

CANADA / JUDGMENT

Randhawa v. Boegman

2025 BCSC 1134

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1134 Randhawa v. Boegman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Randhawa v. Boegman,

2025 BCSC 1134

Date: 20250618

Docket: S256496

Registry: New Westminster

Between:

Honveer Singh Randhawa

Petitioner

And

Anton Boegman, Rana Malhi, Garry Begg, Kabir Qurban, and Mangeet Singh Sahota

Respondents

Before: The Honourable Justice Norell

Reasons for Judgment on Sealing Order and Publication Ban

Counsel for the Petitioner:

S. Uppal

Counsel for the Respondents A. Boegman and R. Malhi:

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M. Sull

Counsel for the Respondent G. Begg:

R. Roy

Place and Date of Hearing:

New Westminster, B.C.

May 26, 2025

Place and Date of Judgment:

New Westminster, B.C.

June 18, 2025

Overview

- [1] On November 8, 2024, following a judicial recount in the provincial electoral district of Surrey-Guildford, the respondent Mr. Begg was declared elected by a margin of 22 votes over the next closest candidate, the petitioner Mr. Randhawa. On January 13, 2025, Mr. Randhawa filed this petition pursuant to s. 150 of the Election Act, R.S.B.C. 1996, c. 106 [EA], alleging that the election of Mr. Begg is invalid on the basis of contraventions of the EA.
- [2] The respondents Anton Boegman and Rana Malhi are Elections BC officials ("Elections BC"). They apply for orders that: this court file be sealed and that the documents filed to date be refiled with the names of individual voters redacted; and for an indefinite publication ban respecting the names of individual voters.
- [3] Mr. Begg applies for similar but broader orders that extend the redactions to the individual voters' family members and their residential addresses. Elections BC takes no position on the broader orders sought by Mr. Begg.
- [4] Although Mr. Randhawa submits that the applicants have not met the test to obtain the orders sought, he agrees with an order that results in the names of individual voters being redacted and a corresponding publication ban, but objects to the names of the voters' family members and their residential addresses being redacted. He also submits that a sealing order and publication ban should not apply to any affidavit or statutory declaration which is voluntarily sworn by any of the individual voters.
- [5] Notice of these applications was provided by the applicants in accordance with Practice Direction 56.
- [6] At the hearing of these applications, I ordered a temporary publication ban of the voters' names and information that would identify them until this decision was made. I provided the parties with the decision on June 13, 2025, with reasons to follow. These are those reasons.

- [7] In summary, I ordered a sealing order over the court file to date, and ordered that all existing court filings be refiled by the parties within seven days with the names of individual voters and information that would identify them redacted. The parties must replace the redactions with an agreed number (for example, "Voter 1"), for the purpose of addressing this petition. I made an order prohibiting the publication of the names of individual voters or information that would identify them. These orders are not indefinite, and shall be reviewed at the conclusion of the hearing of this petition. Any of the voters who cast votes that are the subject of this petition may apply to set aside these orders on seven days notice to the parties. If the parties cannot agree on any redactions, they have liberty to apply.

Legal Framework

- [8] The open court principle is a vital part of our legal system: *Vancouver Sun (Re)*, 2004 SCC 43 at para. 23. In *Sherman Estate v. Donovan*, 2021 SCC 25 the Supreme Court summarized the important rights and interests that protect this principle and the strong presumption in favour of open courts:
- [1] This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press -- the eyes and ears of the public -- is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable.
- [9] Given the rights and interests at stake, the test to obtain a discretionary order limiting court openness is high. As summarized at para. 38 of *Sherman Estate*, an applicant seeking such an order must 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 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.
- [10] This test applies to all types of discretionary orders limiting court openness, whether they are publication bans, anonymization orders, or partial or full sealing orders.
- [11] In short, the applicant "must demonstrate that a superordinate public interest prevails over the public's interest in open court proceedings:" *A Lawyer v. The Law Society of British Columbia*, 2021 BCCA 284 at para. 35.

