

CANADA / JUDGMENT

Stein v. British Columbia (Human Rights Tribunal)

2020 BCSC 70

COURT

Supreme Court of British Columbia

DECIDED

20 January 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 70 Stein v. British Columbia (Human Rights Tribunal)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stein v. British Columbia (Human Rights Tribunal),

2020 BCSC 70

Date: 20200120

Docket: S195493

Registry: Vancouver

Between:

Cheryl Stein

Petitioner

And

British Columbia Human Rights Tribunal

Respondent

Before: The Honourable Madam Justice Fitzpatrick

On judicial review from: Orders of the British Columbia Human Rights Tribunal, dated March 14, 2019 and April 11, 2019 (Case Number: 10445)

Reasons for Judgment

The Petitioner, appearing in person:

C. Stein

No one appearing for the Respondent British Columbia Human Rights Tribunal

Counsel for Vancouver Coastal Health Authority:

T. D.C. Dalziel

Place and Date of Hearing:

Vancouver, B.C.

November 12, 2019

Place and Date of Judgment:

Vancouver, B.C.

January 20, 2020

INTRODUCTION

- [1] In 2012, the petitioner, Cheryl Stein, began asserting a significant number of human rights and other work related complaints before certain tribunals.
- [2] Ms. Stein has been singularly unsuccessful in her litigation efforts over the last approximately eight years before the tribunals. She later sought judicial reviews of virtually each decision in this Court, which were all dismissed. That in turn led to various proceedings in the Court of Appeal and even the Supreme Court of Canada. In the appeal courts, Ms. Stein's lack of success followed.
- [3] This judicial review concerns what Ms. Stein self-describes as the "start" of her campaign to anonymize her name in the tribunals' various decisions and in decisions of this Court. I can only assume that her efforts in this respect will eventually reach the appeal courts.
- [4] In early 2019, Ms. Stein applied to the British Columbia Human Rights Tribunal (the "HRT") to anonymize her name in a proceeding relating to complaints filed by her against Vancouver Coastal Health Authority ("VCHA") in 2013-2015. The HRT rejected the request to anonymize her name in the proceeding. She now seeks a judicial review of both that decision and the HRT's later reconsideration and confirmation of that decision.
- [5] Ms. Stein also seeks an order anonymizing her name in this action and any decisions made in this action. She also seeks an order sealing the court file in this action.

BACKGROUND TO THE JUDICIAL REVIEW

- [6] Ms. Stein is a 51 years old. She is a registered cardiology technologist ("CT") in BC. In 2009, she graduated from a college with a diploma in cardiology technology.

- [7] VCHA is a health authority constituted pursuant to the Health Authorities Act, R.S.B.C. 1996, c. 180. VCHA operates a number of hospitals, care facilities and other health care delivery facilities in the Lower Mainland of BC. Those facilities include Vancouver General Hospital ("VGH").

The Underlying Complaint

- [8] On April 23, 2012, Ms. Stein filed a human rights complaint (the "Complaint") alleging that VCHA had discriminated against her on the basis of her age, race, ancestry, place of origin and mental disability in relation to her application for employment, contrary to s. 13 of the British Columbia Human Rights Code, R.S.B.C. 1996, c. 210 (the "Code"). The Complaint arose from her interactions with Sean Freeze, a CT employed by VCHA, who is a Supervisor in Health Services at VGH.
- [9] On July 16, 2012, VCHA filed an application to dismiss the Complaint on the basis that it had no reasonable prospect of success, pursuant to ss. 27(b) and (c) of the Code.
- [10] On May 31, 2013, HRT Member Diana Juricevic dismissed the Complaint with respect to race, ancestry, place of origin and mental disability. Member Juricevic concluded that the only allegation remaining was the complaint of age discrimination against VCHA and Mr. Freeze: *Stein v. Vancouver Coastal Health Authority and another*, 2013 BCHRT 145 at para. 55 ("Stein (No. 1)").
- [11] The remainder of the Complaint proceeded to a hearing before the HRT for nine days: May 27-30, June 2, and July 9-11, 14, 2014. Member Walter Rilkoff concluded that age was not a factor in VCHA's decision not to consider Ms. Stein as a candidate for a CT position. The HRT dismissed the Complaint after a full hearing on the merits: *Stein v. Vancouver Coastal Health Authority and another* (No. 2), 2014 BCHRT 227 ("Stein (No. 2)").
- [12] On December 3, 2015, the HRT dismissed the reconsideration application of Ms. Stein: *Stein v. Vancouver Coastal Health Authority and another* (No. 3), 2015 BCHRT 180 ("Stein (No. 3)").
- [13] In late 2016, Justice Watchuk heard [C.S.'s] application for judicial review of Stein (No. 2) and Stein (No. 3) in Action No. S149482. In July 2017, she dismissed the proceeding: *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 (the "Watchuk Decision"). I will address the reasons for the anonymization of the petitioner [C.S.] in this proceeding later in these reasons.
- [14] In June 2018, an appeal of the Watchuk Decision was dismissed: *Stein v. British Columbia (Human Rights Tribunal)*, 2018 BCCA 264.

