Federal Court  Cour fédérale

Date: 20180920

Docket: T-1308-17

Citation: 2018 FC 938

[ENGLISH TRANSLATION REVISED BY AUTHOR]

Montréal, Quebec, September 20, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

GENEVIÈVE DESJARDINS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The applicant, Geneviève Desjardins, was Vice-President of Communications and Public Affairs at the Canadian Food Inspection Agency [the Agency]. In 2015, the Public Sector Integrity Commissioner [the Commissioner] received a disclosure of wrongdoing allegedly committed by Ms. Desjardins. He therefore conducted an investigation pursuant to the *Public Servants Disclosure Protection Act*, SC 2005, c 46 [the Act]. In July 2017, the Commissioner

submitted his report to the President of the Agency and to Ms. Desjardins. He concluded that she had committed wrongdoings within the meaning of the Act. In addition, in September 2017, as required by section 38 of the Act, he submitted a report to Parliament summarizing his negative findings against Ms. Desjardins.

[2] Ms. Desjardins applied for judicial review of the Commissioner's report. Pursuant to rule 317 of the *Federal Courts Rules*, SOR/98-106, she requested disclosure of all documents in the Commissioner's possession in relation to her case. On the basis of rule 151, the Commissioner filed a motion for a two-pronged confidentiality order. The first component is a redacted file for the public to be filed in the court record. The names of witnesses and whistleblowers and any identifying information, audio recordings of interviews with witnesses, handwritten notes from investigators and the file of an Agency employee would be omitted from that file. The second component is a redacted file to be prepared for the parties. The only information to be omitted from that file would be the names of the whistleblowers and any identifying information, as well as the audio recordings of witness interviews. The lawyers would have access to that information but could not disclose it to their clients. By Order of Prothonotary Tabib dated April 27, 2018, that motion was dismissed. The Commissioner is now appealing that order.

[3] I am of the view that the prothonotary should have granted the order sought by the Commissioner. The prothonotary erred in law by placing too high a burden of proof on the Commissioner, contrary to the teachings of the Supreme Court. In addition, the prothonotary erred in law in interpreting the provisions of the Act that provide for the confidentiality of

disclosures and testimony given to the Commissioner. Had it not been for those errors, the prothonotary would have had to find that the order being sought was necessary to achieve the purposes of the Act and that its effects on procedural fairness and the open court principle were proportional to its salutary effects, subject to one exception concerning the disclosure of the audio recordings of interviews with witnesses.

[4] According to *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 FCR 331, these errors justify the Court's intervention, the setting aside of the prothonotary's decision and the issuance of the order being sought.

I. Rules applicable to confidentiality orders and the burden of proof

[5] The prothonotary correctly stated the basic principles regarding the open court principle and confidentiality orders. However, she imposed a burden of proof that is inconsistent with the decision of the Supreme Court in *AB v Bragg Communications Inc*, 2012 SCC 46, [2012] 2 SCR 567 [*Bragg*].

[6] The open court principle is deeply rooted in our legal traditions. As stated by Justice Louis LeBel of the Supreme Court of Canada, the "principle that the proceedings of the courts are public is unquestionably one of the fundamental values of Canadian procedural law" (*Lac d'Amiante du Québec Ltée v 2858-0702 Québec Inc*, 2001 SCC 51 at para 62, [2001] 2 SCR 743 [*Lac d'Amiante*]). This principle is recognized at common law (*Scott v Scott*, [1913] AC 417 (HL); *Vancouver Sun (Re)*, 2004 SCC 43, at paras 23−25, [2004] 2 SCR 332; *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2 at paras 27−30, [2011] 1 SCR 19

[*Canadian Broadcasting Corp*]) and in legislative or regulatory provisions governing civil procedure in several Canadian jurisdictions (see, for example, rules 26 and 29 of the *Federal Courts Rules*, section 11 of the *Code of Civil Procedure*, CQLR, c C-25.01, and section 135 of the *Courts of Justice Act*, RSO 1990, c C.43). It also bears a constitutional dimension, since it is inextricably linked to freedom of expression and freedom of the press (*Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326).