- [12] In *Sherman Estate*, the Court addressed when a person's right to privacy could constitute "an important public interest" for the first criterion of the test. Those circumstances exist where "the information in question strikes at the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings": at para. 34. As explained by the Court:
- [33] Personal information disseminated in open court can be more than a source of discomfort and may result in an affront to a person's dignity. Insofar as privacy serves to protect individuals from this affront, it is an important public interest relevant under *Sierra Club*. Dignity in this sense is a related but narrower concern than privacy generally; it transcends the interests of the individual and, like other important public interests, is a matter that concerns the society at large. A court can make an exception to the open court principle, notwithstanding the strong presumption in its favour, if the interest in protecting core aspects of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.
- [13] Dignity is eroded when individuals lose control over dissemination of sensitive information which speaks to their core identity, and which may affect how they are seen in public. Where dignity is impaired, psychological distress can result. Protection of this core information is necessary to individual well-being. This is akin to physical safety interests which have been recognized as an important public interest. The administration of justice suffers when open court proceedings threaten physical well-being and individual dignity: *Sherman Estate* at paras. 71-72.
- [14] Accordingly, "protecting individuals from the threat to their dignity that arises when information revealing core aspects of their private lives is disseminated through open court proceedings is an important public interest for the purposes of the test": *Sherman Estate* at para. 73.
- [15] Examples of situations where courts have recognized that dissemination of sensitive personal information could give rise to a serious risk to dignity are: stigmatized medical conditions; stigmatized work; sexual orientation; subjection to sexual assault or harassment; and in some circumstances, detailed information about family structure and work history: *Sherman Estate* at para. 77

- [16] Other important public interests that have been recognized by courts include trial fairness, the proper administration of justice, preserving confidential commercial information, and physical safety: *Sherman Estate* at paras. 41, 86. The category of important interest "transcends the interests of the parties to the dispute and provides significant flexibility to address harm to fundamental values in our society that unqualified openness could cause": at para. 43.
- [17] Under the first criterion of the test, the applicant must also show a serious risk to the important public interest. While the determination of an important public interest "can be done in the abstract at the level of general principles that extend beyond the parties to the particular dispute", whether an interest is at serious risk "is a fact-based finding" that is "necessarily made in context". These are "separate and qualitatively distinct operations" and both must be established to obtain an order limiting court openness: *Sherman Estate* at para. 42.
- [18] Risk is assessed considering both the gravity of the potential harm, and its probability. The more likely that the information will be disseminated, the more serious the risk. A court may discern the probability in light of the totality of the circumstances: *Sherman Estate* at paras. 82-83, 98. Direct evidence is not necessarily required, but impermissible speculation is not sufficient. The serious risk must be grounded in the record or the circumstances of the particular case: *Sherman Estate* at paras. 97, 102.

Allegations in the Petition

- [19] Mr. Randhawa alleges that 46 invalid votes were cast in the election. They fall within three categories.
- [20] First, he alleges that 23 voters voted in the Surrey-Guildford electoral district despite not residing at the addresses listed on their voter registrations. Mr. Randhawa alleges that these voters did not meet the residency requirements to vote in the electoral district, contrary to s. 29(c) of the EA. That subsection states that to vote in an electoral district, a voter must "be a resident of the electoral district".
- [21] Second, he alleges that two voters voted more than once, contrary to s. 89 of the EA, which states that an individual "must not vote more than once in the same general election or by-election".
- [22] Third, 21 voters who reside at a residential care facility ("Facility"), which houses adults diagnosed with chronic mental health or substance use disorders, voted using mail-in ballots. Mr. Randhawa alleges that staff at the Facility contravened s. 109.01 of the EA, which regulates how an individual may assist a voter who, because of a disability or language difficulty, requires assistance in completing a mail-in ballot. Mr. Randhawa also alleges that at least two of the residents of the Facility were intimidated and under duress when they voted, contrary to s. 256 of the EA, which is an offence provision of the EA. Mr. Randhawa alleges that based on observations of a person who attended the Facility, many of the

residents had limited communication abilities, and there is a "reasonable likelihood" that the other 19 residents were improperly influenced.

- [23] For convenience only, and without suggesting any determination of the issues, I will refer to these three categories as the "Non-Resident Voters", the "Double Voters", and the "Facility Voters", respectively. Collectively I will refer to these as the "Voters".
- [24] At this stage, the allegations in the petition are not proven, and nothing in these reasons should be taken as a determination of those issues. The allegations are all contested. Mr. Randhawa has filed affidavits in support of his allegations, and Mr. Begg has filed affidavits contesting those allegations. Elections BC has provided an affidavit on the election process, and which contains information regarding the circumstances of the Voters.
- [25] The names of the Voters are in the petition and supporting affidavits filed by Mr. Randhawa. The Voters are not parties to this petition proceeding. The names of some of the Voters and their family members are in other affidavits that the respondents wish to file with those names redacted.