- [15] C.S./Ms. Stein sought leave to the Supreme Court of Canada to appeal the decision of the Court of Appeal. On March 28, 2019, the Court dismissed the leave application: Case No. 38291. At this hearing, Ms. Stein advised me that she was seeking a reconsideration of that denial of leave, which the SCC's website confirms. That website also refers to Ms. Stein filing a motion on November 15, 2019 requesting anonymization in that Court.

HRT - Anonymization Efforts

- [16] On December 12, 2018, Ms. Stein brought an application before the HRT to retroactively (from 2013-2015) anonymize her name in seven of its earlier published decisions:
- a) Stein (No. 1); Stein (No. 2); and, Stein (No. 3) (the "Stein 1/2/3 HRT Decisions"); and
 - b) Four other 2015 HRT (2015 BCHRT 79; 2015 BCHRT 82; 2015 BCHRT 122; and, 2015 BCHRT 193) decisions involving Conrad and Lois Keebler and others (the "Keebler HRT Decisions").
- [17] In support of her application, Ms. Stein filed a letter from her doctor, Dr. Blaga Stancheva dated December 10, 2018. Dr. Stancheva stated in the letter that the exposure of Ms. Stein's medical records and diagnoses in public decisions was having a detrimental effect on her mental and physical health. In Dr. Stancheva's "medical" opinion, the exposure of Ms. Stein's name on the internet in these decisions was required so that she "could get fair treatment from future employers".
- [18] On January 30, 2019, VCHA filed submissions opposing Ms. Stein's application for anonymization of the Stein 1/2/3 HRT Decisions. On February 15, 2019, Ms. Stein filed reply submissions with the HRT. At that time, she included her Affidavit #1 sworn February 13, 2019, that attached various dated medical documents (between 2012-2017). Ms. Stein's Affidavit #1 also attached a further note from Dr. Stancheva dated February 4, 2019. That second note read in part:

I have been following her for the last 10 years and, in my medical opinion, she has been sick most of the past six years. Her disability is real.

- [19] Finally, Ms. Stein's Affidavit #1 attached an email sent to her on October 16, 2018 regarding an application she had earlier made seeking employment.
- [20] On March 14, 2019, HRT Member Steven Adamson dismissed Ms. Stein's application for anonymization (the "HRT Anonymization Decision").
- [21] On March 28, 2019, Ms. Stein sought a reconsideration of the HRT Anonymization Decision. On April 11, 2019, Member Adamson dismissed Ms. Stein's application for reconsideration of the HRT Anonymization Decision (the "Reconsideration Decision").
- [22] On May 13, 2019, Ms. Stein filed the petition in this proceeding seeking judicial review of the HRT Anonymization/Reconsideration Decisions (collectively, the "Decisions").

OTHER BCSC PROCEEDINGS

- [23] To recount the history of Ms. Stein's litigation activities from 2012 to the present is a monumental task. Many judges of this Court have heard proceedings to address Ms. Stein's applications for judicial reviews from tribunals and other ancillary litigation brought by her in this Court. However, for my purposes, it is not necessary to recount those proceedings in detail, including those relevant to this proceeding, since Justice Milman of this Court did so in October 2019.

Vexatious Litigant

- [24] On October 10, 2019, Milman J. issued his reasons in *Stein v. Allan*, 2019 BCSC 1734 (the "Milman Decision"). At that time, he recounted the vast majority of Ms. Stein's extensive litigation history, including and specifically referring to *Stein* (No. 1), *Stein* (No. 2) and *Stein* (No. 3) at paras. 13-15. He also referred to the filing of this petition proceeding (S195493) and the related judicial review (S195494) that addressed the HRT's rejection of anonymization in respect of the Keebler HRT Decisions: paras. 34 and 72(r).
- [25] At para. 75, Milman J. concluded that Ms. Stein should be declared a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. However, the remedy imposed at para. 77 of the Milman Decision was to bar Ms. Stein from commencing or carrying on any proceedings in this Court and in the Provincial Court against the Keeblers, their counsel, and counsel for their counsel, and to bar any judicial review proceedings in this Court arising from her complaints about the Keeblers, without leave of the Court.
- [26] In the above circumstances, I conclude that Milman J.'s order does not bar Ms. Stein from continuing with this action since this judicial review does not deal with the Keeblers or their counsel. It is my understanding that, on November 1, 2019, Justice Ehrcke granted an order preventing Ms. Stein from proceeding with the judicial review in S195494 involving the Keebler HRT Decisions unless she applied for and was granted leave to do so. That judicial review is one directly parallel to this one, both being challenges to the HRT's decisions not to anonymize Ms. Stein's name in the *Stein* 1/2/3 HRT Decisions and the Keebler HRT Decisions respectively.

