Date: 20200804

File: 566-34-11840

Citation: 2020 FPSLREB 80

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JASON OLYNIK

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Olynik v. Canada Revenue Agency

In the matter of a preliminary motion for anonymization

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Kristina Cooke, representative, Public Service Alliance of Canada

For the Employer: Nour Rashid, counsel, Treasury Board

Decided on the basis of written submissions, filed June 26, July 3 and July 10, 2020.

REASONS FOR DECISION

I. Background

[1] The grievor, Jason Olynik, filed a grievance on June 11, 2015, claiming that the employer, the Canada Revenue Agency (CRA), had violated article 55 of the relevant collective agreement, which dealt with employment outside the CRA.

[2] A one-day hearing scheduled for March 2020 was postponed due to the COVID pandemic. In preparation for a rescheduled hearing, the bargaining agent, the Public Service Alliance of Canada, filed an interlocutory motion. It requested that the disposition of the grievance be anonymized such that the hearing would be conducted and a decision rendered without referring to the grievor's name or other details that could identify his avocation.

[3] For the reasons set out below, I deny the request to anonymize the grievor's name. However, the name of the grievor's website will be redacted from all decisions of the Federal Public Sector Labour Relations and Employment Board related to this grievance , and from the Board's record.

II. The bargaining agent's submission

[4] The bargaining agent made the following submissions in support of the motion:

[5] The Union brings a motion herein requesting an interlocutory order which would allow for the anonymization of Jason Olynik's (the "Grievor") name in the Federal Public Sector Labour Relations and Employment Board's (the "Board") prospective decision, i.e. without reference to the Grievor's name or information that would disclose his identity. The Union and the Grievor make the following submissions in support of this motion:

[6] The Board's "Policy on Openness and Privacy" affirms the importance of the open court principle, and discusses the exceptional circumstances which may justify a departure from that principle:

> *In exceptional circumstances, the Board departs from its open justice principles, and in doing so, the Board may grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate the protection of an individual's privacy (including holding a hearing in private, sealing exhibits containing sensitive medical or personal*

> *information or protecting the identities of witnesses or third parties). The Board may grant such requests when they accord with applicable recognized legal principles.*
>
> …

[7] Those "applicable recognized legal principles" are applied via the "*Dagenais/Mentuck*" test for placing restrictions on the open court principle. The submissions analyze that test as follows:

[8] The substance of the instant grievance concerns the Grievor's assertion that he has the right to pursue external employment in moderating the video sharing website [name redacted]. A critical aspect of the Grievor's moderating duties, and of all moderators on this particular website, is that they remain anonymous in doing so. Maintaining anonymity in moderating such a website is not done arbitrarily – it has been reported that when identities of people associated with administration of the website become known, they have faced threats to their and their families' safety and livelihood:

> *"We get a lot of threats in general, but these were becoming very, very specific … Certain outlets were reporting my full name, and the rough area of Manchester which I was living in at the time, so the threats started becoming a little bit more direct. We had to do something. We took it offline for 48 hours while we made a lot of preparations, including ensuring my family would be looked after for a period of time if anything happened to me."*
>
> *…*
>
> *By relaxing the restrictions found elsewhere, they could host videos that nobody else would. But with that notoriety came a risk to the lives of the site's founders.*
>
> [Name redacted] **"Q&A: The Man Behind [website redacted], The Islamic State's Favourite Site For Beheading Videos"** ….

[9] The risk posed to sharing and forum website moderators is not particular to [website redacted]. For example, a moderator of the aggregate forum website, Reddit.com, expressed in an interview as follows:

[10] One message [Name redacted] received even mentioned his employer: "I will […] murder you in your [City redacted] flat when you walk back from your work at [name redacted], you might want to take this […] seriously for once." **[name redacted], "Unpaid and abused: Moderators speak out against [name redacted]" [date redacted]**

[11] The controversial nature of [website redacted] has required that virtually all administrators and content moderators remain anonymous due to concerns of safety and privacy.

