

# The Unintended Consequences of Transparency: Saskatchewan Office of Residential Tenancies Written Decisions

By Caid Brossart, Kyla N. Dalsin, Anna Little

## Overview

Saskatchewan's Office of Residential Tenancies (ORT) currently publishes the first and last names of parties and the rental address in the written decision following an ORT hearing. The publication of such personal information raises privacy concerns that can have deleterious implications for both tenants and landlords, including concerns regarding their safety and future rental opportunities. We recommend amendments to the ORT's Rules of Procedure where "tenant" and "landlord" should be used in place of names, and the rental address and additional personal information should be kept anonymous.

## History

### 2017

- The ORT published their decisions on the Canadian Legal Information Institute (CanLII) and used initials for anonymization

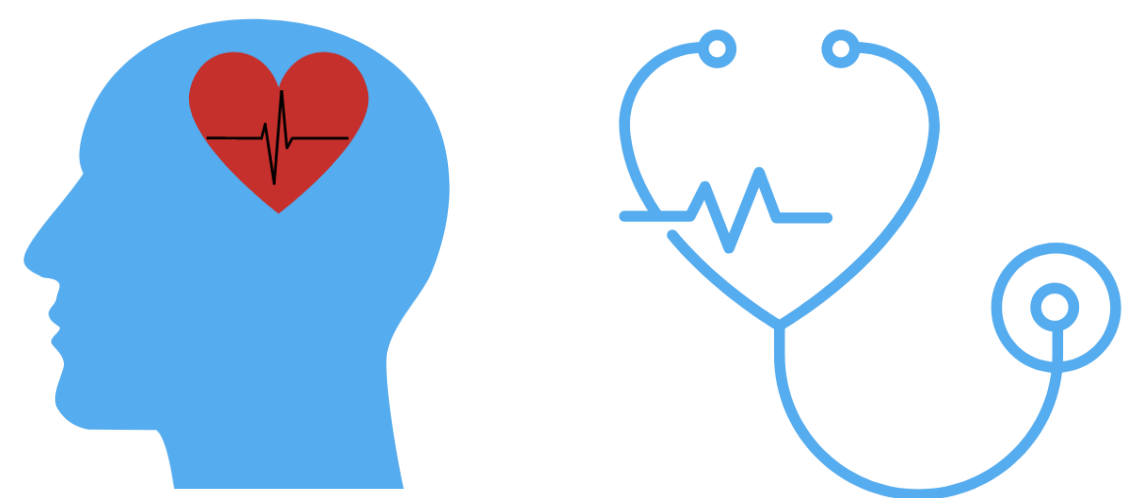


C.B. v A.L. (2023 SKORT 123)

### 2019

- The ORT began publishing the first and last names of parties and the rental address
- Personal information (mental and medial health) of the involved parties has been known to be included in the decision to provide justification

Brossart v Little (2023 SKORT 123)