Anonymization Efforts - BCSC

- [27] As far as I am aware, in 2018/2019, a number of judges of this Court have previously addressed Ms. Stein's efforts to anonymize her name in proceedings and in some of this Court's published court decisions, and to seal various court files.

- [28] In July 2016, in Action No. S166287, Ms. Stein applied for judicial review of an HRT decision regarding the Keebler matter. On December 3, 2018, Ms. Stein applied ex parte before Justice Grauer for an order of anonymity in that proceeding, which he granted subject to the directions of the judge presiding at the hearing of the petition. Justice Grauer also granted an ex parte order that date on Ms. Stein's request to seal the entire court file.
- [29] However, on January 16, 2019, Grauer J. set aside his orders given the lack of notice given by Ms. Stein. He did maintain his order to seal the portion of Ms. Stein's affidavit that included her medical records.
- [30] Ms. Stein also refers to Justice Tammen's order of January 25, 2019 in Action No. S158397. This matter also appears to have been a judicial review from the HRT relating to the Keeblers that commenced in 2015. That judicial review was dismissed in January 2019 (see Milman Decision at para. 19). Justice Tammen's order sealed an affidavit of Ms. Stein and an affidavit of an HRT legal assistant. I have no information about the evidence in support of that relief.
- [31] Ms. Stein also vaguely refers to a decision by Justice Steeves granting her anonymity in respect of some other action before this Court. Unfortunately, she did not provide any further details on which I might consider the relevance, if any, of any decision made by Steeves J. toward that end.
- [32] In May 2019, Justice Myers heard Ms. Stein's application for judicial review in Action No. S166287. At that hearing, he also heard submissions on Ms. Stein's application to anonymize her name in the proceeding and seal the court file (see Milman Decision at para. 24).
- [33] The Court reserved its decision and later, received further written submissions of the parties, including Ms. Stein's written submissions filed June 17, 2019.
- [34] On July 22, 2019, Myers J. dismissed Ms. Stein's application for anonymization and sealing of the court file, finding no compelling reason for the relief: *Stein v. Keebler*, 2019 BCSC 1194 at paras. 105-118 (the "Myers Decision"). At para. 114, Myers J. noted that the basis for Ms. Stein's applications was her concern for confidentiality of the "medical disability" that was the cause of her initial complaint.
- [35] While Myers J.'s decision in Action No. S166287 was under reserve, the petitioner [C.S.] applied before Watchuk J. in Action No. S149482 on July 15, 2019 for an order retroactively anonymizing her name in that proceeding, being the judicial review proceeding that Watchuk J. had earlier dismissed in July 2017 (the Watchuk Decision). The petitioner [C.S.] also applied to seal the court file. The basis for this application was C.S.'s assertion that her mental and physical health was at risk and that the publication of the court decision negatively affected her employability.

- [36] On July 15, 2019, Watchuk J. granted the petitioner [C.S.] in Action No. S149482 anonymization of the judicial review decision in that action (the "C.S. Decision"). The Court declined to order sealing of the court file.
- [37] Evidence before Watchuk J. included medical evidence from Dr. Stancheva, including her notes dated December 10, 2018 and February 4 and March 28, 2019. At paras. 15-19, Watchuk J. concluded, particularly based on C.S.'s assertion that she was having suicidal ideations and Dr. Stancheva's March 28, 2019 note, that C.S. was a vulnerable person and was deserving of protection from the stress and risk arising from a lack of privacy (C.S. Decision at paras. 15, 17).
- [38] On this judicial review and application before me, Ms. Stein places considerable reliance on Watchuk J.'s decision. There are, however, some troubling aspects to the circumstances in which the C.S. Decision arose.
- [39] After releasing his reasons on July 22, 2019, Myers J. became aware of Watchuk J.'s recently released C.S. Decision only one week before. He then sought to address the very unsatisfactory situation where, within the span of one week, this Court had arrived at contrary conclusions on the very same issue in similar circumstances, namely, whether Ms. Stein's name should be anonymized and whether the court files should be sealed.
- [40] In his memorandum dated July 31, 2019, Myers J. advised the parties, including Ms. Stein:
- My understanding is that Ms. Stein did not advise Madam Justice Watchuk that I had an application for anonymization under reserve, nor did she advise me that she had filed the application for anonymization in the WCB matter. It is improper for her to apply for similar or overlapping orders to different judges without at least advising them of the other motions that are pending.
- [41] I am not aware of Ms. Stein having brought any other application before this Court seeking anonymization of her name or a sealing of the court file. I am not aware of any other decision involving Ms. Stein seeking anonymization "in the WCB matter", as referred to by Myers J. in his memorandum. Ms. Stein has not referred to any other decisions on the issue.
- [42] Having said that, I have no doubt that, if no such applications have been filed (other than in the Keebler HRT Decisions judicial review), they soon will be.
- [43] In her February 2019 submissions before the HRT in this matter, Ms. Stein stated:
- So all the way for the next several months I dedicate my life, hanging on by a string, to trying to gain anonymity in all the cases that damage me (as my opponents have intertwined them)
- [44] Based on those submissions being repeated before me on this application, I have no doubt that this is only the "start" of a number of applications by Ms. Stein that will be need to be addressed by this Court at some point.