[12] As it stands currently, the Grievor remained anonymous throughout the entire period of time during which he was providing moderating services to the website. The only reason that the Employer came to know of the Grievor's association with the website was because he undertook to positively disclose same, per the Employer's rules.

[13] The instant grievance does not concern a situation of discipline or misconduct wherein the Grievor may be attempting to hide his actions behind anonymization. The grievance relates to the Grievor's assertion that he has a right to pursue external employment and that his external employment does not violate the Employer's rules. And while the controversial nature of the website and the Grievor's association with same is at issue, this is an issue that must be fleshed out in substantive legal arguments.

[14] The Grievor should not be precluded from pursuing his grievance due to a fear for his personal safety. If the Board does not anonymize his name in its prospective decision, it will publicly associate the Grievor's identity with the website, which would otherwise not be the case, and put at risk the safety and livelihood of the Grievor and his family.

[15] It is also the case that by anonymizing the Grievor's identity but allowing the decision to be published, the open courts principle is preserved since all of the context, issues, arguments [sic] reasoning will be available for the public to access. Per [the Board] in A.B.:

> *[The requesting party] has to not only prove that the limitation is necessary but also that no alternative measures are possible and that the proposed order is the least intrusive way to prevent a substantial risk to an important interest.*
>
> **A.B. v Treasury Board (Royal Canadian Mounted Police), *2016 FPSLREB 23 at para 86.***

[Emphasis in the original]

[16] It is submitted that there is nothing gained in including the Grievor's identity in the Board's prospective decision. Further, it is submitted that anonymization is a minimally intrusive form of a publication ban.

[17] It is the Union and Grievor's respectful position that with all things considered, the salutary effect of anonymizing the Grievor's name outweigh [sic] the deleterious effects on the rights and interests of the parties and the public. This is an exceptional case in which a departure from the open court principle is justified.

[18] In rebuttal argument, the bargaining agent submitted that:

> *There is no reasonable alternative that exists to protect this interest other than the Grievor forgoing litigation. For example, anonymizing the name of the website rather than of the Grievor is not a viable alternative since it is the content of the website, which content will presumably be discussed in detail at the hearing, which is at issue and of a controversial nature.*

[19] And, that:

> *…the Union and Grievor have adduced evidence of which judicial notice can be taken that establishes a future risk to the Grievor, and family who share his name, with respect to their physical and virtual safety interests. The risk is not simply speculative; in an age of increased access and decreased security on the internet, this is a real danger that must be properly considered in keeping with the times.*

[20] The rebuttal argument also noted that in a very recent decision the Board has held:

> *The Canadian Judicial Council has also produced guidelines entitled "Use of Personal Information in Judgments and Recommended Protocol" which address the use of personal information in court decisions. It states that although publication of decisions on* ***the Internet has increased access to justice, at the same time it has raised new privacy concerns****. The purpose of the protocol is to assist judges to strike a balance between the right to privacy and the open court principle.*
>
> [Emphasis in original submission]
>
> **Grievor X v. Canada Revenue Agency, 2020 FPSLREB 74 at para 104.**

III. The employer's submissions

[21] The employer submitted as follows that publishing the parties' names in Board decisions is central to the open court principle and that concealing the grievor's name would be detrimental to that principle:

[22] It is well established law that there is a strong presumption that all judicial proceedings be heard publicly. The Supreme Court has recognized that this presumption is inextricably linked to the freedom of expression guaranteed by the Charter, and it should not be interfered with lightly. The same principles that have been articulated for the courts also apply to quasi-judicial proceedings.[(Vancouver Sun (re), [2004] 2 SCR 332 ["Vancouver Sun"] at paras 23, 26, 28. Lukacs v Canada (Transport, Infrastructure and Communities), 2015 FCA 140 at paras 3-4 and 37-46. Policy on Openness and Privacy, online: Federal Public Sector Labour Relations and Employment Board<https://www.fpslrebcrtespf.gc.ca/en/resources/policies/openness-privacy.html.

[23] Furthermore, the Board's Policy on Openness and Privacy cautions parties that "they are embarking on a process that presumes a public airing of the dispute between them, including public availability of decisions". It further indicates that "Board decisions identify parties and their witnesses by name." The Board may only depart from the open justice principles in "exceptional cases".