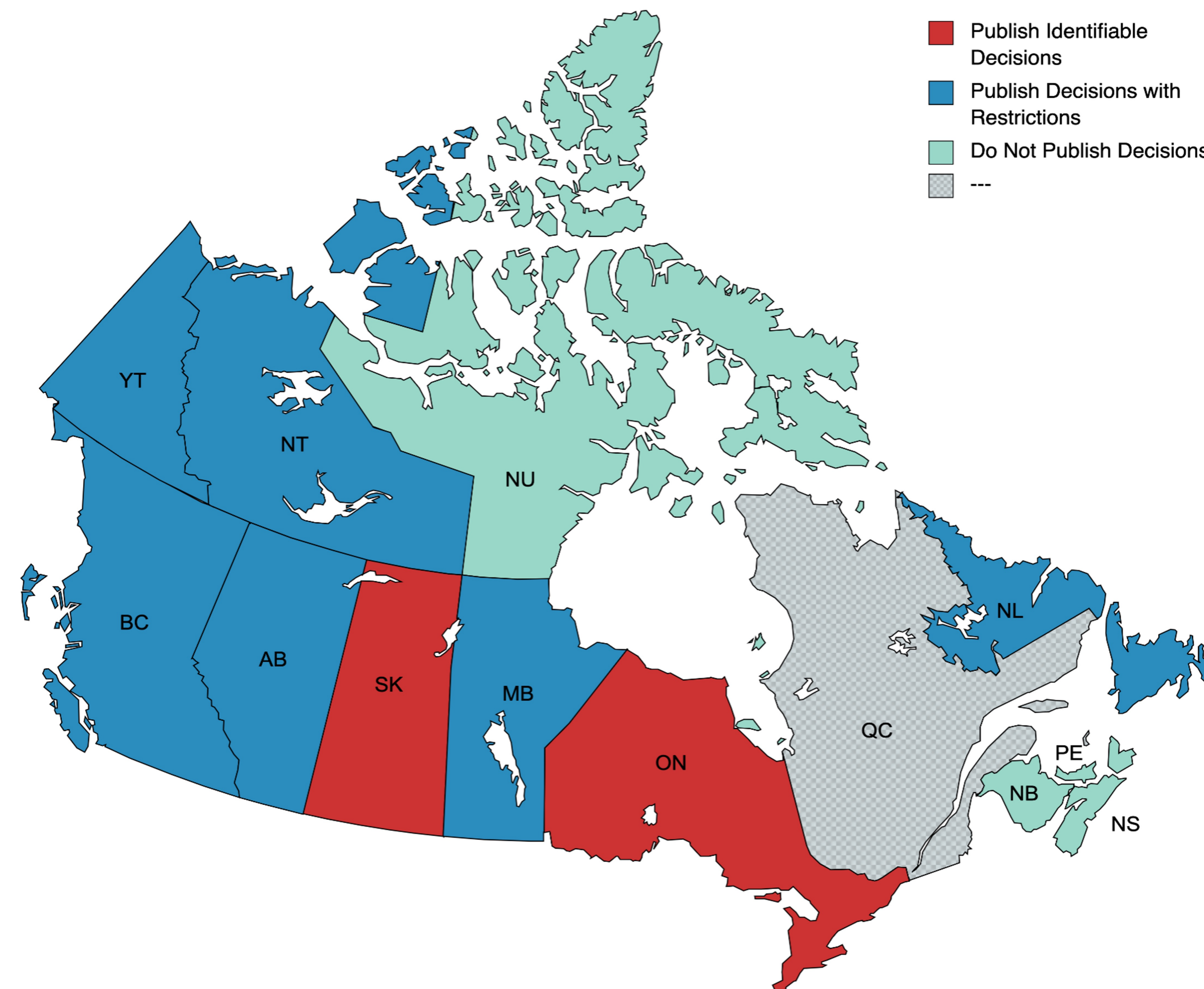
## Example

In *Pandey v Okon*, 2022 SKORT 2571, the decision stated,

**"[t]he Landlord's parents are planning to come from India to help care for the Landlord's wife. They are planning on getting a visa to come to Canada and will be here in one to two months. They are coming to Canada to help care for the [Landlord's] wife, who is going to have a c-section in January 2023."**

This medical information appears to be admitted to the ORT in support of the landlord's argument to evict the tenant due to pressing family matters.

## Other Jurisdictions



## Open Court Principle

The open court principle in Canada enables the public to attend hearings, become educated about the court process, learn about how decisions are rendered, and ensure "the accountability of the justice system."

- The principle can also extend to tribunals, although it is applied in a different way

An important question is whether including personal information is necessary to satisfy the open court principle and "[w]hat value is added to the goal of accountability and transparency by refusing to mask the particular identity of a [party]?"

Ombudsman's practice guide for administrative tribunals states that "information such as marital status, age, sexual orientation, national origin, criminal history, medical history, or specific workplace or residential addresses should only be included in decisions when it is directly relevant to the case, and the reasons would be inadequate without it."

## Access to Justice

The Honourable Chief Justice Richard Wagner noted the nuance within 'access to justice' and stated that one aspect of access to justice is knowing what tools and services are available and how to get to them.

- As many individuals are unaware of the existence of the current CanLII publications, these decisions may not be furthering access to justice

Most ORT applications are being brought forward by landlords at a rate of nearly 4-6 times those brought forward by tenants (claims primarily include security deposits, overdue or unpaid rent, damages to property, and abandoned personal property).

- A large number of cases where tenants are not present for the hearing



## Consultations

- Academics
- Community Legal Assistance Services for Saskatoon Inner City Inc.
- Residential Tenancy Bodies (Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia, the Northwest Territories, Saskatchewan, and the Yukon)
- Saskatchewan Landlord Association Inc.

## Final Recommendation

The Saskatchewan Office of Residential Tenancies should change its current publishing practice to **anonymize first and last names and rental addresses completely**. Personal information that may harm the safety and dignity of individuals should be anonymized in publicly available decisions to improve the balance between access to justice and the protection of privacy. This recommendation should also retroactively apply to decisions with identifiable information and revise them from 2019 onwards.

### Additional Recommendations

- Implement proposed amendments to Part 8 of the Rules of Procedure
- Develop a privacy policy to be posted to the ORT's website
- Continuing professional development session
- Mediation sessions
- Steps for parties to redact information or hold a hearing in private
- Form to request no publication

The ORT should consider implementing the proposed amendments to appropriately balance the open court principle with privacy concerns and access to justice regarding the publication of the written decisions.

## Conclusion

Given the inherent power imbalance between landlords and tenants, steps should be taken to decrease the barriers that exist within this housing system. The current ORT practice of publishing personal information with no steps being taken to anonymize decisions is creating a lose-lose situation for tenants. There are repercussions for tenants who choose to pursue a case against their landlord, as their personal information can be published online.