PRINCIPLES OF JUDICIAL REVIEW

- [45] VCHA has provided extensive submissions on the legal principles applicable to this judicial review. Ms. Stein does not take issue with that aspect of VCHA's submissions.
- [46] In *Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33, Justice Wedge discussed the Court's limited role in addressing a judicial review:
- [12] In an application for judicial review, the court determines whether relief under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 ("JRPA") is warranted. The court assesses, on the applicable standard of review, whether a tribunal has made a reviewable error justifying the court's intervention. The court is not permitted to set aside a decision of a statutory tribunal merely because it would have reached a different conclusion: *Re McInnes and Simon Fraser University* (1982), 140 D.L.R. (3d) 694 (B.C.S.C.), *aff'd* (1983) 3 D.L.R. (4th) 708 (B.C.C.A.).
- [13] The court on judicial review does not sit as an appellate court. It does not re-try the matters decided by the tribunal. It is not the court's role to review the wisdom of the tribunal's decision. The court cannot re-weigh the evidence, make findings of credibility or substitute its view of the merits for that of the tribunal. The court's role is limited to determining whether the tribunal has acted, and made its decision, within its statutory authority or jurisdiction: *Ross v. British Columbia (Human Rights Tribunal)* (1 May 2009), Vancouver L042211 (B.C.S.C.); *Tse v. British Columbia (Council of Human Rights)*, [1991] B.C.J. No. 275 (QL) (S.C.).
- [14] Further, relief under the JRPA is discretionary. The court must determine whether its intervention is warranted having regard to the applicable principles, including the principle of restraint concerning judicial intervention in administrative matters.
- See also *Karbalaeiali v. British Columbia (Human Rights Tribunal)*, 2010 BCSC 1130 at paras. 27-28.
- [47] Ms. Stein has submitted her Affidavit #1 filed May 13, 2019 and Affidavit #2 filed November 7, 2019 at this hearing.
- [48] As a general rule, the only admissible evidence is the "record of proceeding", as defined in the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241 (the "JRPA"). In rare circumstances, other evidence may be admitted to show a lack of jurisdiction, a denial of natural justice or to show a lack of any basis for a factual finding: *Kinexus* at paras. 16-20 and *Karbalaeiali* at paras. 31-33.
- [49] Ms. Stein does not advance any basis upon which her affidavit evidence could or should be admitted as further evidence on this judicial review. I will therefore disregard that evidence for that purpose.

[50] However, her affidavits can be considered in support of her application to anonymize her name in this proceeding and to seal the court file. That said, her affidavits are still largely argument and do not materially add to the evidence that was before the HRT on the issues.

[51] The standard of review to be applied by a reviewing court to a decision of the HRT is set out at s. 59 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 (the "ATA"):

59 (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[52] Section 59(3) of the ATA sets out that discretionary decisions of the HRT are to be afforded the highest degree of deference by this Court and may only be set aside if found to be "patently unreasonable", with a consideration of the factors identified in s. 59(4).

[53] In *Murphy v. Vancouver Island Health Authority*, 2017 BCSC 2255, Justice DeWitt-Van Oosten (as she then was) discussed the patent unreasonable standard in respect of the factors under ss. 59(4)(c) and (d):

[77] If a petitioner does not allege arbitrariness, bad faith or improper purpose under s. 59(4), which is the case here, the test for judicial intervention will not be met if the Tribunal fully considered the submissions of the parties; afforded the petitioner a "fair consideration of her complaint"; took a "reasoned and principled" approach; the determinations reached were "not shown to be based on any irrelevant factors"; and, the Tribunal did not "fail to take any statutory requirements into account": *Berezoutskaia v. British Columbia*, para. 27.

[78] Or, as explained in *Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827, at para. 34:

A decision is patently unreasonable where it is not merely unsupported by reasons that are capable of withstanding a probing examination, but is openly, evidently and clearly irrational: *Ford v. Lavender Co-operative Housing Association*, 2011 BCCA 114. When reviewing a decision for patent unreasonableness, it is not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. A decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz v. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2009 BCCA 92, at para. 39 citing *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80. [Emphasis added.]

[81] Finally, the Tribunal's decision must be read as a whole in deciding whether it is patently unreasonable: *Yaremy v. British Columbia*, para. 36, citing *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, para. 3. And, the fact that there were conflicting affidavits before the Tribunal, raising credibility issues, does not prohibit an exercise of discretion to dismiss: *Berezoutskaia v. British Columbia*, para. 9; *Evans v. University of British Columbia*, 2008 BCSC 1026, para. 34.