[24] The Supreme Court established a standard legal test known as the *Dagenais/Mentuck* test, applicable to all discretionary decisions that limit access to judicial proceedings. This test was reformulated in Sierra Club of Canada. According to the Supreme Court, a party seeking a restriction on the open court principle must demonstrate that:

> *a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and*
>
> *b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings. (Dagenais v Canadian Broadcasting Corp., [1994] 3 SCR 835; R. v Mentuck, [2001] 3*

> *SCR 442 at para 32. Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41).*

[25] With respect to the first stage of the *Dagenais/Mentuck* test, the element of "serious risk", the Supreme Court has emphasized that the party seeking the publication ban has to demonstrate that the threat of injury is "real, substantial, and well grounded in evidence". [Vancouver Sun, para 63; Toronto Star Newspapers Ltd. v Ontario, 2005 SCC 41, ["Toronto Star"] at para 27.]

[26] In *A.B. v Canada Revenue Agency*, cited by the bargaining agent in support of their motion, the adjudicator relied on well grounded evidence of racist treatment against the grievor to conclude that publication of his name could significantly increase the risk of this racist treatment being exacerbated. Given the evidence that he and his wife have already suffered racist treatment, the adjudicator found that this risk was not purely speculative. [*A.B. v Canada Revenue Agency*, 2019 FPSLREB 53.]

[27] Unlike in *A.B. v. Canada Revenue Agency*, in the present case, the safety risks cited by the grievor are purely speculative and without foundation. There is no basis for the grievor's claims that the publication of his name would present a risk, let alone a "serious risk" to his or his family's safety or privacy interests. The grievor did not present any evidence to demonstrate threats made towards him as a moderator but instead relied on hearsay evidence by way of online articles detailing the personal experience of others. The examples presented in these articles pertain to individuals operating on different platforms (such as [redacted]) or holding a significantly higher rank and profile within the [website redacted] platform (namely, [website name redacted] founder [name redacted]).

[28] Furthermore, even if the adjudicator accepts the evidence from the articles detailing the experiences of moderators on other platforms, publicizing the grievor's name would not increase the threat or risk to his safety. The examples of threats identified by moderators in the news articles occur online (on the platform) as a result of, and in direct response to, actions taken by the moderator in approving, rejecting or deleting users' content.

[29] Given that any content moderated by the grievor would have been done anonymously, even if his name is publicized in the decision, there is no direct link between the grievor and the [website redacted] users that he previously moderated.

There is no evidence that the publication of his name would increase the risk to his safety posed by [website redacted] users, given that these threats appear to be made online by users directly against the moderators who were censoring their content.

[30] Contrary to the union's submissions, there are no risks to the grievor's livelihood or that of his family if his name is made public in the decision. As confirmed by the union in its submissions, no disciplinary measures have been taken against the grievor due to his employment with [website redacted]. His employment with the CRA has not been affected by this grievance, and will not be affected whether or not his name is publicized in the Board's decision.

[31] The second stage of the *Dagenais/Mentuck* deals with proportionality, namely, balancing the positive and negative impacts that would result from the order. In the present case, the salutary effect of concealing the grievor's name from the publicly available decision would not outweigh the deleterious effects on the public's right to open and accessible proceedings.

IV. Analysis and reasons

[32] As the parties noted in their submissions, my recent decision in *A.B. v. Canada Revenue Agency*, 2019 FPSLREB 53, summarized the relevant authorities guiding my analysis of the grievor's motion:

> …
>
> *[143] Counsel for the employer opposed the request on the grounds of the constitutionally recognized open court principle, which is a cornerstone of Canada's democracy and the rule of law upon which it is based. She noted the Supreme Court of Canada's decision in* Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, as authority for the proposition that when considering a request for a confidentiality order, the interest sought to be protected "… **cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality**" (see paragraph 55).*
>
> *[144] Counsel for the employer also referred to the Board's decision in* McKinnon v. Deputy Head (Department of National Defence)*, 2016 PSLREB 32 at paras. 70 and 71, in which the **Adjudicator rejected a request to anonymize a name because there was no evidence of alleged challenges** linked to undisclosed health issues. Counsel argued that the grievor claimed mere challenges, which were found insufficient justification. I distinguish*

that case on its facts as the matter before me presented evidence that the grievor was subjected to racist treatment.