[7] The open court principle is not absolute. Various legislative provisions set forth explicit limits on open proceedings, for example in family matters or, in criminal matters, in sexual assault cases. The courts have held that such restrictions, when carefully designed, constituted reasonable limits on freedom of expression (*Canadian Newspapers Co v Canada (Attorney General)*, [1988] 2 SCR 122 [*Canadian Newspapers Co*]; *Canadian Broadcasting Corp*; see also, in a slightly different context, *Lac d'Amiante*). In addition, there are legislative provisions that allow the courts to issue confidentiality orders or to proceed in camera on a case-by-case basis. In the case at hand, the governing provision is rule 151 of the *Federal Courts Rules*:

151. (1) On motion, the Court may order that material to be filed shall be treated as confidential.	**151.** (1) La Cour peut, sur requête, ordonner que des documents ou éléments matériels qui seront déposés soient considérés comme confidentiels.
(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.	(2) Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l'intérêt du public à la publicité des débats judiciaires.

[8] In several cases, the Supreme Court of Canada has held that various kinds of confidentiality orders may be appropriate when the "necessity of the publication ban" and the "proportionality between the ban's salutary and deleterious effects" have been demonstrated (*R v Mentuck*, 2001 SCC 76 at para 32, [2001] 3 SCR 442; see also *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835; *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 [*Sierra Club*]). These criteria are generally applied to motions brought pursuant to rule 151 (*Sierra Club*, *ibid*, at paragraph 53).

[9] In her reasons, the prothonotary asserted that the party seeking a confidentiality order must [TRANSLATION] "establish a real and substantial risk, well grounded in the evidence, that poses a serious threat to the interest in question." She bases this assertion on paragraph 54 of the *Sierra Club* decision. Similarly, the Federal Court of Appeal has outlined the burden of proof that rests on the party requesting such an order and has held that general statements to the effect that the party considers the information at issue to be confidential are not sufficient (*Glaxo Group Limited v Novopharm Ltd*, 1998 CanLII 7667 (FCA)).

[10] However, in *Bragg*, a more recent decision, the Supreme Court stated that it was not always necessary to provide evidence in support of a motion for a confidentiality order. Justice Rosalie Abella stated:

> [15] The *amicus curiae* pointed to the absence of evidence of harm from the girl about her own emotional vulnerability. But, while evidence of a direct, harmful consequence to an individual applicant is relevant, courts may also conclude that there is objectively discernable harm.
>
> [16] This Court found objective harm, for example, in upholding the constitutionality of Quebec's *Rules of Practice* that limited the media's ability to film, take photographs, and conduct interviews

> in relation to legal proceedings (in *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, [2011] 1 S.C.R. 19), and in prohibiting the media from broadcasting a video exhibit (in *Canadian Broadcasting Corp. v. The Queen*, 2011 SCC 3, [2011] 1 S.C.R. 65). In the former, Deschamps J. held (at para. 56) that the *Dagenais/Mentuck* test requires neither more nor less than the one from *R. v. Oakes*, [1986] 1 S.C.R. 103. In other words, absent scientific or empirical evidence of the necessity of restricting access, the court can find harm by applying reason and logic: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 72; *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, at para. 91.
>
> (*Bragg*, *supra*, at paras 15–16).

[11] In this excerpt, Justice Abella refers to the possibility of harm being "objectively discernable." From this I infer that objective elements – as distinguished from evidence in the conventional sense – may be used not only to establish a "public interest" justifying confidentiality, but also to prove a threat or risk of compromising that public interest. These objective elements may include facts derived from judicial notice, from the analysis of the legislative scheme in question and from Parliament's purpose or, as Justice Abella pointed out, simply from "reason and logic."

[12] For example, in addition to the situation of bullying victims illustrated in *Bragg*, Canadian courts are increasingly acknowledging that it is not necessary to submit detailed evidence to find that it is necessary to preserve the anonymity of sexual assault victims: see my reasons in *AB v Canada (Citizenship and Immigration)*, 2018 FC 237, at paras 40–44.