[54] In the past, this Court has recognized that the HRT's decision to anonymize the names of parties is a discretionary one to which the patent unreasonableness standard will apply: *I.J. v. J.A.M.*, 2012 BCSC 892 at paras. 32 and 35. Similarly, a tribunal's decision whether or not to re-open a prior decision is a discretionary one within its mandate to manage its own process, such that the patent unreasonableness standard applies: *J.J. v. Coquitlam School District No. 43*, 2011 BCCA 343 at para. 23 and *Karbalaeiali* at paras. 38, 64-65.

[55] Finally, the standard of review in respect of a discretionary decision can be altered if the underlying or "embedded" issues of fact or law being challenged are readily extricable from the discretionary decision. In that case, the finding is reviewable on the applicable standard of reasonableness or correctness. If, however, the issues of fact or law are inextricably intertwined with issues of discretion, the standard remains as patently unreasonable: *Morgan-Hung v. British Columbia (Human Rights Tribunal)*, 2011 BCCA 122 at paras. 28-29.

HRT ANONYMIZATION / RECONSIDERATION DECISIONS

[56] Section 50(4) of the ATA requires that the HRT "must make its decisions accessible to the public".

[57] Section 27.3 of the Code grants the HRT decision-making authority to make rules respecting practice and procedure to facilitate just and timely resolution of complaints. Rule 5 of the HRT's Rules of Practice and Procedure expressly allows the HRT to anonymize public disclosure of its decisions, including those on its website. Rule 5(5) and (6) provide:

Decisions

- (5) Tribunal decisions are available to the public, and may be published, including on the tribunal's website.

Limiting publication of personal information

- (6) An application for an order limiting public disclosure of personal information must state why privacy interests outweigh the public interest in access to the tribunal's proceedings.
- [58] The balancing exercise inherent in Rule 5(6) is similar to the test applied by the courts. Rule 5 parallels the well-known Dagenais/Mentuck framework, which sets out that the person seeking to limit public disclosure must establish that such an order is necessary to prevent a serious risk to the proper administration of justice and where that objective outweighs the public interest in the open court principle in affording public access to the decision.
- [59] The sole issue for determination by Member Adamson in the HRT Anonymization Decision was whether Ms. Stein had met the onus of establishing that her privacy interests outweighed the public interest in having full access to the Stein 1/2/3 HRT Decisions.
- [60] It is difficult to distill Ms. Stein's petition down to concrete complaints about the Decisions. In the petition, she argues procedural unfairness, but it is clear enough that her argument is otherwise, namely that the HRT's conclusions were wrong, particularly the finding that her medical evidence was "speculative".
- [61] In the petition, she also argues that there is "much bias" toward her, which is "duly unfair". In this and in the "Legal Basis" section of the petition, distilled to its core, Ms. Stein states that she disagrees with the Decisions.
- [62] In argument, when queried by the Court, Ms. Stein advanced the following specific grounds under ss. 59(4)(a), (b) and (c) of the ATA in respect of the Decisions, namely that they were:
- a) exercised arbitrarily or in bad faith: she argues that the HRT was "playing God" in not listening to the evidence from her doctors;
 - b) exercised for an improper purpose: she argues that the HRT was not acting to protect or support her, as it should. Rather, she argues the HRT was biased against her and wanted to "torture" her where there was no prejudice to the other parties if her name was anonymized; and
 - c) based entirely or predominantly on irrelevant factors: the Decisions were "unfair", particularly as to the HRT's rejection of her medical evidence as "speculative" or not provided in a timely manner.
- [63] Ms. Stein does not challenge the Member's statement of the applicable law in the Decisions. Also, she does not argue that he failed to take the applicable statutory requirements into account (the s. 59(4)(d) factor in the ATA).