Analysis

- [26] I will analyze the evidence and submissions in accordance with the three criteria in Sherman Estate.

The court's openness poses a serious risk to an important public interest

- [27] The applicants argue that there are important public interests engaged: those that concern sensitive personal health information of the Facility Voters; and those that concern voter privacy, the exercise of the right to vote, and the reputational interests of all Voters. I will first address the health information of the Facility Voters.
- [28] Elections BC and Mr. Begg argue that there is an important public interest in protecting the sensitive personal health information of the Facility Voters. The residents of the Facility are individuals with health conditions and are vulnerable members of society whose sensitive health information strikes at their biographical core and dignity. Their names, health diagnoses, current location, and any vulnerabilities, is not information available or accessible to the public. The open court principle would pose a serious risk to this important public interest as it would result in the Facility Voter's health information becoming public, and be an affront to their dignity. Mr. Begg argues that the dissemination of the names and/or home addresses of the family members of the Facility Voters would lead to the identification of the Facility Voters, and the same risks.
- [29] Mr. Begg points to evidence filed on this application which he argues supports that there is a serious risk that the dissemination of health information would expose Facility Voters' vulnerabilities, and the ways in which the health and safety of at least one of them has allegedly already been compromised. This evidence concerns the actions of a person who

was involved in having one Facility Voter either move out of or leave the Facility. This Facility Voter is one of two residents who signed a statement in support of the petition. A family member of that Facility Voter filed an affidavit setting out the Facility Voter's health conditions, the circumstances of him leaving the Facility, and the subsequent deterioration in his health. Mr. Begg argues that the serious risk is not theoretical - it has taken place.

[30] Mr. Randhawa argues that the applicants have not established that the Facility Voters' health information engages an important public interest within the meaning described in *Sherman Estate*, and in the alternative, the applicants have not established a serious risk to that interest. However, he agrees to Election BC's proposal to redact names of individual voters and a ban prohibiting publication of the names. He argues that Mr. Begg's allegations about the Facility Voters potentially being exposed to psychological or physical harm are unsubstantiated. Mr. Randhawa contests the allegations regarding the circumstances of the resident leaving the Facility.

[31] In my view, the applicants have established that there is an important public interest in protecting the identity of the Facility Voters and their confidential health information. This is highly sensitive health information that concerns their biographical core and engages their dignity. Mental health and substance use disorders continue to be stigmatized health conditions.

[32] Court openness would pose a serious risk to this important public interest. One of the bases of the petition is that because of the Facility Voters' health conditions, they were subject to improper influence, intimidation, or duress. It is likely that this issue cannot be explored on this petition without the health information of these individuals being exposed. The contested evidence concerning the circumstances of the one resident who left the Facility demonstrates this. As stated in *Sherman Estate* at para. 71:

Dignity is eroded where individuals lose control over this core identity-giving information about themselves, because a highly sensitive aspect of who they are that they did not consciously decide to share is now available to others and may shape how they are seen in public.

[33] Finally, the Facility Voters are not parties to this petition. There is no allegation that they did anything wrong, or in any way contravened the EA. They were exercising their constitutional right to vote, and are innocent bystanders in this dispute. Other than two Facility Voters who signed a statement or statutory declaration, there is no suggestion that any of the Facility Voters chose to become involved in this litigation, and the circumstances of those two voters doing so are in dispute. A person's dignity would be eroded if by exercising their constitutional right to vote, their sensitive health information was to become public information.

[34] I find that the first criterion has been met for the Facility Voters.

[35] I next consider the applicants' arguments that there are important public interests in protecting voter privacy rights, the exercise of the right to vote, and reputational interests.