[13] With respect, I therefore find that the prothonotary erred in law by requiring the Commissioner to bring evidence of the deleterious effects of public disclosure of the identity of

whistleblowers and witnesses. Multiple provisions of the Act assume the existence of these effects, as I am about to demonstrate.

II. Necessity of the order

[14] On page 4 of her reasons, the prothonotary accepted that protection against reprisals and the incentive to disclose wrongdoing were public interests that could warrant a confidentiality order, provided that there was evidence of a real risk that these interests would be compromised. On page 6, however, the prothonotary appeared to question the validity of these interests, stating that the Act does not, in any way, guarantee confidentiality to persons making disclosures or witnesses where an investigation is the subject of an application for judicial review before this Court.

[15] In any event, the main ground for the prothonotary's decision was the absence of evidence of a real risk of reprisals in this case or of a risk that the public disclosure of the information at issue would discourage other public servants from disclosing wrongdoing. As I stated earlier, these findings stem directly from the prothonotary's vision of the applicable burden of proof.

[16] In these circumstances, I believe it is necessary to begin the analysis by examining the purposes of the Act and its provisions concerning confidentiality. This is a question of law. This analysis will then show that Parliament itself considered that public disclosure of the identity of whistleblowers or witnesses would be injurious to the public interest.

[17] Let us start with the obvious. The Act was enacted to fill a gap in the array of recourses available to public servants at that time. Before the Act was adopted, public servants who witnessed or suffered wrongdoing in the course of their employment could report the situation to their superiors or to senior management in their department or agency, who could then take disciplinary action, pursuant to labour law, against the person at fault. In some cases, a public servant could also file a complaint with an independent body, such as the Human Rights Commission. If the wrongdoing constituted a criminal act, it was also possible to file a complaint with the police. However, in almost all cases, the nature of the process initiated by the complaint exposed the public servant to testifying at a public hearing or, at the very least, to the disclosure of their identity to the person who was the subject of the complaint. The Federal Court of Appeal even held that the *Privacy Act*, RSC 1985, c P-21, does not impede the disclosure of the identity of a public servant who had reported misconduct to his superiors (*Canada (Information Commissioner) v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 270, [2003] 1 FCR 219). Such public disclosure could result in various forms of reprisals. In these circumstances, disclosing wrongdoing required extraordinary courage.

[18] This is what the Act was designed to address. Its preamble states that effective procedures for the disclosure of wrongdoings are essential to confidence in public institutions and that procedures for protecting public servants who disclose wrongdoings are therefore necessary. The Act provides a number of measures to ensure the proper handling of disclosures of wrongdoing (see also, in this regard, *Gupta v Canada (Attorney General)*, 2017 FCA 211 at paras 5–9). First, it requires government departments or agencies to establish internal procedures for handling disclosures. It also allows public servants to complain directly to the Commissioner,

who can then conduct an investigation. The procedure is inquisitorial, and section 27 provides that the Commissioner is not required to hold a hearing. Section 26 states that such investigations "are for the purpose of bringing the existence of wrongdoings to the attention of chief executives and making recommendations concerning corrective measures to be taken by them." The Commissioner therefore has no authority himself to impose sanctions on the wrongdoer. It is up to the government, acting as an employer, to do so.

[19] Another part of the Act establishes a procedure to protect against reprisals. Public servants who believe that a reprisal has been taken against them may file a complaint with the Commissioner, who, after investigation, can refer the matter to the Public Servants Disclosure Protection Tribunal, specially created for that purpose.

[20] The complexity of this legislative scheme demonstrates that if disclosure procedures are to be effective, they must provide strong protection for public servants who make disclosures. Parliament was fully aware that public servants who were contemplating disclosing wrongdoings faced significant obstacles. It was necessary to protect them against any type of negative consequences of a potential disclosure, if such disclosure was to be encouraged.