- [64] I adopt VCHA's summary of the considerations that apply on such an application as was brought by Ms. Stein before the HRT, with applicable HRT authorities:
- a) an applicant for anonymization bears the onus of establishing that their privacy interest outweighs the public interest of an "open court" proceeding: *Kandola v. University of British Columbia* (No. 3), 2006 BCHRT 391 at para. 17;
 - b) a speculative impact on one's future employment prospects is not a sufficient reason for the exceptional step of imposing an anonymization order: *Kandola* at para. 20 and *A v. Society*, 2015 BCHRT 143 at paras. 9-11;
 - c) the assertion that one's reputation may be tarnished is insufficient justification for limiting publication: *S v. P*, 2014 BCHRT 244 at para. 45; *Bidulka v. Randall*, 2004 BCHRT 385 at para. 15; and, *Francis v. B.C. (Ministry of Justice)*, 2014 BCHRT 171 at paras. 12-15;
 - d) the HRT should be reluctant to anonymize the name of a complainant, without compelling medical evidence that there is reason to do so: *Bidulka* at para. 16; *A* at paras. 11-12; and
 - e) an application for a retroactive order after a decision has been rendered will weigh against granting the order for anonymization: *Francis* at paras. 9-11.
- [65] From a review of the HRT Anonymization Decision, it is evident that Member Adamson was well aware of the above authorities and that he applied that law. Ms. Stein essentially argues that he erred in his conclusions arising from the application of the law: *Chen v. Surrey (City)*, 2015 BCCA 57 at para. 29.
- [66] Member Adamson addressed the issues raised by Ms. Stein as follows.
- [67] Firstly, he considered the timeliness of Ms. Stein's application, noting that she filed it just over three years after the most recent of the Stein 1/2/3 HRT Decisions (and five-and-a half years after the earliest one). The HRT found that this weighed heavily against granting the anonymization order.
- [68] Member Adamson also contrasted Ms. Stein's application with an earlier application she had made where, in June 2017, the HRT did grant her anonymization: *A. v. Keebler* (No. 2), 2016 BCHRT 63. In that earlier decision, the application was brought closer in time to the decision and more compelling evidence was available regarding the effect on her re-employment.
- [69] I see no error in identifying a lack of timeliness as significantly weighing against the application. Ms. Stein was well aware of the ability to seek such relief years ago. She was also well aware of the publication of the various decisions relating to her on the HRT's website, which did not support her contention that she had just "recently" discovered what a Google search of her name revealed and become concerned about the possible effects of that information. She did not identify any reason why she had not applied earlier to the HRT.

- [70] Secondly, Member Adamson considered Ms. Stein's assertion that the publication of her personal and medical information in the Stein 1/2/3 HRT Decisions could impact her future employability. He found that Dr. Stancheva's December 10, 2018 note was essentially a repetition of what Ms. Stein had asserted to her doctor, describing that evidence as a "bare assertion that is speculative in nature".
- [71] The HRT found Ms. Stein's argument that she had no job prospects unpersuasive and speculative. Ms. Stein asserted that someone had offered her a one-year position as a CT earning \$100,000 a year. She then stated that she "had to turn it down because of the googling situation" where the search results from the Internet revealed the various HRT decisions. Ms. Stein's bare assertions were found to be wanting. In addition, the only document in support of her assertions was an October 16, 2018 email from another party requesting information from Ms. Stein to assess her eligibility for registration for a job. Ms. Stein confirmed that she did not provide her name to that person and never proceeded with the job application.
- [72] On the employment issue, Member Adamson concluded that this evidence "does not weigh significantly in favour of granting this application". I agree that his conclusions were supported by the evidence - or rather, lack of persuasive evidence - submitted by Ms. Stein. His conclusions were reasonable and I see no basis upon which to interfere with them.
- [73] Thirdly, Member Adamson considered Ms. Stein's assertion that the information published in the Stein 1/2/3 HRT Decisions had detrimentally impacted her health, or would do so in the future. Again, Dr. Stancheva's December 10, 2018 note was considered on this point. The HRT found that the evidence was not sufficiently compelling to establish a negative effect on Ms. Stein's health since it was focussed on a "possible future effect". Again, I agree that his conclusion was supported by the lack of persuasive evidence submitted by Ms. Stein and I find that his conclusion was reasonable.
- [74] In summary, Member Adamson concluded that:
- the factors strongly militate against granting the anonymization request. The application is brought long after the decisions were issued and the complaints concluded. The Complainant's evidence regarding the negative effect of the decisions on her job prospects and health is limited and speculative. In the circumstances of this case, the Complainant's privacy interests do not outweigh the public interest of in accessing the decisions with the parties' names identified. As a result, I decline to exercise my discretion to issue the requested anonymization order.
- [75] Ms. Stein has not established any basis to suggest that Member Adamson exercised his discretion arbitrarily or in bad faith, or for an improper purpose. Furthermore, Ms. Stein has not established that the decision was based entirely or predominantly on irrelevant factors or, that he ignored relevant factors. To the contrary, I agree that Member Adamson considered the relevant factors and the available evidence in support of the request for an anonymization order before coming to his decision.

