrongdoing in the public service: *McCarthy v Canada (Attorney General)*, 2020 FC 1100 [*McCarthy*]. In that decision, the Court applied the guidelines set out in *Desjardins* and concluded that the evidence did not establish a serious risk of harm to an important public interest. For the reasons set out above, I believe that the situation in this case is distinguishable from those in *Desjardins* and *McCarthy*, because of the different regulatory regimes, the different contexts (disclosure of wrongdoing in the public service versus prevention of violence in the workplace), and the specific evidence provided by the moving party in this case.

[53] Based on the foregoing analysis, I believe that the moving party has demonstrated that the disclosure of the identities or identifying information of those who have not consented poses a serious risk to an important public interest. Accordingly, the first prong of the *Sherman* test has been met.

b) *Is the order necessary to address this risk because other reasonable measures will not address it?*

[54] The risk, in my opinion, relates to the disclosure of the identities of the participants in the investigation of the applicant's complaint of workplace violence. Given the risk and the nature of

the confidentiality order sought in this case, there does not appear to be a less restrictive way to address the risk.

[55] I conclude, therefore, that the limited confidentiality order sought is necessary to avert the risk and that other reasonable measures to avoid the apprehended harm are not available. The second prong of the *Sherman* test is therefore satisfied.

c) *Do the benefits of the order outweigh its negative effects?*

[56] In light of the analysis above, I find that the benefits of the limited confidentiality order sought outweigh the impact it may have on the open court principle.

[57] It bears repeating that the confidentiality order will only result in the redaction of the names and other identifying information of a limited number of individuals. The substance of their testimony and the rest of the investigation file will be disclosed. According to the applicant, the respondent wants to shield the file from media attention; however, there is no evidence to suggest that the order will have such a significant effect. The substance of the applicant's complaint will be disclosed, as will the substance of the evidence underlying the investigator's findings and the employer's decision.

[58] The applicant also argues that redaction of the names of these individuals will deprive him of a fair hearing, which is generally a significant and legitimate concern. In this case, it is not clear why or how redaction of this information would deprive the applicant of a fair hearing. As noted above, if the applicant can demonstrate to the judge hearing the case that the redaction does in fact prevent him from making the case, then appropriate steps can be taken to remedy the

situation. At this point, I simply note that the applicant has not established the merits of his allegations and therefore there is no reason to deny the order sought.

[59] For all of the reasons stated above, I conclude that the benefits of the limited confidentiality order sought in this case outweigh its impact on the open court principle. The third prong of the *Sherman* test therefore favours the respondent.

[60] Accordingly, I grant the moving party's motion for confidentiality. All that is left to rule upon are the two ancillary issues.

(3) Other issues

[61] The moving party makes two ancillary requests, one for an extension of time to file his documents and the other to amend the style of cause to name the Attorney General of Canada as a respondent. I grant both requests.

[62] First, in light of my decision on the confidentiality order, the respondent will obviously need time to prepare his case to comply with the terms of this order. The time limits for filing documents have long since expired, but it is appropriate to extend them given the length of time it has taken to deal with the motion.

[63] Second, the Attorney General of Canada is the appropriate respondent in this case, pursuant to subsection 303(2) of the Rules. The applicant will still be able to make all the arguments he intended to make about the department in question and, if successful, will be able to obtain orders against that department. However, the Attorney General of Canada is properly the respondent in this case. The style of cause will be changed in the following order.

IV. Conclusion

[64] For all of the reasons above, I conclude that the respondent's motion for confidentiality under section 151 of the Rules should be granted.

[65] Disclosure and communication of documents and other materials designated as "confidential information" from the Competent Person's Report concerning a complaint of workplace violence submitted by the applicant under Part XX of the *Canada Occupational Health and Safety Regulations* is prohibited.

[66] The following information is designated as "confidential information" in the court file:

a) the names of witnesses and respondents who participated in the investigation of the complaint and who have not consented to the disclosure of their identity; and
b) any information that tends to identify the persons referred to in a).

[67] Pursuant to section 152 of the Rules, the respondent will provide two versions of the certified record to the Court, namely (a) a redacted version for filing in the public record of the Court; and (b) a complete, unredacted and fully confidential version for the Court.

[68] The respondent will provide the applicant with and submit to the Court Registry a copy of the public version of the certified record, with the confidential information listed in paragraph 66 above redacted. For greater certainty, this public version must list all documents contained in the certified record, even if an entire document has been redacted.

[69] In addition, the time limits that apply to the respondent pursuant to sections 307, 308, 301, 312 and 314 of the Rules are suspended and will start again on the date of this decision.

[70] Finally, Natural Resources Canada is removed as a respondent, and the Attorney General of Canada is substituted. The amendment is effective immediately.

[71] Neither party has requested an award of costs and, in the circumstances, no costs are awarded.

JUDGMENT in T-325-20

THIS COURT ORDERS as follows:

1. The motion for order of confidentiality under section 151 of the Rules is granted.

2. Disclosure and communication of documents and other materials designated as "confidential information" from the Competent Person's Report of a complaint of workplace violence submitted by the applicant under Part XX of the *Canada Occupational Health and Safety Regulations* is prohibited.

3. The following information shall be designated as "confidential information" in the court file:

    a) the names of witnesses and respondents who participated in the investigation of the complaint and who have not consented to the disclosure of their identity; and

    b) any information that tends to identify the persons referred to in a).

4. Pursuant to section 152 of the Rules, the respondent shall provide two versions of the certified record to the Court, namely:

    a) a redacted version for filing in the public record of the Court; and

    b) a complete, unredacted and fully confidential version for the Court.

5. The respondent shall provide the applicant with and submit to the court Registry a copy of the public version of the certified record, with the confidential information listed in paragraph 3 above redacted. For greater certainty, this public

version shall list all documents contained in the certified record, even if an entire document has been redacted.

6. The respondent shall submit to the Clerk of the Court three copies of the Court confidential version of the certified record, placed in a sealed envelope marked:

> **CONFIDENTIAL INFORMATION PUSUANT TO THE FEDERAL COURT ORDER IN FILE T-325-20.**
>
> **Pursuant to the order of the Court, this envelope will remain sealed in the records of the Court and may be opened only in accordance with the terms of the order or by order of the Court, and all such sealed envelopes may be opened only by the Court and its staff.**

7. The time limits set forth in sections 307, 308, 309, 310, 312, and 314 of the Rules are suspended until the Court determines the outcome of this motion.

8. The style of cause is amended to replace "Natural Resources Canada" with "Attorney General of Canada" as respondent.

"William F. Pentney"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-325-20
STYLE OF CAUSE:	MICHEL POTHIER v ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO SECTION 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	PENTNEY J.
DATED:	SEPTEMBER 22, 2021

APPEARANCES:

Michel Pothier	FOR THE APPLICANT (RESPONDENT) (ON HIS OWN BEHALF)
Julie Chung	FOR THE RESPONDENT (MOVING PARTY)

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT (MOVING PARTY)