[21] The explicit provisions of the Act also show that Parliament considered that the purposes of the Act can only be achieved if disclosures and testimony are kept confidential. Paragraph 11(1)(a) provides that the chief executive of a department or agency must protect the identity of persons involved in the disclosure process, including that of persons making disclosures – whistleblowers – and witnesses. Subsection 22(e) imposes a similar obligation on

the Commissioner, and section 44 establishes that the Commissioner and his employees shall not disclose any information that comes to their knowledge. Moreover, Parliament added section 16.4 of the *Access to Information Act*, RSC 1985, c A-1, and section 22.2 of the *Privacy Act*, to prohibit the disclosure, pursuant to these acts, of information gathered by the Commissioner.

[22] It is easy to understand the rationale of these provisions. Should their identity be revealed, public servants making disclosures would be exposed to a range of diffuse consequences that would be hard to detect or control. They may be perceived as being disloyal to their superiors. They may be assigned less desirable tasks. Their superiors may give them poor references and make it more difficult, if not impossible, for them to find a job in the future. For public servants exposed to such consequences, the Commissioner's power to investigate and the establishment of the Tribunal may be of no help. It is much more effective to ensure the whistleblowers' anonymity and, thus, nip any form of reprisals in the bud.

[23] It should also be noted that anonymity does not concern only the parties directly involved in a specific disclosure case. Persons other than the wrongdoer may engage in reprisals, especially if they take a diffuse form. Furthermore, if anonymity is not protected in one case, it can have an impact on many other potential disclosure cases, since a public servant who is considering the possibility of disclosing wrongdoing will not feel adequately protected.

[24] To summarize, the purpose, scheme and wording of the Act, combined with a dose of "reason and logic," show that Parliament considered that the public disclosure of whistleblowers'

identity would risk thwarting the purposes of the Act, particularly the purpose of ensuring effective disclosure procedures. In my view, nothing more is required to demonstrate the need for a confidentiality order.

[25] Some of the arguments raised by the prothonotary in her reasons nevertheless deserve consideration. First, the prothonotary notes that the confidentiality provisions of the Act are explicitly qualified. Thus, the duty of confidentiality provided for in section 11 is "subject to paragraph (c) and any other Act of Parliament and to the principles of procedural fairness and natural justice." Subsection 22(e) imposes on the Commissioner the duty, "subject to any other Act of Parliament, [to] protect, to the extent possible in accordance with the law," the identity of persons making disclosures and witnesses. The prothonotary drew the conclusion that whistleblowers and witnesses could not expect their identities to be kept private in proceedings before this Court.

[26] I respectfully disagree. The qualifications on the provisions I have just mentioned reflect the fact that, although it is a very important interest, confidentiality must sometimes give way to other interests. In practice, it is difficult to codify solutions to every kind of conflict that may possibly arise between maintaining confidentiality and the obligation to disclose certain information. Parliament has therefore provided that, in the event of a conflict with another Act of Parliament that, should we assume, would require the public disclosure of information, confidentiality should give way.

[27] However, where an Act of Parliament does not require the public disclosure of information but establishes a discretionary power that may have that effect, there is no conflict if the discretion is exercised in a manner that preserves the confidentiality of the whistleblowers' or witnesses' identity. In the case at bar, the *Federal Courts Rules* require the disclosure of certain information, but they also establish a discretionary power to issue a confidentiality order. Thus, the *Federal Courts Rules* do not constitute an "other Act of Parliament" requiring public disclosure of the whistleblowers' or witnesses' identity that would displace the obligation of confidentiality set out in the Act. On the contrary, the *Federal Courts Rules* can be applied in a manner that is consistent with the Act.

[28] I must also respectfully disagree with the prothonotary's statement to the effect that the absence of provisions in the Act expressly providing for the confidentiality of information in proceedings before this Court demonstrates that Parliament did not intend to protect such information when a case reaches this Court. On this point, the prothonotary refers to section 47 of the *Access to Information Act* and section 46 of the *Privacy Act*, which establish such protection. Yet, both the *Access to Information Act* and the *Privacy Act* contain elaborate provisions concerning appeals to this Court. The Act, on the other hand, merely specifies, in section 51.2, who has sufficient interest to file an application for judicial review. Parliament apparently did not give extended consideration to judicial review of the Commissioner's reports in this Court. Therefore, nothing can be inferred from Parliament's silence about confidentiality in this Court.