- [36] Elections BC submits that a person's participation in an election is inherently private and has a public interest dimension. A person's choice to cast a ballot in an election, and their manner of doing so, is a matter related to their core identity and dignity. That information can reveal something about their lifestyle or their experiences. Elections BC refers to sections of the EA which it argues recognize the private nature of voting, in particular ss. 90, 256 and 257. Elections BC and Mr. Begg also refer to other sections of the EA that concern limitations on the use and dissemination of voter participation information, for example, s. 51.01. They argue that whether a voter participated in an election is not information to which the public is entitled.
- [37] Elections BC also submits that there is an important public interest in ensuring that individuals can exercise their right to vote without fear of later being singled out for doing so. Voting in an election is a constitutional right, enshrined in s. 3 of the Canadian Charter of Rights and Freedoms: *Opitz v. Wrzesnewskyj*, 2012 SCC 55 at paras. 27-29. Unless and until it is proven that any of the Voters named in this proceeding committed any wrongdoing, they are innocent citizens who have been drawn into this legal proceeding because they exercised their constitutional right to vote. They did not choose to initiate or participate in this litigation. As a general matter, individuals should not be subjected to public scrutiny and opinion for participating in the democratic process. Elections BC refers to case authorities in civil actions where the identity of parties who are accused of wrongdoing that would harm their reputation have been granted a sealing order or publication ban on an interim basis. Those parties are treated as innocent for the purposes of the application: *Doe v. A.B.*, 2021 BCSC 651 at para. 42; *A Lawyer* at paras. 42, 75-81.
- [38] Elections BC submits that the Court can infer that revealing the names of the Voters in this proceeding creates serious risk to those important public interests. That risk includes deterring these and other citizens from participating in the democratic process in the future. The election in the Surrey-Guildford electoral district was very close and the subject of a judicial recount. Elections BC argues that it is reasonable to infer that some of these individuals may fear or could be exposed to repercussions. Moreover, the Voters accused of wrongdoing could experience significant distress or face other reputational consequences.
- [39] Mr. Begg adopts the arguments of Elections BC, and refers to the affidavits of two staff members at the Facility, their denials of the allegations in the petition concerning them, and the negative repercussions they have already endured as a result of the publicity that has taken place concerning this petition.
- [40] Mr. Randhawa argues that voters generally only have a privacy interest in the manner in which they vote, not the fact that they voted or the residential address which they claimed entitled them to vote in an electoral district. Mr. Randhawa refers to *Alberni-Clayoquot (Regional District) (Re)*, 2019 BCSC 20 at para. 49, which concerned a local government election, where Justice Matthews noted that in order to vote, electors are required to declare their voting area in a public place. The fact someone has voted, and the address they provided when they voted, does not give rise to a privacy interest that goes to a person's

biographical core. Responding to Elections BC's argument that Mr. Randhawa is alleging wrongdoing on the part of the Double Voters and Non-Resident Voters, Mr. Randhawa argues that this is a civil proceeding in which he seeks to invalidate an election. It is not a proceeding in which the Voters are being prosecuted.

- [41] While I accept that there are privacy interests associated with voting, I do not find it necessary to determine whether individual voter participation could be an important public interest for the first Sherman Estate criterion. Instead, my decision rests on the important public interest of protecting the right to vote, along with the important reputational interests engaged by having, at this point, unproven allegations made against Voters who are not party to these proceedings.
- [42] Section 90 of the EA protects the confidentiality of how a person voted. It provides that each person present at a voting place must preserve the secrecy of the ballot, and not attempt to determine how a person voted. A voter is not required to reveal how they voted in any legal proceeding. This is an important public interest. However, Mr. Randhawa is not seeking to inquire how any of the Voters voted.
- [43] Other sections of the EA protect to some extent the identity of voters who have voted. The availability of voter participation lists is limited to certain persons or organizations, such as candidates, and contains limited information: s. 51.01. On the other hand, voter lists are public and can be challenged: ss. 48-49. However, s. 50(4) authorizes the chief electoral officer to obscure personal information of a voter on a voter list to protect the privacy or security of a voter. Many people vote at a polling station where they can be publicly seen. A person voting is required to declare that they are entitled to vote: s. 96.
- [44] Other sections of the EA protect the integrity of the voting process. Section 109.01, referred to above, regulates how assistance may be given to persons who have a disability or language difficulty. Section 256 prohibits, among other actions, intimidation or duress of a voter. Sections 29(c) and 89 regulate who is entitled to vote, in which electoral district they may vote, and prohibits a person from voting more than once in an election. Section 257 of the EA makes it an offence to contravene s. 29(c) or s. 89. These provisions show that not all aspects of voting are completely private. If so, a candidate would not be able to challenge the validity of an election on this basis.
- [45] I accept that there are privacy interests in whether or not a Voter has voted. However, as Matthews J. pointed out in *Alberni-Clayoquot*, voters are required to declare, as a condition of voting, where they reside. I do not find it necessary at this stage to decide what information, if any, beyond how a person voted, is an important public interest that goes to a person's biographical core and dignity.
- [46] I am persuaded that there is an important public interest in protecting the right to vote, and in protecting the reputational interests of individuals not being publicly identified in connection with, at this point, unproven allegations against them. Protecting individuals from unnecessary harm is an important public interest. In *Doe v. A.B.*, a civil action in

