

Open-court principle takes back seat to serious risk of defendant's reputational loss (*S.L.K. v. A.B.*)

Civil Procedure | Litigation | Litigation & Dispute Resolution | Orders

23 January 2026

Whether in criminal or civil cases, the courts are often confronted with disturbing scenarios and serious allegations that, if proven, can have devastating negative impacts on an accused or a defendant. One of the most serious allegations that a person can face is that they have engaged in sexual misconduct or committed an alleged sexual assault against a complainant or plaintiff, particularly if that complaint or plaintiff is a minor. A person accused of such misconduct can suffer reputational harm and/or significant mental health consequences notwithstanding that the allegations are false. Those mental health consequences can come in the form of depression and anxiety.

While victims of such misconduct can also suffer severe mental health consequences, often living in silence and afraid to report sexual assaults to police or commence civil proceedings for damages, when a victim takes the steps necessary to bring these kinds of allegations to the court, judges might be asked to either seal the court file or anonymize the names of the parties.

Sealing orders or orders protecting disclosure of the identities of the parties are exceptions to the open-court principle.

The open-court principle was tested recently in *S.L.K. v. A.B.*, 2025 BCSC 2617.

In this civil action, the plaintiff accused the defendant of a series of sexual assaults over five years. At the time of the assaults, the defendant was the plaintiff's hockey coach.

The defendant brought a motion seeking the anonymization of the identities of the parties on the grounds that the plaintiff's allegations caused the defendant to suffer depression and anxiety. Medically, it was shown that the defendant was required to take medication for these maladies, and that the defendant suffered stomach pains and problems with weight and sleep.

Furthermore, the defendant contended that the plaintiff's action was attracting media attention and placing the defendant's job at risk. The defendant was in their sixties and was the general manager of a business.

While the defendant was a lifetime member of the Vancouver Minor Hockey Association, the defendant's status had also been suspended pending the outcome of the plaintiff's action.

The plaintiff opposed the defendant's motion on the grounds that an order anonymizing the names of the parties would negatively impact the plaintiff's credibility and "threaten me into secrecy".

The plaintiff, who was in their forties and a member of a First Nation, described experiencing terrible long-term consequences even thirty years after, and because of, the defendant's sexual misconduct.

Those consequences included psychological harm and alcohol abuse.

An expert opined that the anonymization sought by the defendant would also have a chilling effect on survivors of sexual assault and that granting the defendant's request would reinforce traditional power imbalances and discourage survivors from accessing justice.

The plaintiff further argued that granting the defendant's request would be contrary to the open-court principle, which serves to protect freedom of expression and is a bedrock of Canadian democracy. However, courts have sparingly found that important public interests can override the open-court principle.

Based on *Sherman Estate v. Donovan*, 2021 SCC 25, in order to override the open-court principle the defendant was required to establish that:

1. Court openness posed a risk to an important public interest;
2. The order sought was necessary to prevent this serious risk to the identified interest because reasonably alternative measures would not prevent this risk; and
3. As a matter of proportionality, the benefits of the order outweighed its negative effects.

The risk to be established had to be a "real and substantial risk" that was "well-grounded" in the evidence.

With respect to the first element of the test, the court concluded that the defendant satisfied the high threshold that refusing the motion would pose a serious risk to an important public interest. The defendant's reputation, dignity and well-being were at stake.

As stated by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), "...the protection of the good reputation of an individual is of fundamental importance to our democracy."

In *A.B. v. C.D.*, 2022 BCSC 2145, the British Columbia Supreme Court also found that a defendant's reputation implicated an important public interest.

With respect to the second element of test, the court found that media attention to the case also supported the granting of the requested order. In considering this element, the court importantly noted that the defendant had not been criminally charged.

Lastly, the court found that granting the order struck the right balance in the circumstances. Although the court was sympathetic to the plaintiff's arguments about feeling silenced if the order was granted and that the plaintiff might be disbelieved, the court explained that the allegations would not be silenced because the allegations would ultimately not be shielded from public view.

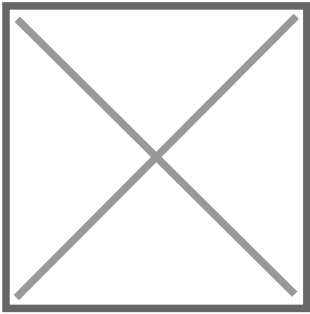
As well, the court noted that the protection of the defendant's identity was only being sought until the first day of trial and that the defendant had already been suspended from coaching hockey. However, in the interests of public safety, the court, in addition to the anonymization order, granted an additional order that the defendant be precluded in participating in any youth organization role or event until trial, without court authorization.

The key takeaway from this case is that the open-court principle is not absolute and that in cases involving serious allegations of sexual misconduct, a defendant can obtain an order to protect their identity, at least until the opening of a trial. Although this is not necessarily an easy order to obtain, and the case law cuts both ways, it is certainly worthy for a defendant facing devastating allegations of serious sexual impropriety in a civil action to attempt to protect their reputation and dignity. In contrast, however, an accused in criminal proceedings will likely have more difficulty obtaining such an order because in a criminal case, the accusations of a victim have been vetted and the Crown believes that there is a reasonable possibility of conviction. A PDF version is available to download [here](#).

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