

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

“Employer”

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Carol L. Roberts

**FILE No.:** 2020/153

**DATE OF DECISION:** January 26, 2021

## DECISION

### SUBMISSIONS

Shelley-Mae Mitchell

counsel for the Employer

### OVERVIEW

1. This is a preliminary ruling on a request for anonymization in an appeal filed by an employer (the “Employer”) of an October 2, 2020 Determination issued by a delegate of the Director of Employment Standards (the “Director”). The Employer asks the Tribunal to exercise its discretion to anonymize the names of an employee involved in this matter, as well as the Employer, due the nature of the matters on appeal.
2. In the Determination, the Director found that the Employer contravened sections 18, 21, 58 and 63 of the *Employment Standards Act* (“ESA”) in failing to pay a former employee (“Employee Z”) wages, business costs, annual vacation pay and compensation for length of service. The Employer terminated Employee Z’s employment following its investigation of a sexual harassment complaint filed by an employee (“Employee A”) against Employee Z. The Director found that that the Employer did not have sufficient grounds to terminate Employee Z’s employment. That Determination is the subject of the appeal.

### POSITIONS OF THE PARTIES

3. The Employer submits that sexual harassment investigations are intended to be confidential to provide complainants with the assurance that, if they proceed with complaints, the details of the complaint will not become public knowledge. The Employer says that to ensure true confidentiality of the complaint and to ensure that employees feel confident that the Employer will not disclose information concerning the harassment, the names of Employee A as well as the Employer should be anonymized. The Employer contends that identifying the parties will eradicate the complete confidentiality promised by the Employer with respect to its investigation. It argues that if Employee A’s name becomes public through an appeal of a Determination, future complainants will be deterred from coming forward and effectively bar the Employer from ensuring that it is providing its employees with a workplace that is free from sexual harassment.
4. The Employer says that it had to share some details of its investigation to the Director in response to Employee Z’s complaint. Since the Determination is not in the public realm, the details of the harassment are not public. However, the Employer submits that the details would become public once the Tribunal’s decision is issued and posted to the Tribunal’s website.
5. The Employer contends that anonymizing the Employer’s name, in addition to that of Employee A, upholds the integrity of the investigation process and gives complainants a measure of confidence to report allegations of sexual harassment. The Employer contends that publicizing the name of the Employer may have the inadvertent effect of identifying Employee A even if Employee A is not explicitly named in the Tribunal’s decision. The Employer argues that knowing the name of the Employer involved in the sexual harassment investigation significantly narrows the number of employees who may have been the

complainant. It says that although it is a large employer, it does not have many reports of sexual harassment and identifying the Employer would make it easier to identify Employee A, who is still employed by the Employer.

6. The Employer also says that Employee A's reputation in the workplace may be affected if she is named. The Employer also says that Employee A continues to be affected by the conduct. The Employer seeks to protect Employee A's emotional state by maintaining her privacy.
7. Finally, the Employer says that the allegations of sexual harassment are explicit and need not be associated with a particular employee in order for the Tribunal to assess whether the Director erred in finding that the Employer did not have just cause to terminate Employee Z's employment. It contends that it is sufficient to state the facts and Employee A's evidence without naming the Employer and the employees and that anonymizing the names of the parties would not harm the principles of transparency, accountability and intelligibility that underlie all decisions of the Tribunal.
8. Although the Director and Employee Z were invited to respond to the Employer's request for anonymization, neither did so. I note, however, that Employee Z did contact the Tribunal expressing concern that his name might become public through an appeal of the Determination.

## **ANALYSIS**

9. The Tribunal's Privacy and Anonymization Policy (the "Anonymization Policy") provides that, in exceptional circumstances, the Tribunal may exercise its discretion to change a person's name (anonymize), or to omit certain personal information, where the harm to a person's privacy or security interest outweighs the public interest in transparency, accountability and intelligibility of Tribunal decisions. The Anonymization Policy states:

It is not enough for a person to want to remain anonymous or to avoid embarrassment. In exercising its discretion, the Tribunal will consider whether the nature of the privacy or other interest you identify outweighs the public interest in transparency, accountability, and intelligibility of its decisions.

10. I am persuaded that, in the circumstances, the name of the Employer, Employee A and Employee Z should also be anonymized for the following reasons.
11. Even though the Employer is a large company, I am persuaded that identifying it could enable both members of the public as well as Employee A's co-workers to identify her once the facts are reported in the Tribunal's decision. I am persuaded that if the public or Employee A's co-workers were able to identify her, this could potentially affect her reputation. As well, I am persuaded that if I did not anonymize the parties, this could undermine the Employer's ability to offer its employees assurances of privacy and confidentiality in reporting incidents of sexual harassment. Although neither Employee Z nor the Employer sought anonymization of Employee Z's name, I find that by identifying Employee Z, his former co-workers as well as members of the public could identify both the Employer and Employee A.
12. The issue on appeal, that is, whether the Employer had just cause to terminate Employee Z's employment, does not require disclosure of the names of any of the parties involved. I find the nature of the privacy

interest in this case outweighs the public interest in transparency, accountability, and intelligibility of the Tribunal's decisions.

### **ORDER**

13. Pursuant to the Tribunal's Anonymization Policy, I grant the Employer's application to anonymize the names of the Employer and Employee A in this proceeding. I have also decided to anonymize the name of Employee Z in this proceeding.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**