

SUPREME COURT OF YUKON

Citation: *BC v KP*,
2025 YKSC 34

Date: 20250606
S.C. No. 22-A0158
Registry: Whitehorse

BETWEEN:

B.C.

PLAINTIFF

AND

K.P., J.T., R.G., and SODEXO CANADA LTD.

DEFENDANTS

Before Justice K. Wenckebach

Counsel for the Plaintiff

Daniel S. Shier

Counsel for Defendant R.G.

Luke Faught

Counsel for Defendant Sodexo Canada Ltd.

Julie Menten

REASONS FOR DECISION

Overview

[1] The plaintiff in this proceeding is B.C., and the defendants are K.P., J.T., R.G. and Sodexo Canada Ltd. (“Sodexo”). B.C.’s, K.P.’s, J.T.’s, and R.G.’s names have been anonymized to protect their privacy. Sodexo has brought an application seeking that its name be anonymized as well.

[2] For the reasons below, I deny Sodexo’s application.

Introduction

[3] Sodexo is a business that provides hospitality services such as food and facilities management. B.C., K.P., J.T., and R.G. worked for Sodexo at a mine site in the Yukon

in 2021. B.C. alleges that, while at the worksite, K.P. racially and sexually harassed her, and then sexually assaulted her. She further alleges that she complained to her supervisors, J.T. and R.G. They did not address the harassment and assault, nor did they assist her when she sought time off for counselling. B.C. states that other employees also harassed her as a result of the sexual assault. Eventually, she was forced to quit her job. She commenced this action on the basis of these allegations.

[4] B.C. brought an application seeking to anonymize information that would identify her in these proceedings. Sodexo sought that its name be anonymized as well. Given the nature of the allegations in the Statement of Claim, I summarily ordered the names of all the individual parties be anonymized. I also concluded that, because Sodexo was a corporation, rather than an individual, argument was needed before a decision could be made about whether its name should also be anonymized.

[5] Sodexo thus brought this application. Additionally, it seeks that the parties be permitted to disclose the parties' names to the Workers' Safety and Compensation Board (the "WSCB") and the Workers' Safety and Compensation Appeal Tribunal (the "WSCAT") when bringing an application before the WSCB; and orders regulating WSCB's and WSCAT's use of the parties' names in their proceedings and decisions.

[6] B.C. filed a response opposing Sodexo's application. At the hearing, B.C.'s counsel clarified that B.C. was not taking a strong position on the application but sought to provide submissions the Court may wish to consider in rendering its decision. R.G. took no position. K.P. and J.T. took no part, as default judgment has been filed against them.

Preliminary Issues

[7] B.C. noted that Sodexo had not provided notice to the media when filing the application, arguing that it might be a necessary pre-requisite for the application. In response, Sodexo pointed out that B.C. had not provided notice to the media when seeking anonymization, either. It furthermore submitted that, because it was asking only for anonymization, and not for relief that was more significant, it was not necessary to give notice to the media. As the issue was not fully argued, I will not consider whether the media should have been given notice of the application.

Issues

- A. Should Sodexo's name be anonymized in the court proceedings?
- B. Should orders be made about anonymization of the parties' names in proceedings before the WSCB and WSCAT?

Law

[8] Court proceedings are presumptively open to all. Court openness is protected under the constitutional right to freedom of expression and is an essential part of the functioning of our democracy. However, the court has the discretion to limit the extent of court openness, for instance, through sealing orders, by permitting redactions of documents, or anonymizing the names of parties or witnesses. This discretion is to be used sparingly and only to protect a public interest (*Sherman Estate v Donovan*, 2021 SCC 25 at para. 30 ("*Sherman Estate*").

[9] An applicant seeking that a judge place limits on court openness must demonstrate that:

- (1) court openness poses a serious risk to an important public interest;

(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects. [*Sherman Estate* at para. 38 (“*Sherman test*”)]

An order limiting court openness is possible only if all three elements of the test are met.