[145] I considered a request to anonymize the decision by the complainant in Abi-Mansour v. Deputy Minister of Fisheries and Oceans*, 2018 FPSLREB 53, and noted the following jurisprudence:*

…

[19] … the Supreme Court of Canada has stated in *Dagenais v. Canadian Broadcasting Corporation, [1994] 3 S.C.R. 835* and *R. v.* Mentuck *[2001] 3 S.C.R. 442* that given the common law and *Charter* protection of the open court principle that confidentiality orders should only be granted when*:*

- such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk; and,
- the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[20] In *Re Vancouver Sun,* [2004] 2 S.C.R. 332, the Supreme Court reconfirmed the *Dagenais/Mentuck test,* noting that openness is integral to the independence and impartiality of courts, as well as to both the public's confidence in the justice system and its understanding of the administration of justice.

[21] In considering the open court principle in the context of a quasi-judicial administrative tribunal, the Federal Court of Appeal stated in *Lukács v. Canada (Transport, Infrastructure and Communities),* 2015 FCA 140 the following at paras. 35-37:

> *[35] In determining whether or not it was appropriate to limit the application of the open court principle in each of these matters, the courts adopted the approach taken by the Supreme Court in* Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835, 120 D.L.R. (4th) 12 and* Mentuck *… This test was described in* Toronto Star Newspapers*, at paragraph 4, as follows:*
>
> > *Competing claims related to court proceedings necessarily involve an exercise in judicial discretion. It is now well established that court proceedings are presumptively "open" in Canada. Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would*

> subvert the ends of justice or unduly impair its proper administration.
>
> *Stated another way, the test is whether the salutary effects of the requested limitation of the open court principle will outweigh the deleterious effects of that limitation.*
>
> *[36] Another important consideration is whether the open court principle applies only to courts or whether it also applies to quasi-judicial tribunals.*
>
> …
>
> *[37] In this application, all parties are agreed that the open court principle applies to the Agency when it undertakes dispute resolution proceedings in its capacity as a quasi-judicial tribunal. Support for this proposition can be found in* R. v. Canadian Broadcasting Corporation, *2010 ONCA 726 (CanLII), 327 D.L.R. (4th) 470, at paragraph 22, where Sharpe J.A. stated:*
>
> > [22] *The open court principle, permitting public access to information about the courts, is deeply rooted in the Canadian system of justice. The strong public policy in favour of openness and of "maximum accountability and accessibility" in respect of judicial or quasi-judicial acts pre-dates [sic] the Charter:* Nova Scotia (Attorney General) v. MacIntyre, *1982 CanLII 14 (SCC), [1982] 1 S.C.R. 175, [1982] S.C.J. No. 1, at p. 184 S.C.R. As Dickson J. stated, at pp. 186-87 S.C.R.: At every stage the rule should be one of public accessibility and concomitant judicial accountability" and "curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance".*

[22] And finally, I note the Supreme Court of Canada's application of the *Dagenais/Mentuck* test in determining whether a confidentiality order should be granted to a Crown corporation in respect of certain documents. The Supreme Court emphasized the importance of considering whether the request for confidentiality in the court proceedings was necessary to prevent a serious risk to an important interest and whether this outweighs the deleterious effects including the public interest in open and accessible court proceedings (*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] S.C.R. at 53).

