

August 20, 2019

VIA EMAIL

Manitoba Human Rights Commission
7th Floor, 175 Hargrave Street
Winnipeg, MB R3C 3R8

Attention: Isha Khan

The University of Manitoba
Office of Legal Counsel
E3-250 Engineering Building
Winnipeg, MB R3T 2N2
Attention: Maria A. Versace

The University of Manitoba
Office of Human Rights and Conflict
Management
201 Allen Building
Winnipeg, MB R3T 2N2
Attention: Joel LeBois

Dear Mesdames/Sirs:

**RE: A.B. v. University of Manitoba
Case No. 15 EN 030**

This letter constitutes the ruling on the Commission's request that "A.B." be used rather than the Complainant's name in any written decision or statement of reasons issued by the Adjudicator under Section 46(1) of the *Code*.

The Respondent opposes the request.

The Complainant alleges a breach of Sections 13 and 14 of the *Code* on the basis of discrimination of the Complainant's criminal record involving sexual offenses.

The Complainant was sentenced to three years' incarceration and was issued a lifetime Prohibition Order restricting him from attending public places where children under the age of 14 can reasonably be expected to be present, from employment that involves children under the age of 14, and from using a computer to communicate with a person under the age of 14.

MICHAEL D. WERIER, CHIEF ADJUDICATOR

137 Girton Boulevard, Winnipeg, MB R3P 0A4
P: 204-296-5359 E: mwerier@darcydeacon.com

The Respondent, in addition to opposing the Commission's request for anonymization, has filed a preliminary objection regarding the application of the *Code* on the basis that the Complainant does not have a characteristic that is protected under the *Code*.

That application is to be heard on August 23, 2019.

The Commission's counsel filed a letter outlining its arguments in support of the request for anonymization. The Complainant filed a letter outlining his reasons for the request.

The Respondent filed a written submission outlining their opposition to the request.

Both parties referenced various legal authorities supporting their arguments.

It is not my intention to recite the arguments or to review in detail the various authorities.

The submissions can be summarized as follows.

The Commission noted that an Adjudicator has the discretion to direct deletion of information if the disclosure could cause undue prejudice or hardship to the party or witness (as per Section 46(3) of the *Code*).

The Commission pointed out that Adjudicators routinely have made decisions protecting the identity of complainants and in one case where the request was rejected (*Walmsley v. Brousseau Bros. Ltd.*, [2014] M.H.R.B.A.D. No. 104), the request was not made until after the completion of the hearing.

The Commission acknowledged that while the Complainant's conviction and the Prohibition Order are available to the public, the publication of his name may attract unnecessary media attention that will result in further prejudice or stereotyping, creating barriers for him to lead his life with dignity and respect.

The Complainant outlined in detail the undue harm and prejudice he would face if there is not a ruling to anonymize his name.

He summarized it this way:

“ . . . should you not rule to anonymize my name, I will have to face the August 23rd preliminary hearing with the possibility of moving, losing my company, threats to my safety, the loss of numerous social contacts, and rifts in my family, to say nothing of emotional damage and further damage to my dignity.”

The Complainant's submissions were compelling and not contradicted.

The Respondent maintained that the Complainant has not established undue hardship or prejudice because his criminal record and Order of Prohibition are a matter of public record. The Respondent relied on the decision in *Walmsley* as supportive of their position on this point. In particular, they pointed to comments made by Adjudicator Pinsky that any significant prejudice or hardship were as a result of the Complainant's previous actions.

The Respondent distinguished prior decisions relied upon by the Commission on the basis that these decisions concerned the disclosure of personal health information.

Finally, the Respondent argued that non-disclosure undermines the principles of transparency and would undermine the authority of the sentencing Court.

I have determined that the Commission's request should be granted, and that any decisions issued by the Adjudicator should not disclose the identity of the Complainant and that he should be identified as "A.B."

As a preliminary comment, I note that it is acknowledged that there are no decided cases analyzing whether criminal records ought to be protected under Section 9(1)(a) of the *Code*. I also note that the Human Rights Commission Policy #1-12 sets out that a criminal record may be a protected characteristic under the *Code*.

Both parties put forward submissions regarding the request for anonymization. In the final analysis, I am satisfied that the Complainant has established that on balance the disclosure of identity could cause him undue prejudice and hardship.

I recognize that a person convicted of a serious crime and being subject to a Prohibition Order has to face the consequences of his actions. However, this does not mean that an individual should be prevented from exercising his or her rights under the *Code* free from undue hardship or prejudice.

I do not find that hardship or prejudice would flow entirely from his prior convictions. Each case must be assessed on its facts. In this case I have determined that a case has been made out prior to the hearing to have the Complainant's identity protected. Therefore, I have included the initials "A.B." in the heading of this ruling, consistent with my finding.

I will hear the parties' submissions on the preliminary objection on August 23, 2019.

A handwritten signature in black ink, appearing to read "Werier".

MICHAEL D. WERIER
Chief Adjudicator