- [76] I am unable to conclude that the HRT Anonymization Decision was patently unreasonable. His conclusions are clearly rational and within the range of potential defensible outcomes.
- [77] I have also reviewed Member Adamson's Reconsideration Decision in the context of the submissions made by Ms. Stein at the time.
- [78] Firstly, Member Adamson noted that a reconsideration application was not appropriate when the applicant simply sought to restate earlier arguments or perhaps advance new ones. He correctly stated that test as requiring that Ms. Stein establish that the decision should be reopened in the interests of fairness and justice: *Grant v. City of Vancouver* (No. 4), 2007 BCHRT 206 at para. 10.
- [79] As he notes, Ms. Stein's materials in support of her application for a reconsideration were simply more arguments in support of her position, consistent with her submission on the reconsideration that she was looking for a "better result".
- [80] In her application for reconsideration, Ms. Stein directly addressed the timeliness of her application. She asserted that she did not apply earlier because she was "self represented and didn't know in 2014-2017 about anonymity and how granted". This assertion would appear to be untrue given her unrepresented status in the Keebler/HRT proceeding when she obtained such an order in June 2017, as noted in *A. v. Keebler* (No. 2), 2016 BCHRT 63.
- [81] Member Adamson considered the further arguments and case law provided by Ms. Stein. He also considered the "fresh" medical evidence presented by Ms. Stein as represented by Dr. Stancheva's note dated March 28, 2019:

This note is to confirm that the above patient of mine did have a suicidal ideation after discovering her name on internet regarding disclosure of her medical/mental diagnosis. That was in October '18. Her condition did get worse; this is not a speculative but a real objective consequence. I have my clinical notes to prove it. Thank you for re-considering her application for anonymity during the trial.

- [82] Member Adamson rejected this evidence on the reconsideration application for the following reasons:

I conclude the March 28, 2019 evidence does not warrant a reconsideration of the March 14, 2019 decision when there is nothing to indicate Dr. Stancheva could not have provided this evidence when the Complainant made her case prior to the March 14, 2019 decision.

- [83] I see no error in the HRT's Reconsideration Decision. In fact, the same result would have been the likely outcome in this Court in light of the first Palmer criteria (*Palmer v. The Queen*, [1980] 1 S.C.R. 759) for the admission of fresh evidence. By that criterion, fresh evidence will not be admitted where it was, by due diligence, available earlier.

- [84] I conclude that Member Adamson's decision to reject such evidence was reasonable. Dr. Stancheva's March 28, 2019 note was not "new" evidence; clearly, Ms. Stein obtained it only in an attempt to remedy the deficiencies in the evidence that she had earlier submitted to the HRT, which had included available medical evidence from this same doctor.
- [85] In conclusion, Ms. Stein has failed to establish that the HRT Anonymization Decision and the Reconsideration Decision are patently unreasonable in the circumstances relating to Ms. Stein's application for retroactive anonymity. Member Adamson exercised his discretion based on the evidence and the applicable law.
- [86] I see no error in relation to the Decisions in terms of affording Ms. Stein with the appropriate level of procedural fairness. The HRT afforded Ms. Stein a fair hearing to present her evidence and arguments. The fact that the HRT did not agree with Ms. Stein does not mean that she was denied such a right.

ANONYMIZATION / SEALING COURT FILE

- [87] I adopt the summary of the law concerning the principles upon which anonymity and the sealing of the court file might be granted, as set out in the Myers Decision:
- [110] Turning to the legal test, in *R. v. Mentuck*, 2001 SCC 76 at para. 32, Iacobucci J., writing for the Court, set out the test for a publication ban:
- A publication ban should only be ordered when:
- (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
 - (b) 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.
- [111] The same test has been applied to anonymization applications. See, for example, *Davidge v. Fairholm*, 2014 BCSC 2150. The decisions recognise that anonymization offends the open court principle.
- [88] I conclude that there is no basis upon which to seal the court file or grant Ms. Stein anonymity.
- [89] At para. 114 of the Myers Decision, Myers J. notes that the "main reason" put forward by Ms. Stein for the relief sought was to maintain the confidentiality of the "medical disability" that was the basis for the complaint. He makes no reference to any allegations by her of employability or medical issues, such as she asserted to Watchuk J. and that she currently asserts to me as significant issues. If these issues were of such a concern to her, I can only assume that they would have formed at least part of her argument in the spring/summer of 2019 when Myers J. heard her application.

- [90] It is not clear to me why it would be the case that Ms. Stein would advance different arguments for anonymity in similar cases and within a similar period. Ms. Stein only "believes" that she would have put her employment and medical evidence before Myers J. More confusingly, Ms. Stein infers in her written submissions that she did not speak to the anonymity issue before Myers J.; however, his reasons would suggest otherwise.
- [91] I conclude that there is no persuasive evidence that public access to the court file will harm Ms. Stein's employment prospects. I agree with the conclusions of Member Adamson on the employability issue. Even Watchuk J. in the C.S. Decision concluded at para. 21 that there was "no evidence other than a general concern of future effects on her employability". That general concern does not justify the extraordinary nature of the relief Ms. Stein seeks.
- [92] I also find that the medical evidence is wanting in terms of establishing a real risk to Ms. Stein's health in the event that her name is not anonymized in the style of cause and this decision, and the court file is not sealed. In my view, Ms. Stein has clearly demonstrated by her actions and words that she is not a vulnerable person who is deserving of the protection of this Court.
- [93] In that respect, I would make two main but related observations.
- [94] The first point is that Ms. Stein's continued assertions that she simply wants privacy to protect her health and future job prospects are overshadowed by her continued actions in advancing a multitude of litigation against various parties, including the Keeblers, Mr. Freeze and VCHA. In fact, she argues that, at present, she is not only asserting her own interests, but those of other disabled persons as a "mental health advocate". She stated in argument that there are other people "still in her sights", which I take as meaning that her litigation efforts are far from over.
- [95] One need only review the litany of proceedings brought by her, as outlined by Milman J. in the Milman Decision at para. 72, to understand the magnitude of that past effort. In addition, as I understand it, even that list is incomplete as it does not include the SCC leave application for reconsideration or the application before Watchuk J. upon which she now heavily relies.
- [96] The second, and related, point is that Ms. Stein has been declared a vexatious litigant and with good reason, as discussed in the Milman Decision. To that end, I would refer to the Myers Decision again:
- [112] In *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para. 111, Morgan J. highlighted the negative effect of non-disclosure of the identities of litigants in administrative tribunals:

The deleterious effects of the presumption against disclosure in s. 21(1) and related provisions of FIPPA are real and substantial. As counsel for the *Toronto Star* points out, emphasizing privacy over openness not only has a negative impact on the press but also affects other stakeholders. Regulators have no way of identifying chronic offenders, reference checks on tenants and others who come before the various tribunals are impossible to carry out. Problematic landlords, police

and other actors, including repeat human rights offenders, vexatious litigants, and the like cannot be discovered by members of the public who have to engage with them.

[113] In *Davidge, Griffin J.*, as she then was, noted:

12 The law is clear that anonymizing a judgment by substituting initials for a litigant's name should only occur in rare circumstances, such as where it is necessary to protect a vulnerable litigant or a vulnerable person who can be identified through the litigant.

[Emphasis added.]

[97] As stated in *Toronto Star*, other stakeholders have an interest in identifying persons with a problematic history, including those who have been declared a vexatious litigant, such as Ms. Stein. I can do no better than quote the *Myers Decision* at para. 116 in stating that Ms. Stein should not be able to "hide under a veil of anonymity" while (in my words) wielding a sword in her hand by advancing substantial allegations and litigating against others into the future.

[98] That brings me to my last and more practical observation. I question what benefit, if any, might be achieved by this order.

[99] As stated in Ms. Stein's application for anonymization before the HRT, the Stein No. 1/2/3 HRT Decisions and the Keebler HRT Decisions involving the Keeblers are "intertwined". By Ms. Stein's own submissions, the "DECISIONS [ARE] ALL TIED TOGETHER AS THEY CROSS REFERENCE".

[100] Given my decision in upholding the Stein No. 1/2/3 HRT Decisions on judicial review, these three decisions will remain on the HRT's website and be available to anyone searching. Ms. Stein's judicial review of the HRT's rejection of her application to anonymize the four HRT Keebler Decisions is yet to be determined, assuming a judge of this Court grants her leave to seek that relief.

[101] As noted in the *Myers Decision* at para. 117, there are numerous prior decisions that have not been anonymized such that "[t]he utility of anonymizing my reasons is questionable". By my estimate, there at least five decisions on this Court's website identifying Ms. Stein by name in various proceedings. VCHA also refers to one unreported decision by another judge of this Court, also identifying her by name. To date, one Court of Appeal judgment has been posted on the website, with Ms. Stein advising that at least two more are to come (from the *Myers Decision* and the *Milman Decision*). Finally, the SCC leave application is also available online and identifies her full name, subject of course to the outcome of the reconsideration/anonymity applications.

[102] I agree that many of these decisions refer to each other and are related in that sense. Certainly, most, if not all, of the online decisions are linked through the *Milman Decision* that provides a comprehensive history of the proceedings taken by Ms. Stein in October 2019.

- [103] In my view, even if Ms. Stein had proved entitlement, which she has not, this is the proverbial "too little, too late" scenario. All of the decisions, with the exception of the one HRT decision and the Watchuk Decision, are in the public domain identifying Ms. Stein by name. They remain fully searchable on the Internet.
- [104] A review of those decisions fully reveals Ms. Stein's extensive litigation history, which she does not regret. She only regrets that now, other people who might be interested in knowing more about her activities from resources on the Internet will also be fully aware of that unsuccessful history, with potential negative consequences to her.

RELIEF AND COSTS

- [105] I dismiss the petition. In addition, I dismiss Ms. Stein's Notice of Application filed November 7, 2019 to anonymize her name in the style of cause and in this decision. I also decline to seal the court file.
- [106] Ms. Stein will pay costs to VCHA of both the petition proceeding and the application, on the usual scale.

"Fitzpatrick J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/00/2020BCSC0070.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/stein-v-british-columbia-human-rights-tribunal-2020>

Prepared on 25 October 2026 · Esheria