[29] Finally, I wish to point out that I reached these conclusions without considering the materials filed by the Commissioner, which were not part of the record before the prothonotary. It is therefore unnecessary for me to address the respondent's objection to their use.

[30] I must still address the objection raised by Ms. Desjardins: that the information which the Commissioner wants to keep confidential is already known to the public. In fact, in her notice of application for judicial review, Ms. Desjardins names certain individuals who, in her opinion, disclosed false information to the Commissioner and who are allegedly behind the investigation. Courts are reluctant to issue confidentiality orders for information that is already in the public domain (see, for example, *Kirikos v Fowlie*, 2016 FCA 80 at paras 25–26). However, there is a difference between Ms. Desjardins' allegation that she believes that certain individuals made the disclosure and a confirmation by the Commissioner that this is indeed the case. I therefore find that the allegations contained in the notice of application are not a bar to the order sought.

III. Proportionality of the order

[31] Having shown that the proposed order is necessary to protect certain interests, I now assess whether the order's deleterious effects on the open court principle or on procedural fairness can be justified.

A. *Effects on open court principle*

[32] With respect to the open court principle, it is now well established that judicial proceedings can be conducted in a sufficiently transparent manner without the alleged victims of

unlawful conduct being identified by name. Since only these individuals' identifying information is confidential, the remainder of the judicial debate takes place in public. Citizens will have access to the court proceedings and the judgment. They can form their own opinions on the work of the justice system. Not releasing the names of the alleged victims has no significant impact on informing the public.

[33] For example, in matters of sexual assault, it has long been recognized that the victims' identity is not information that the public needs to know in order to properly understand and assess the proceedings before the courts. In *Canadian Newspapers Co*, the Supreme Court had to rule on the constitutional validity of a provision of the *Criminal Code* that prevented the media from publishing the names of complainants in sexual assault cases. The Court held that such a rule was a minimal infringement on freedom of the press—and, I might add, on the open court principle. On behalf of the Court, Justice Antonio Lamer said:

> . . . it must be recognized that the limits imposed by s. 442(3) on the media's rights are minimal. The section applies only to sexual offence cases, it restricts publication of facts disclosing the complainant's identity and it does not provide for a general ban but is limited to instances where the complainant or prosecutor requests the order or the court considers it necessary. Nothing prevents the media from being present at the hearing and reporting the facts of the case and the conduct of the trial. Only information likely to reveal the complainant's identity is concealed from the public.
>
> (at 133)

[34] These remarks are just as compelling when transposed on the situation of the witnesses and whistleblowers in this case.

[35] At the hearing, counsel for Ms. Desjardins pointed out that the identity of her client and the facts alleged against her are already known to the public and that there was some injustice in allowing her accusers to remain in the shadows. In his view, the testimony of the whistleblowers and witnesses should be made public; if they lied, they should at least answer for it in the court of public opinion. I cannot accept that argument. It is contrary to the system established by Parliament. One may disagree with this system, but our Court's role is to apply the Act. Furthermore, similar arguments could be made with respect to sexual assault cases. Yet no one is saying that we should stop protecting the anonymity of sexual assault victims in order to make them face the consequences of possible false testimony.

B. *Effects on procedural fairness*

[36] I do believe, however, that one aspect of the proposed order would have a disproportionate impact on the fairness of the proceedings before this Court. The proposed order would prevent Ms. Desjardins's lawyer from sharing with her certain information or documents, mainly audio recordings of meetings with witnesses.

[37] Such orders are sometimes issued, for example, to protect trade secrets (see, for example, *Arkipelago Architecture Inc v Enghouse Systems Limited*, 2018 FC 37). Such cases usually involve businesses that have significant resources and that hire expert witnesses to support their case. These orders usually allow for information sharing between lawyers and experts but not with clients.