…

> [24] As noted by the respondent in their reply to this motion, all employees who are considering filing a complaint under the *Act* are advised by the Board's *Policy on Openness and Privacy* that, "they are embarking on a process that presumes a public airing of the dispute between them, including public availability of decisions." It further states that, "Board decisions identify parties and their witnesses by name."
>
> …

[146] On the important matter of the Board's Policy on Openness and Privacy*, I quote the following, which is available on its website:*

> **Open justice**
>
> The Federal Public Sector Labour Relations and Employment Board ("the Board") is an independent quasi-judicial tribunal that operates very much like a court when it conducts proceedings under several labour-related statutes, including the *Federal Public Sector Labour Relations Act*, the *Parliamentary Employment and Staff Relations Act, the Public Service Employment Act* and Part II of the *Canada Labour Code.* The mandate of the Board is such that its decisions can impact the whole public service and Canadians in general. This document outlines the Board's policy on the openness of its processes and describes how it handles issues relating to privacy.
>
> The open court principle is significant in our legal system. In accordance with this constitutionally protected principle, the Board conducts its hearings in public, save for exceptional circumstances. Because of its mandate and the nature of its proceedings, the Board maintains an open justice policy to foster transparency in its processes, accountability and fairness in its proceedings.
>
> The Board's website, notices, information bulletins and other publications advise parties and the community that its hearings are open to the public. Parties that engage the Board's services should be aware that they are embarking on a process that presumes a public airing of the dispute between them, including the public availability of decisions. Parties and their witnesses are subject to public scrutiny when giving evidence before the Board, and they are more likely to be truthful if their identities are known. Board decisions identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.
>
> …

[147] Having carefully considered the evidence, arguments, and cases submitted by both parties, I am persuaded by the grievor's testimony that he has been subjected to racist treatment (not related to matters raised in this hearing) but in his day to day life

> *in Canada. I accept the submissions of his representative that this decision, if it is published with his full name, could significantly increase the risk of this racist treatment being exacerbated. Given the evidence that he and his wife have already suffered racist treatment, I find this risk is not purely speculative.*
>
> *[148] In arriving at the decision to anonymize the decision, I considered the risk presented by his representative that the grievor fears that he could be unemployable if this decision identifies him (as he suggests may happen) as a terrorist sympathizer. However, I cannot accept this submission given the very clearly established facts that literally, he was the author of his own misfortune by writing disturbing tweets that were posted on the Internet, open for anyone with a computer or smartphone to read. Therefore, I reject his claims that the risk of economic harm to him justifies anonymizing his case.*
>
> *[149] While the Board is very concerned to at all times be open and accountable in its decisions, to enhance confidence in the administration of justice in Canada, on the balance of interests as set out in the* Dagenais/Mentuck *test, I find that in this case, anonymizing is necessary, to prevent a serious risk to the proper administration of justice. And I find that the salutary effects of the order outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression and on the efficacy of the administration of justice.*
>
> *[150] The grievor attended an open public hearing, and all the relevant details of the hearing and the detailed rationale supporting my findings and conclusion will be published for public edification, to assure the Board's accountability.*
>
> *[151] Given what I expect will be exceedingly rare instances of a member of the public service making prolific social media postings that are sympathetic to groups considered terrorists by the Government of Canada, I consider this anonymized decision an extraordinary gesture to* ***protect social values of superordinate importance****, as stated by Dickson J. in* Nova Scotia (Attorney General) v. MacIntyre, *[1982] 1 S.C.R. 175, those being the avoidance of a high probability that otherwise, the grievor would be subjected to racist treatment.*
>
> *[152]* ***All of Canada benefits from the avoidance of prejudiced behaviour*** *that anyone faces, thus satisfying the requirement set out in* Sierra Club of Canada *that the justification for the anonymization request not simply be of a personal benefit to the party making it.*
>
> …
>
> [Emphasis added]

[33] The bargaining agent relied upon the very recent decision of this Board in *Grievor X*. I note the following text from that decision:

> *[110] In my view, this kind of information is analogous to what is described in the CJC protocol as 'second level' information. Personal information about the grievor's family members is material to the decision and, therefore, is included. However, such information, along with the grievor's name, would render them almost as readily identifiable as they would be if their names were included. This is especially so for the grievor's twin brother.*
>
> *[111] I believe that in these exceptional circumstances, anonymizing the grievor's name is necessary to prevent a serious risk to an important interest, namely the privacy interest of third parties who are not involved in this matter. I further believe that the salutary effects of anonymizing the grievor's name so as to protect the privacy of his family members outweighs the harm to the public interest in open and accessible legal proceedings.*

[34] I distinguish that case on its facts as I do not have any similar personal identifiers involving third-parties in the motion before me. Unlike Grievor X, there is not yet any information about identities, medical or criminal conviction histories or the like which could expose personal information of other people such as family members.