[10] An important public interest is one that transcends the narrow interests of the individual. Privacy can be, but is not always, an important public interest. Privacy interests shift from an individual concern to an important public interest where there is a serious risk that the disclosure of information through the court proceedings will touch on privacy in a way that affects “core aspects of [the] individuals’ personal lives that bear on their dignity...” (at para. 33).

[11] It may also be justifiable to limit court openness to protect commercial interests. Examples in which a court may limit its openness to protect commercial interests include where court openness would require a party to breach a confidentiality agreement with a third party (*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 (“*Sierra Club*”)), or to protect trade secrets and patents (*Fairview Donut Inc v TDL Corp Group*, 2010 ONSC 789 at para. 44). However, the fact that information disclosed through the court proceedings will lead to a loss of business is not, without more, sufficient to limit court openness (*Sierra Club* at para. 55).

[12] A serious risk must be objectively established. Direct evidence may not be necessary to establish serious risk; rather, logical inferences may lead the court to conclude that there is a serious risk. However, there must exist objective circumstantial facts that reasonably allow for an inference to be made (*Sherman Estate* at para. 98)

Analysis

A. Should Sodexo's name be anonymized in the court proceedings?

[13] Sodexo argues that here, disclosure of its name through the court proceedings presents a serious risk to two important public interests. First, it submits its reputation is at risk. If Sodexo is named, current and potential clients will not want to use Sodexo's services. It could lose contracts, money, and its employees would therefore suffer.

[14] Second, it argues that if there is further disclosure about the allegations, then female employees who learn of the court case will feel unsafe working for Sodexo. Similarly, women who may otherwise apply to Sodexo for work will be dissuaded from doing so because of concerns about unsafe working conditions.

[15] Regarding its first argument, I conclude that the risk to Sodexo's reputation is not an important public interest.

[16] On the second argument, I conclude the risk that female employees and female prospective employees will not feel safe working for Sodexo is not a serious risk; and there are reasonably alternative measures to prevent female employees and potential employees from feeling unsafe working for the company.

The risk to Sodexo's reputation is not an important public interest

Facts

[17] Sodexo provides its services to a range of industries, including corporations, hospitals, school campuses, and remote sites. It operates across Canada, employing about 6,000 people. Its sales teams earn their salaries either partially or completely through commissions.

[18] Sodexo is owned by a holding company in Canada, which is held by Sodexo S.A. Sodexo S.A. is a publicly traded company.

[19] B.C. commenced her action on March 28, 2023. On about April 5, 2023, the CBC published an article about the suit. The title of the article was: “**Woman sues Yukon mining contractor after alleged sexual assault: Conduct of food-services company Sodexo and 3 of its employees ‘morally reprehensible’, suit claims**” [emphasis in the original].

Analysis

[20] Sodexo submits there is a serious risk its reputation will be harmed through media reporting and publicity about the action. It argues the action involves serious allegations directed not only at the individual defendants but at Sodexo as well. Sodexo states that members of the public are likely to simply accept the allegations as true, rather than understanding that they are unproven. This, Sodexo argues, creates the possibility that it will lose business. Losing business, in turn, will affect its employees, especially the sales teams, who rely on commissions for their wages. Sodexo states that reputational risk leading to negative economic consequences has been accepted as being a matter of public interest by the court (*A Lawyer v The Law Society of British Columbia*, 2021 BCCA 284 (“*A Lawyer*”); *AB v CD*, 2022 BCSC 2145 (“*AB*”)).

[21] In my opinion, Sodexo misreads the case law. In *A Lawyer*, the British Columbia Court of Appeal stated that it was not settled whether risk to a party’s reputation is enough to constitute an important public interest (at para. 71). It did not need to determine whether reputation alone could constitute an important public interest however, because, in the case before it, the Court concluded there was more at stake

than a simple risk to reputation. The applicant in *A Lawyer* was a lawyer who owned his own firm, and was under investigation by the Law Society of British Columbia. The investigation concerned serious allegations about the lawyer's practice. The documents filed in court included the names not only of the lawyer and his firm, but also the names of some of his employees and sensitive information about them and the firm.

