

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250625

Docket: A-249-24

Citation: 2025 FCA 125

**CORAM: STRATAS J.A.
ROUSSEL J.A.
BIRINGER J.A.**

BETWEEN:

TAYLOR MURPHY

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on June 25, 2025.

Judgment delivered from the Bench at Ottawa, Ontario, on June 25, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

BIRINGER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 25, 2025).

BIRINGER J.A.

[1] The appellant is a veteran who seeks to challenge by way of judicial review a determination by Veteran Affairs Canada of his entitlement to benefits under the Rehabilitation Services and Vocational Assistance Program. The appellant brought a motion pursuant to Rule 151 of the *Federal Courts Rules*, S.O.R./98-106 for a confidentiality order in connection with the

proposed judicial review and now appeals the Federal Court’s order (*per* Go J.) issued on the motion: 2024 FC 537.

[2] On the motion, the appellant sought redaction of any identifying information and medical and military information in the proposed, but not yet filed, judicial review application. The appellant also sought to have the entire motion record sealed, which included medical and military records filed by both parties.

[3] Rule 151 allows for the issuance of confidentiality orders but requires the Court to be satisfied that the material should be treated as confidential “notwithstanding the public interest in open and accessible court proceedings”.

[4] The Federal Court correctly identified the test for a confidentiality order set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, and reinforced in *Sherman Estate v. Donovan*, 2021 SCC 25, requiring the appellant to establish that: (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk 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; *Sierra Club* at para. 53.

[5] Balancing these competing interests, the Federal Court determined that certain information about the appellant’s military record, personal life and one of his medical conditions would be redacted from the motion record materials, but that the appellant had not established

real and serious harm from disclosure of other information. The Court refused to order the entire motion record sealed. Regarding the proposed application for judicial review, the Federal Court ordered redaction of only the appellant's date of birth, address, telephone number and military service number.

[6] The standards of review from *Housen v. Nikolaisen*, 2002 SCC 33 apply to the motion judge's decision. Questions of law are reviewable on a standard of correctness, whereas questions of fact or mixed fact and law are reviewable on a standard of palpable and overriding error unless there is an extricable question of law, which is reviewable for correctness.

[7] The appellant does not dispute the test for a confidentiality order identified by the Federal Court but submits that the Federal Court erred in declining to extend the confidentiality order to all medical information. The appellant says that is necessary to protect his privacy, personal dignity and *Charter* interests. The appellant also contends that the Federal Court erred in law in ordering redactions as it was not required to order the "absolutely least restrictive option", and sealing the entire motion record was a reasonably alternative measure.

[8] Departing from the open court principle is an exceptional measure. This places a heavy burden on the moving party to support the request with evidence of a risk of serious harm that would arise if confidentiality were not ordered: *Rémillard v. Canada (National Revenue)*, 2022 FCA 63 at paras. 49 and 51; *9219-1568 Quebec Inc. v. Canada (Privacy Commissioner)*, 2024 FCA 38 at para. 20. Courts often receive medical records in the context of litigation and there is no absolute right to have these records sealed on the basis that an important privacy interest is

engaged: *Bulakhtina v. Complaints Committee of the Death Investigation Oversight Committee*, 2022 ONSC 4068 at para. 12; *Sherman Estate* at para. 56. A confidentiality order must be framed as narrowly as reasonably possible to mitigate the risk alleged and adhere to the open court principle: *Sierra Club* at paras. 57 and 62.

[9] Here, the Federal Court determined, based on the evidence, that an order covering all the appellant's medical and military records was inconsistent with the principles of minimal impairment and proportionality. The Federal Court did not err in law in applying those legal principles. The Federal Court ordered redactions of documents, including the appellant's entire personnel record, that turned out to be extensive. The appellant observes that his "medical and military records are now so heavily redacted that there is virtually no information left on them". We agree. The appellant nonetheless seeks further redactions or sealing of the entire motion record.

[10] We are not to intervene with the Federal Court's balancing of competing interests under the *Sherman* test unless there has been a palpable and overriding error: *Decor Grates Incorporated v. Imperial Manufacturing Group Inc.*, 2015 FCA 100 at paras. 16-19. A "palpable" error is one that is obvious; an "overriding" error is an error that would affect the outcome: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38, citing *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46. The appellant's disagreement with where the Federal Court decided to draw the line on the redaction of documents does not warrant our intervention.

[11] We also reject the appellant's submission that the Federal Court erred in failing to consider whether the respondent violated subsection 8(1) of the *Privacy Act*, R.S.C. 1985, c. P-21 by filing certain information in its motion record. Subsection 8(1) prohibits disclosure by a government institution of personal information, except in accordance with that section. The Federal Court did not have to make that determination. The question before the Court under Rule 151 was, in light of the respondent having filed medical and military records with the Court, whether a confidentiality order should issue: *McCarthy v. Canada (Attorney General)*, 2020 FC 1100 at para. 22. Subsection 8(1) of the *Privacy Act* does not displace the determination that must be made under Rule 151.

[12] The appellant claims procedural unfairness in the Federal Court's decision to end submissions on an alleged improper purpose of the respondent's inclusion of certain medical information in its motion record. We disagree. The appellant's transcription of a portion of the hearing's audio recording establishes that the appellant effectively made out this allegation, but that the motion judge chose to move on, exercising the Court's inherent jurisdiction to control its own proceedings.

[13] The appellant asks for a confidentiality order for all medical records that may be required for the judicial review application. The Federal Court declined to issue such an order, noting uncertainty regarding arguments to be made on the application, including whether military and medical records would be relevant. We decline for similar reasons. As the Federal Court noted, the appellant may choose to move for another confidentiality order once the nature of any sensitive information to be filed on the application has been determined.

[14] For these reasons, we will dismiss the appeal with costs in the all-inclusive amount of \$500.

“Monica Biringer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-249-24

STYLE OF CAUSE: TAYLOR MURPHY v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 25, 2025

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
ROUSSEL J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: BIRINGER J.A.

APPEARANCES:

Taylor Murphy FOR THE APPELLANT
(SELF-REPRESENTED)

Jordan Fine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE RESPONDENT
Deputy Attorney General of Canada