[38] I accept that protecting the identity of whistleblowers (as opposed to the identity of witnesses) is of critical importance to the proper functioning of the regime established by the Act. Although Ms. Desjardins believes that she knows the identity of certain whistleblowers, the Office of the Commissioner has never confirmed their identity and has never said whether certain witnesses were also whistleblowers.

[39] In the case at hand, we can assume that Ms. Desjardins does not have unlimited resources. As her lawyer pointed out at the hearing, it is quite possible that she wishes to play a major role in analyzing the evidence, either because she has intimate knowledge of the facts or because she wishes to reduce her lawyer's fees. The Commissioner's proposed order would prevent that. The prothonotary previously found that the disclosure of the audio recordings from the witness interviews was necessary to allow Ms. Desjardins to assert her rights. This aspect of the prothonotary's order has not been appealed, so I will take it as a given. I will therefore assume that these audio recordings are an important part of the case before this Court.

[40] Counsel for the Commissioner pointed out that the main reason for preventing Ms. Desjardins from having access to the audio recordings of the witness interviews is that it would reveal which witnesses were also whistleblowers. If, in some recordings, the excerpts relating to a disclosure were redacted, the absence of redactions in the other recordings would allow Ms. Desjardins to infer which witnesses were also whistleblowers and which witnesses were not. In my view, in these particular circumstances, it would be entirely appropriate for the Commissioner to alter the recordings of the non-whistleblower witnesses to include redaction marks, even if the recordings are actually disclosed in their entirety. In this way, it would be

impossible to deduce the whistleblowers' identity. One can imagine that other similar measures could conceal the whistleblowers' identity, and the above remarks are not intended to prevent the Office of the Commissioner from resorting to those measures.

[41] I therefore believe that such a measure will make it unnecessary to issue an order preventing Ms. Desjardins from having access to the audio recordings of the witness interviews. Thus, only the material redacted to protect the whistleblowers' identity will be part of a "counsel's eyes only" record.

IV. Conclusion

[42] I am of the view that the Commissioner has demonstrated that the order he is proposing is necessary to ensure the witnesses' and whistleblowers' anonymity and that—with the exception of the part aimed at preventing Ms. Desjardins from having access to the audio recordings of the witness interviews—the order is a minimal infringement on the open court principle and procedural fairness. I will therefore issue an order to that effect.

ORDER in T-1308-17

THE COURT ORDERS that:

1. This Confidentiality Order governs the use, disclosure and release of documents and other materials originating from the Office of the Commissioner's investigation file numbered PSIC-2015-D-0173, further to a disclosure of wrongdoing made to the Commissioner concerning the applicant Geneviève Desjardins.

2. The following information shall be designated "Confidential Information" in the Court record:

   (a) the names of witnesses who participated in investigation number PSIC-2015-D-0173 conducted by the Office of the Commissioner;

   (b) the names of the whistleblower(s) who made disclosures or allegations of wrongdoing as part of the investigation conducted by the Office of the Commissioner;

   (c) any identifying, or potentially identifying, information on the persons referred to in subparagraphs (a) and (b) above.

3. The following material from the supplementary certified record shall be considered confidential ("confidential material"):

(a) audio recordings of interviews with all witnesses in the investigation file bearing number PSIC-2015-D-0173;

(b) the audio recording of a telephone conversation that took place on March 5, 2016 between the investigators and counsel for the applicant;

(c) the complete handwritten notes prepared by investigators during their interviews with witnesses; and

(d) the complete copy of a Canadian Food Inspection Agency employee's file found in the Office of the Commissioner's investigation file.

4. The Office of the Commissioner shall provide three versions of the certified record and supplementary certified record to the Court, to counsel for the parties and to the parties, as follows:

(a) a redacted version for filing in the public record of the Court (the "Public Version");

(b) a complete, unredacted and fully confidential version for the Court and for counsel for the parties (the "Confidential Version for the Court and for Counsel for the Parties"); and

(c) a confidential and partially redacted version for the parties (the "Confidential Version for the Parties").