[35] I can understand the grievor's concern for his safety and that of his family. Obviously, he has chosen a path with his avocation that has led him to feel that he is threatened by harm, which involves the related need to remain anonymous or hidden with respect to his online activities. In his representative's words, the grievor has associated himself with a "controversial" website. Given his statement that the website has been used to disseminate videos of terrorists beheading hostages, I consider the comment that it is controversial a bold understatement.

[36] Due to his choice of such a controversial avocation, the grievor fears that the prosecution of his grievance against his employer may place information on the public record that would allow unnamed persons to identify him, locate him, and seek to harm him and his family, or worse.

[37] The grievor relied upon a published quote from a person in Great Britain who presumably pursues associations that are similarly controversial to those of the grievor. That person is quoted as saying that his online associations led someone to threaten to murder him at his home.

[38] Counsel for the employer replied that the grievor's concerns are speculative and as such should not be accepted as evidence of real harm or even risk. As she noted, the

Supreme Court has emphasized that the party seeking the publication ban has to demonstrate that the threat of injury is "real, substantial, and well-grounded in the evidence" (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41 at para. 27) .See *Vancouver Sun (Re)*, 2004 SCC 43 at para. 63; and *McKinnon v. Deputy Head (Department of National Defence)*, 2016 PSLREB 32.

[39] I agree. I find this evidence is speculative. Citing one published quote from a publicized leader of an online forum who claimed to have been threatened in Great Britain is less than clear and cogent evidence upon which I can make a finding of fact that the grievor faces such a similar threat.

[40] Furthermore, I am not convinced by the grievor's submissions that the complete anonymization of the proceedings and the resulting decision is necessary. I believe that the redaction of identifying information, such as I have done in this decision, is sufficient.

[41] Unless the name and nature of the website is directly at issue in this grievance hearing, the Board's usual practice is to avoid making unnecessary direct references to third parties or other such entities. I will similarly redact the submissions on file to provide the same assurance.

[42] I am also unconvinced that the risk cited by the grievor, even were it accepted as real and imminent, presents any broader public value as required by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, as the interest sought to be protected (at para. 55) "… **cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality**" (emphasis added).

[43] As noted, in *A.G. (Nova Scotia) v. MacIntyre*, [1982] 1 S.C.R. 175, Dickson J. stated (at pages 186 and 187), "At every stage the rule should be one of public accessibility and concomitant judicial accountability …", and the "… curtailment of public accessibility can only be justified where there is present the need to protect social values of superordinate importance."

[44] The pleadings in this matter reveal that the grievor has chosen what he claims is a dangerous avocation. While this sounds dramatic, most litigants would rather not

have their names published and certainly would prefer not to have their names memorialized in the published decision if they lose their case.

[45] I see no public value in any derogation from a constitutionally guaranteed right to the open and accessible administration of justice to perpetuate such activities. If any true risk of harm does exist from the grievor's actions, he has brought it upon himself, without any intervention of the Board.

[46] Given my finding that the grievor adduced insufficient evidence to discharge his burden of proof to allow me to conclude that real harm may arise from the case proceeding and being reported as required, I need not proceed to the second step of the analysis to weigh the salutary effects of granting the order against the harm to public access to our institutions of justice.

[47] The Supreme Court of Canada has clearly stated that the right of Canadians to enjoy open and accessible courts and tribunals is fundamental to our democracy and is guaranteed by our constitution. Any derogation from this must be exceedingly rare and must be based upon evidence of harm that if allowed to persist would risk the proper administration of justice.

[48] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[49] The motion is granted in part.

[50] I order the name of the grievor's website redacted from all decisions of the Board, and all of its record, pertaining to this matter.

[51] The request to anonymize the case and decision is rejected.

August 4, 2020.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board