

## The open court principle versus reputational loss

By **Stephen A. Thiele**

Law360 Canada (February 3, 2026, 2:36 PM EST) -- The open court principle is a powerful doctrine that has been inextricably linked to the rights guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The principle permits public access to information about the court, which, in turn, fosters the public to discuss, opine and criticize court practices and proceedings. As well, the principle permits members of the public to obtain information about the courts and the cases that are heard by them.

However, the principle is not absolute, and sometimes it must yield to protect the identities of litigants or information filed with the court. For example, in civil cases involving serious allegations of sexual misconduct, courts are required to seriously consider the significant loss to reputation or the mental health consequences that a party may suffer if their identity is published in the style of cause, and weigh it against the consequences of potentially silencing a victim or placing their credibility at stake.



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In the battle between the open court principle and a defendant's potential reputational loss, the open court principle, as seen in *S.L.K. v. A.B.*, 2025 BCSC 2617, does not always win.

In this case, the plaintiff alleged having been a victim of sexual assault over a five-year period at the hands of the defendant. During this time, the defendant was the plaintiff's hockey coach.

The allegations were serious, and accordingly the defendant sought an order to anonymize the identities of the parties in the style of cause until trial. The defendant argued that such an order was appropriate because the plaintiff's allegations, which had not yet been proven, caused the defendant to suffer significant mental health consequences.

As a result of the action, the defendant was required to take medication for depression and anxiety and had suffered stomach pains and problems with weight and sleep.

The defendant also showed that the case was attracting media attention, which potentially placed the defendant's job as general manager of a business at risk. Indeed, the defendant's status as a lifetime member of the Vancouver Minor Hockey Association had already been suspended pending the outcome of the plaintiff's action.

The plaintiff opposed the defendant's motion.

The plaintiff argued that the requested order to anonymize the identities of the parties would harm the plaintiff's credibility. Furthermore, the plaintiff felt that such an order would "threaten me into secrecy" and ignore the terrible long-term consequences that the plaintiff had endured even 30 years after the alleged sexual misconduct had occurred.

The plaintiff, a member of a First Nation, described having suffered psychological harm and alcohol abuse because of the defendant's sexual misconduct.

The plaintiff's opposition to the defendant's motion was supported by expert evidence. The expert explained that granting the defendant's request would have a chilling effect on survivors of sexual assault and would simply reinforce traditional power imbalances and discourage survivors from accessing justice.

Lastly, the plaintiff relied on the open court principle. The plaintiff contended that this principle served to protect freedom of expression, was a bedrock of Canadian democracy and could not be easily overridden.

In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada described that in order to override the open court principle, a defendant was required to establish that:

(1) court openness posed a "real and substantial" 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 "real and substantial risk" had to be "well grounded" in the evidence.

In the circumstances, the court found that the defendant satisfied the high threshold that refusing the motion would pose a serious risk to an important public interest because the defendant's reputation, dignity and well-being were at stake. Courts had determined that a person's reputation was an important public interest and that "the protection of the good reputation of an individual [was] of fundamental importance to our democratic society."

With respect to the second element of test, the court found that media attention surrounding the case supported the granting of the requested order. Importantly, the court noted that the defendant had not been criminally charged.

Lastly, the court found that granting the order outweighed its negative effects.

Although the court was sympathetic to the plaintiff's arguments about feeling silenced and potentially disbelieved if the order was granted, the court felt that the allegations would ultimately not be shielded from public view and that there were other protections in place for the public that struck the right balance in the circumstances.

In this regard, the court noted that the defendant had already been suspended from coaching hockey and further ordered that the defendant be precluded from participating in any youth organization role or event without court authorization until trial.

While cases involving sexual misconduct present challenging emotional issues for both victims and alleged wrongdoers, the key takeaway from the case is that defendants can minimize their potential reputational harm at an early stage by seeking to anonymize their identities in a style of cause. As shown by the court's ruling, a defendant facing serious allegations of sexual misconduct will have an improved chance to avoid the impacts of the open court principle if they are able to show a significant threat to their reputation, including an increased risk of losing their job or ability to earn a livelihood,

and serious mental and physical health consequences caused by the allegations.

Furthermore, a defendant will also have a better chance to obtain an anonymization order if no criminal charges are pending and demonstrates a willingness to be subject to restrictive orders, particularly where the sexual misconduct involves minors or youth.

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