[22] Applying the framework set out in *Sherman Estate* to the facts, the Court concluded that the information that would be disclosed through the court proceedings was "...sensitive personal information that would strike at the core" of the individuals affected. The Court, furthermore, concluded full court openness would pose a serious risk to "...the reputational interests of multiple legal professionals" (at paras. 75-76).

[23] Contrary to Sodexo's submission, *A Lawyer* does not stand for the principle that risk to reputational harm combined with risk to economic harm may be sufficient to constitute a public interest. Rather, *A Lawyer* states that a public interest may arise where the reputational risk to the individuals affected is so significant that it affects a core aspect of their lives and dignity.

[24] *A Lawyer* and *AB* are also distinguishable from the facts in the case at bar. In both *A Lawyer* and *AB*, the primary beneficiaries of the orders were members of a profession. In *A Lawyer*, the individuals were involved in the legal profession. In *AB*, the defendant was a young doctor who was alleged to have falsely imprisoned his cousin and engaged in sexual misconduct with her, amongst other things. The Supreme Court of Canada has recognized that reputation is critical to a lawyer's ability to practice their profession (*Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para.118). Similar considerations apply to doctors. Thus, the negative effects on the parties'

reputations in *A Lawyer* and *AB* could be sufficient to imperil their abilities to practice their chose professions.

[25] Here, the allegations are about how Sodexo managed its supervisors and maintained the safety of its work sites for its employees. Although serious, the allegations do not go to the heart of the services Sodexo provides.

[26] Moreover, the orders in *A Lawyer* and *AB* applied mostly to individuals, with the exception that the lawyer's firm's name was also anonymized. The firm, however, is closely linked to the lawyer himself. If the firm bore the lawyer's name, anonymization would simply follow the order that the lawyer's name be anonymized. Even if it did not bear the lawyer's name, it was owned solely by the lawyer who was under investigation by the Law Society. It would therefore be so closely aligned with the lawyer that anonymization would be required. The *Sherman* test was therefore applicable to the facts of the cases.

[27] In contrast, Sodexo is a large, publicly traded corporation. While publicly traded corporations have reputations and privacy interests, they do not have personal lives or dignity. The *Sherman* test is therefore unhelpful in determining whether Sodexo's interests have a public interest dimension.

[28] The question thus returns to whether the risk to Sodexo's reputation, with the potential for economic consequences, including for employees, is an important public interest. The answer is no. It is inherent in open court proceedings involving individual parties that there will be some invasion of privacy, and with it, can come inconvenience and upset (*Sherman* at para. 31). There may, additionally, be some risk to the individuals' reputations. Similarly, for corporations such as Sodexo, some risk to

reputation and the risk of some economic consequences may also arise in open court proceedings. Such risks are not, without more, important public interests.

[29] Here, Sodexo's counsel (not counsel of record in this action) provided evidence that clients contacted Sodexo after the article about the action was published. He furthermore states that he believes it is likely contractors will terminate contracts with Sodexo or Sodexo will lose opportunities to bid on contracts if there is further publicity about the action. He also states Sodexo's employees would be affected, including the sales teams whose salaries are dependent on commissions. I conclude that, while these risks are important to both Sodexo and its employees, they do not rise to the level of an important public interest.

The risk that female employees and female prospective employees will not feel safe working for Sodexo is not a serious risk

[30] I agree with Sodexo the risk that women would not feel safe working for the company is an important public interest. Similarly, the risk that prospective female employees may not want to work for Sodexo because of concerns they would be unsafe constitutes an important public interest. However, I also conclude Sodexo has not established that the risk is serious.

Facts

[31] Sodexo's evidence is that, at the site where B.C. worked, 11 out of the 23 employees identified as female. In his affidavit, Sodexo's counsel states that he is concerned about the impact the allegations will have on the workplace culture if the allegations continue to be reported publicly. He states he has concerns that further coverage may encourage rumors and gossip and may affect the working experience of

female employees. He also attests he is worried that women will be discouraged from working at Sodexo.