Public Version

5. The Office of the Commissioner shall file with the Court Registry a copy of the Public Version of the supplementary certified record, in which:

(a) the confidential information listed in paragraph 2 above is redacted; and

(b) the confidential materials listed in paragraph 3 above are removed.

Confidential Version for the Court and for Counsel for the Parties

6. The Office of the Commissioner shall file with the Court Registry three copies of the Confidential Version for the Court and for Counsel for the Parties of the certified record and supplementary certified record, placed in a sealed envelope identifying this proceeding and bearing the following markings (the "legend"):

> **CONFIDENTIAL INFORMATION PURSUANT TO THE ORDER IN FEDERAL COURT FILE NUMBER T-1308-17.**
>
> **In accordance with the Court order, this envelope shall remain sealed in the Court's records and shall be opened only in accordance with the terms of the said order or by order of the Court, and all such sealed envelopes may be opened only by the Court and its staff.**

7. Copies of the Confidential Version for the Court and for Counsel for the Parties shall be kept under seal and shall be accessible only to the Commissioner, the Court, counsel for the parties, and Court staff.

8. The Office of the Commissioner shall provide counsel for the parties with a copy of the Confidential Version for the Court and for Counsel for the Parties of the certified record and supplementary certified record.

9. Any redacted material to protect the whistleblowers' identity in the Confidential Version for the Parties (see paragraph 11 below) of the certified record and supplementary certified record shall be made available only to counsel for the parties. Counsel for the parties shall refrain from disclosing, directly or indirectly, to any third party and to their respective clients, the above material and any information arising from such material as being for counsel's eyes only, except in the cases permitted by any other order made by the Court.

10. Material designated for counsel's eyes only shall be conspicuously marked with the following legend on each page containing such material:

CONFIDENTIAL INFORMATION
FOR COUNSEL'S EYES ONLY

Version for the Parties

11. The Office of the Commissioner shall provide the applicant and the respondent with a copy of the Confidential Version for the Parties of the certified record and supplementary

certified record. The Confidential Version for the Parties shall contain all the material provided in the Confidential Version for the Court, with the exception of:

(a) the names of the whistleblower(s) who made disclosures or allegations of wrongdoing as part of investigation file number PSIC-2015-D-0173, as listed in subparagraph 2(b) above; and

(b) any identifying, or potentially identifying, information on the whistleblowers' identity.

Material to come

12. With respect to any other material to be filed in the Court record in the future regarding the application for judicial review submitted by the applicant in this matter, the parties and their counsel shall file:

(a) a copy of a Public Version, redacted to remove any confidential information as defined in paragraph 2 above, any confidential material as listed in subparagraphs 3(a) to 3(d) above, and any information that could reveal the information protected under this Order;

(b) three copies of a Confidential Version for the Court, unredacted, placed in a sealed envelope identifying this case and bearing the legend indicated in paragraph 6. Any text containing confidential information in the Confidential Version for the Court shall be identified with the symbol #, which shall be inserted immediately before and after the text in question.

13. If confidential information originating from the material protected under this Order is included in any other document, that part of the document shall be protected and designated confidential like the document from which the confidential information has been extracted.

14. The parties shall provide the Commissioner with a copy of the Confidential Version for the Court of all material filed in the Court Registry in the future.

15. If the Commissioner and the parties disagree as to how to characterize and treat the material to be filed in this matter on a confidential basis, a party may, with prior notice to the Commissioner, seek directions from the Court before filing the material containing the confidential information or confidential material.

16. Any person who has access to the confidential material shall refrain from disclosing such confidential material or from making it possible for it to be disclosed, directly or indirectly, except as permitted by this Order or any other order of the Court.

17. After the final conclusion of this application for judicial review, including any future appeal, any person to whom the confidential material has been disclosed shall return or destroy such material and all copies thereof. Counsel for a party may retain a copy of these documents for archival purposes.

18. This Order shall remain in effect until amended or rescinded by the Court.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1308-17
STYLE OF CAUSE:	GENEVIÈVE DESJARDINS v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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