which the defendant was alleged to have committed sexual abuse, the Court granted an order anonymizing his name, as well as a sealing order and interim publication ban protecting his identity. In finding that the defendant's privacy was at stake, the Court reasoned:

- [42] Where bare allegations of criminal conduct are made in a Notice of Civil Claim, in the absence of Crown charges or any evidence, a defendant can be treated as "innocent" for the purposes of such an application. Protection of the innocent from unnecessary harm is a social value, which has been held to justify limiting public accessibility and the open court principle: Dr. A. at paras. 33-35; B.G. v. HMTQ, 2002 BCSC 1417 at paras. 13, 21, and 38. The court will protect defendants who, due to the serious nature of the untested allegations set out in a claim, will unjustly suffer irreparable harm to their reputation in the eyes of the community: B.G. at paras. 24, 38.
- [47] Similarly, in A Lawyer, the applicant lawyer sought a partial sealing and anonymization order to protect the identities of themselves, their law firm and their colleagues while under investigation by the Law Society of British Columbia. Justice Bennett granted the order, reasoning as follows:
- [73] The question comes down to whether the information sought to be sealed is sufficiently sensitive and "bears on their dignity" in such a way as to displace the strong presumption in favour of the openness of court.
- [75] The information sought to be sealed and anonymized is sensitive personal information that would strike at the core of the persons sought to be anonymized. It contains serious allegations of dishonesty that is under investigation by the LSBC. It would affect the livelihood of the applicants and other employees at the firm, particularly given that the nature of the firm renders its success dependent on referrals and reputations. As noted, the matter is still under investigation, and the allegations at this point are simply that.
- [76] This case implicates an important public interest, namely the reputational interests of multiple legal professionals.
- [77] Is the important interest at serious risk? [quotation omitted]
- [78] I would suggest that it is. Public access to names at this point in the process is a serious risk to the previously mentioned reputational interest, and may cause irreparable harm to those affected.
- [79] Thus, it must be decided whether the risk to the applicant's reputation, and that of the firm and its employees, is not only an important public interest, but is one that necessitates a partial sealing order and anonymization of the names. I do not think that an alternative measure would mitigate the risk.

- [80] With respect to proportionality, the salutary effects include protection of reputation. The deleterious effects to the open court principle by way of a partial sealing order and anonymization are minimal. The partial sealing order and anonymization can also be temporary, rather than permanent.
- [81] In my view, the salutary effects of sealing and anonymization orders outweigh its deleterious effects. In my view, the Sherman Estates test is met, and that the sealing and anonymization orders be granted at least during the investigation stage. This may change as the case develops.
- [48] The reasoning in both of those case authorities is applicable here. Allegations that the Voters impermissibly voted in the electoral district, or that they voted twice, are serious allegations, and are sufficiently sensitive that they bear on the Voters' reputational interests and displace the strong presumption in favour of the court's openness. These Voters are not party to this proceeding. While I accept that this is not a prosecution, the basis of Mr. Randhawa's allegations is that these Voters voted in contravention of the EA.
- [49] I can infer from the publicity that this case has already had, as well as the importance of an election, that the court openness principle would pose a serious risk to these important interests. The evidence of the two staff at the Facility on how the allegations have affected them demonstrates this.