Analysis

[32] It is not reasonable to conclude that Sodexo's female employees will feel unsafe in the workplace solely because of knowledge of the allegations in this action. An employee learning of the action would measure the allegations against her own experience in the workplace, and, potentially, against her colleagues' experiences, as well. Her interactions with her supervisors and other colleagues and prior feelings about the safety of her work environment would have a great influence on how she assesses the allegations and whether Sodexo can provide her with a safe workplace.

[33] Moreover, the site at which the alleged assault and harassment occurred is now closed. While an employee may compare her own working environment to that which allegedly occurred in the Yukon, she is not likely to immediately assume that the same situation would recur, with different supervisors, at different sites.

[34] Similarly, I do not conclude there is a serious risk a female prospective employee would be deterred from applying to work at Sodexo because of the allegations. I am not convinced that a job seeker would conclude Sodexo does not provide a safe workplace based only on these allegations. Again, it is more likely to be one factor the employee uses in considering whether she would be safe working for Sodexo.

There are reasonably alternative measures to prevent this risk

[35] An employer has the ability to address employees' concerns about safety at a worksite. It can provide information to employees and potential employees about how it ensures female employees are not subject to harassment or abuse. It can explain the

training it provides to supervisors to recognize and respond appropriately to harassment and abuse. It can also instruct female employees what steps they can take when they are uncomfortable in a work situation. Sodexo has not explained what, if any, steps it has taken to ensure that its female employees and female prospective employees feel safe in the workplace. A corporation should work internally to address potential employees' concerns before asking a judge to limit court openness.

B. Should there be orders about anonymizing the parties' names at the WSCB and WSCAT?

[36] Sodexo seeks three orders. First, it asks that the parties be permitted to disclose their names to the WSCB and WSCAT for the purposes of an application to the WSCB. Second, it asks that WSCB and WSCAT be permitted to disclose the parties' names as it deems necessary for the purpose of deciding applications before them. Third, Sodexo seeks that WSCB and WSCAT be required to anonymize the names of the parties as they appear in the style of cause or decisions they publish.

[37] I conclude that the orders sought should be granted.

Analysis

[38] The anonymization order provides that all material filed in the court file containing information that could identify the plaintiff is to be redacted, and that both redacted and unredacted versions of the materials are to be filed. In addition, the unredacted versions are to be released only to the parties, the Court, and court staff.

[39] The individual parties are not prevented from disclosing their names to WSCB and WSCAT by the letter of the order. However, disclosure of the individuals' names would breach the intention of the order. Because permitting the disclosure would not

overly impact the parties' privacy rights, I grant them permission to name the individual parties in proceedings before WSCB and WSCAT.

[40] Similarly, I grant permission to WSCB and WSCAT to disclose the individual parties' names as it deems necessary for the purposes of its proceedings.

[41] Finally, if the WSCB and WSCAT do not anonymize the names of the individual parties in any published decision of an application brought before them related to this matter, then a member of the public, seeing the decision and having knowledge of the action, would be able to identify the individual parties in this action. It is therefore logical to require the WSCB and WSCAT to anonymize the individual parties' names in any decision they publish regarding this matter.

[42] However, Sodexo has not provided WSCB and WSCAT notice of this application. As their legal interests are affected, they should have been provided notice. Rather than requiring Sodexo to provide notice and have another hearing, I will order that WSCB and WSCAT anonymize the names of the individual parties in any decision published that deals with the facts of this action, but that they are at liberty to apply to set aside this order upon giving the parties 72 hours' notice.

Conclusion

[43] I deny Sodexo's application to anonymize its name in these proceedings. The parties are permitted to use the individual parties' names in proceedings before the WSCB and WSCAT; and WSCB and WSCAT are permitted to use the individual parties' names in their proceedings as they see fit. However, I also order that WSCB and WSCAT anonymize the names of the individual parties in their style of cause and

decisions that concern the facts of this matter; and WSCB and WSCAT are at liberty to apply to set aside that term of the order upon giving the parties 72 hours' notice.

WENCKEBACH J.