The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk

- [50] This criterion requires the court to consider whether there are alternatives to the order sought and to restrict the order as much as reasonably possible to prevent the serious risk: Sherman Estate at para. 105.
- [51] In my view, an order similar to that proposed by Elections BC and Mr. Begg, which would result in redaction of the names of the Voters and information identifying them, is necessary to prevent the serious risks to the important public interests identified above. Such orders go no further than what is necessary to address those risks. All other information in the court file is available, and only the identities are protected. Further, the public can attend the proceedings which will be held in open court.
- [52] I acknowledge that redactions to the publicly-available materials represent a greater incursion into court openness than only a publication ban over the Voters' identities. However, given the risks outlined above, in my view, a publication ban alone would not suffice to protect the important public interests identified. With only a publication ban, the highly personal health information of the Facility Voters would still be available to any member of the public who wished to search the court file. Similarly, the identity of the Non-Resident Voters and Double Voters would be available to any member of the public.

- [53] Elections BC and Mr. Begg seek indefinite orders. In my view, there should be, at first instance, a temporal limitation to the orders, particularly in relation to the Non-Resident Voters and Double Voters, pending the evidence on the petition.
- [54] Mr. Begg seeks an order that names of family members and their addresses be sealed. I do not find that this degree of specificity is necessary. An order that information that would identify a Voter must be redacted would likely include information of family members who identify themselves as such, their names, or their residential addresses, since addresses can be used to determine identity, but there may be situations where it would not be necessary to redact that information.
- [55] Mr. Randhawa also argues that family members' names, particularly of the Facility Voters, should not be redacted, otherwise, they will be able to file inflammatory affidavits under the cloak of anonymity. This argument seems to be related to the contested allegations concerning the one resident leaving the Facility. I do not accede to this argument. First, if inadmissible affidavits are filed, that can be addressed by application. Second, s. 150(10) of the EA states that if an application is made to invalidate an election based on a claim that s. 256 of the EA is contravened, which is one of the allegations concerning the Facility Voters, the evidence regarding that claim must be given orally by witnesses rather than by affidavit. Any of the persons providing evidence on that allegation will need to provide that evidence orally, in open court, and be subject to cross-examination.

As a matter of proportionality, the benefits of the order outweigh its negative effects

- [56] The final requirement for a sealing order is that, as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.
- [57] Elections BC acknowledges the public's interest in this petition and their presumptive right to review the materials before the court. Elections BC argues that concealment of individual voter names through redactions and a publication ban on disseminating the same, represents a minimal limit on court openness in the circumstances. These protective measures will not impede the public's ability to engage with the substance of this proceeding.
- [58] Elections BC refers to other cases in which court openness in proceedings concerning elections has been restricted to protect the confidentiality of voters. In *Opitz*, the Supreme Court of Canada referred to a confidentiality order that had been made in that proceeding to protect the identity of voters: at para. 108. The Court did not discuss the confidentiality order further.
- [59] In *Alberni-Clayoquot*, this Court adjudicated the validity of elections in two electoral areas in the Alberni-Clayoquot Regional District. Citing privacy concerns, the chief electoral officer sought an order sealing an affidavit filed by a candidate, which revealed personal information, addresses, and "a description of some" of 13 voters whose ballots were erroneously cast in the wrong electoral area: at paras. 4, 45. Justice Matthews made an

interim order sealing portions of the affidavit pending determination of the petition: at para. 46. In her final decision on the petition, Matthews J. ultimately declined to seal the affidavit permanently. She reasoned:

- [47] The chief election officer referred to a document that Mr. DeLuca signed when given access to the voting register. It precluded him from using the information for any purpose other than for the purpose of the review at hand, which was to determine whether voters had voted where not permitted. In my view, using this information in his affidavit to make submissions on this petition is not in contravention of the terms on which he was given access to the information.
- [48] Section 123 of the Local Government Act provides that the manner in which a ballot is cast is secret. A voter cannot be required to disclose the manner in which he or she voted, including in a court proceeding such as this. A person scrutinizing an election must not try to discover how a person voted or take any step to reveal how a person voted. Section 163(5)(c) prohibits a person from accessing or inspecting a listed of registered voters or use the information from a list of registered voters except for purposes authorized under the Local Government Act.
- [49] The affidavit material filed does not offend s. 123 or s. 163(5)(c) of the Local Government Act. The material concerns the identity of electors who voted in the wrong the electoral area, not the manner in which they voted. The Local Government Act does not create a privacy interest for persons who attend at a voting poll and cast a ballot. In order to vote, electors are required to declare their voting area in a public place.
- [60] Justice Matthews further reviewed the provisions and regulations regarding use of personal information under the EA and concluded that, assuming that the information about the electors in the affidavit constituted "personal information", its disclosure did not offend the legislation; the proceeding regarding the validity of the election was part of the administration of the election: paras. 50-52.
- [61] Elections BC argues that there are three distinguishing features between the circumstances in Alberni-Clayoquot and the circumstances in the present case. First, it does not seem that the voters' names were used in the affidavit before Matthews J., rather, it was addresses and descriptions which appeared in the affidavit. Second, at the time Matthews J. declined to seal the affidavit, "it was not possible to determine whether the errors were made by the electors or the election officials": at para. 13. In this case, allegations of wrongdoing are advanced against the named Voters. Third, Matthews J. declined to seal the affidavit at the conclusion of the proceeding. Notably, she did seal aspects of the affidavit during the proceeding.
- [62] In *Re Judicial Recount: West Vancouver-Sea to Sky Electoral District in the 2020 Provincial Election*, 2020 BCSC 1957, the Court ordered parameters for media access to a judicial recount, including that: a reporter must swear or affirm a declaration required of those participating in the judicial recount, to aid in maintaining the confidentiality of identifiable members of the electorate; and a reporter shall not publish or in any way disclose the name

of or any information that identifies a voter, including possible specific identifying marks on ballots. The Court arrived at these parameters upon considering the open court principle and the test for limits on court openness: at paras. 93, 101-114. The Court noted that a similar approach had been taken in two previous judicial recounts in B.C., and three in Ontario: at para. 112.

[63] Elections BC notes that similar orders were made in the judicial recount pertaining to this proceeding, indexed at 2024 BCSC 2075. Justice Loo noted at para. 16(b):

Accredited media were invited to attend but were required to agree to certain terms as conditions of their attendance. Among other terms, they were not entitled to publish or disclose any information that could reveal the identities of electors, election officers, members of the counting teams, or representatives of the parties to this proceeding. They were permitted to view the counting process only from a distance.

[64] The judicial recount cases, while helpful for their discussions, are addressing a situation where ballots are being examined and counted and there is a need to protect the secrecy of the ballot. That is a different situation than the one here. Alberni-Clayoquot concerns a petition that alleged invalidity of an election, and in my view is the most applicable. I agree with Elections BC that Alberni-Clayoquot has some distinguishing features, but my conclusions and approach in this case are consistent with those of Matthews J., who made an interim order at the hearing of the petition, until the decision on the petition was made.

[65] In my view, for all the reasons discussed under the second criterion, as a matter of proportionality, the benefits of the orders sought outweigh their negative effects. The orders minimally affect the public's ability to engage with the substance of this proceeding, and for the media to report on the case. Only the names and identifying information of the individual Voters are redacted and prohibited from publication, and the orders have a temporal limit on them, and will be reviewed at the conclusion of this petition.

Orders

[66] I therefore order as follows:

[67] All of the documents presently filed in the existing court file shall be sealed by the Registrar of this Court. Within seven days, all of the documents presently filed in the existing court file shall be re-filed by the party who had filed them, with the name of the Voters and any information that would identify Voters, redacted. The parties must replace the redactions with an agreed number (for example, "Voter 1"), so they can identify those Voters for the purpose of addressing this petition.

- [68] Henceforth, any documents filed shall have the names of Voters and any information that would identify the Voters, redacted and replaced with a number to be agreed upon by the parties. At the same time as filing a new redacted document, the party shall file an unredacted copy of the document which shall forthwith be sealed by the Registrar of this Court, with a copy to be forwarded to me by the Registrar.
- [69] The names of any Voters referred to in this proceeding or any information which would identify them shall not be published in any document or broadcast or transmitted in any way.
- [70] These orders are not indefinite, and shall be reviewed at the conclusion of the hearing of this petition as to whether the orders should continue, be amended, or terminated.
- [71] Any of the Voters who are the subject of this petition may apply to set aside this order on seven days notice to the parties.
- [72] If the parties cannot agree on any redactions, they have liberty to apply.
- [73] Access to the sealed documents is restricted to the parties and counsel for the parties.
- "Norell J."

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